UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6
1445 Ross Avenue, Suite 1200
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November 17, 2013

Jayson M. Hudson
Regulatory Branch, CESWG-PE-RB
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Mr. Hudson,

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Final Environmental Impact Statement (FEIS) prepared by the United States Army Corps of Engineers (USACE) for the Luce Bayou Interbasin Transfer Project (LBITP). The purpose of the proposed action is to provide municipal water supply for Houston, Texas and its surrounding area by utilizing surface water rights currently available to Houston from Lake Livingston in the Trinity River basin.

EPA rated the DEIS as "**EC-2**" i.e., EPA had "environmental concerns and requested additional information" in the Final EIS (FEIS) due to concerns with water use, cumulative impacts, wetlands impacts, alternatives analysis, historical, archeological, and cultural resources, air quality impacts, and environmental justice.

EPA submitted significant scoping comments on May 17, 2010, and on the Draft EIS on December 10, 2012. While some of our comments were addressed in the FEIS, EPA continues to have significant concerns despite efforts to seek resolution. The FEIS is still unresponsive to many of EPA's significant areas of concern. EPA expects these outstanding issues to be addressed in the Record of Decision (ROD) document. Our detailed comments on these significant concerns are as follows:

Water Use Calculations

In our previous comment letter for the DEIS, dated December 10, 2012, we asked for an explanation of forecasted water use per person. The DEIS stated that between 2010 and 2040 the population of Harris County was expected to increase from 4 million people to 6 million people, and the projected water use was expected to increase from 450 million gallons daily (mgd) to 1,350 mgd. This equals a 2010 water use of 112.5 gallons per capita per day (gpcd), and a 2040 water use of 225 gpcd. The DEIS stated aggressive water conservation and reuse measures will be instituted as part of the Region H water plan. If water use held steady at 112.5 gpcd, and the population increased to 6 million people it would yield an expected water use of 675 mgd. The response to EPA comments in the FEIS explained the 2040 date was an error and that the correct water-planning forecast was to year 2060. The water-planning year is inconsequential to water use per capita. What needs explanation is the doubling of water use per person in the face of aggressive conservation measures. Water use per capita should be holding

steady or decreasing if water conservation measures are implemented. This is an important issue because the need for water is the purpose of the Luce Bayou project. The ROD should include an explanation why water use per capita is expected to increase.

Historic and Archeological Resources

In the DEIS comment letter, EPA asked what process was used to determine Indian Trust Assets (ITA's) that were not in the project vicinity, and why National Historic Preservation Act (NHPA) and Archeological and Historical Protection Act (AHPA) consultation was not completed. The response to EPA comments was that the USACE has, and will continue, to coordinate with tribes, and that consultation documentation is provided in Appendix H. Appendix H contains consultation documents with the Texas State Historic Preservation Officer (SHPO) and an unsigned Memorandum of Agreement (MOA) between several parties, including tribes. EPA was unable to locate any letters to, or from, tribes indicating specific tribes were contacted for this project. This is not adequate consultation for NHPA, AHPA, or Executive Order (EO) 13175. The ROD should include letters to/from tribes, and a signed copy of the MOA.

Environmental Justice Deficiencies

EPA comments for the DEIS stated potential impacts to low-income populations were not assessed as specified in EO 12898. In addition to low-income populations, other vulnerable populations, such as children and the elderly were not evaluated. The response to EPA comments by the USACE is confusing because it is in response to a comment from Texas Parks and Wildlife concerning zebra mussels and alternatives analysis. Therefore, we strongly recommend the USACE comply with EO 12898 and include a discussion of low-income and vulnerable populations in the ROD.

Alternatives Considered but not Developed for Analysis

Section 2.4.4 of the FEIS states the preferred conveyance method of constructing a channel, versus using pipelines the entire length of conveyance, would have the same direct impacts to the land surface. While true, this does not account for indirect and cumulative effects of constructing a rapid-flow channel through large wetland complexes and tributaries. This could result in subsurface drainage of adjacent wetlands, and potentially, diversion of tributaries during record droughts, or periods of no release. The ROD should include a discussion of indirect and cumulative impacts to wetlands and tributaries from construction of the proposed channel. Specifically, describe to what extent adjacent aquatic resources would be drained or have their chemical, biological, or physical integrity altered.

Discrepancies in Wetland Acreages Impacted

Based on EPA's review of the FEIS, we discovered many discrepancies and inconsistencies in acres of wetlands listed, wetland acres by type, and linear feet of streams. For example, section 2.8.4 states alternative 3A would cause the least damage to streams, but according to tables 2-4 and 5-1, alternative 6 would result in fewer impacts to streams.
Tables 2-4 and 5-1 also list two different totals of linear feet of streams affected by alternative 3A. The acres of wetlands affected by alternative 3A listed in sections 3.6.2.2 and 2.8.4 do not match. Finally, there are acreage discrepancies for the proposed mitigation area between sections 3.6.2.2 and 5.3.2.7. The ROD should correct all discrepancies concerning linear feet of streams and acreages of wetlands in the ROD.

Effects to Coastal Estuarine Systems

According to table 5-1, Alternative 3A would indirectly affect the Galveston Bay (Trinity Bay) estuarine environment and mud flats/bay bottom as environmental flows are altered through project implementation. The ROD should quantify all indirect or cumulative impacts to the affected bay systems and, identify the appropriate compensatory mitigation for any adversely affected aquatic resource.

Wetland Mitigation

The ROD should provide documentation that the proposed sole preservation mitigation site is under imminent threat of destruction or adverse modification. EPA recommends that where preservation of important resources to the watershed is used to provide compensatory mitigation, that preservation be done in conjunction with aquatic resource restoration, establishment and /or enhancement activities. It appears, based solely on jurisdictional acreages, that the compensation ratio is approximately 2:1 preservation acres vs. impacted acres. If sole preservation is approved for this project, the compensation ratio should be much higher than 2:1.

Stream Mitigation

It appears the only stream impacts mitigated for are the 65 linear feet of impacts to Luce Bayou at the outfall structure, while the remaining 15,000 linear feet of impacts from the preferred alternative remain unaccounted for and unbalanced. The ROD should include compensatory mitigation for impacts to the Trinity River and adjacent wetlands at the intake structure from mechanized clearing and bank hardening. If no work is performed to enhance the proposed preservation areas and most of the water and stream impacts for the project are unaccounted for, the EPA recommends the District Engineer deny the permit. For comments pertaining to wetlands and streams, please contact Jim Herrington at herrington.jim@epa.gov, or 254-770-6595.

EPA appreciates the opportunity to review the FEIS. Responses to our comments should be included in the ROD. EPA would appreciate a preliminary copy of the ROD be made available for our review prior to public release. We welcome the opportunity to meet with you to discuss our ongoing significant concerns. Please contact Rhonda Smith at 214-665-8006, or Keith Hayden, of my staff at hayden.keith@epa.gov or 214-665-2133, for assistance.

Sincerely,

Debra A. Griffin

Debra A. Griffin
Associate Director,
Compliance Assurance
And Enforcement Division