UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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August 17, 2009

Scott McHenry
Federal Highway Administration
California Division
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Subject: Final Environmental Impact Statement for Orange County Gateway Project, City of Placentia, California (CEQ# 20090236)

Dear Mr. McHenry:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for the Orange County Gateway Project (Project), City of Placentia, California. Our review is provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act.

We rated the Draft Environmental Impact Statement (DEIS) for this Project as *Environmental Concerns- Insufficient Information (EC-2)* due to the need for an expanded cumulative impacts analysis and a more comprehensive description of the complete corridor-wide, regional rail expansion and grade separations that are proposed. We also recommended additional information and mitigations for inclusion in the FEIS addressing impacts to traffic, air quality, sensitive receptors and jurisdictional waters. Most of our concerns regarding construction emissions as well as impacts to traffic and circulation were resolved in the FEIS. Remaining concerns regarding impacts to air quality, environmental justice, and jurisdictional waters as well as cumulative impacts are summarized below.

Air Quality

Construction Mitigation Measures

We were pleased to note that many of our construction related recommendations, including the appropriate siting of staging areas away from sensitive receptors, were incorporated into mitigation measures AQ-2 and AQ-8 (at p. 3.13-39 and p. 3.13-41). While the FEIS acknowledges that the Orange County Transportation Authority (OCTA) Resident or Project Engineer will ensure that the contractor adheres to the construction mitigation measures referenced, EPA recommends that all construction related mitigation measures identified in the

FEIS, including those requirements under South Coast Air Quality Management District Rules, be included as specific commitments in the Record of Decision (ROD).

Mobile Source Air Toxics

EPA's previous recommendations regarding mobile source air toxics (MSAT) from construction related emissions were not incorporated into the FEIS. FHWA's response to comments indicates the proposed Project would result in a net reduction in MSAT emissions in the area and the region; however, this does not appear to account for construction related MSAT emissions which may occur over the span of 13 years (at. p. 3.4-32). EPA continues to recommend performing the assessment described in the March 2007 report entitled "*Analyzing, Documenting, and Communicating the Impacts of Mobile Source Air Toxic Emissions in the NEPA Process*" (http://www.trb.org/NotesDocs/25-25(18)_FR.pdf), prepared for the American Association of State Highway and Transportation Officials (AASHTO). The analysis of potential MSAT impacts is especially important in already highly impacted areas. Specifically, we reiterate that the ROD should identify design alternatives and options to further reduce MSAT emissions, including indoor air quality improvements, for all sensitive receptors within the Project area including, but not limited to, *Parque de los Ninos* and the El Camino Real Continuation High School (see pg. 3.4-24 for others). The ROD should assess options to relocate the outdoor play areas further away from staging areas, include these options and identify any additional measures that will be implemented to further reduce impacts.

Further, both EPA and California Office of Environmental Health Hazard Assessment (OEHHA) have long standing experience and published, peer-reviewed guidance for evaluating long-term health effects, including cancer risk. The concerns raised about estimating exposure over a 70-year lifetime have been addressed extensively by our agencies (at p. 3.13-25). Recently, EPA has published an Air Toxics Risk Assessment Reference Library (http://www.epa.gov/ttn/fera/risk_atra_main.html) that addresses the precise concerns raised in this section of the FEIS – namely how to develop appropriate exposure scenarios in a risk assessment. Similarly, California OEHHA has hot spot risk assessment guidance published in support of California's Air Toxics "Hot Spots" Information and Assessment Act of 1987 (a.k.a. AB2588, http://www.oehha.ca.gov/air/hot_spots/pdf/HRAguidefinal.pdf). While we agree with the statement in the FEIS that there may be uncertainties associated with risk assessments, for this Project most uncertainties would be consistent across alternatives, and thus such an analysis would still be sufficient for distinguishing between the impacts among scenarios and informing mitigation.

The ROD should include a revision of the discussion of uncertainties in "Exposure Levels and Health Effects" to include a discussion of possible exposure scenarios typically used by EPA and California OEHHA in air toxics risk assessments. EPA is not recommending that a human health risk assessment be performed for this Project. We do, however, acknowledge that such an assessment is possible.

Greenhouse Gas Emissions

EPA appreciates the information included in this FEIS with respect to Caltrans' statewide efforts on climate change. However, because NEPA requires the disclosure of project impacts to resources, EPA reiterates our recommendation that the ROD include a greenhouse gas analysis which identifies the cumulative contributions or benefits to GHGs that will result from implementation of the Project. Additionally, we recommend that the ROD include a discussion of any potential impacts of climate change on the Project and, as appropriate, identify specific mitigation measures needed to 1) protect the Project from the effects of climate change, 2) reduce the Project's adverse air quality effects, and/or 3) promote pollution prevention or environmental stewardship.

Environmental Justice

EPA's previous recommendations regarding Environmental Justice were not fully incorporated into the FEIS. Specifically, the Environmental Justice analysis does not evaluate localized impacts from diesel emissions to minority or low-income communities in the immediate vicinity of the Project railway that could result from the Project. The ROD should identified a range of potential impacts associated with the various Project alternatives and provide appropriate mitigation measures for any adverse impacts due to Project related emissions.

Further, under the three Build Alternatives, residences will be acquired in three census tracts with high percents of population below the poverty level (at pg. 3.4-98). The FEIS also states that these impacts can only be avoided under the No Project Alternative because the proposed improvements are to the existing BNSF and local streets adjacent to these residential uses. The FEIS identifies mitigation measures CI-4 to CI-6 to address relocation impacts; however, the FEIS also indicates that relocation of potentially displaced residents may be difficult given the current housing market and projected growth of the Orange County area (at pg. 3.4-89). In the ROD, FHWA should commit to allocating housing units from the North Yorba Linda Estates, Yorba Heights or Maag Ranch development projects (at pg. 3.4-35) described in the FEIS, or reasonable alternatives, to minimize the relocation effects of the Project to the greatest degree possible. The ROD should identify 1) the timing and location of the redevelopment strategies, 2) the responsible party for the redevelopment, and 3) how the redevelopment can be incorporated into the Project construction schedule.

Jurisdictional Waters

We appreciate the clarifications made to Section 3.17.1 as a result of our comments; however, EPA remains concerned about the level of analysis included in the Jurisdictional Waters section. While the FEIS discloses proposed permanent fill to waters of the United States from a numeric perspective, it does not sufficiently describe the activities proposed relevant to these waters and what functions would be affected with each alternative. Additionally, from a functional perspective, it remains unclear what the differences are between the alternatives. The FEIS should disclose for each Alternative: (1) the name of the crossing, (2) the aquatic resource type (concrete channel, earthen channel, riprap), (3) the type of activity proposed (viaduct, etc.),

(4) the acreage of waters impacted, and (5) the effect to aquatic resource function from the proposed activity.

Further, Section 3.17.4.1 defers avoidance and mitigation of aquatic resources to the permit process. EPA continues to disagree with this approach. The EIS is an appropriate vehicle for the project proponent to demonstrate compliance with future permit requirements, and EPA advocates that the avoidance and minimization be addressed to the extent practicable in the FEIS and documented in the ROD. The ROD should include a summary of avoidance and minimization measures for impacts to waters of the United States. This should include a summary of what types of crossing structures are available that will avoid impacts to aquatic resources. This will be particularly important for proposed impacts to soft bottomed waterways (i.e. turning soft bottom into concrete).

Additionally, the Mitigation Measures Section 3.17.4.2 includes proposed mitigation measures for impacts to waters. Mitigation Measure BIO-1 now includes reference to the new regulations issued governing compensatory mitigation to promote no net loss of aquatic resources by improving restoration and protection policies, increasing the effective use of mitigation banks, and strengthening the requirements for the use of in-lieu fee mitigation. These new compensatory mitigation standards emphasize best available science, promote innovation, and focus on results. We emphasize that mitigation for impacts to waters of the United States proposed in the FEIS must be consistent with the new rule. While BIO-1 includes a reference to this rule, we again reiterate our recommendation that the ROD should discuss how the requirements of the new rule will be met by the proposed Project.

Finally, the Response to EPA's Comments indicates that 'the post-Rapanos guidance does not apply to this project because the jurisdictional delineation (JD) and the Unites States Army Corps of Engineers (USACE) approval of that delineation predate the Rapanos decision'. We request that the ROD provide confirmation that the USACE agrees with this interpretation. The ROD should also confirm that the February 17, 2004 JD approved by USACE did not expire after five years. The ROD should confirm that the scope of the Project has not changed since the USACE first made a determination on the extent of jurisdiction. A change in the scope of the Project or the introduction of new information may require a re-evaluation of the JD.

Cumulative Impacts

As previously stated in our comments on the DEIS for this Project, EPA understands and supports the inherent benefits associated with grade separation projects which can result in increased efficiencies and reduced emissions if executed appropriately. Given that the rail corridor under consideration for the Project is connected to a broader system in the greater Los Angeles area which continues to adapt to safety, efficiency and environmental concerns, EPA again recommends that the FEIS include a comprehensive summary of the proposed projects in their entirety to provide a better understanding of how the timeline for this Project fits into the greater regional setting of future, related projects. Given the potential for Project construction to last over a decade, an analysis of how future projects, in conjunction with the proposed Project, may cumulatively impact the health of the affected resources should be addressed in this section.

While we understand the Project may not itself be a rail facility or service improvement project (at pg. 4-5), the cumulative impacts analysis should include a comprehensive description of the associated elements of all foreseeable future actions including additional grade separations and railway improvements in the vicinity of the Project, for example, the Third Main Track Project. As the Response to EPA's Comment F1-6 indicates: 'it is likely that, at some point in the future, the BNSF would install a third track in its right-of-way in the OCG study area to provide a continuous three track cross section across this part of Southern California.' Further, BNSF had requested in a letter dated October 30, 2006 that its right of way be preserved and that the 'existing right of way is reserved for future rail improvements and rail expansions within the corridor'. Because the Third Main Track Project appears reasonably foreseeable, the FEIS and ROD should disclose to the public the cumulative impacts that will result, when considered with the all future grade separations and the proposed additional rail tracks (including the LOSSAN project) that are in the Project vicinity.

Thank you for the opportunity to comment on the FEIS. If you have any questions, please contact Connell Dunning, Transportation Team Lead at (415) 947-4161, or contact Tom Plenys, the lead reviewer for this project. Tom can be reached at (415) 972-3238 or plenys.thomas@epa.gov.

Sincerely,

Connell Dunning

FOR Kathleen M. Goforth, Manager
Environmental Review Office (CED-2)

CC: Michael McConaha, City of Placentia
Gene Fong, Federal Highway Administration
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