UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

April16, 2007

Ms. Susan A. Meyer, Senior Project Manager
Regulatory Branch, U.S. Army Corps of Engineers
Los Angeles District
P.O. Box 532711,
915 Wilshire Boulevard,
Los Angeles, CA 90053-2325

Subject: Final Environmental Impact Statement (Final EIS) for the Cajon Third Track Project (CEQ# 20070094)

Dear Ms. Meyer:

The U.S. Environmental Protection Agency (EPA) has reviewed the above project pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. In addition, because Burlington Northern Santa Fe (BNSF) has applied to the U.S. Army Corps of Engineers (ACOE) for a Clean Water Act Section 404 permit to construct a third track through the Cajon Pass in San Bernardino County, California, EPA has reviewed the FEIS for compliance with the Clean Water Act Section 404(b)(1) Guidelines.

EPA provided detailed comments on the Draft Environmental Impact Statement (DEIS) on January 4, 2007, rating the document as EC-2, Environmental Concerns - Insufficient Information. Our review of the DEIS indicated our primary concerns regarding aquatic resource and air quality impacts Following our review of the FEIS, EPA has continuing environmental concerns related to demonstration of compliance with Clean Water Act Section 404(b)(1) Guidelines and the air quality impacts of the project.

EPA's attached comments identify our concerns that information provided in the FEIS does not justify that the preferred alternative is the least environmentally damaging practicable alternative, the only alternative that can be permitted under Section 404 of the Clean Water Act. EPA recommends specific revisions to the Alternatives Analysis and compensatory mitigation proposals and we are available to further discuss these recommendations. In addition, because the project is located in an area with the highest concentrations of ozone and particulate matter larger than 2.5 microns in diameter (PM2.5) and given preliminary information regarding the difficulties in attaining the existing national ambient air quality standards, we continue to believe that it is appropriate for the project sponsors to commit to benchmark levels of air quality mitigation beyond the minimum levels currently required.

When the Record of Decision is released for public review, please send (2) copies to the address above (mailcode: CED-2). If you have any questions, please contact Connell Dunning or Jorine Campopiano, the lead reviewers for this project. Connell can be reached at (415) 947-4161 and Jorine can be reached at 415-972-3397.

Sincerely,

/S/ Connell Dunning for

Nova Blazej, Manager
Environmental Review Office

Enclosure: Summary of Rating Definitions
Detailed Comments

CC: David Valenstein, Federal Railroad Administration
Thomas J. Stone, DesertXpress
Steve Loe, US Forest Service
Steve Smith, South Coast Air Quality Management District
Alan DeSalvio, Mojave Air Quality Management District
John Hanlon, US Fish and Wildlife Service
Raul Rodriguez, California Department of Fish and Game

EPA DETAILED COMMENTS ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT FOR CAJON THIRD TRACK PROJECT, APRIL 16, 2007

Clean Water Act Section 404/Compliance with the Section 404(b)(1)Guidelines

In EPA's comments on the Draft Environmental Impact Statement (DEIS), we emphasized the need for the Final Environmental Impact Statement (FEIS) to clearly demonstrate that the project complies with the 404(b)(1) Guidelines. After review of the information provided in the FEIS, it does not appear that the proposed project represents the least environmentally damaging practicable alternative (LEDPA). The Army Corps of Engineers cannot permit the discharge of dredged or fill material if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem. An alternative is considered practicable if is it available and capable of being done after taking into consideration cost, existing technology, and logistics

The Draft 404(b)(1) Alternatives Analysis provided in Appendix A of the FEIS does not demonstrate that the proposed project is the LEDPA. The on-site alternative, Reduced Footprint with Drainage Structure Replacement appears to be practicable. The Alternatives Analysis included six alternatives, one of which was specifically requested by EPA in earlier discussions with the applicant. This alternative, entitled Reduced Footprint with Drainage Structure Replacement, took the applicant's preferred alternative, Reduced Footprint, and proposed additional aquatic resource enhancements to replace sub-standard, undersized culverts with larger culverts or spans to improve drainage and water quality and enhance wildlife movement throughout the project area.

The applicant determined that this alternative was not practicable due to (1) potential track outages, (2) increased impacts to jurisdictional waters, (3) increased mitigation, (4) increased costs associated with the structures and (4) potential for increased flooding. We consider some of these practicability screening criteria inappropriate for Clean Water Act compliance purposes.

1.Track Outages

Track outages that cause significant delays in the movement of goods is an appropriate screening criteria, as it creates a logistical constraint. However, the information provided states that in most cases, track outages could be avoided through a "jack and bore" process which pushes a smooth pipe through the rail embankment.

Recommendation:

EPA requests that the Corps provide additional information regarding which culverts could benefit from this process, and why "jack and bore" are not practicable in these locations.

2. Increased Impacts to Waters of the U.S.

Increased impacts to waters of the United States is not an appropriate screening criterion for this project. Replacement of undersized culverts would result in a better functioning stream system and increased wildlife movement, and is clearly consistent with the Clean Water Act

goals to restore and maintain the chemical, physical, and biological integrity of waters of the United States.

Recommendation:

EPA requests that the Corps remove increased impacts to waters of the U.S from the screening criteria for determining practicability.

3. Increased Mitigation

The potential for increased mitigation is not an appropriate screening criteria for practicability. The amount of compensatory mitigation is dependent upon the functions lost as a result of impacts authorized by the Corps permit. If impacts result in increased function of the aquatic resources, compensatory mitigation requirements may be reduced.

Recommendation:

EPA requests that the Corps remove the potential for increased mitigation from the screening criteria for determining practicability.

4. Increased Costs

While cost is a consideration in practicability, the applicant has not provided specific cost figures that demonstrates that increased costs make the project impracticable.

Recommendation:

EPA requests that the Corps consider increased costs of improved culverts and spans in context with the costs of the entire project.

5. Potential for Increased Flooding

It is unclear from the information provided whether retention basins upstream of the culverts were originally created for flood control purposes or if these basins are back-water areas that have developed from the presence of an undersized culvert. Without any documentation of flood control design function of the basins, it is unclear what flood control benefits would be compromised.

Recommendation:

EPA requests that the Corps document flood control design function of the basins to provide information regarding what flood control benefits would be compromised.

Compensatory Mitigation

In our comments on the DEIS, EPA determined there was insufficient information on proposed mitigation to offset unavoidable impacts to waters of the United States. After review of the Habitat Mitigation and Monitoring Plan (HMMP) included in Appendix D of the FEIS, we have determined that the proposed plan does not adequately compensate for impacts to waters.

The applicant has proposed a 26.1 acre compensatory mitigation site to serve as compensation for permanent impacts to wetlands and unvegetated waters of the United States. Overall, the HMMP is unclear how waters will be compensated for, at what ratios, and whether the mitigation consists of preservation, enhancement, creation, or restoration.

Recommendation:

To help clarify, the Draft HMMP should be revised to include a table specifically for Clean Water Act Section 404 purposes. The table should identify how waters will be compensated for, at what ratios, and whether the mitigation consists of preservation, enhancement, creation, or restoration.

It is also unclear how temporary impacts would be compensated for. The FEIS identifies approximately 3.5 acres of waters of the United States will be temporarily impacted.

Recommendation:

For temporary impacts, EPA recommends that the Draft HMMP be modified to include these sites. Baseline conditions at each site should be established and revegetation and numeric success criteria for these sites should be created. The sites should also be included in the annual monitoring to ensure that the aquatic functions return to the site. If significant temporal losses are anticipated, (i.e. site covered or buried for more than one growing season), mitigation ratios should be increased to compensate for loss of aquatic function.

It appears that the majority of the mitigation for permanent losses of waters of the United States would be in the form of preservation. Typically, preservation is "last-resort"mitigation, and even if found acceptable by the resource agencies, the ratios would be much higher than would be for creation or restoration. Additionally, EPA is concerned that the HMMP did not identify a permanent legal protection mechanism for the mitigation site.

Recommendation:

If the Corps determines that preservation is the appropriate form of mitigation, EPA requests that the mitigation ratios are increased due to the net losses of waters of the United States.

To ensure the long term success of this mitigation site, a conservation easement should be placed over the site and an endowment set up to manage the aquatic resources into perpetuity.

Ephemeral Streams

In our comments on the DEIS, EPA did not agree with the assessment of ephemeral drainages "… have relatively minimal functions and values as compared with other aquatic resources…". EPA acknowledges and appreciates the language changed in the FEIS to reflect the important functions of ephemeral streams.

Air Quality

The project is located near monitors recording among the highest concentrations of ozone and particulate matter over 2.5 microns in diameter (PM2.5) in the country. Rapid growth in rail traffic and other goods movement sources, along with emissions of nitrous oxides (NOx) and primary particulate matter (PM) during construction phases, will hinder the already challenging attainment strategies for these pollutants in the South Coast area. In view of the location of the project and the rail traffic accommodated by the project, and taking into account preliminary information regarding the difficulties in attaining the existing national ambient air quality standards, we continue to believe that it is appropriate for the project sponsors to commit to benchmark levels of air quality mitigation beyond the minimum levels currently required. For example, with respect to fugitive dust and exhaust from equipment during the construction phase, the FEIS essentially commits only to comply with South Coast Air Quality Management District (SCAQMD) and Mojave Desert Air Quality Management District (MDAQMD) rules, and to pursue feasible options for reducing exhaust emissions from equipment and engines.

Recommendations:

The ROD should identify specific commitments to use only the cleanest construction equipment available, including Tier 3 and Tier 4 compliant engines, to take steps to prohibit idling of construction equipment beyond a specified time limit that represents the shortest period possible, etc.

The ROD should also include specific commitments to ensure that locomotive emissions are minimized through use of only Tier 2 and, as soon as available, Tier 3 locomotives.