



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

January 27, 2021

Regulatory Division (SPK-2019-00308)

Surface Transportation Board
Attn: Mr. Joshua Wayland
395 E St, SW
Washington, DC 20423
Joshua.Wayland@stb.gov

Dear Mr. Wayland:

As a cooperating agency on the preparation of an Environmental Impact Statement (EIS) for the Uinta Basin Transportation Corridor project, the Corps of Engineers (Corps) is providing comments for the draft EIS. The Surface Transportation Board project identification number is Docket No. FD 36284, Seven County Infrastructure Coalition.

Project Background

The applicants, Seven County Infrastructure Coalition and Uinta Basin Railway, LLC, are proposing to construct an 88-mile long railway common-carrier freight rail system that would connect the Uinta Basin to the interstate common-carrier rail network. Based on the available information, the project would result in the discharge of dredged or fill material in waters of the United States (waters) and, therefore, would require a Department of the Army (DA) Permit. A DA permit application has been submitted and the Corps of Engineers (Corps) is currently reviewing the proposal. The Corps' goal is to adopt the EIS in order to make a permit decision under Section 404 of Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act (R&HA).

Comments and Recommendations

1. Range of Practicable Alternatives:

The STB's Office of Environmental Analysis (OEA) concluded that, of the conceptual routes that were considered for the construction of a railway that would allow freight trains to operate safely and efficiently, only three alternatives would be reasonable under NEPA. This section of the draft EIS indicates that NEPA requires federal agencies consider reasonable alternatives to the proposed action. To be reasonable, an alternative must meet the project purpose and need and must be logistically feasible and practical to implement.

Although NEPA requires discussion of a reasonable range of alternatives and the effects of those alternatives, under EPA's Section 404(b)(1) CWA Guidelines (Guidelines), practicability of alternatives is taken into consideration and no alternative may be permitted by the Corps if there is a less environmentally damaging practicable alternative (LEDPA) unless there are other significant environmental consequences associated with the alternative. It is also important to recognize that determining the LEDPA cannot include any aspect of compensatory mitigation.

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose.

Information regarding direct and indirect effects to the aquatic environment is necessary to make the selection of the LEDPA. The selection criteria used in Chapter 2 of the draft EIS may narrow the range of alternatives carried forward. Based on the current analysis in this Chapter, the Corps would not be able to evaluate the practicability of these alternatives or determine the LEDPA. For example, several alternatives were not carried forward because each one of these alternatives would create disproportionately significant environmental impacts due to a greater number of water body crossings than other proposed alternatives, and/or would affect a greater area of wetlands. Factors such as “disproportionate environmental impacts” should not be used as screening criteria for alternatives since actual data was not specifically identified for each of the 27 original alternatives and the potential effects were evaluated from a desktop review which would not allow for an objective analysis of each alternative. This type of evaluation may be considered speculative and/or pre-decisional. If these alternatives cannot be dismissed based on other criteria, then they should be carried forward for detailed analysis.

Because the 404 b1 Guidelines are a more stringent set of criteria in which to identify a reasonable/practicable range of alternatives, the Corps requests that the criteria used to determine a reasonable range be couched in terms of practicability (i.e. availability and cost, logistic and existing technological constraints). This will ensure STB and the Corps can agree on the alternatives dismissed and those carried forward for detailed review. This will eliminate the potential of the Corps having to supplement STB’s analysis if alternatives are later determined to be practicable as a result of comments from the STB’s draft EIS or the DA permit application associated with this proposed project currently under review by the Corps. As part of the DA permit application, the Corps is in the process of reviewing the applicant’s practicability analysis that could be incorporated in Chapter 2 or be included as appendix to the EIS once the Corps review is complete. Not incorporating an alternatives practicability analysis in the EIS could result in the STB and the Corps coming to different decisions regarding the project, which we hope to avoid.

2. Environmentally Preferred Alternative:

Information for the Environmentally Preferred Alternative in the draft EIS Summary and Chapter 2 indicate that, based on OEA’s analysis and consultation with appropriate government agencies, the Whitmore Park Alternative would result in the fewest significant impacts on the environment. At this time, the Corps has not made a determination regarding least damaging alternatives for this project. The Corps would like to reiterate that in order to address 404 b1 Guideline requirements, the applicants must demonstrate that the preferred alternative, (i.e. Whitmore Park) is the LEDPA as part of the DA permit process.

3. Cumulative Impacts – Rail Terminals:

The Rail Terminals Section indicates that if the Coalition were to construct and operate the proposed rail line, OEA anticipates that new rail terminals would be constructed at the terminus points near Myton and Leland Bench to transfer commodities between trucks and rail cars. Based on discussions with the applicants, at this time terminals are not being proposed as part of the railroad. The applicants have indicated that mobile loading/offloading is common practice

when no additional infrastructure construction is proposed for railroad projects. The Corps recommends the inclusion of a discussion in the EIS of the mobile loading/offloading approach that would avoid the necessity of constructing additional auxiliary facilities associated with the railroad.

4. Cumulative Impacts - Growth Inducement Associated with Railroad Alignments:

The Oil and Gas Development Section indicates that the proposed railroad would have the capacity to ship between 130,000 and 350,000 barrels of oil each day. All oil transported would be from new production. Existing wells would be used for the additional oil to be extracted. However, the new production would result in the need to drill between 49 and 131 new wells annually to replace depleted wells. Ancillary facilities (e.g. access roads, electric power distribution lines, well pads, surface or subsurface pipelines, storage tanks, etc.) would need to be constructed to support the new oil field developments. Section 3.15.5.3 - Water Resources indicates that cumulative impacts would depend on the selected alternative (i.e. Indian Canyon, Wells Draw, or Whitmore Park) and the relative location of the future oil and gas wells. This section also indicates that the STB's OEA expects that impacts to waters resources would be avoided or minimized as part of any federal, state, and local permitting requirements. The Corps agrees that construction of the railroad would promote future development along the selected alignment that would not otherwise occur. Development of the area could constitute a cumulative impact to waters of the U.S. This aspect of cumulative impact caused by growth inducement from the railroad alignments has not been sufficiently evaluated and should be more thoroughly addressed in the draft EIS.

5. Cumulative Impacts – Past, Present, and Reasonably Foreseeable Future Actions:

The water resources cumulative impacts study area is defined as the Hydraulic Unit Code (HUC) 10 watersheds that would be crossed by the proposed rail line. Although Figure 3.15-1. depicts past, present, and reasonably foreseeable future actions for the alignments, the Corps recommends including a map that clearly depicts the water resources cumulative impacts study area in the draft EIS.

6. Water Resources – Field Data:

The draft EIS indicates that field data has been collected for the majority of the field study area for the Indian Canyon, Wells Draw, and Whitmore Park alternatives. The field study area consists of a 1,000-foot-wide corridor along much of the rail centerline for each alternative. In general, the field data to identify aquatic resources within the survey study area appears to be sufficient for planning purposes for these three alternatives. If additional alternatives are later determined to be practicable, additional field data should be collected to confirm the extent of aquatic resources in those rights-of-way.

7. Water Resources – Project Impacts:

Information for impacts associated with the project should clearly specify the miles of stream lost compared to the length of realigned streams. Information that accounts for the reduction in sinuosity when the meandering streams are realigned/straightened should also be included to appropriately determine the stream losses associated with the project.

8. Consultation:

The Corps has designated the STB as the lead Federal agency for compliance with Section 7 of the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA) and to act on our behalf in any consultation conducted for compliance with ESA and NHPA. The Corps' goal is to adopt the STB's Section 7 and Section 106 consultations in order to make a permit decision under Section 404 of CWA and/or Section 10 of the R&HA.

If the terminals identified in the *Cumulative Impacts, Rail Terminals Section* were to be constructed as part of the railway project and the facilities were to impact waters, our regulations indicate that those portions of the project must be included in the same DA permit application for the Corps to evaluate the impacts of a single and complete project. In this case, the action area in the EIS and Section 7 ESA consultation would have to include all areas that would be directly or indirectly affected by the discharges of dredged or fill material into waters, including any waters located within the loading terminals/intermodal facilities at the terminal points of the proposed railroad. This would also be applicable to Section 106 of the National Historic Preservation Act (NHPA) consultation. If STB's regulations preclude the expansion of the Action Area under Section 7 of the ESA and Area of Potential Effect under Section 106 of the NHPA, the Corps would need to supplement these consultations in areas resulting in impacts to waters of the U.S. prior to finalizing a DA permit decision.

However, based on recent communication with the applicants, additional information has been provided to the Corps indicating that mobile loading/offloading is common practice in the railroad industry and no additional infrastructure (i.e. terminals) would be constructed as a result of this project. The applicants will submit additional information to further evaluate the mobile loading/offloading alternative and the Corps will make a determination whether the railroad by itself can be considered a single and complete project per our regulations.

We appreciate the opportunity to provide our comments on the draft EIS. Please refer to identification number SPK-2019-00308 in any correspondence concerning this project. If you have any questions, please contact Nicole Fresard at 533 West 2600 South, Suite 150, Bountiful, Utah 84010, by email at Nicole.D.Fresard@usace.army.mil, or telephone at (801) 295-8380 ext. 8321. For more information regarding our program, please visit our website at www.spk.usace.army.mil/Mission/Regulatory.aspx.

Sincerely,

Jason Gipson
Chief, Nevada/Utah Section
Regulatory Division

cc: Ms. Victoria Rutson (Vicki.Rutson@stb.gov)