UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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February 21, 2020

Ref: 8ORA-N

Eighth Coast Guard District (dwb)
1222 Spruce Street
Suite 2.102D
St. Louis, Missouri 63103-2832
Attn: Rob McCaskey

Dear Mr. McCaskey:

The U.S. Environmental Protection Agency Region 8 has reviewed the United States Coast Guard's (USCG) January 8, 2020, notice of intent (NOI) for the EIS that is being prepared for the BNSF Railway Bridge Across the Missouri River at Bismarck, North Dakota. The following comments were prepared in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and in anticipation of our review of the EIS under Section 309 of the Clean Air Act.

We recommend USCG include the following topics in the scope of analysis in the Draft EIS:

- Ensuring the EIS includes the analysis necessary to support CWA Section 404 permitting;
- Impacts to Waters of the U.S. (WOTUS), including wetlands and Section 404 permits under the Clean Water Act;
- Impacts water resources, including water quality, riparian habitat, stream morphology and surface water and groundwater movement, as well as any National Pollutant Discharge Elimination System (NPDES) permits needed (Section 402 of the Clean Water Act);
- Impacts to air quality; and
- Impacts to environmental justice communities;

Consistency with NEPA and Clean Water Act Permit Requirements

Purpose and Need

For purposes of complying with both the Clean Water Act (CWA) and National Environmental Policy Act (NEPA), the EPA recommends that the purpose and need statement remain broad enough to encompass an appropriate range of both "reasonable" and "practicable" alternatives to meet the basic (i.e., underlying) project purpose, including the proposed action and other transportation methods available. We recommend defining a purpose and need statement broad enough to allow for analysis of a range of alternatives without eliminating less environmentally damaging alternatives that may still be considered practicable under the CWA Section 404 implementing regulations. Developing an agency-coordinated purpose and need statement is critical prior to establishing subsequent screening criteria or identification of alternatives.

Conversely, the use of a narrow project purpose to determine the scope of studies has the potential to result in the need to prepare additional NEPA documentation to meet NEPA and CWA Section 404 requirements. The Corps of Engineers and EPA both have roles in Section 404, and consistent with the E.O. 13807 we recommend USCG coordinate to ensure this EIS is sufficient for related federal permit decisions.

Range of Alternatives

The EPA recommends that the NEPA document evaluate a range of reasonable and practicable alternatives, including multiple alignments. Under CWA Section 404 regulations, the U.S. Army Corps of Engineers (Corps) can only issue a permit for a discharge of fill material into waters of the U.S. if it can be demonstrated that the project is the least environmentally damaging practicable alternative (LEDPA). Practicable alternatives depend on cost, technical and logistical factors and must be capable of achieving the basic project purpose. For an alternative to be practicable, it must be reasonably available or obtainable and may include consideration of options beyond the authority of the lead agency. To assure that the project is permittable, it is essential that the NEPA document includes a full range of alternatives with the goal of avoiding and minimizing the impacts to waters of the U.S. while meeting the purpose of the action.

It is important that the NEPA document summarizes criteria used to screen reasonable alternatives, including the CWA regulatory criteria used to develop practicable alternatives, and consideration be given to environmental, logistical, technological and cost criteria. Providing details of the reasoning used to eliminate alternatives is helpful in understanding the decision process. As required by regulation, the rationale must be consistent with the practicability definition and criteria outlined in the preamble language of the CWA 404(b)(1) Guidelines (40 CFR § 230.10). The lead agency should ensure that any selected or preferred alternative is consistent with these criteria and demonstrate that such alternative is the least environmentally damaging practicable alternative. EPA and the Corps have experience to assist STB in ensuring consistency with the 404(b)(1) Guidelines.

WOTUS and Water Quality

Analysis/Resource Considerations

Affected Environment and Baseline Conditions

Please consider the following when defining baseline conditions:

- Verify that any historical data (e.g., data 5 years or older) are representative of current conditions.
- Include resources directly impacted by the project footprint within the geographic scope of analysis, as well as the resources indirectly (or secondarily) impacted by the project. These indirectly impacted areas may include adjacent or downstream waters, and any other resource areas which may be affected by project construction or operation.
- We recommend that the existing environmental baseline be used as the basis for comparison of impacts across all alternatives, including the no-action alternative. In the EPA's experience, comparison of the action alternatives to existing conditions is an important frame of reference to quantify and/or characterize the magnitude of effects and understand each alternative's impacts.

Direct, Indirect and Cumulative Effects

Because NEPA and CWA Section 404 have slightly different definitions for indirect (secondary) and cumulative impacts, identify in the document which statute is being employed to evaluate the impacts and how the analysis would differ under the other statute's definition.

We suggest analyzing impacts according to airsheds and watersheds rather than political boundaries.

It is important that the NEPA document examine the direct, indirect, and cumulative impacts to the environmental, cultural, and recreational resource characteristics of the project area. This may include impacts to threatened, endangered and/or sensitive species and their habitat; fish and invertebrate assemblages; water quality, and other resources within the geographic scope of analysis. Cumulative impacts related to the project that could affect the aquatic resources are important to evaluate.

In determining whether a project may have a significant effect on the environment, we recommend analyzing the direct and indirect effects of all alternatives, in combination with past, present, and reasonably foreseeable future activities. For the cumulative effects analysis, consider the effects of reasonably foreseeable growth in the area of the alternatives and its effects on the hydrologic and aquatic resources. Finally, the project may not affect the location of the expected growth, but it may affect the timing and amount of growth. Therefore, an analysis of the indirect impacts of development is recommended.

Waters of the U.S.

To illustrate effects to waters of the U.S., including wetlands, in the area we recommend that the NEPA document include the following analyses or descriptions:

- Description of impacts under individual or nationwide permits authorizing the discharge of fill or dredge materials to waters of the U.S.;
- Maps, including wetland delineation and regional water features;
- Wetland delineation and descriptions, including wetlands function analysis if it is expected that the project will cause impacts;
- Analysis of the direct, indirect, and cumulative impacts to all streams and wetlands in the geographic scope, including impacts from changes in hydrology even if these wetlands are spatially removed from the construction footprint.
- Consideration of minimization measures that could reduce adverse effects associated with alternatives; and
- A description of mitigation measures for any unavoidable adverse impacts to waters of the U.S.

Compliance with Executive Order 11990 Protection of Wetlands

The EPA recommends that the NEPA document demonstrates that all wetlands, including both jurisdictional and those found to be non-jurisdictional, are being protected on any federal lands that lie within in the project area as outlined in EO 11990. It is the lead agency's responsibility to comply with EO 11990. We recommend mapping aquatic resources within the project site, including wetlands and

springs, and assuring all avoidance measures are incorporated into the project. If impacts to non-jurisdictional wetlands on federal lands are unavoidable, we recommend offsetting mitigation efforts be incorporated by the lead agency.

Riparian Habitat, Stream Morphology and Surface Water and Groundwater Movement

Railroad beds can act as dams changing surface water and shallow groundwater flow pathways which can affect wetlands and riparian habitat. In areas of shallow groundwater, less groundwater may reach downgradient creeks, wetlands and gullies and surface water flow can become more concentrated discharging only through culverts and bridges constructed for the railroad. Similarly, the riparian habitat can be separated from upland habitat by the railroad bed. We recommend assessing and disclosing these impacts as site-specifically as possible for the alternatives to assist in assessing the least environmentally damaging practicable alternative.

Clean Water Act § 401 Certifications

It is likely that the proposed project will need to obtain NPDES stormwater construction permits from the State of North Dakota under Section 402 of the Clean Water Act. Regardless of which alternative is selected, it is likely the applicant may need to obtain a Clean Water Act Section 401 water quality certification for any federal permits that may result in a discharge to a WOTUS, including both Section 402 permits and Section 404 permits. Section 401 certifications are issued by states when the discharge originates in an area of state jurisdiction. We recommend that the applicant coordinate with the State early in the NEPA process and throughout the §402 and §404 permitting processes to ensure the EIS includes the information required for the 401 certification process.

Air Quality

We have several recommendations outlined below to assist the USCG identify whether any alternative could have the potential to have less impact on air quality. These recommendations will assist USCG in identifying which equipment or activities may emit the most pollutants and assist in focusing any practices to minimize emissions from those sources.

We recommend the description of the alternatives include detailed information on the equipment and operating schedule needed to complete each alternative. Based on the equipment roster and operating schedules and durations for use, we recommend an emission inventory be prepared for construction and any demolition. Additionally, manufacturer specifications or EPA engine tier emission factors may be used. When generating an emission inventory, we recommend that assumptions used in the inventory, such as engine age and tier be reasonably conservative. If newer, lower emitting, engines are assumed in the inventory those assumptions should be carried forward in implementation of the alternative by the applicant. Further, we recommend the analysis evaluate the air quality impacts of explosives used for demolition purposes. Based on this information we recommend the EIS identify whether there are any significant differences to air quality impacts between the alternatives. If any activity or equipment contributes greatly to the emission totals, we recommend the EIS identify any opportunity to reduce those emissions especially if the activity will occur near residences or sensitive population centers. Since the bridge is adjacent to residences, businesses and a university, we recommend that all opportunities are explored to minimize emissions including but not limited to Tier 4 diesel equipment, minimizing emissions from explosives if used, and using a fugitive dust control plan.

If the new bridge would accommodate or facilitate a second track, we recommend that the EIS disclose the potential range of additional trains that would be accommodated by a second line across the Missouri River, and the length that the additional line would cover. Based on the current level of transit on the line, we recommend relating the potential additional impact to the current level of transit (e.g. the number of trains traveling from point A to point B would likely double, triple, etc.). This information would assist the USCG in determining if there will be additional air quality and other resource impacts to the nearby community (as expressed below) due to increased rail traffic.

Lastly, it is unclear in the documents provided whether the Surface Transportation Board has been consulted regarding alternatives proposing creation of new surface rail alignments or the addition of a second line to the existing line and their authority, where applicable. If not, we recommend that they be consulted for their resource expertise relating to analyses of not only air quality impacts to surrounding communities, but other resource impacts that may result from new alignments or the addition of a second rail line along the existing alignment.

Environmental Justice and Community Impacts Concerns

Proposed alternatives and any changes to the existing line (i.e. construction of a second line) could potentially adversely affect Environmental Justice communities in the project area. For all communities, including Environmental Justice communities, impacts from noise, vibration, dust and other air emissions during demolition, construction and operation should be considered. Similarly, there may be impacts from increased rail traffic, emergency response times, neighborhood connectivity, etc. that could warrant analysis in the EIS.

Closing

We appreciate your consideration of our comments at this early stage of the process. These comments are intended to help ensure a thorough assessment of the project's environmental impacts, adequate public disclosure, and an informed decision-making process. If further explanation of our comments is desired, please contact me at [redacted] hubner.matt@epa.gov or my supervisor Philip Strobel at [redacted] strobel.philip@epa.gov.

Sincerely,

Matt Hubner
NEPA Branch