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

December 17, 2007

David Valenstein
U.S. Department of Transportation
Federal Railroad Administration
Office of Railroad Development
1200 New Jersey Ave SE, MS-20
Washington, DC 20590

Subject: Final Program Environmental Impact Statement for LOSSAN, Los Angeles to San Diego Proposed Rail Corridor Improvements in the State of California, (CEQ# 20070465)

Dear Mr. Valenstein:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

This Final Program Environmental Impact Statement (Final PEIS) is a Tier 1 NEPA document prepared to provide a landscape-level analysis of the potential environmental impacts. Project-level alternatives and impacts will be evaluated in multiple future Tier 2 NEPA documents.

EPA provided comments on the Draft Programmatic Environmental Impact Statement (PEIS) on October 29th, 2004 and rated the document as "Environmental Concerns – Insufficient Information (EC-2)". The Tier 1 document provides a thorough description of what future actions are needed to fully understand the potential environmental impacts of the proposed project. However, we remain concerned that the LOSSAN Final PEIS does not identify a specific strategy, including responsible parties and timelines, for the implementation of the multiple planning, design, analysis, and mitigation measures proposed for the future Tier 2 project-level. We request clarification in the ROD regarding all parties along the 125-mile corridor who may ultimately be responsible for implementing the multiple measures included in this programmatic document as commitments for future implementation of project review and construction.

EPA supports the proposal to relocate the existing tracks away from the sensitive coastal bluffs near Del Mar and San Clemente, and improve rail crossings on the six lagoons along the San Diego portion of the corridor, so long as impacts to the sensitive

lagoon ecosystems are minimized in future project implementation. We appreciate the opportunity to review this Final PEIS. When the Record of Decision is released for public review, please send one copy to the address above (mail code: CED-2). When any project-level analyses are initiated please also include us in the coordination as identified in the Final PEIS. If you have any questions, please contact me or Connell Dunning, the lead reviewer for this project. Connell can be reached at 415-947-4161 or dunning.connell@epa.gov.

Sincerely,

/s/ Connell Dunning for

Nova Blazej, Manager
Environmental Review Office

Enclosures

EPA's detailed comments

cc:

Lea Simpson, Caltrans Division of Rail, Sacramento
Susanne Glasgow, Caltrans District 11
Ron Kosinski, Caltrans District 7
Sylvia Vega, District 12
Karen King, North County Transit District
Stephanie Hall, U.S. Army Corps of Engineers, Los Angeles
Janet Stuckrath, U.S. Fish and Wildlife Service, Carlsbad
Tami Grove, California Coastal Commission
L. Breck McAlexander, CA Department of Fish and Game
Chris Means, Regional Water Quality Control Board
Richard Chavez, SANDAG

Responsibility and Timing for Future Tier 2, Project-level Improvements

While the Final Programmatic Environmental Impact Statement (Final PEIS) provides a thorough listing of what will be required during future project-level environmental analyses, theFinal PEIS does not identify the intended strategy (timeframe, responsible parties, specific project coordination) for implementing these measures, but states instead that this information will be determined at a later date.

Recommendation:

The Record of Decision (ROD) should specifically identify the responsible parties for analyzing and implementing each subsequent Tier 2 analysis along the 125-mile corridor. Specifically, the owner/operator of each leg of the entire LOSSAN corridor should be identified along with estimates of the timing for future studies.

The ROD should identify those Tier 2 improvements that are most likely and reasonably foreseeable at this time. For example, although all improvements are not known at this time, we are aware of North County Transit District intended plans for implementing project level improvements in North San Diego County portion of the LOSSAN. This, and other intended short- and long-term improvements, should be disclosed in the ROD so that the reader and decision-makers have a better understanding of future improvements.

Summary of all Deferred Design, Mitigation, and Operational Analyses and Improvements

EPA is highly supportive of the multiple measures that Caltrans and FRA have identified as important for future project-level analyses. However, as currently written, mitigation measures are interspersed throughout the document, making it difficult to track commitments, considerations, and guidance for future project level analysis. Because the future success of the LOSSAN corridor is based on the ability of the project to be planned, constructed, operated, and maintained in a manner that avoids impacts to environmental resources to the highest extent, EPA recommends that this information be compiled into a stand alone document.

Recommendations:

Include in the ROD a listing of all identified potential mitigation measures and design guidance, by resource area, for future project-level analyses. Provide this information in a stand-alone format so that it can easily be shared with future consulting teams and staff responsible for site-specific analyses. Provide each mitigation measure along with an estimate of timing for implementation (design, construction, operation) and identification of the responsible party (FRA, Caltrans, owner/operator). This will insure that all deferred possible mitigation and design measures, as well as operational measures, are identified in one place and will be easy to transfer to consultants, project managers, others, etc. who will be contributing to future project-level analyses.

This list of future, Tier-2 project-level design commitments, coordination recommendations, and mitigation opportunities should identify responsible parties and recommended timelines for implementation.

Interagency Coordination

The Final PEIS does a great job of identifying potential future needs for coordination with regulatory and resource agencies. For example, we are highly supportive of the following commitments:

> *"1. Early consultation with regulatory and resource agencies will be conducted to define project-level issues, approaches, survey requirements and seasonal constraints, and procedures. This information, as well as that obtained earlier during project definition, will be incorporated into project work plans. Overarching regulatory requirements and guidelines will frame the approach and objectives of the work plans, including (but not limited to) project-level requirements such as identification of the Least Environmentally Damaging Practicable Alternative (LEDPA), avoidance alternatives for Section 4(f) and 6(f) resources, Biological Opinions, Section 106 compliance for cultural resources, costal consistency reviews, air quality conformity determinations, and NEPA/Section 404 coordination. (Page 3.16-6)*
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> *4. Work plans for projects in San Diego County will include working with agencies,local jurisdictions, lagoon foundations, and others to evaluate the potential impacts and benefits to lagoon hydrology and habitat through design of new crossing structures and/or reducing the amount of existing fill. This evaluation will also be coordinated with the Department regarding the proposed I-5 bridges crossing the lagoons." (Page 3.16-6)*
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> Recommendations:
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> While these commitments address our concerns for adequate coordination, it is unclear who the responsible parties would be for insuring that this coordination occurs. In the ROD, identify the responsible party next to each mitigation measure.
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> In addition, one specific strategy that should be more clearly described is coordination among all agencies regarding the timing of multiple construction activities to reduce impacts to lagoons to "one-time-in, one-time-out" to reduce multiple short-term impacts to theses sensitive resources. The ROD should identify, by lagoon, all future construction projects, the responsible party, and strategies for coordinating operational improvements to reduce impacts to lagoons to "one-time-in, one-time-out". The implementation and construction of multiple projects within each lagoon should occur simultaneously, to reduce impacts to sensitive habitat.

Context for Understanding Cumulative Impacts

Tier 1 analyses should provide the context for understanding the magnitude of the impacts of the project as a whole by analyzing the impacts of other past, present, and reasonably foreseeable projects or actions and then considering those cumulative impacts in their entirety. At the program-level, the Draft PEIS should focus on identifying landscape-level opportunities to avoid and minimize impacts, which may include working with other entities. The Final PEIS defers this analysis to the project level:

> *5. Cumulative impacts assessments will be re-evaluated at the project-level to ensure that reasonably foreseeable projects in the project vicinity (at the time of project-level assessment) are accounted for in the identification of impacts. At the project level, a more accurate estimate can be made of where the Rail Improvement projects can be coordinated with other projects (such as the I-5 North Coast Corridor project or lagoon restoration work). Based on funding timeframes, environmental review status, planned construction schedules, and required in-service dates of various projects, the feasibility of combining or coordinating data collection, construction timeframes, and mitigation design and monitoring programs can be more accurately assessed, and opportunities for reducing potential cumulative impacts may be identified. (Page 3.16-6)*

Recommendation:

The ROD should clarify that cumulative impacts will need to be assessed for each subsequent project-level analysis. Specifically, it cannot be assumed at the project-level that the cumulative impact assessment has been already been completed

Aquatic and Biological Resources and Hydrology

Demonstration of the Least Environmentally Damaging Practicable Alternative

The information provided in this programmatic EIS does not provide enough detail regarding potential impacts to waters of the US to adequately inform decision making and elimination of potential alternative alignments.

Following completion of this PEIS, subsequent project proponents will need to obtain Clean Water Act authorization from the Corps of Engineers and the project must demonstrate compliance with the Clean Water Act Section 404(b)(1) Guidelines (40 CFR 230). An analysis of alternatives that identifies the least environmentally damaging practicable alternative (LEDPA) will be central to the future Tier 2, project-level reviews. The alternatives analysis must include a reasonable range of alternatives that meet the project purpose while avoiding and minimizing damage to waters of the U. S. This may require assessment of alternatives that were not considered in this programmatic EIS or alternatives that were considered but have been eliminated. It is important to understand that this step has not yet been completed and demonstration of alternatives provided in this document have not yet been determined to be the LEDPA.

Recommendations:

At the Tier-2, or project-level, Caltrans, FRA, or the alternative responsible party, will need to demonstrate that the proposed project is the least environmentally damaging practicable alternative. All future Tier 2 analyses should include an evaluation of the project alternatives in order to demonstrate the project's compliance with 404(b)(1) Guidelines and include alternatives that avoid discharging fill material into the waters of the U.S.

For the Tier-2 analyses, EPA recommends identifying all bridge design features that reduce discharge of fill materials to waters of the United States (e.g., minimizing the need for rock slope stabilization around the bridge abutments at the shoreline). Although longer bridge spans that provide for reductions in encroachment fill may be more costly than leaving, or increasing, the volume of fill currently in these waters, relative costs alone do not render an alternative impracticable pursuant to the Section 404(b)(1) Guidelines. Colocating the rail with I-5 bridges should be considered where appropriate.

EPA is supportive of the Tier 2 level commitments identified in Section 3.12, including the following from Page 3.12-27.

"Further analysis and assessment of potential facility impacts on floodplains, specifically on flood elevations, as specific locations and facility designs are developed, to determine if the proposed facility is in the base floodplain (that area which has a one percent or greater chance of flooding in any given year). The analysis would identify potential encroachment on study-area floodplains as defined in Executive Order 11998 for Floodplain Management (23 C.F.R. Section 650(a)) and DOT Order 5650.2, or location of facilities in a 100-year floodplain without adequate mitigation measures.

Further analysis (hydrologic modeling of flow rates) of potential construction and facility impacts on surface hydrology in coastal areas and tidal marshes and lagoons, and on other surface waters.

Evaluation of impacts and benefits of removal of existing earthen fill from lagoon crossing structures, and of design options for new structures that reduce the amount of fill required in lagoons. These evaluations would be done in consultation with resource agencies and lagoon organizations, and include an analysis of consistency with lagoon plans. Options would be coordinated with other infrastructure construction plans in the lagoon areas, including the I-5 North Coast Corridor project proposed by the Department."

Recommendation:

We note that in response to our concerns with the environmental sensitivity of the coastal lagoons in northern San Diego County, Caltrans and FRA are deferring analysis of surface hydrology impacts until future studies. The fact that subsequent environmental analyses will include hydrological modeling and consider the benefits of removing

existing earthen fill from lagoon crossing structures, as well as other commitments at the lagoons areas, should be confirmed in the ROD.

Relationship to High Speed Rail Project

The LOSSAN Final PEIS identifies in a footnote on page 2.0-69 that "HSR alignment would locate a HSR station at Universal City and that South of Universal City, the HSR would run within the LOSSAN Corridor ROW on HSR exclusive grade-separated tracks to its terminus in downtown San Diego". However, the document does not generally describe what is proposed for High Speed Rail along the LOSSAN route and how both high speed rail service and local improved service along the LOSSAN corridor can both be accommodated within the same, or adjacent, right-of-way.

Recommendations:

In the ROD, clarify if both projects can be co-located on the same right-of-way, and, if so, estimate what the combined impacts to resources would be. Provide direction in the ROD for coordination between LOSSAN and High Speed Rail that would lead to reduced impacts.

Water Quality

In our comments on the Draft PEIS, we recommended an expanded discussion on potential increased parking areas and an estimate of this leading to increase surface water runoff. The Final PEIS does not provide any information regarding planned parking (surface parking lots versus parking structure, number of parking spaces, location of proposed parking, etc.)

Recommendation:
Future Tier-2 analyses should fully consider all alternatives for providing access to surface parking. The ROD should address potential expansion of parking facilities at the LOSSAN stations in terms of approximate area and potential locations, and identify general mitigation measures that could be implemented to minimize detrimental effects on water quality from stormwater runoff.

Air Quality

Effects of Diesel Emissions from Locomotives

EPA remains concerned about the health effects from diesel emissions, which include Hazardous Air Pollutants, or air toxics. The Final PEIS does not identify the general locations or densities of sensitive receptors such as schools, hospitals, senior centers and recreational fields that occur in proximity to the rail corridor and may experience impacts related to Hazardous Air Pollutants. However, the Final PEIS does commit to a risk assessment of potential health impacts during all subsequent Tier-2 project-level analyses.

At the programmatic analysis level, it is important to characterize the potential large-scale air quality impacts along the 125-mile corridor to better inform future project-level analysis. While this was not included in the Final PEIS, we commend Caltrans and FRA for

committing to a risk assessment and assessment of potential "hot spots" during all Tier-2 analyses in order to better design future stations and rail improvements. It is unclear who the responsible party will be to initiate the health risk assessment for each Tier-2 analyses that will occur along the entire 125-mile corridor.

Recommendation:
The ROD should identify who will initiate the human health risk assessments along the 125-mile LOSSAN corridor for future Tier-2 project analysis and implementation. Will FRA or Caltrans take the lead on the health risk assessment?

Given the anticipated increase in rail traffic over the next twenty years and corresponding increase in diesel emissions and idling locations, the Tier-2 analyses should identify potential problem areas in terms of relative densities of sensitive receptors and environmental justice communities, as well as potential "no-stop" and "no idling" zones.

All Tier-2 analyses should include a section that describes both the criteria pollutants as well as the hazardous air pollutants generated from diesel exhaust, and the health effects these pollutants can cause. Specifically the project analysis needs to address particulate matter under 2.5 microns in diameter (PM2.5), as this was not consistently addressed in the Final PEIS.

The Tier 2 analyses will need to consider the age and size of the locomotive fleet, and consider how new diesel locomotive technology may affect emissions.