



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

Robert L. Vaught, Forest Supervisor
Humboldt-Toiyabe National Forest
1200 Franklin Way
Sparks, NV 89431

July 7, 2003

Dear Mr. Vaught:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (DEIS) for the Jarbidge Canyon Project (CEQ # 030198). Our comments are 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 appreciate the extension allowing EPA to provide comments by July 7, 2003 (from June 23, 2003). Our detailed comments are enclosed.

EPA rates the DEIS and Proposed Action as EO-2: Environmental Objections - Insufficient Information. Although the DEIS does not identify a preferred alternative, Alternative 4 (Elko County's proposal) is identified as the Proposed Action. As neither Alternative 3 nor 4 would meet water quality standards, EPA has environmental objections for both as currently described. Per EPA policy, we must raise environmental objections if the alternative "might violate or be inconsistent with achievement or maintenance of a national environmental standard" ("Policy and Procedures for the Review of Federal Actions Impacting the Environment," EPA, 1984, see p. 4-5).

When a DEIS does not identify a preferred alternative, EPA's policy requires a separate rating for each alternative. Accordingly, EPA rates the action alternatives as follows:

- Alternatives 2, 5, 6, and 7 - EC-2: Environmental Concerns - Insufficient Information.
- Alternatives 3 and 4 - EO-2: Environmental Objections - Insufficient Information.

According to the DEIS, Alternative 4 will cause violations of water quality standards for both the short term (construction) and long term (future operations), and may require placing fill material in waters of the United States, thus triggering a need for approval under Section 404 of the Clean Water Act (CWA). Federal regulation provides that Section 404 approval cannot be given if a project as proposed violates water quality standards.

The Final EIS (FEIS) needs to clearly address how constructing and operating the project

would meet applicable water quality standards. Alternative 4 appears to be the most damaging to the aquatic environment. For any action alternative which is selected by the Forest Service, EPA recommends integrating a strong, effective water quality mitigation component. The Best Management Practices proposed by Elko County for Alternative 4 form a strong basis for a water quality mitigation program for the final selected alternative. The FEIS should strengthen its analysis of CWA Section 404-related issues, with particular emphasis on how the Proposed Action would be consistent with 40 CFR Part 230.

We appreciate the opportunity to review the DEIS and request two copies of the Final EIS (FEIS) when available. We commend Mr. Jim Winfrey's efforts to address our questions on the DEIS and to provide pertinent documentation. If you have any questions, please call me at (415) 972-3831 or refer staff to David Tomsovic at (415) 972-3858 or at [<tomsovic.david@epa.gov>](mailto:tomsovic.david@epa.gov).

Sincerely,

/signed by/

Enrique Manzanilla
Director
Cross Media Division

Enclosures: 2
"Summary of EPA Rating Definitions"
EPA's Detailed Comments on DEIS

cc:
Jim Winfrey, U.S. Forest Service, Elko, Nevada
Andy Rosenau, Army Corps of Engineers, Sacramento, California
Bob Williams, U.S. Fish and Wildlife Service, Reno, Nevada
Leo Drozdoff, Nevada Division of Environmental Protection, Carson City, Nevada
Rob Stokes, Elko County, Elko, Nevada

Jarbridge Canyon Draft Environmental Impact Statement (DEIS)
U.S. EPA's Detailed Comments, July 7, 2003

WATER QUALITY

Water Quality Standards

The DEIS acknowledges that Alternatives 3 and 4 are damaging to the aquatic environment (see pp. 3-104 and 3-105). Alternative 3 “would probably meet Nevada Division of Environmental Protection (NDEP) water quality standards over the long term, but would not meet the standards during construction.” (p. 3-104). “Alternative 5 would likely meet NDEP water quality standards,” although there is a degree of uncertainty regarding that alternative’s potential water quality impacts (p. 3-105).

EPA’s comments focus on Alternative 4 (Elko County’s proposal), which the DEIS identifies as the Proposed Action. Alternative 4 is projected to cause the most adverse water quality effects. The Proposed Action appears inconsistent with key provisions of the Clean Water Act (CWA) as turbidity, total suspended solids and water temperature “would likely increase” (p. 3-105). Building Alternative 4 involves extensive in-river work that would prove “difficult to mitigate.” Rebuilding South Canyon Road in its previous location and river relocation has the “greatest potential to increase fine sediments and turbidity” from the road’s reconstruction and future operation (p. 3-104). Alternative 4 has more road miles closer to the river (p. 3-104). Locating a rebuilt South Canyon Road in and adjacent to the river reduces or eliminates overstory vegetation, thus decreasing streamside shading and increasing water temperature (with consequent adverse impacts on cold water fish, including the Federally-listed bull trout). Such in-river work may adversely modify designated critical habitat for the Federally-listed bull trout. Most critically, from a water quality perspective, “Alternative 4 would not meet NDEP water quality standards during construction.” Furthermore, future use of the rebuilt road “would not meet NDEP water quality standards,” apparently over the life of the project. Thus, Alternative 4 is projected to violate water quality standards in both the short and long term.

Even though the DEIS indicates that Alternatives 3 and 4 are projected to violate water quality standards, page 3-183 indicates that “The USFS [Forest Service] expects the Jarbridge Canyon project area activities...to fully comply with local, state, and Federal requirements.” Section 313 of the Clean Water Act requires Federal facilities, as well as activities on Federal land, to comply with applicable requirements of the statute, including the maintenance of water quality standards.

Alternative 4 does not integrate adequate mitigation to protect water quality, and ensure the maintenance of water quality standards, during and after South Canyon Road’s reconstruction. Elko County’s Board of County Commissioners has developed 41 Best Management Practices (BMPs) for Alternative 4 (letter of August 16, 2002), but as these BMPs for Alternative 4 are not evaluated in the DEIS, their potential to reduce or avoid projected water

quality violations is unclear. For any alternative selected by the Forest Service, EPA strongly recommends adopting and implementing a strong, effective water quality mitigation program to ensure water quality standards are met. The 41 BMPs proposed by Elko County form a strong basis for a water quality mitigation program for the final selected alternative.

Appendix C of the DEIS addresses the three water quality improvement projects to be implemented by the County under the Settlement Agreement. EPA has informed the Forest Service these three projects have the potential to provide significant water quality benefits (see memorandum from Robert Leidy and Hugh Barroll, EPA, to Jim Winfrey, Forest Service), and thus supports implementation of these water quality improvement projects. However, these water quality improvement projects cannot be treated as compensatory mitigation for any unavoidable adverse impacts on waters of the United States pursuant to 40 CFR Part 230 (see page 4 below).

Recommendation: The Final EIS (FEIS) should clearly demonstrate that the selected alternative is fully consistent with the CWA, including the requirement that Federally-approved projects not cause or contribute to water quality violations. The FEIS should analyze whether projected water quality violations could be reduced or avoided by adopting Elko County's 41 BMPs. If these BMPs are effective at reducing or avoiding the projected water quality violations, EPA recommends that the FEIS and Record of Decision specifically adopt them, including a commitment to implement the BMPs through the life and maintenance of the project. EPA recommends integrating the three water quality improvement projects described in Appendix C into the selected alternative and Record of Decision.

Idaho (Downstream) Water Quality

Page 1-2 indicates that the Jarbidge River's East and West Forks "flow north to Idaho." Idaho's surface waters are thus "downstream." Although the DEIS states that adverse water quality conditions are projected to occur with the Proposed Action, the document does not specifically analyze potential impacts to downstream waters in Idaho. The project's construction and operation may affect surface water quality in Idaho, but it is unknown whether Idaho's water quality standards will be met.

Recommendation: The FEIS should address the project's potential water quality impacts on surface waters subject to Idaho's jurisdiction, including an analysis of whether discharges and pollutant loading in Nevada may affect the maintenance of Idaho's water quality standards. To the extent that the project affects surface water quality in Idaho, the Forest Service should ensure that Idaho's standards are fully maintained, consistent with CWA Section 313.

Phosphorous

Page 3-103 states that the analysis of water quality effects to the Jarbidge River system is

limited to turbidity, sediments, and temperature. It is unclear if sediment loading contributes to elevated phosphorous levels. If sediments are a source of phosphorus, as in other locations, this should be addressed in the water quality analysis.

Recommendation: The FEIS should address if sediment loading in the project area is a potential source of phosphorous. If so, an analysis of phosphorous-related impacts and appropriate mitigation should be included in the FEIS's water quality analysis, with appropriate commitments in the Record of Decision.

DISCHARGE OF FILL MATERIAL IN WATERS OF THE UNITED STATES

CWA Section 404 Permitting

The DEIS does not address the Proposed Action's consistency with CWA Section 404 and EPA regulations at 40 CFR Part 230. EPA's review finds that the DEIS does not address the key provisions highlighted below.

- The DEIS does not address if an individual CWA Section 404 permit is required or if the project can be authorized under a general permit. The DEIS does not quantify the acreage of waters of the United States, including wetlands and other special aquatic sites, that would be filled under the action alternatives. Any project placing fill material in 0.50 acre or more of waters of the United States needs an individual permit. Table 3-32 identifies the acreage of each alternative in "confined reaches," the "100-year floodplain" and the "channel migration zone." However, the table does not address if these acreage totals are based exclusively on the placement of fill material, or include impacts indirectly related to the placement of fill material (e.g., increased erosion and sedimentation, and decreased shading). The Proposed Action, as currently described, would require an individual permit, while Alternative 3 may qualify for a general permit.
- To secure CWA Section 404 authorization, a prospective applicant (Elko County and/or the Forest Service) needs to demonstrate that the selected proposal is the least environmentally damaging practicable alternative capable of achieving the basic and overall project purpose. Discharge of dredged or fill material is not permitted under CWA Section 404 if there is a practicable alternative which would have less adverse impact on the aquatic ecosystem, to the extent that the alternative does not have other significant adverse environmental effects, per 40 CFR Part 230.10(a). Absent an expanded analysis of CWA Section 404 issues, EPA is unable to determine if the Proposed Action is consistent with Section 404 and 40 CFR Part 230. Under 40 CFR Part 230.7, a condition for receiving a general permit is that the proposed discharge of fill material into waters of the United States meets the applicable restrictions on discharge found in 40 CFR 230.10. However, the consideration of alternatives in 40 CFR 230.10(a) is not directly applicable to general permits. Compared to Alternative 4, the other action alternatives appear less damaging to aquatic resources regulated under CWA Section 404. The action alternatives evaluated in the DEIS, other than Alternative 4,

appear capable of achieving the stated purpose(s) on page 1-6 to “provide access within the West Fork of the Jarbidge River Canyon to the Jarbidge Wilderness while improving the environment and aquatic habitat and conditions for the listed bull trout.” The action alternatives fully evaluated in the DEIS are therefore presumed reasonable under NEPA and practicable under the CWA 404 analysis.

- The DEIS does not address if the Forest Service evaluated all feasible means to avoid and minimize placing fill in waters of the United States, including special aquatic sites. (For this project, in addition to wetlands, the Proposed Action may potentially affect a second type of special aquatic site: riffle and pool complexes [see 40 CFR Part 230.45]). If an activity associated with a discharge is proposed for a special aquatic site, but such activity is not clearly shown to be “water dependent,” the regulations presume that practicable alternatives not involving such placement of fill in the special aquatic site are available [40 CFR Part 230(a)(3)]. The DEIS does not address if the project is “water dependent” for purposes of CWA Section 404 and 40 CFR Part 230.
- Under Section 404, discharge of fill material is not permitted if it causes or contributes to violations of applicable water quality standards [40 CFR Part 230.10(b)(1)]. As noted, the DEIS clearly acknowledges that Alternatives 3 and 4 are projected to violate water quality standards. The State of Nevada is thus precluded from providing CWA Section 401 water quality certification in connection with a Section 404 permit application if the proposed discharge of fill material into waters of the United States violates applicable water quality standards.
- Discharge of fill material into waters of the United States cannot be authorized if it jeopardizes the continued existence of any species listed under the Endangered Species Act (ESA) or results in the loss or adverse modification of critical habitat [40 CFR Part 230.10(b)(3)]. The DEIS does not address if the Proposed Action may cause “significant degradation” of the aquatic environment, including the loss of fish and wildlife habitat [40 CFR Part 230.10(c)]. The Proposed Action is expected to impact a Federally-listed species (bull trout) and its habitat.
- Discharge of fill material into waters of the United States cannot be authorized “unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.” [40 CFR Part 230.10(d)].
- Compensatory mitigation is required for remaining unavoidable adverse impacts. The DEIS does not address if the Proposed Action adequately mitigates unavoidable adverse impacts to aquatic resources from placing fill material in waters of the United States. Since the three water quality improvement projects described in Appendix C are required by the Settlement Agreement, they do not qualify as compensatory mitigation for any prospective Section 404 permit to implement the Proposed Action or this project.

Recommendation: EPA recommends that the discussion and analysis of Section 404-related issues identified above be thoroughly addressed in the FEIS.