



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

JUN 21 2011

Colonel Philip T. Feir
Commander, New England District
US Army Corps of Engineers
696 Virginia Road
Concord MA 01742-2751

RE: South Coast Rail Project (NAE-2007-00698)

Dear Colonel Feir:

On May 27, 2011, the EPA New England Region ("the Region") submitted comments on the above referenced Public Notice for the Massachusetts Department of Transportation's ("MADOT") proposed South Coast Rail project. As explained in our detailed letter, the Region stated its assessment that the proposed project may have a substantial and unacceptable impact on aquatic resources of national importance, which include, among others, the Hockomock Swamp, designated by the Commonwealth of Massachusetts as an Area of Critical Environmental Concern, and the ecologically significant Pine Swamp.

Our concerns about this proposed project focus primarily on the characterization (both extent and severity) in the Corps' Draft Environmental Impact Statement ("DEIS") of direct and secondary adverse impacts to wetlands and other waters of the U.S. We provided a number of examples in our May 27th comment letter of additional analysis that is necessary in order for the potential impacts of alternatives to be fairly evaluated, including a more accurate assessment of impacts to vernal pools, a more complete analysis of the nature, extent, permanence and severity of several types of secondary impacts, and a more accurate portrayal of the relative functions and values of the resources that would be affected by each alternative. These issues result in the DEIS understating impacts to aquatic resources in the Stoughton and Whittenton alignments and overstating impacts to aquatic resources from the Rapid Bus alternative.¹ Notwithstanding the lack of complete information, we noted that the direct impacts to important aquatic resources would be substantial.

The Region also identified a number of questions and concerns related to the alternatives analysis and noted the lack of sufficient information in order to determine which alternative would be the least environmentally damaging practicable alternative. We also expressed concern about the challenges associated with developing an adequate compensatory mitigation plan given the nature and extent of the impacts. These concerns, along with those associated with the characterization of the impacts, led us to conclude, as explained in detail in Attachment B to our May 27th letter, that the Public Notice and supporting documentation provided do not provide enough information for EPA to assess compliance with the Section 404(b)(1) Guidelines.

¹ We also expressed concern about the scoring system used to compare impacts and rank the various alternatives under consideration, which exacerbates the problems associated with the incomplete characterization of impacts.

Several members of my staff met with your Regulatory Division staff on June 15, 2011. We were able to clarify our concerns and the information we need to fully evaluate the proposed project. Your staff was able to explain in further detail some of the information contained in the Public Notice and DEIS. While we found the discussion helpful and appreciate your staff making this effort, the information conveyed at the meeting did not diminish the Region's concerns. The Regulatory Division and its consultant will be developing additional information on alternatives and adverse impacts to respond to EPA's concerns. Pending receipt of that additional information and our evaluation of it, our serious concerns with this proposed project remain.

Therefore, and in accordance with the field level procedures outlined in the August 1992 Memorandum of Agreement (MOA) between EPA and the Army Corps of Engineers, Part IV, paragraph 3(b), regarding 404(q) of the Clean Water Act, 33 U.S.C. 1344(q), we reaffirm our assessment and, given the nature and extent of impacts already identified, and the inability to determine whether the project can be permitted consistent with the Section 404(b)(1) Guidelines, conclude that the proposed project will have a substantial and unacceptable impact on aquatic resources of national importance. Our reaffirmation preserves our ability to raise these unresolved issues to senior officials at both EPA and the Department of Army.

Please contact me if you want to discuss these comments, or have your staff contact Matt Schweisberg at 617-918-1628.

Sincerely,



H. Curtis Spalding
Regional Administrator

cc: U.S. Army Corps of Engineers, New England District
Alan Anacheka-Nasemann, Senior Project Manager
Regulatory Division, Permits and Enforcement Branch
696 Virginia Road
Concord, MA 01742-2751

Secretary Richard K. Sullivan, Jr., EOEEA
attn.: MEPA Office (Aisling O'Shea)
100 Cambridge Street, Suite 900
Boston, MA 02114

Kristina Egan
Director, South Coast Rail
Massachusetts Department of Transportation
10 Park Plaza, Suite 4150
Boston, MA 02116-3973

Tom Chapman, Supervisor
U.S. Fish and Wildlife Service
New England Field Office
70 Commercial Street, Suite 300
Concord, NH 03301