

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105**

July 23, 2004

Dean Hagstrom
Bureau of Indian Affairs - Western Regional Office
PO Box 10
Phoenix, AZ 85001

Subject: Draft Environmental Impact Statement (DEIS), Weber Dam Repair and Modification, Walker River Paiute Indian Reservation, Mineral County, Nevada (CEQ #040237)

Dear Mr. Hagstrom:

The U.S. Environmental Protection Agency (EPA) has reviewed the DEIS for the above-referenced project. Our comments are provided under the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA Implementing Regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The DEIS fully evaluates the Proposed Action and No Action. It also provides information on two action alternatives eliminated from detailed consideration (constructing a new off-channel reservoir or developing a system of ground water wells). The information on the two eliminated alternatives allows a reader to understand "the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." (40 CFR 1502.14). The DEIS states that a new off-channel reservoir and a system of ground water wells would both result in a loss of approximately 450 acres of jurisdictional wetlands along the lower Walker River (see pp. 2-14 and 2-18). The repair and modification of Weber Dam under the Proposed Action is expected to directly impact approximately 0.1 acres of jurisdictional wetland (p. 4-18). We commend the Bureau of Indian Affairs and the Walker River Paiute Tribe for crafting a Proposed Action having far less wetland impacts than the two eliminated alternatives.

EPA has no objections with the proposed project and Proposed Action. We rate the DEIS as "Lack of Objections" (LO). Please see the enclosed "Summary of EPA Rating Definitions" for an explanation of this rating system. We recommend that the Final Environmental Impact Statement (FEIS) clarify applicable requirements under Clean Water Act Section 404 and Federal regulations implementing Section 404(b)(1) (40 CFR Part 230). Please see our detailed comments (enclosed) regarding clarifications on Section 404-related issues that would strengthen the FEIS.

We appreciate the opportunity to comment. Please send one copy of the FEIS to my attention at the letterhead address (mailcode: CMD-2) when available. If you have questions, please call my staff reviewer, David Tomsovic, at 415-972-3858 or < tomsovic.david@epa.gov >.

Sincerely,

/S/

Lisa B. Hanf, Manager
Federal Activities Office

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

cc: The Honorable Victoria Guzman, Tribal Chairperson, Walker River Paiute Tribe of the
Walker River Reservation, Schurz, NV
Richard Gebhart, Army Corps of Engineers, Reno, NV

Aquatic Resources and the Clean Water Act

EPA does not object to this project or the Proposed Action. We ask that the Final Environmental Impact Statement (FEIS) clarify requirements under Clean Water Act Section 404(b)(1) and Federal regulations at 40 CFR Part 230. Section 404(b)(1) and 40 CFR Part 230 govern the placement of dredged or fill material into waters of the United States, including wetlands.

Page 4-18 states that the dam's realignment "is expected to directly impact 0.1 acres of jurisdictional wetland." The DEIS does not quantify the acreage of impacts to waters of the United States needing Section 404 authorization, i.e., requiring the placement of dredged or fill material in waters of the United States. The DEIS does not address whether the Proposed Action avoids and minimizes, to the fullest extent practicable, the placement of dredged or fill material in waters of the United States. The DEIS does not address whether the Proposed Action requires an individual Section 404 permit or may be authorized by a general permit (we understand that the Army Corps suggests that the project should be processed as an individual permit rather than as a general permit). Under 40 CFR Part 230.7, a condition for receiving a general permit is that a proposed discharge of dredged or fill material in waters of the United States meets applicable "restrictions on discharge" at 40 CFR 230.10. The DEIS does not address what party would apply for Section 404 authorization: the Bureau of Indian Affairs (BIA), the Walker River Paiute Tribe, or both (i.e., joint permittees).

The Army Corps can authorize a discharge of dredged or fill material in waters of the United States only when a proposed project is consistent with 40 CFR Part 230, including applicable restrictions on discharge at 40 CFR Part 10(a)-(d). An applicant must comply with restrictions regarding: (a) practicable alternatives; (b) water quality and other effects; (c) aquatic degradation; and (d) the mitigation of unavoidable adverse impacts to aquatic resources. However, an analysis of alternatives is not required for a general permit. Although Weber Dam is a Federal facility owned and operated by the United States, because of its location on tribal land, water quality certification by EPA is required under CWA Section 401 prior to the Corps' approval under Section 404.

Recommendations: The FEIS should quantify the acreage of waters of the United States requiring the placement of dredged or fill material. The FEIS should address whether the BIA, the Tribe, or both would apply for Section 404 authorization. The FEIS should address whether the Proposed Action needs an individual permit or could be authorized by general permit. Should the project be processed as an individual permit, the FEIS should address applicable restrictions on discharge at 40 CFR Part 230.10(a)-(d), including practicable steps to avoid and minimize the placement of dredged or fill material in waters of the United States. The FEIS should also address Section 401 water quality certification by EPA.