

CHAPTER 4 SDEIS COMMENT SUMMARIES AND RESPONSES

This chapter summarizes and responds to all substantive comments that OEA received on the SDEIS. In total, OEA received 23 written/electronic comments on the SDEIS. These written/electronic comments have been included in Appendix C of this FEIS in the order in which they were received. The majority of these comments were received on or before the SDEIS comment deadline of April 25, 2011. However, OEA also accepted a number of comments that were received after this deadline.

OEA carefully reviewed each comment for the purpose of considering the comment and developing an appropriate response. OEA prepared the comment responses in accordance with CEQ guidance and its own environmental regulations (found at 49 C.F.R. Part 1105). CEQ guidance states that “an agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology.”¹ The guidance goes on to state that “if a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous.”² OEA’s responses clarify information presented in the DEIS and SDEIS, explain and communicate government policy or regulations, direct commenters to certain sections and/or specific information in the DEIS, the SDEIS or this FEIS, and answer technical questions. OEA has added several mitigation measures in response to concerns raised by commenters, but has not altered any of the conclusions in the SDEIS in response to the comments.

OEA has organized the comment summaries and responses into categories of like topic to assist the reader in finding specific issues or areas of interest. Further, OEA has presented the categories in the same order in which they appear in the DEIS/SDEIS to the greatest degree practicable. Commenters frequently submitted comments that addressed identical or very similar subjects. OEA grouped these comments together and for each subject, provides a summary of the comment or a series of direct quotes to illustrate the commenters’ concerns. Each summary or series of quotes is followed by OEA’s response. To further assist commenters in finding OEA’s response to their particular comments, a unique comment key code has been assigned to each comment summary. These comment key codes have been incorporated into the table at the beginning of Appendix C. In many instances commenters submitted one letter that included comments relevant to a number of different categories. As a result, many of the comments are directed to multiple comment key codes to capture all issues presented in a single comment letter. As explained in Chapter 1, OEA refers to RRLLC’s development project as RRLLC’s proposed waste-to-ethanol facility/industrial development site throughout this chapter to be consistent with current project plans.

¹ CEQ’s *Forty Most Asked Questions*, 29a.

² *Id.*

4.1 COMMENT SUMMARIES AND RESPONSES

4.1.1 General/NEPA Process

Summary

SDEIS GN-1: In accordance with its responsibilities under NEPA and Section 309 of the Clean Air Act, the USEPA Region 3 office in Philadelphia, Pennsylvania, reviewed the SDEIS and sent in a comment letter. USEPA stated that it had, in its comment letter on the DEIS, previously rated the Proposed Action as Environmental Concerns (EC), Insufficient Information (2) because of its potential impacts to irreplaceable environmental resources. USEPA further stated that because OEA would be responding to all comments in the FEIS, it once again rated the proposed action in the SDEIS as EC2, and offered four specific comments/questions for OEA's consideration in developing the FEIS.

Response

USEPA's comments and rating are noted. Each of USEPA's specific comments/questions have been evaluated and addressed individually according to their respective resource category later in this chapter.

4.1.2 Project Purpose and Need

Summary

SDEIS PN-1: OEA received several comments questioning the purpose and need of RJCP's proposed rail line. Commenters alleged that there is no need for RJCP's proposed rail line because RRLLC's proposed waste-to-ethanol facility has not yet been permitted by PA DEP, and there is no guarantee that it will be permitted because ethanol production from waste is currently not an operational, commercially feasible process. Commenters also stated that the current HRI quarry is only being used as a borrow area for other onsite activities, and that HRI would not be a potential shipper on the proposed rail line. Further, commenters noted that the proposed frac water treatment plant will likely not be permitted by PA DEP, and that the proposed industrial park is dependent upon the construction of the I-80 interchange, which has not been approved by FHWA. Commenters alleged that RJCP has no justified need to build the rail line and that the project would not be economically viable at this point in time.

Response

Generally, the Purpose and Need statement in an EIS does not need to demonstrate an immediate, unsatisfied demand for rail service. CEQ regulations simply require an agency to "briefly specify the underlying purpose and need to which [it] is responding in proposing the alternatives including the proposed action." 40 C.F.R. § 1502.13. In defining purpose, "the agency should take into account the needs and goals of the parties involved in the application." *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991). Perhaps more importantly, "an agency should always consider the views of Congress, expressed, to the extent that the agency can determine them, in the agency's statutory authorization to act, as well as in other congressional directives." *Id.* Most relevant here, the Board is statutorily obligated to approve new rail construction unless the Board finds that it is inconsistent with the public convenience and necessity. *See* 49 U.S.C. § 10901(c). Any authority granted under Section 10901 is permissive. In other words, if the Board approves the project, it would be granting RJCP the authority to construct the proposed rail line as part of

its larger common carrier railroad system of transportation. Because this authorization would be permissive, it would not require RJCP to construct the proposed rail line. As a private company using private funds, RJCP, not the Board, would determine if operation of the proposed rail line would be economically viable enough to render a financial return on its construction investment.

Summary

SDEIS PN-2: One commenter claimed that RJCP's proposed rail line would not be needed if development was for businesses that are compatible with current land uses such as a golf course, a bed and breakfast, an ATV or hunting lodge, a spa, cabins, etc. The commenter stated that these kinds of businesses would generate jobs, would not destroy the environment, and would add to the economic stability in this area.

Response

Comment noted. However, the Board, pursuant to 49 U.S.C. § 10901, is the federal agency responsible for authorizing, where the statutory criteria are met, the construction and operation of new rail lines that are proposed by railroad applicants. The Board does not initiate rail construction projects and has no jurisdiction over local land use/land development issues that do not involve rail transportation by a rail carrier (nor would the broad federal preemption in 49 U.S.C § 10501(b) apply to them).

4.1.3 RRLLC's Proposed Waste-to-Ethanol Facility/Industrial Development Site

Summary

SDEIS RR-1: Several commenters expressed direct opposition to RRLLC's proposed waste-to-ethanol facility/industrial development site. Specific comments are summarized as follows:

“Why should a few people prosper from exploiting a pristine environment by opening a trash dump? Why should an ecosystem be destroyed to enrich a few? Why would Pennsylvania suffer New York and New Jersey trash? Stop the Dump.”

“Please cease and desist all activity related to the proposed landfill and ethanol plant. I implore you to reconsider these projects, as the plans seem to inadequately address many of the residents' concerns. I am also appalled at the intentional neglect of the environment and local wildlife. Again, I urge you to discontinue all efforts currently directed at wildlife degradation and community erosion.”

“...I am extremely opposed to this proposed Ethanol plant project. This will have very negative environmental and economic impacts that would be inflicted on the Central Pennsylvania wilderness region...”

“The proposed landfill/waste-to-ethanol facility is not needed or wanted in this area. This is a get-rich scheme to make millions of dollars for members of RRLLC...”

Response

Comments noted. As explained in Section 1.9 of the DEIS and Section 3.1 of this FEIS, the development and operation of RRLLC's proposed waste-to-ethanol facility, as well as the other industrial development activities planned on the larger RRLLC property, are not within the Board's

jurisdiction and require no approval from the Board. Because the waste-to-ethanol facility and other industrial development activities are not facilities that are part of rail transportation, the Board has no jurisdiction over them. Nor would the broad federal preemption in 49 U.S.C. § 10501(b) apply to them. Construction and operation of the waste-to-ethanol facility would, therefore, be subject to all federal, state, and local regulations that would apply to any such facility. Specifically, the proposed waste-to-ethanol facility would require a federal permit pursuant to Section 404 of the CWA, thus triggering the requirement for NEPA review by USACE. Additionally, RRLLC's proposed waste-to-ethanol facility would require a Waste Management Permit from PA DEP. Applicants for PA DEP Waste Management Permits must complete an extensive Environmental Assessment, which evaluates a wide range of potential impacts. PA DEP would not approve such a permit unless the social and economic benefits of such an operation outweighed its environmental harms (see Section 503 of the Pennsylvania Solid Waste Management Act, 1980-97 (35 P.S. §§ 6018.101-6018.1003)). Thus, there would be environmental review by the appropriate government entities before the waste-to-ethanol facility could be built and become operational.

Summary

SDEIS RR-2: Two commenters disagreed with OEA's decision to treat RRLLC's proposed waste-to-ethanol facility and other proposed industrial development projects as cumulative impacts, and not as connected actions to the proposed rail line, in the SDEIS. Commenters alleged that, in making this decision, OEA relied on an inappropriately narrow interpretation of NEPA and failed to recognize the interdependent relationship between these projects. The commenters claimed that there would be no proposed railroad if not for RRLLC's proposed waste-to-ethanol facility, and that there would be no waste-to-ethanol facility if not for RJCP's proposed railroad. Further, commenters argued that the SDEIS is deficient because it fails to evaluate alternatives for the waste-to-ethanol facility, and it does not treat the impacts of the waste-to-ethanol facility as direct impacts of the project.

Response

Comments noted. See Section 3.1 of this FEIS for OEA's discussion of the appropriate scope of analysis of RRLLC's proposed waste-to-ethanol facility/industrial development site in the environmental review process for this project.

Summary

SDEIS RR-3: Several commenters submitted newspaper and magazine articles about the long-term economic viability of the biofuels industry. Specifically, one commenter submitted an article by David Biello that appeared in the August 2011 issue of *Scientific American*, which highlights certain scientific and economic challenges associated with the commercial production of ethanol from various organic sources (i.e., wood chips, corn, algae, etc.). A second commenter submitted two articles from the *Progress News* highlighting the recent bankruptcy announcement of Bionol Clearfield and the Clearfield County Industrial Development Authority's recent vote to write off an uncollectible debt from the failed Sunnyside Ethanol development project. The commenter submitted these newspaper articles to illustrate the economic concerns associated with the biofuels industry and to question the purpose and need for RJCP's proposed rail line.

Response

Comments noted. The long-term economic viability of the biofuels industry is not directly relevant to the Board's environmental review of RJCP's proposed rail line project. OEA notes, however, that

RRLLC's proposed waste-to-ethanol facility would employ a relatively new technology involving a complex series of thermo-chemical and bio-chemical processes to generate a synthesis gas that would be fermented using naturally occurring anaerobic bacteria in a high-efficiency environment. Based on OEA's understanding of this new proprietary technology, it appears that RRLLC's proposed ethanol production process would not be burdened by the same production difficulties associated with the corn and algae processes discussed in Mr. Biello's article. See also OEA's response to comment SDEIS PN-1 above regarding the purpose and need for RJCP's proposed rail line.

Summary

SDEIS RR-4: The Centre County Planning and Community Development Office questioned the purpose and need for RJCP's proposed rail line and submitted a letter from PA DEP indicating that the permit for Keystone Clearwater Solution's proposed frac water treatment plant has been revoked.

Response

See OEA's response to comment SDEIS PN-1 above regarding the purpose and need for RJCP's proposed rail line. OEA consulted with Keystone Clearwater Solutions (Keystone)³ and learned that the National Pollutant Discharge Elimination System (NPDES) permit for the proposed frac water treatment plant remains valid. Keystone is currently in the process of administratively transferring this permit to RRLLC. The permit that PA DEP revoked (see PA DEP's August 15, 2011 correspondence in Appendix C) is a Residual Waste General Permit, which authorized treatment of water recycled back to the natural gas drilling industry for reuse. According to Keystone, Residual Waste General Permits are not transferable from one entity to another, and RRLLC has recently sought the consulting services of Keystone to re-apply for this permit on its behalf.

4.1.4 Proposed Action and Alternatives

Summary

SDEIS PA-1: People Protecting Communities (PPC) commented that the Black Rock Road alternative is a hypothetical alternative based on a preliminary subdivision plan that could undergo significant change during a final approval process.

Response

Comment noted. Other than the No-Action Alternative, every alternative evaluated as part of an EIS under NEPA, including the Proposed Action, could be considered "hypothetical" because none of the alternatives exist yet. For purposes of this EIS, OEA evaluated a number of alternatives that were developed based on a similar level of preliminary engineering with the understanding that each of these alternatives would be further refined during the final design/permitting process. OEA evaluated the Black Rock Road alternative in detail because it was both a reasonable and feasible alternative to the Proposed Action and could, in time, potentially be advanced to construction. However, OEA acknowledged in the SDEIS that this alternative has only been approved by local authorities on a preliminary basis and that additional approvals would be necessary prior to construction. OEA recognizes that this alternative, along with the other build alternatives, could undergo changes as a result of more intensive design work, local approvals, and/or necessary state or federal permits.

³ As explained in Chapter 5 of the SDEIS, Keystone succeeded Rex Energy Corporation as the permittee and manager of the proposed frac water treatment plant on the RRLLC property.

Further, NEPA requires that agencies consider a range of alternatives, including a detailed evaluation of all reasonable alternatives, as well as a brief discussion of the reasons for eliminating other alternatives from detailed study (40 C.F.R. § 1502.14(a)). Reasonable alternatives include those that are practical or feasible from a technical and economic standpoint. An alternative that is outside the legal jurisdiction of the lead agency (in this case the Board) must still be analyzed in the EIS if it is reasonable, as is the case for the Black Rock Road alternative for this project. A potential conflict with local or federal law (or decisions) does not necessarily render an alternative unreasonable, although such conflicts must be considered (40 C.F.R. § 1506.2(d)).

Summary

SDEIS PA-2: The Centre County Planning and Community Development Office (Development Office) commented that Chapter 2 of the SDEIS needs to be revised because the Centre County Planning Commission (Planning Commission) did not deny a preliminary subdivision plan submitted by RRLLC, but rather declined to accept the plan for review due to identified plan deficiencies. The Development Office further stated that the plan was subsequently deemed approved through court action.

Response

Chapter 2 of the SDEIS does not state that the Planning Commission denied RRLLC's preliminary subdivision plan. Rather, Chapter 2 states that RRLLC's preliminary subdivision plan was not approved by the Development Office. In response to the comment, OEA clarifies here that the Development Office serves as the administrative staff for the Planning Commission, which is comprised of nine locally elected officials (i.e., township supervisors and borough council members) who are appointed to serve on the Planning Commission on a volunteer basis by the County Commissioners. The Planning Commission, upon acceptance of a complete subdivision plan, is required to review the plan, render its decision and communicate said decision to the applicant within 90 days. In this case, the Development Office, not the actual Planning Commission, reviewed RRLLC's preliminary subdivision plan, determined it was inadequate, and subsequently rejected it without review by the Planning Commission. The Centre County Court of Common Pleas has since approved RRLLC's plan (see Appendix C of the SDEIS). The court found that the Development Office has no authority to reject a plan unless the plan is missing one or more of the necessary plan submittal components outlined in Sections 504 and 705 of the Centre County Subdivision and Land Development Ordinance. According to the Masters Report attached to the court order, RRLLC's preliminary subdivision plan was not missing any of the necessary plan submittal components outlined in Sections 504 and 705 of the Centre County Subdivision and Land Development Ordinance. Therefore, the Development Office did not have the authority to reject RRLLC's plan.

4.1.5 Identification of the Environmentally Preferable Alternative

Summary

SDEIS ID-1: Citing fewer threatened and endangered species, land use, and transportation/safety impacts along the Modified Proposed Action, two commenters, including the Pennsylvania Game Commission, indicated that they agreed with OEA's identification of the Modified Proposed Action as the environmentally preferable alternative.

Response

Comment noted.

Summary

SDEIS ID-2: PPC commented that OEA's selection of the environmentally preferable alternative is flawed. PPC alleged that, like the stated transportation purpose and need, OEA's identification of the environmentally preferable alternative is based on assumptions and presumptions. PPC argued that it is premature to select a preferred alternative without the necessary approvals for the waste-to-ethanol facility/landfill. PPC noted that the PA DEP permitted tonnage for RRLLC's facilities could be so low as to eliminate the need for rail transportation or local road improvements.

Response

CEQ defines a cumulative impact as "the impact on the environment which results from the incremental consequences of an action when added to other past, present, and reasonably foreseeable future actions..." (40 C.F.R § 1508.7). As a reasonably foreseeable future action, the waste-to-ethanol facility/landfill did not need to exist or be permitted for OEA to conduct an environmental review of RJCP's proposed rail line. OEA had all the information it needed to conduct a careful and deliberate environmental analysis for this project, as presented in both the DEIS and SDEIS. The purpose of this analysis was to identify the environmental impacts of the various alternatives and to compare the alternatives to identify the least environmentally damaging alternative. Table 2.2 in Chapter 2 of the DEIS describes this comparative analysis. Based on the data presented in this table, OEA properly concluded that the Modified Proposed Action is the environmentally preferable alternative for this project. See also OEA's response to comment SDEIS PN-1 above regarding the purpose and need for RJCP's propose rail line.

4.1.6 Land Use

Summary

SDEIS LU-1: The Centre County Planning and Community Development Office (Development Office) commented that it had previously (in 2005) determined that RRLLC's proposed landfill project was inconsistent with the Centre County Comprehensive Plan, the Snow Shoe Township Comprehensive Plan, and the Snow Shoe Township Zoning Ordinance. The Development Office stated that OEA should have included this landfill inconsistency determination in its analysis of the Black Rock Road alternative's consistency with local and regional land use plans in the SDEIS.

Response

As discussed in Section 4.2.1 of the SDEIS, OEA determined that the Black Rock Road alternative's associated increase in truck traffic on local roads does not appear to be consistent with the Centre County Comprehensive Plan. In making this determination, OEA only evaluated the Black Rock Road alternative, its associated roadway improvements, and the transportation impact that those improvements would have on the existing local road system. OEA did not evaluate or consider the land use consistency of RRLLC's proposed waste-to-ethanol facility/industrial development project because land development projects, including RRLLC's project, are not within the Board's jurisdiction (which is connected to rail transportation). OEA properly focused its evaluation and assessment of the potential impacts associated with the Proposed Action and alternatives independent of RRLLC's or any other private entity's land development proposals.

4.1.7 Noise

Summary

SDEIS NO-1: One commenter stated that “the noise of the train alone is reason enough to stop this absurd project.”

Response

As discussed in Section 4.5 of the DEIS, although not required under the Board’s thresholds for noise impact analysis (49 C.F.R. § 1105.7), OEA conducted a quantitative noise analysis for both the Proposed Action and the Modified Proposed Action. In order to identify and quantify potential noise impacts, OEA used FTA’s Noise Impact Assessment Spreadsheet to predict wayside train noise levels from RJCP’s proposed rail operations. OEA used input parameters, such as land use category, existing noise level, type of source, speed of source, number of events, etc., to develop both severe and moderate noise impact contours (a noise contour is a line plotted on a map connecting points of equal sound). In addition to the FTA wayside noise model, OEA used the FRA’s train horn assessment model to calculate severe and moderate impact zones resulting from horn noise at public grade crossings. These severe and moderate horn noise impact zones were incorporated into the noise impact contours generated by the wayside train noise model. Based on this analysis, OEA identified 178 (71 moderate and 107 severe) noise-impacted sensitive land uses along the Proposed Action and 32 (23 moderate and 9 severe) noise-impacted sensitive land uses along the Modified Proposed Action. OEA identified the Modified Proposed Action as the environmentally preferable alternative for this project in part because of its substantially fewer noise-impacted sensitive land uses.

Chapter 6 of the DEIS and Chapter 7 of the SDEIS included mitigation measures to minimize or reduce these potential noise-related impacts. OEA has incorporated these noise mitigation measures in its final mitigation recommendations in Chapter 5 of this FEIS.

4.1.8 Biological Resources

Summary

SDEIS BR-1: PA DCNR commented that it had previously requested a presence/absence survey for the local road upgrade alternative because habitat assessments identified suitable habitat for six species of concern. PA DCNR stated that since then, it has learned that the local road upgrade alternative has not been selected as the preferred alternative. PA DCNR also indicated that its concerns would still stand if that portion of the project becomes viable.

Response

Comment noted. OEA continues to view the Modified Proposed Action as the environmentally preferable alternative for this project.

4.1.9 Water Resources

Summary

SDEIS WR-1: PA DEP recommended that OEA contact the Watershed Management Program to discuss the project’s permitting needs for construction stormwater and Chapter 105 waterway encroachments. Similarly, PA DEP commented that any earth disturbance of one acre or more would

require an NPDES permit under Chapter 102 of its rules and regulations. PA DEP stated that it was unable to determine if an Industrial Stormwater NPDES permit would be required.

Response

Comment noted. RJCP has offered a voluntary mitigation measure which would require it to obtain the necessary state and federal permits prior to initiating any construction activities for this project. OEA has included this mitigation measure in its final environmental mitigation recommendations in Chapter 5 of this FEIS. If the Board approves the proposed rail line project and imposes this voluntary mitigation measure, the specific permitting requirements of PA DEP would be coordinated by RJCP prior to project construction in accordance with the terms of the voluntary mitigation.

4.1.10 Parks and Recreation Facilities

Summary

SDEIS PR-1: A number of commenters objected to the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail as a result of RJCP's potential reactivation of the rail banked Eastern Segment. Commenters expressed frustration about the lost recreational opportunities that could result from this impact. Additionally, commenters indicated that thousands of people enjoy the rail trail on an annual basis, and these recreational visitors help to support local businesses via green tourism. Specific comments are as follows:

“I have just discovered that there are certain interests who are attempting [to] take away one of my favorite privileges. The Snow Shoe Rails to Trails has 3000 members who bring hundreds of thousands of green dollars to the Centre County region. Why should we suffer? Why should we lose our privileges?”

“We are opposed to the proposed trash train. You would be taking away regulated riding trails from ATV riders. We finally have a nice, clean, safe place for us to ride. We do not want you to destroy our scenic riding area.”

“I live in Quakertown, PA which is about 3-4 hours drive from Snow Shoe, PA. We only get a chance to come ride our ATVs out there 5-6 times a year, but it is a trip I always look forward to. I was sickened by what your Board wants to approve out there to bring in trains and trash and hazardous materials to ruin the land and poison the people...you people want to ruin what is a beautiful place to ride and enjoy and is historical in nature. Please, as an individual and as part of a large group of riders, don't take away this fantastic area and all the revenue it brings to the area...”

“The community, particularly the Snow Shoe Rails to Trails organization promotes a positive recreational outlet for many, many people, and I abhor the idea of destroying part of their facilities simply for the financial gain of a few.”

“As an avid ATV rider and former ASI Riding Instructor, I am much concerned about loss of good riding areas. The loss of most of the Snow Shoe Rails to Trail System would be a tremendous blow to most riders. Snow Shoe Rails to Trails is well worth the 3.5-hour drive to get to and most trips there I use the dinner, grocery store, gas station, sandwich shop and hardware store as do many other people who come to ride. If this trash train wins out than a lot of the riders will go to Jersey or West Va. and spend the money there.”

Response

Comments noted. See Section 3.2 of this FEIS for OEA's detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program.

Additionally, OEA has recently learned of a planned expansion of the Snow Shoe Multi-Use Rail Trail. This PA DCNR-sponsored expansion involves connecting the Snow Shoe Multi-Use Rail Trail to the Bloody Skillet Recreation Area in Sproul State Forest. A 6.6-mile connection on the eastern end of the Snow Shoe Multi-Use Rail Trail is currently under construction and would not be impacted by RJCP's proposed project. The expansion of the Snow Shoe Multi-Use Rail Trail, and its subsequent connection to the popular Bloody Skillet Recreation Area, may further offset the various impacts associated with the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail.

Summary

SDEIS PR-2: One commenter submitted a petition signed by approximately 180 individuals opposing the environmental and economic impacts on the Central Pennsylvania wilderness region that might be caused by the proposed construction, operation, and reactivation of the rail line. Petitioners, who are citizens of, or recreational visitors to, the affected area, stated that enjoyment of their rural lifestyle and their ability to participate in recreational activities, such as hiking, biking, boating, and ATVing, would be negatively impacted by the industrialization that the proposed rail line would promote in this remote, wilderness region.

Response

Comment noted. OEA evaluated the impact that RJCP's proposed rail line project would have on local, regional and state parks and recreation facilities in Section 4.8.4 of the DEIS. This analysis showed that the Western Segment would have no impact on parks and recreation facilities, while the Eastern Segment would impact two recreation facilities: the Snow Shoe Multi-Use Rail Trail and a portion of the Moshannon State Forest. Specifically, the Eastern Segment would eliminate the 9.3-mile section of the Snow Shoe Multi-Use Rail Trail extending from its western terminus near the Black Bear Run Bridge to Gorton Road. See Section 3.2 of this FEIS for OEA's detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program. Approximately 4,400 feet of the Eastern Segment would be physically located within the property boundary of Moshannon State Forest, and another 3.3 miles would parallel the state forest boundary on the opposite side of Moshannon Creek. Analysis of the Moshannon State Forest Public Use Map indicates that there are no developed recreation facilities, other than the former railroad bed itself, within this 4,400-foot section. The District Manager of the Moshannon State Forest (see Appendix B of the DEIS) indicated that the proposed rail line could potentially impact the "ambience" of the area and the recreational experience of hikers using the Allegheny Front Trail. However, this impact is anticipated to be minimal given the limited number of trains RJCP proposes to operate on a daily basis (i.e., one or at most two unit trains daily). Additionally, the proposed rail line would eliminate 9.3 miles of the Snow Shoe Multi-Use Rail Trail and the noise generated by ATVs, potentially enhancing the recreational experience of hikers using the Allegheny Front Trail. Any recreational activities occurring on RRLLC's private property would be considered trespassing and would be unlawful.

4.1.11 Hazardous Materials Transport

Summary

SDEIS HM-1: Three commenters expressed concern regarding potential safety issues associated with RJCP's planned transport of ethanol, a regulated hazardous material. Concerns varied between safety issues in developed areas near homes and safety issues in remote areas not easily accessible by emergency responders. One commenter indicated that "even if train accidents are rare, just one could prove disastrous."

Response

OEA has thoroughly evaluated the impacts, including potential safety issues, associated with RJCP's planned transport of ethanol over its proposed rail line. This analysis, which is presented in Chapter 3 and Appendix B of the SDEIS, indicated that the statistical probability of occurrence for a train accident resulting in a release of ethanol into the project area would be extremely low. OEA calculated a 0.0007 (0.07%) annual probability of occurrence for a mainline train accident that would result in a release of hazardous materials on the proposed rail line. This annual probability of occurrence would equal an estimated return year interval of one accident resulting in a release of hazardous materials every 1,428 years. The planned 25 mph maximum operating speed for the proposed rail line likely would further reduce the probability of an occurrence. Also, existing federal regulations and containment procedures are in place to minimize this risk of an occurrence, and emergency response service providers are available in the project area to remediate possible damage in the event of a spill. Additionally, ethanol's ability to biodegrade (breakdown) quickly when released into the environment makes it unlikely that the effects of a release would be long term. Based on these conclusions, OEA determined that RJCP's planned transport of ethanol is within an acceptable range of risk for rail transportation of hazardous material.

OEA also concluded that the Modified Proposed Action would be the environmentally preferable alternative from a hazardous materials risk/exposure/impact perspective because an ethanol spill along this alternative would have significantly less potential to impact people when compared to the Proposed Action. Further, OEA concluded that the significantly greater number of grade crossings associated with the Proposed Action compared to the Modified Proposed Action (i.e., 17 versus 4) would likely increase the probability of occurrence of a train accident for the Proposed Action.

4.1.12 Cultural/Historic Resources

Summary

SDEIS CR-1: Two commenters expressed concern regarding potential impacts to the historical Peale Tunnel and Viaduct Bridge. Commenters alleged that RJCP's proposed reactivation of the former railroad along the Eastern Segment would destroy and/or severely compromise these landmarks.

Response

As discussed in Section 4.12.2 of the DEIS, the rail bed of the Proposed Action, formerly the Beech Creek Railroad, has been identified as a linear historic district eligible for listing on the National Register. In its October 29, 2009 correspondence (see Appendix B of the DEIS), PHMC determined that the proposed project would have "no effect" on National Register-eligible historic buildings, structures, districts, or objects located in the project area. OEA notes that PHMC's finding would

apply to the Peale Tunnel and the Viaduct Bridge located along the Eastern Segment. These features would be returned to their original use, and RJCP would maintain them as part of its active rail infrastructure. Additionally, Chapter 6 of the DEIS and Chapter 7 of the SDEIS included a mitigation measure requiring RJCP to leave in place the Peale Tunnel's historic stone portals during construction. OEA has included this mitigation measure in its final mitigation recommendations in Chapter 5 of this FEIS. Thus, reactivation of the former railroad along the Eastern Segment would not have an adverse effect on the Peale Tunnel or the Viaduct Bridge.

4.1.13 Cumulative Impacts

Summary

SDEIS CU-1: One commenter noted that natural gas wells are being developed on the RLLC property and asked whether the chemicals used in the natural gas drilling process would mix with an ethanol plant.

Response

OEA analyzed the natural gas drilling projects in the project area as part of the cumulative impacts assessment in Chapter 5 of both the DEIS and SDEIS. Because the natural gas drilling projects are not part of rail transportation, the Board has no jurisdiction over them. Nor would the broad federal preemption in 49 U.S.C. § 10501(b) apply to them. Thus, potential conflicts between adjacent land uses (i.e., ethanol plant versus natural gas wells) would be identified and dealt with by the appropriate entities having approval and/or permitting authority over such projects.

Summary

SDEIS CU-2: OEA received one comment regarding the cumulative impact projects identified in the SDEIS, and their subsequent potential to result in cumulative recreational impacts when combined with the loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail. The commenter alleged that the area is presently being used for a variety of outdoor recreational uses, including camping, ATV riding, horseback riding, biking, walking, etc., and that the proposed industrialization of RLLC's property would negatively impact these established recreational uses, resulting in a negative impact to the local economy.

Response

Section 5.2.8 of the DEIS discusses potential cumulative impacts to socioeconomic resources, including parks and recreation facilities. As noted in the DEIS, exclusive of PennDOT's proposed highway/bridge improvement projects, which would occur within or immediately adjacent to a state-owned transportation right-of-way, the remainder of the other cumulative impact projects would take place entirely on private property. Therefore, OEA does not foresee any physical cumulative impacts to parks or recreational facilities, including the Moshannon State Forest and Black Moshannon State Park, which are located on the south side of I-80. Since RLLC's land is private property, any unauthorized or unpermitted recreational use of this property would constitute trespassing and would be unlawful.

Summary

SDEIS CU-3: PPC commented that OEA provides incomplete and conflicting information about the safety of the waste-to-ethanol facility. Specifically, PPC argued that OEA admits "that data does not exist regarding the safety or waste-to-ethanol technology and makes dangerous assumptions

concerning the potential impacts that could occur from an incident. On one hand, OEA relies on the remoteness of the site to determine that an incident would have negligible safety impacts, and on the other hand assumes that any emergency response required at the site would likely be within the existing service capabilities of existing local and regional service providers.”

Response

As indicated in Chapter 5 of the SDEIS, certain safety concerns (i.e., potential fire and/or explosion) are inherent with any thermo-chemical process, including those that would occur at RRLLC’s proposed waste-to-ethanol facility. However, given the remote location of RRLLC’s proposed waste-to-ethanol facility and the associated absence of homes and other businesses in the surrounding area, an emergency incident at the waste-to-ethanol facility would not likely affect any private property other than that owned by RRLLC. If RRLLC’s waste-to-ethanol facility were to catch fire and explode, it is likely that no other private properties in Rush or Snow Shoe Townships would be impacted because of the immense buffer distance created by RRLLC’s 5,750 acres of land.

Summary

SDEIS CU-4: USEPA requested that the cumulative impacts be more clearly defined by including a map and a more detailed description of the potential environmental resources that may be impacted by the cumulative impact projects. Further, USEPA requested more detailed information regarding the proposed “frac water” treatment facility.

Response

OEA appropriately examined the cumulative impact projects in Chapter 5 of the DEIS and discussed changes to these projects that had taken place after preparation of the DEIS in Chapter 5 of the SDEIS. There have been no changes to the cumulative impact projects since issuance of the SDEIS. Therefore, the cumulative impacts analysis presented in the DEIS and SDEIS remains current. The DEIS included a map of the cumulative impact projects (see DEIS Figure 5-1). This map shows the general locations of each of the cumulative impact projects as accurately as possible. As discussed in Chapter 5 of the DEIS, given the speculative and preliminary nature of many of the cumulative impact projects, it is not possible for OEA to provide detailed location, boundary or impact information at this time. Thus, OEA’s cumulative impacts assessment was based on a qualitative evaluation of currently available information. Without exact locations and detailed building footprints or limits of disturbance, a more detailed and/or quantitative cumulative impacts assessment is not possible.

As discussed above in response to comment SDEIS RR-4, OEA contacted Keystone Clearwater Solutions (Keystone) and has learned that Keystone recently received an NPDES permit for the proposed frac water treatment plant from PA DEP and is currently in the process of administratively transferring this permit to RRLLC. Keystone stated that the proposed facility would be designed to treat not only frac water, but also wastewater from the ethanol production process and leachate (i.e., any liquid that, in passing through matter, extracts solutes, suspended solids or any other component of the material through which it has passed) from the proposed landfill. The treatment technology planned for the facility would involve a two-stage process. The first treatment process would consist of a physical chemical treatment aimed at precipitating heavy metals out of the water, while the second treatment process would involve an aerobic biological process similar to a municipal wastewater treatment plant. At peak operating capacity, the treatment plant would be permitted to discharge a maximum 1.252 million gallons/day of treated water into the Moshannon Creek.

Summary

SDEIS CU-5: USEPA indicated that it is unclear which actions would occur first. USEPA asked, “if the rail line is active before the development begins, will the rail line be used to transport construction material? If the development is ready to begin before the rail is active, will the local road system be improved to accommodate the construction traffic?”

Response

The timing of RJCP’s proposed rail line project in relation to the cumulative impact projects is unknown at this time. However, it is reasonable to conclude that if RJCP’s proposed rail line is authorized and built before the cumulative impact projects, construction materials for those projects could be transported via the rail line. Based on OEA’s understanding of the cumulative impact projects, RJCP’s proposed rail line, if operational, would be used to transport construction materials in lieu of constructing the local road improvements proposed under the Local Road System Upgrade alternative and the Black Rock Road alternative. Due to the recent growth in the Marcellus Shale natural gas drilling industry, OEA has recently learned that Gorton Road has been paved to provide improved vehicular access to the RRLLC property. That road could be used to carry the construction traffic related to the cumulative impact projects if the proposed rail line is not operational when those projects move forward.

Summary

SDEIS CU-6: USEPA asked if the local road improvements would need to be implemented to accommodate workers and non-rail deliveries from the various cumulative impact projects. USEPA requested that OEA provide information regarding infrastructure improvements that are planned for the expected development.

Response

Because the cumulative impact projects are not part of rail transportation, the Board has no jurisdiction over them. Nor would the broad federal preemption in 49 U.S.C. § 10501(b) apply to them. Therefore, local road improvements to accommodate workers and non-rail deliveries from the various cumulative impact projects were not part of OEA’s environmental analysis for this project. Further, given the preliminary nature of the proposed cumulative impact projects, OEA has no information regarding the need for associated or accompanying infrastructure improvements.

4.1.14 Mitigation

Summary

SDEIS MI-1: PA DEP commented that any solid waste generated as a result of this project should be taken to a permitted solid waste processing or disposal facility.

Response

OEA agrees with this comment and has modified the mitigation measure aimed at proper disposal of waste materials encountered along the rail line during construction (*see* VM 35 in the SDEIS) to include waste materials generated as a result of construction. This modified mitigation measure has been included as part of OEA’s final recommended mitigation in Chapter 5 of this FEIS.

Summary

SDEIS MI-2: PA DCNR summarized the history of botanical surveys conducted for this project and stated that it was pleased to see that the recommendation to resurvey the applicable wetland habitats along the selected alternative for *Sparganium angrocladum* prior to project permitting had been incorporated into the SDEIS as a mitigation measure.

Response

Comment noted. OEA has included this mitigation measure in its final mitigation recommendations in Chapter 5 of this FEIS.

Summary

SDEIS MI-3: Headwaters Charitable Trust (HCT) requested that the Board require RJCP to mitigate the impact to the Snow Shoe Multi-Use Rail Trail by replacing the 9.3 miles with a suitable trail and by repaying the \$555,195 Transportation Enhancement monies spent to repair the Peale Tunnel. Further, HCT expressed concern regarding mitigation measure VM 33 in the SDEIS which requires RJCP to negotiate a mutually acceptable agreement with HCT to mitigate the impacts of the reactivation of the rail banked Eastern Segment. HCT states “the voluntary mitigation language gives RJCP the liberty of not mitigating trail connectivity caused by the lost segment if they determine a mutually acceptable agreement cannot be reached. We are concerned this language could be used as an ‘out’ without engaging in any meaningful dialogue to resolve the issue. To date RJCP has been slow to respond to our requests for further dialogue on the subject. Months later when we did finally arrange a conference call with their attorney it appears that their reluctance to respond to us stems from their perceived opposition by the Trust to reactivation of the line.”

Response

As explained in Section 4.8.4 of the DEIS and in Section 3.2 of this FEIS, the Snow Shoe Multi-Use Rail Trail was developed under the rail banking program of the Trails Act, 16 U.S.C. § 1247(d). Rail banking is a method by which rail lines authorized for abandonment can be preserved for future rail service through interim use as a trail. When a line is rail banked, the line is not abandoned, and the railroad retains a right to reinstitute rail service at any time. In this case, RJCP has the right to restore rail service over the rail line, and the users of the Snow Shoe Multi-Use Rail Trail must step aside. The Board has no authority to require RJCP to mitigate for the impact to the Snow Shoe Multi-Use Rail Trail. In its proposed voluntary mitigation presented in Chapter 6 of the DEIS and Chapter 7 of the SDEIS, however, RJCP offered to negotiate a mutually acceptable agreement with HCT to mitigate the impact to the Snow Shoe Multi-Use Rail Trail. RJCP also reserved the right to construct a new trailhead facility, consisting of a gravel parking area and covered sign structure, at the new Gorton Road trail terminus as the sole voluntary mitigation for the impact to the Snow Shoe Multi-Use Rail Trail if RJCP were to determine that a mutually acceptable mitigation agreement is unachievable. OEA has included this mitigation in its final mitigation recommendations in Chapter 5 of this FEIS.

Summary

SDEIS MI-4: Counsel for RJCP, Fletcher & Sippel LLC, commented that HCT’s request to require RJCP to mitigate the impact to the Snow Shoe Multi-Use Rail Trail is beyond the scope of OEA’s environmental review process. In its letter, Fletcher & Sippel stated that OEA should not accept HCT’s invitation to participate in designing alternative trail systems for ATV riders in Central Pennsylvania. The letter pointed out that the Board has already ruled, in a decision served July

27, 2009, that RJCP needs no further authority to reactivate the Eastern Segment. It explains that HCT's rights and obligations with respect to the trail and the termination of trail use are subjects that are or could have been addressed in the trail agreement or conveyance documents between Conrail and HCT many years ago. Finally, the letter indicated that those rights and obligations are matters of private contract and are not an appropriate subject for backdoor resolution through the Board's environmental review process.

Response

Comment noted. See Section 3.2 of this FEIS for OEA's detailed discussion of the Snow Shoe Multi-Use Rail Trail and the rail banking program.

Summary

SDEIS MI-5: Counsel for RJCP, Fletcher & Sippel LLC, commented that OEA's recommended mitigation measure #1 in Chapter 6 of the DEIS and Chapter 7 of the SDEIS requiring RJCP to offer fair market value payment in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act for the acquisition/condemnation of any private property needed to construct the Western Segment would not apply in this case because this statute sets forth guidelines for federal agencies and federally funded projects to follow in acquiring real property by eminent domain. In its letter, Fletcher & Sippel stated that this statute does not apply because RJCP is a private company using private funds. It explains that RJCP would be subject to the procedures for exercising eminent domain set forth in Pennsylvania statutory law (i.e., the Pennsylvania Eminent Domain Code) found at 26 Pa. C.S.A. § 701 et seq., which contains provisions assuring fair market value compensation. Thus, the letter suggested that mitigation measure #1 is unnecessary since this subject is already adequately covered by state law.

Response

OEA agrees that RJCP would not be subject to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act because this statute only applies to federally funded projects. The applicable provisions of the Pennsylvania Eminent Domain Code (PAEDC), including the fair market value payment requirements, would govern the acquisition of property needed to construct the Western Segment. In Pennsylvania, condemnation of private property for public purposes is governed in accordance with the procedures and provisions set forth in the PAEDC. See 26 Pa. C.S.A. § 101 et seq. Section 204(b)(2)(i) of the PAEDC establishes that the exercise by any condemnor of the power of eminent domain to take private property in order to use it for private enterprise is prohibited except when taken by a public utility or railroad. Further, Sections 701-703 of the PAEDC establish that a condemnee shall be entitled to just compensation and fair market value for the taking. If RJCP's proposed project is approved by the Board, any condemnation of private property necessary to reestablish the railroad right-of-way would be conducted in accordance with the procedures and provisions set forth in the PAEDC. For this reason, OEA has removed mitigation measure #1 from its final mitigation recommendations in Chapter 5 of this FEIS.