

INTRODUCTION/BACKGROUND:

Thank you for the opportunity to comment on NEPA. We base our comments on direct experiences with how this vital and necessary federal law created to address government decisions about the environment was used to circumvent, manipulate and ignore the protected rights of rural citizen landowners/stakeholders within the precedent Union Pacific Railroad rail trail conversion, a major federal action with serious environmental effects. The UPRR Superfund runs 72-miles through the guts of the 1500 square mile larger Bunker Hill Superfund in north Idaho, through sensitive wildlife ecosystems, wetlands, riverine and lacustrine environments for which no Environmental Impact Statement was done, thus creating a locked-into-place "Superfund Remedy" that---to this day---inhibits or negates sound remedial actions throughout the Coeur d'Alene Basin.

Our comments are directed to three main discussion areas: NEPA's purpose, Issues related to NEPA Environmental Impact Statements, NEPA Public Participation as a Political Tool. These comments support our basic thesis that NEPA law, enacted for the protection of our shared environment through public processes and consideration of alternatives, was circumvented, manipulated, abused within the UPRR CERCLA Remedy process. We assert, further, that the on-going legal and ecological problems wrought by the politically motivated and secretly negotiated UPRR Superfund Remedy can be traced directly back to the abuses of NEPA processes.

NEPA'S PURPOSE:

As stated in your comments, the purpose of NEPA is to "protect and empower the public." Further, NEPA "is an effective means of ensuring accountability by federal managers whether they are distant bureaucrats or potentially corrupt local managers." NEPA certainly was in effect during the early decision processes that governed the Union Pacific 72-mile spur line abandonment, a major federal action requiring proper assessment and cleanup of mine waste, fertilizers, and other toxics carried to and from the Silver Valley in north Idaho. The impact of the railroad causeway as an hydraulic barrier in this flood-prone region was never properly investigated, although one of the "selling points" within the railroad's secret and confidential "Conceptual Action Plan" documented this importance. NEPA processes for UPRR in the early 1990's constituted secret talks, negotiations, and plans created in spite of repeated citizen attempts to be included in NEPA-mandatory discussion of alternatives. According to documents filed by the governments (EPA, DOJ, Idaho, the Coeur d'Alene Tribe) and Union Pacific, it would have been too difficult and problematic to involve the reversionary landowners holding fee title to the land under the highly contaminated railroad easement, so our rights to inclusion and consideration of our alternatives were not allowed. In fact, we have documentation proving this to be true, and the resulting "sweetheart deal" brokered among UP and the governments is a mockery of everything for which NEPA stands. Landowner/stakeholder involvement was limited to "lecture and listen" meetings, and a call for "public comment" well after all the key decisions had been made in secret by the signatory parties. The "pro-trail responses" were almost exclusively form post cards, whereas the anti-trail citizen responses were contained in long letters with bringing up serious environmental issues that have not, to this day, been resolved or answered. And although the governments acknowledged that the comments were evenly divided pro and con, the official "Response to Public Comments" issued by EPA in May, 1999, was a short, cursory document of a few pages that did not address issues. We assert this to be a violation of NEPA that occurred before the precedent trail idea became a CERCLA Response.

ISSUES RELATED TO NEPA ENVIRONMENTAL IMPACT STATEMENTS:

No NEPA EIS was done for this major action, and the EE/CA substituted is wholly inadequate in that it is little more than a plan to put a 10-foot strip of permeable asphalt within a highly contaminated 150 foot wide right-of-way. In addition, the EE/CA was based on erroneous information, incorrect maps, did not offer alternatives other than the "Do nothing" or "Build a Trail" scenarios. Further, the tracks have been moved in places from the historic right-of-way, so the implemented "remedy" (the ribbon of asphalt) is not even in the right place but is, rather up to ¼ mile off and is located on private land outside the actual easement. Also, the land below Harrison across to Plummer (around 14 miles) was described as "Recreational use, natural resource land, with no statistics available

for population density," and maps depicted the area simply as "Reservation." In truth, almost every bit of that land is privately owned, non-tribal land held in fee simple. All the land is under jurisdiction and control of Kootenai and Benewah Counties, not the Coeur d'Alene Tribe, and there has been no Tribal governance over this land for over 100 years since before the area was opened to homesteading under the Dawes Act. Also, the EE/CA states that ecological issues related to the railroad will be discussed in EPA's Basin Wide Remedial/Investigation/Feasibility Study (RI/FS), yet when the RI/FS was released, it stated that these issues had already been discussed in the EE/CA. When this "fatal flaw doublespeak" was pointed out, the Railroad was then excluded from EPA's Record of Decision. Repeated attempts (even under FOIA) to get information have met with more doublespeak.

Since the UPRR abandonment is a major federal action involving federal agencies and statutes, we assert a right and proper NEPA EIS was mandatory. We assert, further, that the governments abused the Congressional intent of the 1983 Railbanking legislation by merely going through the STB "abandonment" process, even though the STB (then ICC) issued an SEA that, we assert, was not fully "recognized" nor did it address the serious environmental issues involved with this highly contaminated and precedent federal action. Further, Congress enacted this federal law to preserve expensive and underutilized railroad infrastructure for future reactivation, and at no place in the legislation is there a provision to use the law to hide contamination or to give an Indian Tribe pseudo jurisdiction over non-tribal land and non-tribal people. In short, circumventing a NEPA-mandatory EIS was a political move, rather than based on sound environmental evaluation. Only theoretical risk assessments were submitted in the EE/CA, with no studies for human and ecological health along the abandoned ROW. These areas are show increased disease clusters (cancers, thyroid diseases) as well as high mortality to migrant birds passing through the flyway, among other problems. But, the political move to create an attractive nuisance recreation facility abrogated the duty to do rigorous environmental assessment.

NEPA PUBLIC PARTICIPATION AS A POLITICAL TOOL:

The state of Idaho electeds manipulated NEPA public participation, we assert, by selectively involving factions supportive of the UPRR rail-trail conversion while abrogating participation for those opposed to the plan. In fact, local county commissioners---our most immediate rural citizen voice---were kept from the information loop and were, essentially, "told" by Boise, the state capitol, what to do. At a US DOJ meeting in 2000, citizens presented questions and statements in writing to the governments. Included among these were proposed alternatives, queries about the use of ISTEPA funds to cover contamination, questions about health issues, questions related to changes proposed for the last Swing Bridge in America covered under Section 102 SHPO auspices, assertions about the need for health studies related to cancer clusters along the ROW, questions about how the precedent use of Railbanking as a Superfund remedy would be handled. These questions were submitted well before the Certificate of Interim Trail Use (CITU) was issued, yet EPA and the governments did not reply to these NEPA-related issues. In fact, no answers came to us for a full nine months, and by then it was too late, and the answers were incomplete and insubstantial. In short, there was complete disdain for respecting public involvement under NEPA. As a result, our land and our lives have been changed forever, and we are "stuck" with a wholly inadequate Superfund remedy that is subject to recontamination by seasonal flooding, erosion, and has created edge effects for sensitive wildlife (eagles, osprey, loons, elk, deer, bear, cougar) and plant life as well as opened up rural, remote, undeveloped private land to serious problems with illegal parking, hunting and trespassing, litter, crime. All these illegal activities serve, also, to undermine the inadequate "Remedy."

CONCLUSION:

We do not have time or space here to fully express our profound outrage and sadness at the politically motivated abuses of the NEPA process here in north Idaho. We have tried for years to work "through the systems", but our efforts are met with media suppression, clearly prejudiced and rigged "collaborative" and "consensus" group efforts, and the cumulative effects---due to the preliminary abuses of NEPA---are heartbreaking and, we assert, illegal. Since most of us rural folk lack the finances for protracted legal defenses, who will help us correct this terrible environmental injustice? Who will protect our rights under NEPA?

