

***Twin Springs Ranch
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January 10, 2008

EIS OFFICE
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
1551 Hillshire Drive
Las Vegas, NV 89134

Delivered via Internet to <http://www.ocrwm.doe.gov>.

RE: Comments to *Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada – Nevada Rail Transportation Corridor* (DOE/EIS-0250F-S2D; the Nevada Rail Corridor SEIS), and *Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0369D; the Rail Alignment EIS).

Please note that supplemental comment herein is made only as to the *Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0369D; the Rail Alignment EIS), herein referred to as the draft EIS or dEIS or document. We also specifically do not comment as to the Mina alternative.

Please also note that these comments are intended to supplement and not replace any of our previous comments, beginning in March, 2004, and continuing through the present. We expressly incorporate all previous comments and supplemental comments by reference into these continuing supplemental comments.

To Whom It May Concern:

COMMENTERS ARE ½ FALLINI TRUST AND ½ HELEN FALLINI LIVING TRUST, JOE FALLINI, SUSAN FALLINI AND FAMILY, ANNA FALLINI AND FAMILY, CORRINA FALLINI AND FAMILY, LORINDA FALLINI AND FAMILY.¹

¹ Commenters herein may be referred to as Fallini, Fallini family, we, Twin Springs Ranch, or permittees within the Reveille Allotment. For purposes of comment, these are the same.

I. COMMENTS RELATIVE TO OVERALL DOCUMENT:

- 1 [As a comment regarding the appropriateness of the project as a whole, the Constitution provides that the federal government shall own no land without the express consent of the legislature of the State in which the ownership occurs. We believe that the State of Nevada Legislature has not given its consent to this ownership, and that the project should not continue until and unless the United States receives the consent of the State of Nevada.]
- 2 [An overriding fault of the draft EIS is that, throughout, it selects one alternative that DOE deems to be the “most conservative” or the “worst case scenario”. However, DOE is not permitted to assume that the “worst case scenario” is the only alternative that must be assessed. DOE must assess an adequate range of alternatives for each of the issues/resources subject to the analysis.]
- 3 [Further, DOE often erroneously and arbitrarily decides what is the “worst case scenario”. For example, DOE has “decided” that the “worst case scenario” relative to water acquisition is that new wells would have to be drilled. However, DOE has no assurance whatsoever that the State of Nevada will permit either the acquisition of new water rights or the acquisition of existing water rights. Therefore, the “worst case scenario” may be that DOE must ship nearly 2 billion gallons of water to the construction site, via 198,129 10,000-gallon tank cars. This reasonably foreseeable possibility alone would have ramifications to, and may significantly alter, all of DOE’s other assessments of impacts to resources, including timetables for completion of construction.]
- 4 [Likewise, the document throughout often fails to equate relatively minor impacts to one resource as relatively significant impacts to another.] [One example is the roadbed having a (purportedly) minor impact to infiltration on a watershed basis; however, the post-storm accumulation of water along the roadbed on all upslope areas will attract cattle, wild horses, and wildlife to the pools to drink, which will significantly increase the likelihood of collision with the trains. Thus a small impact on infiltration may have a significant impact on wildlife, wild horses, and livestock grazing.] 5
- 6 [Also, the document in several areas (e.g. livestock grazing, wild horses, wildlife habitat) errs by attempting to minimize the impact area to that acreage that will be immediately under the construction right-of-way.] [A significant example of the error of this approach is the failure to adequately discuss wildfire, the increased likelihood of wildfire starts as a result of construction and operation of the railroad, and the reasonably foreseeable impacts to wildlife habitat, special status plants and animals, and livestock habitat outside the boundaries of the right-of-way. The document is *nearly* devoid of any discussion whatsoever of wildfire, and is *completely* devoid of any discussion of train-caused wildfire or wildfire-avoidance in Chapters 2, 3, and 4.] [Another significant example is the disruption of livestock calving season that will occur particularly during construction. This disruption of the cows during calving will result in increased orphaning and death loss of the calves, well outside the “footprint” of the railbed.] 7 8

II. COMMENTS RELATIVE TO SPECIFIC PORTIONS OF THE DOCUMENT:

Please note that the page numbers referenced herein refer to the page numbers as they are contained on the disc version of the dEIS; to the extent that these page numbers may differ from hardcopy page numbers, please refer to disc pages.

Please also note that language at one portion of the dEIS is often repeated at other locations. We do not infer by reference to only one location that these comments apply only to that location; rather please consider them applicable to all similar wording within the dEIS.

COMMENTS TO: VOLUME I. CHAPTER 2. PROPOSED ACTION AND ALTERNATIVES

9 [Page 2-48. Section 2.2.2.4.1. The dEIS fails to describe and assess an adequate range of alternatives relative to water needs, in assuming that the “preferred” method of obtaining water represents the “maximum” impact.

The dEIS states that “For purposes of analysis, DOE assumed that it would obtain all required water from *groundwater* pumped from new water-supply wells DOE is aware that there could be other approaches for obtaining some of the water required for construction, including purchasing or leasing water from established municipalities or other existing permitted water-rights holders. ... New water-supply wells is the only method for obtaining water that would require new construction; therefore, this EIS analyzes the impacts of obtaining all required water from new water-supply wells to illustrate the maximum impacts of the suite of potential water obtainment activities.”

However, this assumption raises at least two questions that are unanswered in the dEIS:

(1) It is a reasonably foreseeable possibility that the State of Nevada will find the granting of water rights for this project not in the best interests of the State, and therefore deny the construction of new water wells. If Nevada does not grant water rights for new wells, then DOE’s next preferred alternative would be to seek alternative sources from existing water rights, as is discussed in the quote above. However, assuming for argument that the State granted transfer of water rights from existing sources, then the impact of drying up springs, wells, municipal supplies, etc. is never discussed in the dEIS.

Further, the assumption that drilling new wells would be the maximum impact is entirely without foundation. For example, using all of the water out of existing agricultural wells would result in drying up hundreds to thousands of acres of alfalfa or other crops, which would in turn negatively affect both the socioeconomics of the particular county(ies) and the welfare of wildlife, such as pronghorn and others, that rely upon the agricultural crops and freestanding water. This scenario, as opposed to new well construction, might have far greater negative impacts than are associated with the construction of new wells, and there is nothing cited in the dEIS which should have led DOE to the conclusion that drilling new wells constituted the “maximum” impact alternative.

This discussion is entirely missing in the dEIS. The document for this reason alone does not assess an adequate range of reasonably foreseeable alternatives in obtaining the necessary water to construct and operate the railroad. This also leads to the second scenario, stated below.

(2) It is also a reasonably foreseeable possibility that the State of Nevada – if it finds that the granting of water rights is not in the best interests of the State – would also find that the transfer of water rights from existing beneficial uses would not be in the best interests of the State. If Nevada does not grant water rights transfers from existing sources, then DOE’s next alternative would be to seek water from sources outside the State of Nevada, which is not at all discussed in the dEIS. This would expand the zone of consideration and analysis to other states, and would require many more trains hauling water from outside the state. Section 4.2.6 of the dEIS states that 7.5 million cubic meters (which equates to 1,981,290,393 gallons) of water will be needed for the construction of the rail line. Using 10,000 gallon tank cars to transport this amount of water would require 198,129 tanker rail car loads, or an additional 1,981 one-way trips by 100-tanker trains.

The document is remiss in not addressing this reasonably foreseeable possibility. The document for this reason alone does not assess an adequate range of reasonably foreseeable alternatives in obtaining the necessary water, and transporting the water via rail or land roads, to construct and operate the railroad.]

10 [Page 2-48. Section 3.2.2.1. The dEIS fails to describe and assess an adequate region of influence relative to land use and ownership, and improperly and erroneously assumes that the nominal width of the railroad under construction phase represents the “upper bounds” of the impact area.

The document states, “The region of influence for land use and ownership is the nominal width of the rail line construction right-of-way, and includes all private land (including patented *mining claims*), American Indian lands, and public land that would be fully or partially within the construction right-of-way. The land use and ownership region of influence also includes the locations of construction and operations support facilities outside the nominal width of the rail line construction right-of-way. Although the *operations right-of-way* would be smaller than the construction right-of-way, DOE evaluated the construction right-of-way as the basis for identifying potential land-use impacts because: ... • It provides a more conservative estimate of the amount of land that would be utilized than the operations right-of-way, providing an upper bound for analysis....”

However, this is akin to stating that the “region of influence” of a dam across the Columbia or Snake River is the “nominal width of the base of the dam while under construction”. This is erroneous. Here, DOE is proposing a “dam” that stretches 340 miles, with a nominal “footprint” of 40,000 acres, but the impacts accrue to over 4,150,000 acres with active grazing permits (See Table 3-7)².

² We also comment, since this is so far still America, that American measures should be used throughout the document, without the need for Americans to convert figures from metric terms. Thus, 16,000+ square kilometers becomes 4,150,000 acres, which demonstrates the reality of the impact area for land use.

Further, just as the discussion of aesthetics considers the viewshed (dEIS section 3.2.3.1 at page 3-106), the larger impact area (region of influence) must be considered, which is the impact to the entire livestock operation for each of the ranches discussed (which the dEIS refers to as permittees).

Fallini has supplied numerous comments, including Fallini's supplemental comments sought by DOE under contract with Resource Concepts, Inc. (RCI) regarding the impacts to the family ranching business, land use, private land values, aesthetics, etc. Those comments and supplemental comments provide site-specific information relative to the Reveille Allotment (over 658,000 acres in size) that demonstrate that the effect of construction and operation of the proposed Caliente rail line will reach far beyond the "nominal width of the rail line construction right-of-way". These comments have been completely ignored in the dEIS, as have the list of mitigations proposed by Fallini relative to the Reveille Allotment, which includes significant portions of Caliente Common Segments 2 and 3.

In addition, the dEIS fails to account for the critical time periods of livestock operations, the most critical of which is the calving season, when mother cows that are spooked off their newborn calves may abandon those calves, which will in turn result in certain death by a number of means (weather, predation, etc). Even mother cows that are highly disturbed may move off and leave older calves behind. If the calves do not follow the mother cows, orphaning of the calves occurs, which leads to anything from extremely poor growth by the calves, to death of the calves. In the case of *at least* the Reveille Allotment, the calving season begins the first of February and runs through July. Any construction activity that occurs during this time will have the likelihood of increasing the number of orphaned and dead calves.

DOE has unreasonably and arbitrarily limited the scope of the "region of influence" to just the nominal width of the construction corridor, apparently so as to minimize the discussion of negative impacts to livestock operations along the entire length of the proposed rail corridor, including within the Reveille Allotment. The dEIS for this reason alone provides an inadequate analysis of the human environment that will be disturbed by construction and operation of the proposed Caliente line.

See also discussion under Chapter 8, relative to Mitigations, which are also inadequately described, reported, and proposed.]

COMMENTS TO VOLUME II. CHAPTER 3. AFFECTED ENVIRONMENT.

- 11 [Page 3-65 (Figure 3-30) and Page 3-72 (Table 3-7). The dEIS fails to report Caliente Common Segment 2 crossing Ty's Pipeline Extension.]

This pipeline is new since Fallini's supplemental comments. It will run from Cedar Pipeline Ranch north to the eastern base of the Reveille Mountains.]

- 12 [Page 3-83, Section 3.2.2.5.2.2. The dEIS fails to report the presence of geothermal resources at Warm Springs near the Warm Springs Summit.]

- 13 Pages 3-107 and continuing, Section 3.2.3.3. The dEIS fails to identify visual resources and impact to wilderness values, and fails to report such effects from key observation points within Wilderness and/or Wilderness Study Areas, which will be effected by the construction and operation of the Caliente Rail Line.

Specifically, Sections 3.2.3.3.2.4 through 3.2.3.3.2.6 fail to report accurately the proximity of the rail line to the South Reveille Wilderness Study Area. See page 3-93 (Section 3.2.2.5.3.2), which states:

“The South Reveille Wilderness Study Area would be 30 meters (100 feet) from the centerline of Caliente common segment 2.”

Yet there are no key observation points within either the South Reveille or Kawich WSAs.

The document for this reason alone does not assess accurately and adequately the affected environment.]

- 14 Page 3-214, Section 3.2.7.2.1. The dEIS fails to accurately assess and report the present situation (existing environment) as to vegetation through which the Caliente Rail Line would be placed.

The dEIS states, “Undisturbed areas of winterfat, or whitesage (*Krascheninnikovia lanata*), are present, but uncommon, within the construction right-of-way. While they have no official protected status with any federal or state agency, the BLM has identified these vegetation communities as important and their conservation or protection should be considered during development of any projects.”

However, this statement is erroneous for at least three reasons: 1) the dEIS does not define what is meant by the word “undisturbed”; 2) the dEIS does not identify why “undisturbed” areas of winterfat should deserve consideration during development, but areas of “slightly”, “lightly”, “moderately”, or “heavily” disturbed areas (however the classes are defined) should not be considered; 3) the dEIS fails to accurately report the presence of winterfat in most of the length of Caliente Common Segment 2 and 3, *at least* within the Reveille Allotment. It is a key component of the vegetation, and is a key management species, at BLM vegetation monitoring locations Key Areas 6, 20, 15, 17, 4, and 2A, which represent the majority of the vegetation types through which the proposed rail line would pass. See BLM monitoring files. See also dEIS Appendix H, Table H-1.

The document for this reason alone does not assess accurately or adequately the affected environment.]

- 15 Page 3-224, Section 3.2.7.2.2. The dEIS inadequately and inaccurately describes the affected environment for wildlife as being only that area within the construction right of way.

The dEIS states, "As with the vegetation communities and wetland habitats, DOE gathered data on wildlife communities to identify existing information regarding the occurrence and distribution of wildlife, including mammals, birds, reptiles, and aquatic species, within the construction right-of-way."

However, as with livestock habituated to the open range and as with wild horses habituated to the open range, the wildlife population's habitat and habitat uses are not confined to or defined within the area of the construction right-of-way. The effects of construction and operation of the railroad, especially but not limited to noise, will be disruptive to wildlife populations well away from the construction right-of-way, which the dEIS fails to adequately assess. In addition, wildlife corridors may also be affected, including bighorn sheep that are commonly found using the area near Warm Springs. Bighorn populations are known to have suffered die-offs from airborne dust, smoke, and ash from wildfires and construction activities. We did not see anywhere within the dEIS that described this reasonably foreseeable possibility. In addition, the post-storm accumulation of water on the upslope areas of the railbed will have the reasonably foreseeable impact of attracting wildlife, which will result in an increased likelihood of collision by trains.

Further, the document fails to discuss at all train-caused wildfires, which are a commonly reported and reasonably foreseeable possibility. The web is full of reports of such incidents across the United States and in the arid West.

The document for this reason alone does not assess accurately the affected environment and the potential of trains to cause wildfires, noise, and other forms of wildlife disruption that will reach far beyond the construction right-of-way.]

16 [Page 3-242, Section 3.2.7.3.2.2. The dEIS inadequately and inaccurately reports the affected environment as to bird species.

(1) The dEIS states, "Two upland game bird species are expected to occur within the Caliente rail alignment construction right-of-way: chukar (*Alectoris chukar*) and Gambel's quail (*Callipepla gambelii*). Two species of upland game birds, chukar and mourning dove, were observed during surveys conducted along the rail alignment. Chukars were recorded in cliff and talus habitat in the Beatty Wash area. Mourning doves are common and were observed at multiple locations along the rail alignment. The greater sage-grouse is an upland game bird that has historically occurred in low abundance near portions of the rail alignment and it could occupy suitable habitat along the northern sections of the rail alignment."

As a matter of simple arithmetic, chukar + Gambel's quail + mourning dove + sage grouse = four upland game bird species, not two.

Additionally, the document fails to discuss any habitat or population surveys relating to Gambel's quail. The document for this reason alone does not assess accurately and adequately the affected environment relative to upland game bird species.

(2) The dEIS states, "Populations of raptors are typically low in numbers, and their occurrence in the rail line construction right-of-way would be very low due to the lack of roosting, nesting, and foraging potential along the alignment. Raptors observed during field surveys included prairie falcon (*Falco mexicanus*), red-tailed hawk (*Buteo jamaicensis*), rough-legged hawk (*Buteo lagopus*), northern harrier (*Circus cyaneus*), burrowing owl (*Athene cunicularia*), great-horned owl (*Bubo virginianus*), turkey vulture (*Cathartes aura*), and golden eagle (*Aquila chrysaetos*). In addition, ferruginous hawks (*Buteo regalis*) have been reported to occupy, and in some cases nest in, areas with trees close to the construction right-of-way.

The obvious observation is that, if the cited raptor species were not roosting, nesting, or foraging, what were they doing there? The corollary is that if the species were there, they were either roosting, nesting, or foraging, and, thus, there must be roosting, nesting, and foraging habitat available.

We conclude that DOE has inadequately sampled for the roosting, nesting, and foraging habitat available for the cited species, and for this reason alone the document does not assess accurately the affected environment relative to raptors.

(3) The dEIS states, "Populations of bird species that rely on sagebrush habitat in Nevada are declining because cattle grazing and the proliferation of nonnative weeds have degraded the native sagebrush habitat

However, it is not the State of Nevada that is the focus of this proposed rail alignment, and the document provides no foundation for applying a broad, sweeping, and mostly inaccurate statement to this area. Further, it is wildfires, not cattle grazing, that has destroyed millions of acres of sagebrush habitat within the State of Nevada in the past several years. The dEIS is completely silent as to the contribution of operation of railroads in starting such fires, and for this reason alone the document does not accurately assess the affected environment relative to sagebrush-obligate or sagebrush-dependent species.

Finally on this note, within *at least* the Reveille Allotment, the available data do not show a decline in the ecological condition or forage conditions of the sagebrush habitat, due to any reason at all, let alone due to cattle grazing. *At least* as to the 658,000+ acres within the Reveille Allotment, the document erroneously reports the affected environment relative to sagebrush-obligate species.]

17 [Page 3-248, Table 3-53. The dEIS fails to report the presence of bighorn sheep at Warm Springs and the Warm Springs Summit, along Caliente Common Segment 3.]

18 [Page 3-256. The dEIS fails to adequately assess the affected environment relative to Tonopah fishhook cactus.]

The dEIS states, "The Tonopah fishhook cactus has been recorded near the Caliente rail alignment in Reveille Valley. Only general locations of this species are included in the Nevada Natural Heritage Program database (DIRS 182061-Hopkins 2005) because of the risk of illegal collection. Field surveys consisting of two 1.6-kilometer (1-mile) transects perpendicular to the

rail alignment in Reveille Valley did not locate any Tonopah fishhook cacti within the construction right-of-way.”

However, two transects run perpendicular to the rail alignment, cannot be deemed to be adequate sampling, either in number, or in design. Such sampling would properly be conducted along several transects run parallel to the rail alignment, both within and outside the construction corridor. In fact, the two transects could have only sampled a maximum of (nominal width of 1000 feet x 2 transects = 2000 feet =) 0.38 mile, out of the two miles (10,560 feet) of transects conducted.

For this reason alone, DOE has inadequately sampled, and therefore inadequately reported and assessed, the affected environment relative to Tonopah fishhook cactus.]

19 [Page 3-256. The dEIS fails to adequately assess the affected environment and pertinent controlling government requirements relative to cacti, yucca and Christmas trees.

The dEIS states, “As defined in Section 3.2.7.3 3, special status species are species that are afforded some level of protection or special management under federal or state laws or regulations. As such, all cacti and yucca are considered special status because they are protected by the State of Nevada and the BLM. All cacti, yucca, and Christmas trees have special consideration under Nevada Revised Statutes Section 527.050 and are protected from unauthorized removal....DOE would salvage minimal amounts of cacti and yucca within the construction right-of-way in accordance with this law and the requirements of applicable land management agencies during the construction phase. Stipulations for salvage are outlined in BLM Manual 6840, *Special Status Species Management*.”

However, while accurately stating that cactus, yucca, and Christmas trees have protected State – and therefore Federal - status, the dEIS erroneously assumes that DOE may “salvage” “minimal amounts” of the species

(1) As to “minimal amounts”, although we are not lawyers, it would appear from our reading of NRS 527 that BLM may have the authority to remove the protected species from land they administer. However, it may also be BLM’s decision that DOE must replant or replace off-corridor a like number of (or more, or fewer) individuals of each species that will be destroyed as a result of the construction activities. In any event, it is not DOE’s prerogative, because DOE has no authority, to decide that it will only protect “minimal amounts” of the species.

(2) As to “salvage”, such activity as outlined in BLM Manual 6840 is an exception to the prohibition on “take” of a species, and is permitted as follows:

“G. Section 10 (Exceptions to the ESA). Section 10 of the ESA provides for exceptions to the requirements and prohibited acts of other sections of the ESA.

1. Take and incidental take. Section 10 of the ESA provides exceptions for activities otherwise prohibited by Section 9. The BLM shall obtain permits from the FWS and/or

NMFS if ...reduction to possession of listed plants is anticipated and is not otherwise authorized. Authorization for take can occur in several ways...

g. ... (3) Any BLM employee may, when acting in the course of his or her official duties, remove and reduce to possession a federally endangered plant without a permit if such action is necessary to (i) care for a damaged or diseased specimen; (ii) dispose of a dead specimen; or (iii) salvage a dead specimen which may be useful for scientific study.”

Therefore, assuming BLM would apply the provisions of Manual 6840 to include not only endangered species, but also “special status” species, it would appear that neither DOE nor BLM has any authority to “salvage” any live individuals of these plant species, but instead only individuals that are already dead.

Further, assuming Manual 6840 was erroneously cited by the dEIS, and that this Manual would not apply, then the dEIS nevertheless fails to identify the mechanism by which these State-protected (and therefore federally-protected) plant species would be preserved, and/or the mechanism by which appropriate Mitigations would occur. We know of no federal protective mechanism that would apply (other than Manual 6840), and contend that the protective measures for these plant species is inadequately provided for by federal Manual 6840 guidance, and should therefore be properly determined by the State of Nevada.]

20 [Page 3-257. The dEIS fails to assess the affected environment relative to burrowing owl.

The dEIS states, “DOE identified one burrowing owl burrow, which appeared to be active, within the Caliente rail alignment study area in the vicinity of Yucca Mountain.”

However, this is an incredible, and in-credible, statement. The study area purportedly involves a strip 10 miles wide x 340 miles long, but DOE would have the public believe that in the entire 3400-square mile corridor (2,176,000 acres), only a single active burrowing owl burrow was located! This indicates that the sampling conducted by DOE was inadequate, either as to timing or as to intensity, or as to design, or as to a combination of the three.

For this reason alone, the dEIS fails to adequately monitor the habitat of, and report and assess the affected environment relative to, the burrowing owl.]

21 [Page 3-261, Section 3.2.7.3.5.1. The dEIS fails to recognize the proximity, if not the crossing, of bighorn habitat at Warm Springs Summit.

Bighorn are regularly sited on private and public lands at Warm Springs, and we believe they may move between Warm Springs and the Black Springs waters.]

22 [Page 3-269 and continuing, Section 3.2.8. The dEIS fails to assess the impacts of noise and vibration on wildlife, wild horses, wilderness characteristics, livestock traditional home ranges, and sensitive underground structures, focusing erroneously on a limited set of “receptor” areas, i.e. towns/cities.

Many more sensitive “receptor” areas exist outside these towns, which are relatively noisy as compared to the quietude of the majority of the proposed rail line, including, but not limited to the wild horse herd management area, bighorn habitat, livestock habitat, and wilderness characteristics of the South Reveille WSA and the Kawich WSA.]

23 [The dEIS is also silent as to the danger of collapsing the tunnel spring at Black Spring, which is very near by the proposed rail line. We alerted DOE to this fact in previously-supplied comments.

24 [affected environment relative to invasive species.

The dEIS states, “*Invasive species* usually have little to no nutritional value for livestock and wildlife; some invasive species are toxic or physically injurious to animals, can increase the frequency of wildfires, and degrade wildlife habitat by reducing the diversity of native vegetation.”

(1) As to nutritional value, the document is simply wrong. Cheatgrass (*Bromus tectorum*), for example, has very high protein and nutrient values in the spring, when it is green. It often displays seed retention on-stem through the period when most perennial bunchgrasses become dormant, when livestock and wildlife again turn to the seeds, which are also high in nutritive value.

(2) As to wildlife habitat, the dEIS statement depends upon what wildlife species one is discussing, and operates under the assumption that “native” forage is “better” for all wildlife, which is itself an erroneous assumption. Cheatgrass is a favored food of the non-native chukar, which was introduced to America from the same region of the world that cheatgrass originated. It is also a favored food of mule deer and pronghorn in the spring, as it is one of the first species to provide green spring foliage. It is also a favored food of mule deer and pronghorn in the fall and winter (if a fall/winter germination takes place) when other, native, species are dormant and contain relatively low protein values. Cheatgrass also is a very good watershed stabilizer, unless it is burned.

(3) While most noxious weeds, such as Tamarisk, are also invasive, not all invasives are classified by the State of Nevada as noxious weeds. Further, noxious weeds by their designation fall under the regulatory mandates of the State, whereas other invasive species do not. The two groups should be discussed more thoroughly, and separately.

(4) While the negative side of non-native species should be discussed, the flip-side of their presence, when there is one, should also be discussed in an accurate assessment of the affected environment. The document does not do so, and therefore provides an inadequate assessment of the current management situation of the affected environment.]

COMMENTS TO: VOLUME III. CHAPTER 4. ENVIRONMENTAL IMPACTS

25 Page 4-4, Section 4.1.3. The dEIS fails to accurately portray the “real” and “perceived” risks of the proposed rail construction and its consequent shipment of radioactive materials.

While the document provides a nice academic discussion, the Fallini family has already been subjected to the very real risks associated with nuclear testing, which was initially “perceived” by the government to be “risk free”. The effects of the nuclear testing are still being felt by the Fallini family to this day.]

26 Page 4-43. The dEIS erroneously concludes that, relative to transportation corridors, the proposed Caliente rail alignment is not in conflict with the Tonopah Resource Management Plan.

The dEIS states, “The Tonopah Resource Management Plan designates 1,075 kilometers (668 miles) for transportation and utility corridors (DIRS 173224-BLM 1997, p. 2). It also allows rights-of-way on more than 600 square kilometers (149,000 acres) if the land use is compatible with existing land values.... Because withdrawal for other federal use has precedence over potential land disposals, there would be no conflict with the Tonopah Resource Management Plan.”

However, the conflict that must be addressed is not necessarily limited to land disposals, but must be assessed against “existing land values”³. We have previously commented upon the great deal of conflict with other resource values which would occur due to the construction and operation of the Caliente rail route, and incorporate those comments herein.]

27 Page 4-44, Section 4.2.2.2.3.2. The dEIS fails to adequately and accurately describe the impacts of construction and operation to livestock grazing.

(1) The dEIS states, “Wherever the rail line would cross a grazing allotment, DOE quantified the amount of forage loss in animal unit months. DOE calculated potential loss of animal unit months as the proportion of land within each grazing allotment that would be crossed by the footprints of the rail line construction right-of-way and support facilities. The Department did not consider site-specific allotment characteristics.”

Therefore, on its face, the dEIS admits that it does not provide site-specific analysis relative to the issue of and impact upon livestock grazing. However, the types of information needed to provide a site-specific analysis are readily available and/or could have been determined by field production surveys and/or available data in the records and files of BLM.

For this reason alone the dEIS does not provide an adequate analysis of the impacts to livestock grazing

(2) The dEIS states, “For this analysis, DOE conservatively assumed that all the area within the rail line construction right-of-way would be unavailable for forage.”

³ We are unsure whether the dEIS accurately reflects the wording of the Tonopah RMP. We believe the correct wording is “other resource values”, not “existing land values”.

However, DOE presents no information that supports the assumption that only the ground under the rail line construction right-of-way would be unavailable for forage, so there is no evidence that such area presents a “conservative” estimate. In fact, some areas of some allotments will almost certainly be made unavailable, due to the disruption of livestock use patterns due to construction and operation of the rail line.

It is incumbent upon DOE to assess this reasonably foreseeable possibility. The dEIS does not do so, and therefore fails to adequately describe the impacts to livestock grazing.

(3) The dEIS states, “The presence of a rail line could require livestock on some allotments to adjust to new routes to access water and forage. Generally, livestock could learn these new routes and acclimate to and cross the rail line in most areas.” (See also page 4-59, Section 4.2.2.3).

However, this statement does nothing except exhibit a complete lack of understanding by DOE of the affects on livestock grazing, and the need for the EIS to assess on a site-specific basis. Some operations may not be adversely affected due to location and placement of the rail line, while others, such as Fallini’s Reveille Allotment, will be significantly affected. Some operations may have cattle that are physically moved on a relatively short rotation basis, while others, such as Fallini’s Reveille Allotment, are moved by the rotation of waters. When access to these waters is obstructed, the cattle will not “reason” their way around or through the construction zone or rail line; instead, they will tend to rotate to other waters, which may not even be available (i.e., being pumped) at that time of year. Conversely, after storm events, Fallini cattle are used to using the available storm pools, and such accumulations on the upslope side of the railbed will undoubtedly attract cattle to the proximity of trains. We have previously supplied comments and supplemental comments regarding this issue, which are apparently completely ignored in the dEIS.

For this reason alone the dEIS fails to adequately assess the impacts to livestock operations *at least* relative to the Reveille Allotment.

(4) The dEIS states, “The rail line could intersect existing fences on active grazing allotments. The BLM and DOE would review with the affected allotment permittees the need to restore fences.”

(a) Does DOE have no information relative to existing fences, so that a definitive statement can be made that “x” number of fences would be intersected? We believe this information is readily available or could be determined readily by a survey of the proposed rail line, and should have been included in the dEIS analysis.

(b) A “review” with affected allotment permittees is not sufficient mitigation. DOE here fails to commit to restore destroyed fences, opting only to “review” with affected permittees.

(5) The dEIS states, “The Caliente rail alignment would cross a number of stockwater pipelines on active *grazing allotments*. During the construction phase, DOE would sleeve these pipelines

within a casing pipe under the rail roadbed to protect them and keep them operational. The casing pipe would be capable of withstanding the load of the roadbed, track, and rail traffic.”

However, this fails to assess an ongoing need to access these under-railbed sections of pipeline for future repair, replacement, or cleaning, and this is not sufficient mitigation for the construction of the rail bed over existing pipelines. DOE here fails to commit to repair or replace such under-railbed portions of pipelines, and to do so in a timely manner so as not to disrupt livestock operations. Fallini in comments and supplemental comments described the affect that cutting off water along these pipelines would have, and either disruption by construction or the inability to repair/replace pipeline sections under the railbed will have the same consequences.

The dEIS for this reason alone fails to adequately assess the impacts to livestock grazing from the construction and operation of the proposed rail line.

(6) The dEIS states, “There would also be a number of new construction wells on grazing allotments.... The well footprints would ... not affect grazing patterns except for the presence of human activity during the construction phase.”

However, the statement is correct only as to new wells, but not as to the operation of the rail line, which will have continuous disruptive effects on the livestock operations. Additionally, even as applies only to wells during the construction phase, the dEIS fails to describe the impact of the statement. The fact is that the construction phase could last for 4-10 years, during which entire time the livestock operations would be disrupted.]

28

[Pages 4-46 through 4-47 and Page 4-5, Tables 4-18, 4-19, 4-20. The dEIS fails to adequately assess on a site-specific basis the adverse impacts of the proposed Caliente rail line to the livestock operation of the Reveille Allotment.

The dEIS narrative and Tables report only as to assumed forage under the rail bed footprint, do not report other forage that may be lost due to loss of access and/or change in livestock use patterns, do not report forage lost due to curtailment of watering through pipelines during construction and if (when) pipes under the railbed become inoperable, and do not report as to reasonable expected loss of livestock performance due to construction and operation of the railroad. Further, these pages ignore completely the reasonably foreseeable likelihood that train operations vibrations will collapse the spring tunnel at Black Springs, making that water system, and the forage base it serves, unavailable to livestock.

Additionally, because of the failure of the dEIS to provide an allotment-by-allotment site-specific analysis of impacts to forage and operations, the dEIS fails to assess the impacts of construction and operation to the accomplishment of objectives and commitments to manage contained within a Stipulated Agreement relative to the Reveille Allotment. In short, the disruption of livestock activities will have the consequences of: (1) changing livestock use levels and patterns, and; (2) depriving Fallini of the ability to properly respond to and alter such undesired levels or patterns such pattern changes, as committed to between BLM and Fallini.

For this reason alone the dEIS fails to adequately assess on a site-specific basis the impacts to livestock grazing within *at least* the Reveille Allotment, and likely the remainder of the rail line allotments.]

29 [Page 4-124 and continuing, Section 4.2.5.2.1. The dEIS fails to adequately assess stormwater drainage and the impacts of damming (i.e. filling with the roadbed) several hundreds, if not thousands, of small-order drainages.

While the dEIS admits that localized flow patterns will be altered, the document fails to discuss all of the reasonably foreseeable results of such numerous “mini-dams” that will stretch for 340 miles. These dams will result in surface pool accumulation after storm events. The dEIS is silent to this fact. While this may have minor overall watershed effects, it has indirect impacts to livestock grazing and wildlife use of the areas. These pools of water are a known attractant to livestock and wildlife, which will increase the likelihood of congregation around the rail line, which will increase the likelihood of train collision after storm events. See also Section 4.2.7.2.1.2, where the dEIS fails to assess this reasonably foreseeable likelihood.]

30 [Page 4-151, Section 4.2.6. The dEIS fails to adequately assess a range of alternatives of acquiring water, and erroneously assumes without foundation that it will be permitted by the State of Nevada to acquire water within state.

The dEIS states, “This Rail Alignment EIS does not analyze the impacts of obtaining water through other methods.”

We concur. Therefore, on its face, the dEIS admits that it does not analyze a full range of alternatives. See also Page 4-154, which estimates the needs of the project to be 7.5 million cubic meters (1,981,290,393 gallons) of water. If the State does not permit the taking of water, a reasonably foreseeable possibility, then water would have to be acquired out of state, and would require the transport of such water in 198,129 rail car shipments (i.e. one 10,000-gallon tanker equals one shipment). This is a reasonably foreseeable possibility, which should be assessed by the EIS.]

31 [Page 154. The dEIS fails to assess a reasonably foreseeable range of alternatives as to groundwater pumping withdrawal rates.

The dEIS states, “The typical groundwater pumping scenario for rail roadbed construction wells assumes a 9-month effective pumping period with 3 months of lost production for each construction well because of adverse weather conditions or other factors such as equipment repairs. This provides for a conservative or upper bound estimate of groundwater withdrawal rates that would result in the largest potential impacts (greatest amounts of drawdown) to groundwater resources and existing groundwater users potentially situated within the region of influence of the proposed water wells.”

However, it is reasonable to expect that ground water pumping may have to occur in a shorter-than-9-month period, because the dEIS at page 4-194 states:

“The Migratory Bird Treaty Act (16 U.S.C. 703 through 712) protects migratory birds, their eggs, and occupied nests....As such, all activities that would harm nesting birds or result in nest abandonment would be prohibited during construction and operation of the railroad....To avoid or minimize adverse impacts to migratory birds during the construction phase, DOE would implement best management practices, including minimizing groundbreaking activities in nesting habitat during the critical nesting period, which the BLM defines as May 1 through July 15 (see Chapter 7)....”⁴

Therefore, it is a reasonably foreseeable possibility that the construction activities would be lost for 3 months due to inclement weather and mechanical breakdowns, and an additional *at least* 2.5 months when the weather is not inclement, but migratory birds are nesting. In addition, Fallini would request that construction activities not occur on the Reveille Allotment during peak calving season, which starts February 1 and ends about the end of July, a period of 6 months. Consideration should also be given to avoiding wild horse foaling season and wildlife fawning seasons.

For this reason alone the dEIS fails to adequately assess a reasonable range of alternative pumping withdrawal scenarios that would encompass withdrawal over a shorter time period (e.g. 6.5 months). As with many other issues discussed by the dEIS, DOE has arbitrarily and erroneously selected one scenario, characterized it (erroneously) as the most conservative, and assessed only it, claiming that all other reasonably foreseeable scenarios would have “less impact”.]

32 [Page 4-155, Section 4.2.6.2.1. The dEIS fails to assess the reasonably foreseeable possibility that overcommitted areas will not be permitted to be accessed and down-watered.

The dEIS states, “...although available groundwater resources in some hydrographic areas might be deemed to be currently “overcommitted” as a whole (hydrographic areas 203, 204, 170, 173A, 149, 146, 228, and 229), one or more particular aquifers within a hydrographic area might not be overcommitted. Additionally, all water-rights appropriations might not be in service simultaneously.”

However, “might not be” is not sufficient analysis. It is a reasonably foreseeable possibility that all aquifers “might be” overcommitted, and that all water-rights appropriations “might be” in service simultaneously. In fact, in the absence of proof to the contrary, it would be most reasonable for DOE to assume that all aquifers are overcommitted and all appropriations will be in service simultaneously. Therefore, the document fails on this basis alone to assess an adequate range of alternatives and impacts.]

33 [Page 4-174, Section 4.2.6.2.2.5. The dEIS fails to adequately assess impacts to Witch Well, which is the well discussed at pages 4-173 through 4-174, and possible mitigations.

Table 4-64 reports that Witch Well is 0.83 miles from proposed Well RrV8, but no radius of influence is provided in the Table. Instead, the Table states that such radius is “not applicable”

⁴ See also additional comments to page 4-193, herein below.

and that “no calculation was completed for reasons stated in text.” However, the text at this section gives no reason for not performing the calculation.

Further, the dEIS provides no proposed mitigation if the pumping at wells on either side of Witch Well result in lowering/incapacitating of the water supply at this location.]

34 [Page 4-174, Section 4.2.6.2.2.6. The dEIS fails to adequately assess impacts to Black Spring, and possible mitigations.

The dEIS states, “...hydrogeologic impact analysis results indicate that if all of the water required for construction was obtained from the HC5, this might impact flow rates to Black Spring. However, analysis indicates that if the groundwater withdrawal rate at HC5 did not exceed 490 liters (129 gallons) per minute, discharge rates at Black Spring would probably not be affected by the groundwater production.”

However, “hydrogeologic impact analysis” is not a precise analysis, and it is reasonably foreseeable that pumping at HC 5, even at rates lower than 129 gallons per minute, will impact the discharge rates at Black Spring. “Probably” is not sufficient analysis.

Further, the dEIS provides no proposed mitigation if the pumping at wells HC 5 and/or HC 7 result in lowering/incapacitating of the water supply at this location.]

35 [Page 4-184 and continuing, Section 4.2.7. The dEIS fails to adequately assess any impacts whatsoever of construction crews accessing and “recreating” on the rangelands, livestock habitat, and wildlife habitat during the course of the construction phase.

Unless the work camps will be on “lockdown”, it is a reasonably foreseeable likelihood that construction crews will use the rangelands and the various private and public lands for a considerable distance away from the work camps, to “recreate”. The impacts of this dramatic increase in the year-round human activities on the rangeland vegetation, livestock operations, and wildlife populations and habitat are not addressed by the dEIS.]

36 [Page 4-194. The dEIS fails to adequately and clearly comply with provisions of the Migratory Bird Species Act.

The dEIS states, “The Migratory Bird Treaty Act (16 U.S.C. 703 through 712) protects migratory birds, their eggs, and occupied nests....As such, all activities that would harm nesting birds or result in nest abandonment would be prohibited during construction and operation of the railroad....Short-term impacts could include birds avoiding the area during construction activities. To avoid or minimize adverse impacts to migratory birds during the construction phase, DOE would implement best management practices, including minimizing groundbreaking activities in nesting habitat during the critical nesting period, which the BLM defines as May 1 through July 15 (see Chapter 7). If groundbreaking or land-clearing activities had to be conducted during the bird nesting season, DOE would conduct surveys to identify nests of migratory birds before beginning those activities.”

However, this statement is at once erroneous, self-contradictory, and insufficient, as follows:

(1) The Migratory Bird Treaty Act does not protect “occupied” nests, it protects all nests, whether occupied or not. See 16 U.S.C. 703.

(2) While initially stating that “all activities that would harm nesting birds or result in nest abandonment would be prohibited during construction and operation of the railroad”, DOE then walks away from this protection, stating that DOE would only “minimize” activities; then further walks away from this by minimizing only “groundbreaking” activities, and finally goes on to state that, if the groundbreaking activities “had to occur”, only that “DOE would conduct surveys ... before beginning those activities.”

However:

(a) “minimizing” may be construed by DOE to mean anything, and does not provide the required protection under the MBTA;

(b) “groundbreaking” is not the only activity that will disturb nesting migratory birds, and does not provide the required protection under the MBTA;

(c) “had to occur” may be construed by DOE to mean anything, and does not provide the required protection under the MBTA;

(d) “would conduct surveys before beginning” does not provide the required protection under the MBTA.

(e) absolutely no protection is discussed relative to the operations phase of the railroad, which will occur year round for at least the next 50 years.]

37 [Page 4-196, Section 4.2.7.2.1.2. The dEIS fails to provide the required protection to cacti, yucca and Christmas trees provided by State law.

The dEIS states, “It is possible that some individual cacti and yucca plants would be removed during the construction phase, resulting in a small impact to individual plants. However, construction activities would not threaten cacti or yucca populations.”

However, removal may (likely will) result in death of individual plants, which is not a “small impact” to the individual plant. The document does not clearly state whether these plants will be removed and replanted, or removed and killed.

In addition, State law does not address “populations” of cacti and yucca and Christmas trees, but rather protects individual plants.

Further, assuming “populations” is the operative concern, we found nowhere in the dEIS that DOE has conducted any surveys whatsoever regarding the full population of cacti species and yucca species in the impact area, so as to be able to authoritatively state that the construction of the rail line will “not threaten cacti or yucca populations.”]

We have, quite frankly, seen more and better quality analysis given to smaller groups of wildlife species in local-area projects than this EIS gives to species that will be disrupted over a 340-mile length of railroad, for the next 60 years.

The dEIS states, “After sections of the rail line were completed, it is possible that trains moving along the completed portion of track could collide with and injure or kill individual game animals. However, the likelihood of such collisions would be low, because most game animals would likely avoid oncoming trains whenever possible. During rail line construction there would be a potential for short-term impacts from the temporary disruption of movement patterns of game species within an area or along migratory corridors. This could disturb individuals or groups of animals and cause animals to avoid the construction areas.... These changes in movement or habitat-use patterns would affect relatively low numbers of individuals at any one time; therefore, changes in utilization of the water or forage resources in the region would be small. There could be direct impacts to game populations if animals avoid water sources close to construction activities. Water sources are found only along certain portions of the Caliente rail alignment and there could be a small short-term impact to individuals if they are unable to reach those water sources. However, there would be no impact on the overall populations of State of Nevada game species.”

However:

(1) The “overall populations of the State of Nevada” is not the relevant baseline. The relevant baseline is those populations within the impact area. What DOE is saying here is that, if all wildlife along the route are killed, it won’t have any impact on the overall populations of the state. This is not adequate analysis.

(2) It is not a short-term impact to a game animal to deprive it of water, especially in dry summer months. It is a permanent impact, because the animal dies.

(3) Killing “relatively low numbers of individuals at any one time” still kills them all

(4) No analysis whatsoever is provided for the fact that wildlife will likely congregate at storm runoff accumulations on the upslope side of the road, which will increase the likelihood of collision by trains. The notion that most animals avoid collision with trains “whenever possible” is irrelevant to the fact that the history of railroads is full of reports of collisions with wildlife.

For example, in one scientifically-undertaken Canadian study, “railway-killed ungulates included bighorn sheep, caribou, deer (species unknown), elk, moose, mule deer, and white-tailed deer (N=164). Elk, moose, and mule deer comprised 83% of all ungulates killed. Railway-killed carnivores included black bear, cougar, coyote, grizzly bear, timber wolf, and wolverine (N=56). Black bears comprised 49% of all carnivores recorded. Rodents (beaver and porcupine) comprised 4% (N=9) of the reported mammal railway-kills. Bird railway-kills (N=12) included 5

Bald Eagles, 5 owls (Great Horned Owl and Northern Saw-whet Owl), 1 Killdeer, and 1 Ruffed Grouse.” (See <http://www.dot.state.fl.us/emo/sched/wells.pdf>.)

- 39 Page 4-197, Section 4.2.7.2.1.5. The dEIS fails to adequately assess long-term impacts to the free-roaming nature of wild horses caused by operation of the Caliente line.

The dEIS discusses only short term impacts to forage, water, and patterns of movement during the construction phase, and long term impacts only relative to forage loss. However, the dEIS is entirely silent as to the long-term impacts to the free-roaming ability of wild horses along the rail line, due to operations over the next 50 years. See also Tables 4-79 through 4-82, and pages 4-211 through 4-216, all of which fail to adequately address impacts to the Herd Management Area usability due to operations of the rail line.]

- 40 Page 4-215, Table 4-82. The dEIS fails to adequately assess long-term impacts to Tonopah fishhook cactus.

The dEIS states that there would be a “small impact to potential habitat”. However, DOE undertook only two survey transects, and those were undertaken perpendicular to the proposed rail alignment, rather than multiple transects conducted parallel to the rail alignment inside and outside the construction right-of way. Further, two linear transects run perpendicular to the rail alignment cannot be deemed to be a sufficient sample size and sample design so as to adequately sample the “potential habitat” of the Tonopah fishhook cactus.

On the basis of the failure to adequately sample both the right-of-way corridor and the potential habitat of the species, DOE lacks sufficient information to authoritatively conclude that impacts to the potential habitat of the Tonopah fishhook cactus will be “small”. The fact is that the lack of adequate sampling means that the railbed construction has the potential to wipe out the entire population and entire habitat of the species, at least within the Reveille Allotment.]

- 41 Page 4-242 and continuing, Section 4.2.8. The dEIS fails to adequately assess the impacts of noise to livestock grazing, wildlife habitat use, wild horses, and wilderness values.

DOE sampled ambient noise, and assessed increased noise of operations only at three communities, and did not assess long term impacts to the biological resources and to the decreased opportunities for solitude within Wilderness and Wilderness Study Areas.]

- 42 Pages 4-270 through 4-271, Section 4.2.9.2.1. The dEIS fails to adequately assess the impacts of the operations phase of the railroad, and fails to provide for mitigation for livestock losses during operations due to collisions.

The dEIS states that , “During the construction phase, there could be an additional impact from construction trains colliding with cattle. DOE would compensate ranchers for any such losses of cattle in accordance with Nevada Revised Statutes 705.150 to 705.200.”

However, the dEIS is entirely silent as to collisions and compensation during the 50-year proposed operations phase. This is not acceptable, and is inadequate analysis of the long-term impacts.]

43 [Pages 4-270 through 4-271, Section 4.2.9.2.1. The dEIS fails to adequately assess the site-specific impacts of the construction and operations phases of the railroad to livestock management agreements/decisions that will be impaired, and possible mitigations.

Specifically, within *at least* the Reveille Allotment, BLM and the permittees have come to management agreements that contain provisions relating to management objectives within Base Water Service Areas and that contain provisions relating to the permittee taking management actions if short-term utilization levels are exceeded. The construction and operations of the Caliente rail line will have the reasonably foreseeable impacts of: (1) causing changes in livestock distribution that may result in undesirable levels and patterns of use, and; (2) depriving Fallini of the ability to make the necessary livestock use adjustments in order to respond to the undesirable levels and patterns of use, if they develop.

Having failed to assess the above reasonably foreseeable impact on a site-specific (i.e. allotment-by-allotment) basis, the dEIS also fails to assess possible mitigations, including but not limited to abandonment, suspension, or modification of the provisions of the Stipulated Agreement between BLM and Fallini regarding corrective actions required of Fallini should undesirable levels or patterns of use result from construction and operations activities of the railroad. Just as BLM could realign boundaries, BLM could and should make considerations for the change in the livestock operational environment caused by the proposed rail construction and operation. BLM and DOE, being cooperating partners in the development of this EIS, should have included such provisions in the dEIS.]

44 [Page 438 and continuing, Section 4.2.11. The dEIS fails to adequately assess not only impacts to suppliers (whom DOE has not yet identified), but also to consumers of fossil fuels.

(1) The dEIS admits at Section 4.2.11.2.1.3 that it has not identified regional suppliers of fossil fuels, but “assumes” they would have the ability to respond to an increase in demand. However, DOE is not permitted such “assumption”, and the information is or should be readily available to determine whether regional carriers can or cannot absorb the increase in demand. For this reason alone the dEIS fails to adequately assess the impacts to regional carriers and the ability of such carriers to supply the increased demand.

(2) The dEIS fails at this location, and in the Socioeconomics section, to assess the impacts to the region and the State of the increased demand in fossil fuels, which the dEIS admits will amount to 6.5% of the total annual consumption of the entire state. It is a reasonably foreseeable impact that if demand increases by 6.5%, then the cost of the product may reasonably be assumed to increase by 6.5% statewide. This means that the cost of diesel fuel statewide, if currently \$3.30, would increase to \$3.51. Assuming statewide consumption remains at 480 million gallons annually, this will cost the people of Nevada an additional \$100,800,00 annually. The dEIS does not contain this relevant discussion.

(3) It is also a reasonably foreseeable impact that the state-wide average impacts discussed in (2) above will be magnified within the region of the State that is impacted by the demand.

These facts are not discussed by the dEIS, anywhere that we could find, including under Socioeconomic impacts to the area (Section 4.3.9). See also Chapter 8, page 8-8, where the dEIS also fails to assess unavoidable impacts due to the use of fossil fuels. Again, these impacts are not just upon the distributors, but also the consumers within the State of Nevada.]

COMMENTS TO: VOLUME IV. CHAPTER 5. CUMULATIVE IMPACTS

45 [Page 5-3, Section 5.1.4. The dEIS unreasonably fails to consider mitigations requested by entities who are not proponents of the rail project.

The dEIS states, “DOE continues to coordinate with public- and private-sector project proponents to foster adequate consideration of cumulative environmental issues.”

This apparent disregard for those who are adversely impacted by the project and therefore oppose the project, is unreasonable, and demonstrates that the dEIS fails to adequately propose, implement, and assess mitigations. This is evident by at least three facts: (1) the dEIS fails to assess the site-specific impacts to grazing allotments; (2) the dEIS fails to assess possible mitigations on a site-specific allotment basis, and; (3) the dEIS is entirely silent to the mitigations proposed by *at least* Fallini on *at least* the Reveille Allotment. See Fallini supplemental comments forwarded by Resource Concepts, Inc., as contracted by DOE.]

46 [Page 5-35 and continuing, Section 5.2.2.7.4. The dEIS fails to adequately assess the cumulative impacts of the proposed rail construction and operation relative to wildfire.

The dEIS states, “Both the proposed railroad project and other reasonably foreseeable future actions would likely implement appropriate fire-avoidance strategies in consultation with the BLM. Potential cumulative impacts from wildfires would be small.”

However: (1) “would likely” is not good enough. It is incumbent of DOE to spell out what fire-avoidance and fire-suppression strategies would be employed in the construction and operation of the railroad; (2) Chapters 2, 3, and 4 of the dEIS do not even contain the phrase “fire-avoidance”; (3) the reasonably foreseeable possibility of train-started wildfires is very real, and is never discussed in Chapters 2, 3, and 4 (Proposed Action, Affected Environment, Impacts).

The dEIS, having failed to adequately assess train-caused wildfire in Chapters 2, 3, and 4, cannot be deemed at Chapter 5 to have adequately assessed the cumulative impacts of the proposed project.]

COMMENTS TO: VOLUME IV. CHAPTER 6. STATUTES AND REGULATIONS.

47 [Pages 6-4 through 6-6, Table 6.1. The dEIS at this Table fails to list the pertinent State of Nevada NAC regarding the protection of cactus, yucca, and Christmas trees.

Table 6-1 should include permits and authorizations that may be necessary to obtain under NAC 527.]

48 [Page 6-32, Section 6.3.7.8. The dEIS erroneously states that no protected species would be hunted, taken, or possessed.

The dEIS states, “Nevada Revised Statute, Chapter 527, Protection and Preservation of Timbered Lands, Trees, and Flora, also applies to the permit requirement. No protected species would be hunted, taken, or possessed during construction or operation of the proposed railroad.”

However, see page 4-196, wherein the dEIS states:

“It is possible that some individual cacti and yucca plants would be removed during the construction phase....”

See also page 2-233, wherein the dEIS states:

“Overall, there would be a loss of conifer habitat and individual conifer trees. There would also likely be a net loss of cacti and yucca along the proposed rail line.”

Therefore, the dEIS at page 6-32 through 6-33 erroneously states that no protected plant will be taken. Cacti, yucca, and Christmas trees will all be taken.]

COMMENTS TO: CHAPTER 7. BEST MANAGEMENT PRACTICES AND MITIGATION.

49 [Chapter 7. The dEIS fails to assign and assess on a site-specific basis those Best Management Practices and Mitigation measures that would be employed.

Relative to *at least* the Reveille Allotment, the dEIS fails to discuss any of the allotment-specific mitigations proposed by Fallini, or any others that might have been developed by DOE in response to Fallini’s comments, and supplemental comments as provided to RCI under contract to DOE/BLM.

Relative to *at least* the Reveille Allotment, Fallini’s preferred mitigation continues to be that no rail construction occur within, across, or through the Reveille Allotment. Notwithstanding this preferred mitigation, Fallini proposed a set of mitigations for DOE’s consideration, none of which are effectively addressed on a site-specific basis within the dEIS.

Fallini herein reiterates those comments and requested mitigations. In addition, and as a result of limited discussions with DOE personnel, Fallini offers the following additional requested mitigations.⁵

⁵ We note that some of these mitigations may appear to differ from mitigations proposed in Fallini’s supplemental comments. Where conflicts appear to occur, they are primarily the result of verbal representations by DOE. For example, the mitigation to have railroad crossings herein is in response to verbal representations by DOE that the rail corridor will not be fenced. Although this may be necessary, this MUST be in coordination with underpasses being constructed for the large percentage of our cattle that will not cross things that they perceive as barriers (e.g.,

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cont.

1. No construction will occur within the Reveille Allotment prior to final approval and permitting of the Yucca Mountain Repository.
2. No construction will occur within the Reveille Allotment prior to final approval and permitting of the transcontinental transportation of nuclear material, including complete NEPA analysis and including any litigation challenging such transportation.
3. No construction activities will occur within the Reveille Allotment between February 1 and July 31, for the protection of *at least* peak livestock calving, wild horse foaling, wildlife fawning, and migratory bird nesting considerations.
4. An access road will be constructed every ½ mile along the rail route through the Reveille Allotment.
 - a) Each access road will be constructed to allow crossing of pickup trucks and horse trailers. Note that this may be coordinated with mitigation 5.c), below.
 - b) At any place where a road currently crosses the proposed line, the road would be constructed/improved to allow crossing of any vehicle, including but not limited to a semi with a low boy hauling trailer.
5. In the event that no fence is constructed along both sides of the rail corridor:
 - a) DOE will be liable for any death or injury loss of domestic livestock relating in any way to the rail route, including but not limited to death or injury loss by vandalism, harassment, collision with land vehicles, collision with trains, shooting or other loss by construction workers, etc. If commercial carriers are also allowed to use the rail line, this mitigation will apply equally to those carriers.
 - b) The railbed and line will be constructed as low to the ground as possible to allow ease of crossing by those cattle, wildlife, feral and domestic horses that will by their individual nature cross railroad tracks..
 - c) At ½ mile intervals, the railroad will incorporate underpasses of sufficient size to accommodate passage by livestock which will by their nature otherwise not cross railroad tracks. This may be incorporated with mitigation 4.a), above.]

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6. The Bureau of Land Management will permanently withdraw the 111 public water reserve filings on the Reveille Allotment done under the authority Executive Order of April 17, 1926 (PWR 107).

highways, railroad tracks). Further, if at any future time the rail line is constructed and the corridor is fenced, then Fallini's requested mitigations also revert to those of the proposed alternative mitigations previously submitted (e.g., more underpasses, etc.).

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7. The Permitted Use (Active Use) AUMs on the Reveille Allotment will be increased from 25,730 AUMs per year to 31,802 AUMs, approving a water-base application filed with BLM dated November 30, 2000.

8. During the construction of the railroad, BLM will not hold Twin Springs Ranch (Fallini) responsible nor accountable for any change in utilization in the base water service areas near the rail route.

a) If utilization exceeds that of the agreed-upon percentages in these areas, no action will be required by the Twin Springs Ranch the following year during the time that any construction of the Rail route is in progress.]

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b) DOE will pay for any additional range studies needed as a result of the construction and existence of the rail road. The range studies will be undertaken at the discretion of Twin Springs Ranch. Twin Springs Ranch will notify DOE in advance of the necessary range studies. Though termed range studies, these may include, but are not necessarily limited to vegetation, wildlife, sensitive species surveys, etc.]

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c) Following construction of the railroad, BLM and Fallini will meet to discuss the changes to levels and patterns of use caused by construction and operation of the railroad to determine whether changes to the management objectives, management system, and associated management actions that may be need.]

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Cont.

9. DOE will be responsible for the prompt (i.e. within 24 hours of notice from Fallini) repair, replacement, and cleaning of segments of livestock water pipelines which lie beneath the railbed, during all phases of construction and operation of the railroad.]

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Cont.

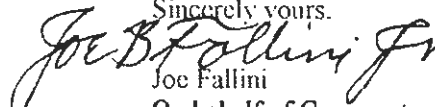
10. Upon cessation of use by DOE (i.e. end of Construction phase), DOE will transfer water rights for each of the wells located within the Reveille Allotment to Fallini for beneficial uses to be determined at the discretion of Fallini.

11. The Twin Springs ranch will be reimbursed by DOE for all legal and consulting fees, past, current, and future, relating to impacts caused by the proposal to construct, construction, and operation of the Caliente Rail Corridor, relative to the Reveille Allotment.]

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Cont.

12. DOE will construct a single phase power line from the existing Sierra Pacific Line located in Stone Cabin Valley to The Bellehelen Ranch in the Kawich Mountains.]

We appreciate the opportunity to comment.

Sincerely yours,

Joe Fallini
On behalf of Commenters