

ANTONIO ROSSMANN

Attorney at Law

380 HAYES STREET, SUITE ONE
SAN FRANCISCO, CALIFORNIA 94102 USA
TEL (01)(415) 861-1401 FAX (01)(415) 861-1822
www.landwater.com

ADMITTED IN CALIFORNIA
NEW YORK AND
THE DISTRICT OF COLUMBIA
ar@landwater.com

26 February 2013

Diane Alvarado
Facilities Implementation -- Pacific Area
U.S. Postal Service
1300 Evans Avenue, Suite 200
San Francisco, CA 94188-8200

RE: Proposed relocation and sale of Berkeley Main Post Office (NEPA)

Dear Ms. Alvarado:

Several of the historic and civic individuals and organizations testifying before your hearing this evening have asked me to provide comment on the applicability of the National Environmental Policy Act (NEPA) to the proposed relocation and sale of the Berkeley Main Post Office.

By way of qualifications a brief biographical summary is attached. As an individual I am familiar with the Berkeley Main Post Office as a frequent user of it, most recently to obtain passport renewals for my daughters, who attend Berkeley High School within one block of the building.

In my opinion NEPA applies to the proposed action of the United States Postal Service (USPS), under NEPA the relocation and sale represent a major federal action affecting the human environment, no categorical exclusion can lie, and therefore before taking any official decision on relocation or sale, an environmental impact statement (EIS) must be prepared and circulated for public review.

1. NEPA applies to the Postal Service. *City of Rochester v. United States Postal Service*, 541 F.2d 967 (2d Cir. 1976); *Chelsea Neighborhood Associations v. United States Postal Service*, 516 F.2d 378 (2d Cir. 1975); 39 C.F.R. part 775.

2. The "major federal action" -- the "whole of the action" -- defined by your notice is that of relocation *and sale*. ("If this relocation is approved, USPS anticipates selling the current Berkeley Main Post Office building.") The action cannot be segmented into relocation only when the driving force for that action is the intended sale. 40 C.F.R. § 1508.25 ("connected actions ... should be discussed in the same impact statement").

3. Assessment of the relocation and sale must take place at the earliest possible moment to ensure that impacts are acknowledged, alternatives identified, and both the proposal and impacts are assessed *before* decision and in time to allow meaningful public participation. 40 C.F.R. § 1502.5 (EIS "shall be prepared early enough" to contribute to decision-making and "not be used to rationalize or justify decisions already made"). Assessment after relocation will prove meaningless, because at that time the remaining alternatives will only ask how to deal with an empty, publicly-inaccessible building.

4. Substantial, indeed overwhelming, evidence to be presented tonight supports the conclusion that relocation and sale of the Berkeley Main Post Office will produce an adverse impact on the environment, which includes both the loss of an historic resource and community disruption. *City of Rochester, supra*; 40 C.F.R. § 1508.14 ("human environment shall be interpreted comprehensively" to include "physical environment and the relationship of people with that environment").

5. USPS cannot rely on a "categorical exclusion" to escape the duty to prepare an EIS. The regulations of both the Council on Environmental Quality and U.S. Postal Service itself do not allow categorical exclusions in cases such as this, representing "extraordinary circumstances in which a normally excluded action may have a significant adverse effect." 40 C.F.R. § 1508.4; 39 C.F.R. § 775.6; see also 39 U.S.C. § 404 (no Congressional NEPA exemption for closure or consolidation of post offices).

For these reasons, the Postal Service is requested to refrain from further actions on the Berkeley Main Post Office until it prepares, circulates, and reviews a NEPA environmental impact report.

Respectfully submitted,



ANTONIO ROSSMANN

Antonio Rossmann has practiced land use and natural resources law in California for more than a third of a century, having established his San Francisco-based practice in 1976. He has served as counsel in some of California's and the West's leading water and land-use proceedings, including the Owens Valley groundwater war, the Mono Lake public trust litigation, South Pasadena's resistance to the 710 freeway, Nevada's opposition to the MX missile and the Yucca Mountain nuclear repository, the State Water Project Monterey Amendments challenge, the Imperial-to-San Diego Colorado River water transfer, and constitutional defense of California groundwater regulation.

In 2010 the Los Angeles Daily Journal named Mr. Rossmann as one of the Top 100 California Attorneys.

Mr. Rossmann, an honors graduate of Harvard College (1963) and Harvard Law School (1971) and former editor of the Harvard Law Review, teaches water resources and land use law at the University of California at Berkeley School of Law (Boalt Hall). He has taught courses in land use, water, and constitutional law at Stanford, Hastings, UCLA, and the University of Tokyo (the latter as a Fulbright Lecturer). Prior to establishing his practice, he served as a law clerk to the Honorable Mathew Tobriner, Justice of the California Supreme Court. In the fall and winter of 2012-2013 Mr. Rossmann served as a consultant on water resources law to the U.N. Food and Agricultural Organization in Rome, Italy.

A former chair of the State Bar of California's Committee on the Environment and the first executive director of the National Center for Preservation Law, Mr. Rossmann is the past president of the Harvard Law School Association of Northern California and founding chair of the Harvard Law School Association Environmental Law Section. His published works include "Forging the New Water Law," 33 HASTINGS LAW JOURNAL 903 (1982) (co-author Michael J. Steel); "Administrative and Judicial Litigation," in C. Duerksen, ed., A HANDBOOK ON HISTORIC PRESERVATION LAW (Conservation Foundation and National Center for Preservation Law, 1983); and "Historic Preservation," in K. Manaster and D. Selmi eds., CALIFORNIA ENVIRONMENTAL LAW AND LAND USE PRACTICE (Matthew Bender, 1998) (co-author Roger B. Moore).

From 1963 to 1968 Mr. Rossmann served as a naval officer and decorated Vietnam veteran (including two years of combat duty in the Tonkin Gulf), to the rank of Lieutenant Commander. An active athlete, Mr. Rossmann was twice the Harvard University sculling champion and more recently served as president of the Western States Endurance Run.