UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

March 7, 2005

Jim Bartel, Field Supervisor
U.S. Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, CA 92009

Subject: Draft Environmental Impact Statement (DEIS) for the Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP), and Santa Rosa and San Jacinto Mountains Trails Plan, Riverside County, California (CEQ #040504)

Dear Mr. Bartel:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

The DEIS analyzes the impacts of the Coachella Valley MSHCP in anticipation of receiving an application for an incidental take permit pursuant to the Endangered Species Act. Based on our review, we have rated the DEIS as Environmental Concerns-Insufficient Information (EC-2). We have concerns about water and air quality impacts. We also request additional information regarding consultation with tribal governments, environmental justice issues, enforcement of the MSHCP, and impacts to cultural resources and migratory birds. Please see the enclosed Detailed Comments for a description of these concerns and our recommendations. A *Summary of EPA Rating Definitions* is also enclosed.

We appreciate the opportunity to review this DEIS. When the Final EIS is released for public review, please send two copies to the address above (mail code: CMD-2). If you have any questions, please contact me or David P. Schmidt, the lead reviewer for this project. David can be reached at 415-972-3792 or schmidt.davidp@epa.gov.

Sincerely,

/S/

Lisa B. Hanf, Manager
Federal Activities Office

Cross Media Division

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

cc: Jim Sullivan, Coachella Valley Association of Governments
Thomas J. Davis, Agua Caliente Band of Cahuilla Indians

EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) FOR THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP), MARCH 7, 2005

Clean Water Act (CWA) Requirements

Impacts to Waters of the United States

The DEIS acknowledges that regional surface waters provide important habitat for a variety of wildlife species. However, minimal information is provided on surface water quality or quantity. Section 4.7.3 (Hydrology and Water Quality Related Project Impacts) provides a brief description of the major surface water drainages in the Valley, but focuses on flood protection and groundwater recharge.

Exhibit 4-5 is a map of natural communities in the Plan area. Although the "coastal and valley freshwater marsh" community is listed in the legend, it is difficult to identify those areas on the map. In addition, wetlands and other waters of the United States (waters) in the Plan area are not delineated. Section 4.8.3 of the DEIS quantifies the impacts to coastal and valley freshwater marshes under each alternative, but indicates that the disturbances allowed under the proposed action/preferred alternative would be less than significant because of the benefits conferred by the Plan.

One of the criteria for determining significance of impacts of the MSHCP is, "Having a substantial adverse effect on Federally protected wetlands as defined by Section 404 of the Clean Water Act" (page 4-58). Because the types of waters impacted are not identified, and their values and functions are not discussed, the conclusion reached in the DEIS that impacts are less than significant under the proposed action/preferred alternative is not supported.

Recommendations:

The Final EIS (FEIS) should identify and delineate all major wetlands and waters located within the proposed MSHCP area. They should be clearly located on regional or sectional maps, and their values and functions discussed. The types of impacts to these waters (e.g., fill, development, etc.) should also be identified, and the document should describe avoidance measures that can be implemented to minimize the potential negative impacts to these resources.

The FEIS should also discuss the requirements of Section 404 of the CWA and their applicability to the MSHCP. The information provided should include the permitting role of the U.S. Army Corps of Engineers, other environmental laws and regulations that must be complied with before a permit can be issued, CWA Section 404(b)(1) Guidelines, and the requirement for a water quality certification, or waiver of certification, issued pursuant to Section 401 of the CWA.

CWA Section 303(d) Impaired Waters

The CWA requires states to develop a list of impaired waters that do not meet water quality standards, establish priority rankings, and develop action plans, called Total Maximum Daily Loads (TMDLs), to improve water quality. The California 2002 CWA Section 303(d) List of Water Quality Limited Segments[1] includes two water bodies within the MSHCP area. The Coachella Valley Storm Channel is listed for pathogens. The Salton Sea is listed for nutrients, salinity, and selenium. The DEIS does not discuss CWA Section 303(d) listings in the Plan area, the TMDLs that have been established, pollutants of concern, or the impact the proposed MSHCP might have on meeting CWA Section 303 goals.

Recommendations:

The FEIS should provide information on CWA Section 303(d) impaired waters and efforts to develop and revise TMDLs. It should describe existing restoration and enhancement efforts for those waters, how the proposed project will coordinate with on-going protection efforts, and any mitigation measures that will be implemented to avoid further degradation of impaired waters. The FEIS should also provide a description of the CWA Section 303(d) program.

Clean Air Act (CAA) Requirements

National Ambient Air Quality Standards (NAAQS)

The DEIS provides a good discussion of air quality in the Coachella Valley. Information on several Federal air quality standards, however, is out of date. The NAAQS for ozone was revised on July 18, 1997 (62 Federal Register 38856) when EPA promulgated an ozone standard of 0.08 ppm as measured over an 8-hour period. EPA's final rule designating non-attainment areas under the 8-hour NAAQS was published in the Federal Register on April 30, 2004. On that date, EPA announced the designation of the Coachella Valley, California, as a Subpart 2 "Serious" non-attainment area for the new ozone standard, effective June 15, 2004. EPA intends to revoke the 1-hour ozone standard on June 15, 2005. If a project is approved by a Federal agency before June 15, 2005, and the action commences before that date, then the project will need to meet the conformity requirements for the 1-hour ozone standard at 40 CFR Part 93.150-160.

The fine particulates NAAQS was established on July 18, 1997 (62 FR 38652). Fine particulates are those less than 2.5 micrometers in diameter and are also referred to as PM2.5.

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[1] California's 2002 CWA Section 303(d) List can be found at the following web site: http://www.swrcb.ca.gov/tmdl/303d_lists.html.

The standards include an annual standard set at 15 micrograms per cubic meter (based on the 3-year average of annual mean PM2.5 concentrations) and a 24-hour standard of 65 micrograms per cubic meter (based on the 3-year average of the 98th percentile of 24-hour concentrations). EPA's final rule designating non-attainment areas under the fine particulate NAAQS was published in the Federal Register on January 5, 2005 (70 FR 944). The Coachella Valley was not listed as non-attainment and, accordingly, is designated as unclassifiable/attainment.

Recommendations:

The FEIS should provide information on the new 8-hour ozone and PM2.5 Federal standards. It should discuss the transition from the 1-hour ozone standard to the 8-hour ozone NAAQS, including revocation of the 1-hour NAAQS. The FEIS should also provide information on the availability of monitoring data for 8-hour ozone and PM2.5 criteria pollutants.

Conformity Determinations

The DEIS indicates that the South Coast Air Quality Management District is considering the adoption of the Coachella portion of the Transportation Conformity Emission Budgets for Ozone Precursors for the Southeast Desert Modified Air Quality Management Area Ozone Non-attainment Area (p. 4-185). The DEIS states that, subsequent to state approval, EPA has a role in the conformity determination, although that role is not specified. Appendix M of the DEIS is a CAA Conformity Analysis for the MSHCP that focuses on PM10 conformity, and includes an appendix that quantifies the potential future emissions associated with the full buildout of lands within conservation areas of the MSHCP.

The DEIS does not provide a clear explanation of conformity, how it is triggered, and its purpose. The document references transportation conformity, but does not explain the distinction between general and transportation conformity. The conformity analysis in Appendix M is not referenced in the main body of the DEIS, and the purpose for inclusion of the full buildout analysis in Appendix M is not clear.

Recommendation:

The FEIS should include a thorough discussion on general conformity, including the distinction between general and transportation conformity, the regulatory requirements, the relationship to the State Implementation Plan, how the general conformity analysis is performed, and the time-frames in which general conformity determinations must be made. Appendix M should be referenced and summarized in the appropriate part of the main document, and EPA’s consultation role (40 CFR 93.105) should be clarified.

Environmental Justice

The DEIS provides a good description of how minority and low-income populations were identified using data from the 2000 Census and supports the conclusion that no disproportionate adverse impacts would be expected for those populations. However, the document provides little information on the actions taken to elicit participation of these populations. For example, the DEIS does not indicate efforts made to reach the large Hispanic population in the Plan area. Such outreach activities could include Spanish versions of major documents, newsletters and summary meeting notes, having a Spanish translator available at public meetings, and holding meetings during the evening when more of the working public would be able to participate.

Recommendations:

The FEIS should document the public involvement methods used to communicate with environmental justice communities within the Plan area. Assessment of the project's impact on minority and low-income populations should reflect coordination with those populations affected.

Consultation and Coordination with Tribal Governments

The Coachella Valley is inhabited by numerous bands of the Cahuilla Indians. Six reservations exist today: Agua Caliente, Augustine, Cabazon, Morongo, Santa Rosa, and Torres-Martinez. The MSHCP Implementation Agreement indicates that the Agua Caliente, Cabazon, and Torres-Martinez Bands are members of the Coachella Valley Association of Governments (CVAG), the local lead agency for the preparation of the MSHCP. However, the DEIS indicates that the Agua Caliente Tribe is now preparing their own draft HCP, and it is not clear if they are still a member of CVAG. The extent of involvement of the other three Coachella Valley tribal governments in the MSHCP process is not specified.

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes. The DEIS does not indicate that Fish and Wildlife Service initiated this form of consultation with the tribes.

Recommendations:

The FEIS should provide information on the process and outcome of government-to-government consultation between the Service and each of the tribal governments in the Plan area in accordance with Executive Order 13175. It should also clarify the role that the Service will play to meet its Federal tribal trust responsibilities.

The Proposed Action indicates that approximately 69,578 acres within the MSHCP Plan area are Native American reservation lands or tribal-owned lands that are not part of the proposed Plan and are not subject to its provisions. These lands include tribal trust, allotted, and fee (privately owned) lands. The DEIS also indicates that there are 3,800 acres of undeveloped tribal lands outside of the Reservations that are part of the MSHCP Reserve System (Table 2-4). The DEIS does not specify which tribe(s) owns the land, and no additional information is provided as to how that undeveloped tribal land will be utilized within the Reserve System.

Recommendations:

The FEIS should disclose ownership of the undeveloped tribal lands, confirm that its owner(s) will participate in the MSHCP, provide information as to how the land will be preserved, and describe the mechanism for doing so.

Section 106 Consultation and Impacts to Cultural Resources

Historic properties under the National Historic Preservation Act (NHPA) are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. Section 106 of the NHPA requires a Federal agency, upon determining that activities under its control could affect historic properties, consult with the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO). Because there are several Federal agencies serving as cooperating agencies with the Service for this DEIS (Bureau of Land Management, Forest Service, and National Park Service), it is not clear which agency has Section 106 consultation responsibilities.

Executive Order 13007 (May 24, 1996), Indian Sacred Sites, requires Federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian Religious practitioners, and to avoid adversely affecting the physical integrity of such sacred sites. It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site. The DEIS does not reference the Executive Order and only Section 5, which addresses the proposed Santa Rosa and San Jacinto Mountains Trails Plan, provides information on Indian sacred sites. Tribal members have expressed concern that an increase in visitors and usage of the trails may lead to an increase in intentional looting or unintentional damage sites.

Recommendations:

The FEIS should provide additional information on the Section 106 consultation process. It should clarify which Federal agency is responsible for Section 106 consultation, state whether consultation is necessary and, if required, indicate the status and outcome of that consultation.

The FEIS should also address Executive Order 13007, distinguish it from Section 106, and discuss how the appropriate Federal agencies will accommodate access to Indian sacred sites and other requirements of the Order.

Enforcement and Management of the MSHCP

Given the scope of the MSHCP and the many unique species and habitats, EPA believes the enforcement and management of the MSHCP is crucial. We are concerned with the reliance on revocation or suspension of the take authorization as the primary enforcement tool. There is no assurance that the threat of revocation or suspension of the take authorization can assure successful implementation of the MSHCP.

Recommendations:

The FEIS, MSHCP, and Implementation Agreement should describe the enforcement process and enforcement tools, other than revocation and suspension of the take authorization, that can be used to ensure the MSHCP conservation goals are met. The FEIS should discuss whether the County or Cities could implement building moratoriums or revoke building permits, and indicate how impacts of "violations" of MSHCP obligations would be mitigated. We also urge the Service to provide clear future opportunities for public and agency input on the implementation and management of the MSHCP which, we believe, will help ensure adequate enforcement and oversight.

Impacts to Migratory Birds

Executive Order 13186, *Responsibilities of Federal Agencies to Protect Migratory Birds* (January 10, 2001), requires that environmental analyses of Federal actions required by NEPA evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern. The Executive Order supports the Migratory Bird Treaty Act (MBTA) and other Federal statutes that promote the conservation of migratory bird populations.

The DEIS does not reference the Executive Order or the MBTA. The Implementation Agreement of the MSHCP addresses the MBTA by saying that the take of covered species will be allowed in the amount specified in the MSHCP, subject to the terms of the Section 10(a) permit (Implementing Agreement, Section14.12). The DEIS does not quantify or evaluate the impact of the anticipated take.

Recommendations:

The FEIS should discuss the purpose of the MBTA and Executive Order 13186, and describe how the MSHCP supports their goals. The FEIS should also clarify the requirements of the MBTA in relationship to the Service's authority to issue take permits for species covered by the Act, and discuss the impact of the anticipated take.