

US EPA ARCHIVE DOCUMENT



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

May 3, 2012

Mr. Roger Root
Assistant Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003

Subject: Supplemental Draft Environmental Impact Statement for the Tehachapi Uplands Multiple Species Habitat Conservation Plan, Kern County, California (CEQ# 20120021)

Dear Mr. Root:

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

The EPA reviewed the Draft Environmental Impact Statement and provided comments to the U.S. Fish and Wildlife Service (Service) on July 14, 2009. We rated the Tehachapi Uplands Multiple Species Habitat Conservation Plan Alternative and the document as Environmental Concerns – Insufficient Information (EC-2) due to two main concerns: the potential impacts to approximately 29 acres of wetlands, riparian, and wash habitats; and the effects of covered activities on the highly sensitive population of California condor. We provided recommendations for improving the air quality analysis and the assessment and disclosure of cumulative impacts, induced growth, transportation, and visual resources. We also asked for additional information describing the proposed alternatives and conservation lands, the purpose and need for the proposed project, and the irreversible and unavoidable impacts of the covered activities.

Based on our review of the Supplemental Draft Environmental Impact Statement (SDEIS), we are rating the preferred alternative and the document as EC-2, Environmental Concerns – Insufficient Information (see enclosed EPA Rating Definitions). We commend the Service for preparing detailed responses to our comments. The responses were extensive, thoughtful, and addressed most of the issues raised in our July 14, 2009 letter. We have continuing concerns, however, regarding the potential impacts of covered activities to wetlands and riparian areas, as well as the population of California condor that reside or forage within the proposed covered lands. We recommend that the Service demonstrate avoidance of waters of the U.S. before issuing the incidental take permit, and provide additional information in the final EIS comparing the effects of the alternatives on the California condor. Our detailed comments are enclosed.

We appreciate the opportunity to review this SDEIS. If you have any questions, please contact me at (415) 972-3521, or contact Jason Gerdes, the lead reviewer for this project. Jason can be reached at (415) 947-4221 or gerdes.jason@epa.gov.

US EPA ARCHIVE DOCUMENT

Sincerely,

/s/

Kathleen Martyn Goforth, Manager
Environmental Review Office (CED-2)

Enclosure: Summary of the EPA Rating System
Detailed Comments

cc: John Robles, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service

Waters of the U.S.

In our comments on the DEIS, we stated that the DEIS lacked sufficient information to determine to what extent impacts to waters of the U.S. would be avoided, minimized, and mitigated as required by Section 404(b)(1) Guidelines of the Clean Water Act. We expressed concern that the development of the proposal to issue an incidental take permit (ITP) for 29 acres of potentially jurisdictional waters had not occurred in close coordination with the U.S. Army Corps of Engineers (Corps), the EPA, the Regional Water Quality Control Board (Regional Board), and the California Department of Fish and Game (CDFG). Additionally, we stated that the Tejon Ranch Corporation (TRC) had not demonstrated sufficient avoidance, minimization, and mitigation of impacts to waters.

The Supplemental Draft Environmental Impact Statement (SDEIS) includes information from the Tejon Mountain Village (TMV) environmental impact report (EIR) regarding wetlands delineated in the TMV project site, as well as the types of mitigation that would be imposed during the TMV approval process to minimize effects on wetlands. It is still unclear, however, how the full extent of HCP covered activities (not just the TMV development) would affect waters, and if TRC has demonstrated sufficient avoidance, minimization, and mitigation of impacts to such waters.

Recommendation:

The FEIS should discuss how the HCP covered activities could affect waters, and demonstrate that all impacts to waters would be avoided and minimized to the maximum practicable extent and that unavoidable impacts would be mitigated appropriately. We recommend that U.S. Fish and Wildlife Service coordinate with the Corps, EPA, Regional Board, and CDFG on this matter.

Critical Habitat for the California Condor

Our DEIS comment letter expressed concern about potential impacts to the population of California condor that utilize proposed covered lands. The EPA, along with several other commenters, recommended that the Service and the TRC consider an alternative that excludes development within designated California condor habitat. We commend the Service for acting on this recommendation and developing the Condor Critical Habitat Avoidance MSHCP Alternative--an alternative that would reconfigure proposed development to avoid federally designated critical habitat for California condor. This alternative, however, has not been sufficiently analyzed. The SDEIS includes extensive discussion about the preferred alternative--the Tehachapi Uplands Multiple Species Habitat Conservation Plan Alternative (TU MSHCP)--and its potential direct and indirect effects on the California condor and its foraging habitat; but does not include a commensurate level of analysis for the CCH Avoidance MSHCP and other alternatives.

Recommendation:

The FEIS should include a thorough analysis of the impacts of the Condor Critical Habitat Avoidance MSHCP Alternative. To facilitate comparison with the other alternatives, this analysis should include additional information on the impact that this alternative would have on waters, as well as on foraging habitat, the existing California condor population, and the potential for the population to expand its size and range. The FEIS should identify the environmentally preferable alternative, regardless of which alternative is selected.