

US EPA ARCHIVE DOCUMENT



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

June 27, 2011

Lisa Gibson  
US Army Corps of Engineers  
Sacramento District  
Regulatory Branch  
1325 J Street, Room 1480  
Sacramento, CA 95814-2922

Subject: Final Environmental Impact Statement for Folsom South of U.S. 50 Specific Plan Project, Sacramento County, California [CEQ #20110160]

Dear Ms. Gibson:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for Folsom South of U.S. 50 Specific Plan Project (Project), Sacramento County, California. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. These comments were also prepared under the authority of, and in accordance with, the provisions of the Federal Guidelines (Guidelines) promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act (CWA).

EPA reviewed the Draft Environmental Impact Statement (DEIS) and provided comments to the U.S. Army Corps of Engineers (Corps) on September 17, 2010. We rated the DEIS as Environmental Objections – Insufficient Information (EO-2), primarily due to significant impacts to aquatic and ecologically important resources, the potential for a net loss of wetland and aquatic functions, a flawed Section 404(b)(1) On-Site Alternatives Analysis, significant air quality impacts, and the lack of a demonstrated need for the proposed level of development. We also expressed concerns about the long-term reliability of the proposed water supply and the need to identify the Least Environmentally Damaging Practicable Alternative (LEDPA). Although we appreciate the efforts made to improve the document and project, EPA continues to believe the Proposed Project has the potential to contribute to significant environmental degradation. Many of the objections we expressed in response to the DEIS remain for the FEIS. These are discussed in the attached Detailed Comments.

At the time the Notice of Availability for the DEIS/DEIR was published, EPA was unaware that the Corps intended it to also serve as a Public Notice (PN) for the Clean Water Act Section 404 permit. This joint purpose was unusual, reduced the opportunities for public input, and complicated execution of EPA's duties in the program pursuant to CWA Section 404(q). In the

coming weeks, EPA will discuss with the Corps options for preserving 404(q) action that would normally have been triggered by a traditional PN for permit issuance.

EPA appreciates the opportunity to provide input on this Project. When the ROD is released for public review, please send one hard copy and two CD to the address above (Mail Code: CED-2). If you have any questions, please contact me at 415-972-3843, or contact Carter Jessop, the lead reviewer for the FEIS. Carter can be reached at 415-972-3815 or [jessop.carter@epa.gov](mailto:jessop.carter@epa.gov).

Sincerely,

/s/

Enrique Manzanilla, Director  
Communities and Ecosystems Division

Cc: Gail Furness de Pardo, City of Folsom Community  
Michael R. Finnegan, Bureau of Reclamation  
Mr. Kenneth Sanchez, U.S. Fish and Wildlife Service  
Mr. Dan Gifford, California Department of Fish and Game

**U.S. EPA DETAILED COMMENTS ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT FOR FOLSOM SOUTH OF US 50 SPECIFIC PLAN PROJECT, SACRAMENTO COUNTY, CA, JUNE 27, 2011**

*Need for the Proposed Level of Development*

In our September 17 comment letter, EPA requested that the Corps provide a detailed validation of the need for the proposed level of development. In response USEPA-62, the Corps directs the reader to the project's Purpose statement and indicates that the City of Folsom is planning for anticipated growth over the next 20-30 years. We continue to question whether the applicant has accurately assessed and disclosed the *need* for the proposed project, in light of changes in regional housing market conditions. A large number of projects have been approved in the region, but have not moved forward with construction for a variety of reasons, and/or now face difficulties finding adequate opportunities for compensatory mitigation. This is a critical consideration, given the proposed project's attendant loss of 40.6 acres of waters of the US and its contribution to regional and cumulative impacts. EPA recommends that the Corps more thoroughly examine the basis for the City of Folsom's predictions regarding population growth and development needs, including the underlying data, and discuss the need for the proposed project, accordingly, in the ROD.

*Environmentally Preferable Alternatives*

In our comments on the DEIS, EPA stated that we believe that the "No U.S. Army Corps of Engineers Permit" (No USACE Permit) and "Resource Impact Minimization Alternatives" offer significantly reduced adverse environmental impacts, and we recommended that they be refined to meet the Sacramento Area Council of Governments (SACOG) density and smart growth goals. We believe that, with such design modifications, these less damaging options may prove to be practicable. In its response to EPA's comments, the Corps indicates that it believes the range of alternatives to be appropriate, without justifying why these alternatives could not be practicably modified per our recommendations ("Comments and Individual Responses" USEPA-8, USEPA-22, and USEPA-61 through USEPA-63). We once again encourage the Corps to analyze alternatives that incorporate the environmentally preferable components of these alternatives, along with a redesign of the projects to meet the SACOG goals and requirements.

*Least Environmentally Damaging Practicable Alternative*

We understand that the Corps intends to make its determination regarding the LEDPA in the Record of Decision (ROD). EPA remains concerned with the Project's ability to comply with 404(b)(1) Guidelines. The DEIS examined some programmatic level alternatives, and we are concerned that project-level alternatives may be inconsistent with the programmatic in that more avoidance and minimization may be necessary at the project level to make a finding that the project is the LEDPA. We understand and appreciate that the Corps will, as stated in that response, provide us project-level alternatives analysis information before completing the ROD, but we remain concerned that, once the larger avoidance and minimization steps have been taken through the NEPA process, the scope of change that could occur at the project level may be limited.

In response USEPA-61, there is a reference to alternatives analyses at the project level for “Carpenter Ranch, Folsom South and on-site infrastructure,” suggesting that these are available for review. While EPA did receive a copy of the Carpenter Ranch alternatives analysis, we have not received similar analyses for either of the other projects, and the “Appendix L” to which USEPA-61 refers does not appear to exist. Without sufficient information, EPA is unable to make a finding that any of these proposals represent the LEDPA, or comply with the other restrictions on discharges under the 404(b)(1) Guidelines.

EPA’s objections to the approach taken in the Carpenter Ranch alternatives analysis remain. Using the cost of the proposed alternative as the basis of comparison to the costs of the other alternatives, as was done in the Carpenter Ranch analysis, is inappropriate. As stated by the Corps in the Hartz Mountain 404(q) elevation decision, an “alternatives analysis must be objective and balanced, and not be used to provide a rationalization for the applicant’s preferred result (i.e., that no practicable alternative exists).” In order to comply with the 404(b)(1) Guidelines, the applicant needs to demonstrate which development configuration achieves the project purpose while impacting the least amount of wetlands (and other waters of the US) and is capable of being constructed under current market influences (i.e., providing a reasonable profit typical of the industry in question), regardless of how it compares to the costs of the proposed alternative. These are the “criteria” as discussed in response USEPA-62.

#### *Impact Avoidance and Compensatory Mitigation*

The FEIS states that impacts to waters of the US within the watershed will remain “significant and unavoidable.” Given the information provided in the FEIS, EPA believes that it has not yet been demonstrated that additional impact avoidance and minimization is impracticable. Until the LEDPA determination is made and we are sure that only those impacts that are truly unavoidable remain, discussion of compensatory mitigation is preliminary and should be referred to as such.

Mitigation for most of these impacts is proposed to occur primarily at mitigation banks, but the FEIS contains no discussion of the competing needs/demands on mitigation bank credits in the region, which we believe are already over-subscribed. For example, the South Sacramento County Habitat Conservation Plan (SSHCP) will require as many credits as are currently available, if not more, in order to meet its conservation goals. The impacts of the Folsom South of U.S. 50 Project should be analyzed from a regional perspective. To simply state that there are ample credits in the regional mitigation banks is to ignore the demand for credits from the SSHCP projects and others. This is a very important regional issue that must be addressed in light of the need to adequately analyze cumulative impacts and significant degradation as required under the 404 (b)(1) Guidelines.

Furthermore, we believe the proposed mitigation ratio of 1:1 is inadequate. Loss of naturally occurring wetlands cannot be replaced by simply purchasing an equal number of credits at a mitigation bank. Studies have shown that functions of naturally occurring wetlands are rarely replaced by created wetlands (Kentula et al. 1992; An approach to improving decision making in wetland restoration and creation, EPA/600/R-92/15 August 1992). More recently, vernal pool researchers have found few mitigation projects with constructed vernal pools that compare favorably to natural plant communities (M. Barbour and A. Solomeshch, pers. comm; manuscript

in preparation). We therefore believe that compensatory mitigation needs to occur at a ratio greater than 1:1 in order to realistically offset losses and meet the no-net-loss of functions threshold. In addition, several of the banks listed in the Wetland Mitigation and Monitoring Proposal are located far from the project area and out of the immediate watershed. Interagency Review Team approval would be required to access such banks. A large number of the available credits are also out of kind (e.g., 300 acres of riparian and adjacent riverine wetlands at the Cosumnes River Bank). The Corps must address these issues in order to ensure that the Project is capable of meeting the no-net-loss threshold.