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

MAR 2 2 2013

Aaron Burton
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P.O. Box 12008
Riverside, CA 92502-2208

Subject: EPA comments on the Draft Environmental Impact Statement for State Route 79 Project, Riverside County, California (CEQ# 20130025)

Dear Mr. Burton:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (EIS) for the State Route 79 Project (SR 79 Project), Riverside County, California. Our comments are provided under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's (CEQ) NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act. Based upon our review, we have rated the proposed action as *Environmental Concerns- Insufficient Information (EC-2)*. See attached "Summary of the EPA Rating System" for a description of the rating. The basis for the rating is summarized below and further detailed in our enclosed comments.

The development of the EIS follows the National Environmental Policy Act and Clean Water Action Section 404 Integration Process for Federal Aid Surface Transportation Projects in California Memorandum of Understanding (NEPA/404 MOU). EPA is a participant in the SR 79 Resource Agency Workgroup which provides an interagency forum for early feedback during the development of the Draft EIS and facilitates the NEPA/404 MOU process. EPA has provided Concurrence on the project's Purpose and Need statement (December 19, 2003), Administrative Agreement on Criteria for Alternatives Selection and Range of Alternatives (June 23, 2004), Updated Administrative Agreement on Alternatives (June 14, 2005), and Final Agreement on the Range of Alternatives to carry forward in the Draft EIS (July 2, 2007). We also provided comments on an Administrative Draft EIS for the project on October 21, 2010.

EPA acknowledges the magnitude of avoidance Caltrans and Riverside County Transportation Commission have already implemented by eliminating an earlier, more damaging alternative that would have bisected a network of significant alkali vernal pools in Riverside County. Notably, in 2010 the SR 79 Project was nominated for, and received, a U.S. Fish and Wildlife Service Transportation Environmental Stewardship Excellence Award for the efforts to avoid impacts to vernal pools. To further avoid and minimize impacts to vernal pools and other waters of the United States from the remaining alternatives assessed in the Draft EIS, we recommend right of way reductions in strategic locations. The Final EIS should also include a conceptual compensatory mitigation plan which discloses the strategy to compensate for

remaining unavoidable impacts. These recommendations are further discussed in our attached detailed comments, along with other recommendations related to ongoing tribal consultation and air quality impacts.

For the next NEPA/404 MOU checkpoint (identifying preliminary least environmentally damaging practicable alternative), EPA is available to continue working with the Resource Agency Workgroup to discuss additional avoidance and minimization measures and mitigation options.

Thank you for the opportunity to comment on the Draft EIS. We look forward to continued early coordination on this project. When the Final EIS is released for public review, please send two hard copies and two electronic copies to the address above (mail code: CED-2). If you have any questions, please contact Susan Sturges, the lead reviewer for this project, at 415-947-4188 or sturges.susan@epa.gov.

Sincerely,

Connell Dunning

Connell Dunning, Transportation Team Supervisor
Environmental Review Office
Communities and Ecosystems Division

Enclosures:
(1) Summary of Rating Definitions
(2) EPA's detailed comments on the SR 79 Draft EIS

Cc via email: Cathy Bechtel, Riverside County Transportation Commission
Stephanie Hall, Army Corps of Engineers
Sally Brown, U.S. Fish and Wildlife Service
Marie Petry, Caltrans District 8
John Chisholm, Caltrans District 11
Carolyn Washburn, CH2M HILL, Inc.

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment.

EPA COMMENTS ON THE DRAFT EIS FOR STATE ROUTE 79 PROJECT, RIVERSIDE COUNTY, CALIFORNIA, MARCH 22, 2013

Waters of the United States

LEDPA Determination

Narrowing the project right of way should be utilized as a means to further avoid impacts to aquatic resources and comply with the Clean Water Act Section 404 (b)(1) Guidelines (Guidelines), that require the U.S. Army Corps of Engineers (Corps) to permit only the least environmentally damaging practicable alternative (LEDPA). The Draft EIS states that the project right of way varies between 230 and 2,035 feet wide, but that a smaller cross-section could be considered during final design to further avoid environmental impacts (p. 2-3). The EPA acknowledges significant avoidance measures that Riverside County Transportation Commission (RCTC) and Caltrans have already taken, especially for vernal pools in the Metropolitan Water District Upper Salt Creek Preserve area; however, we note that narrowing the right of way could further avoid or minimize impacts to several wetlands and other waters of the U.S. Particular opportunities of interest include avoiding direct impacts to vernal pools northwest of the Esplanade Avenue and Warren Road intersection in Segments J and K. Narrowing the right of way could also avoid or minimize impacts to various wetlands in Segments N and M and the Salt Creek channel at crossings within Segments A, C and D. In addition, though not determined to be jurisdictional waters of the U.S. by the Corps, we encourage avoidance and minimization of the ephemeral drainages in the West Hemet Hills that would be directly impacted by Segments G and H. As further described in our comments, these drainages provide important water quality and biological functions and some contribute to the Stowe Road vernal pools complex.

Narrowing the project right of way should also be considered where it would avoid indirect impacts to jurisdictional waters. The Draft EIS has identified indirect impacts to 2.43 acres of vernal pools at the Stowe Road vernal pool complex due to "interruption in hydrological patterns". Hydrologic and sedimentation impacts could result from cut and fill of portions of ephemeral drainages and their watersheds in Segment H where the road alignment would cross the West Hemet Hills. Additionally, the Stoney Mountain Preserve vernal pool complex is located immediately adjacent to the impact area of Segments J and K, yet this area has not been identified for potential indirect impacts including noise, polluted runoff, and buffer encroachment. Similarly, though the 1.97 acre vernal pool identified as VP0109 north of Esplanade Avenue would not be filled by Segment K (unlike Segment J), it would be further encroached upon by the new roadway; yet there is no discussion of potential indirect effects. Narrowing the project right of way in these segments could help reduce unavoidable indirect impacts to these important resources.

Recommendations:

- In order to comply with the Clean Water Act Section 404(b)(1) Guidelines and the selection of the LEDPA, Caltrans and Riverside County Transportation Commission (RCTC) should consider all opportunities to narrow the project right of way where it would avoid or minimize impacts to jurisdictional waters of the U.S. Wetlands are special aquatic sites and are of particular concern in the project area due to their limited presence and threats from surrounding land use. The EPA will work with Caltrans and RCTC

during Checkpoint 3 of the National Environmental Policy Act and Clean Water Action Section 404 Integration Process for Federal Aid Surface Transportation Projects in California Memorandum of Understanding (NEPA/404) process to identify additional measures to avoid impacts to jurisdictional waters of the U.S.

- The Final EIS should demonstrate long-term avoidance measures for the Stoney Mountain Preserve vernal pool complex and VP0109 located immediately adjacent to the impact areas outlined for Segments J and K.

The EPA is concerned with some aspects of the engineered drainage system that would capture and deliver flows from the West Hemet Hills cut for Segment H to the Stowe Road vernal pool complex. The drainage system would be designed to avoid and reduce impacts to the vernal pools by avoiding excessive erosion and sedimentation as well as interruption to current hydrological patterns. Caltrans and RCTC have proposed to monitor the performance of the drainage system for a minimum of 5 years but it is not clear if this includes baseline assessment and post construction monitoring of the vernal pools and the ephemeral drainage that the engineered system would flow to. It is also unclear whether Caltrans and RCTC, or their contractors, would have access to the vernal pools and the ephemeral drainage so that monitoring could occur since the Draft EIS mentions that much of the area is privately owned (p. 3-453).

Recommendations:

- The Final EIS should verify that Caltrans and RCTC would have access to the vernal pools and the ephemeral drainage downstream of the discharge point of the engineered drainage system in order to conduct pre and post construction monitoring.

- The pre and post construction monitoring plan should include condition assessments, utilizing an appropriate methodology, such as the California Rapid Assessment Method (CRAM), of the Stowe Road vernal pool complex and the ephemeral drainage that would receive flows from the engineered drainage system. The pre and post construction monitoring plan should identify specific performance criteria, including an adaptive management strategy, to ensure that the engineered system is working at the end of 5 years. The EPA requests a copy of the annual monitoring reports when they are submitted to the Corps and the other agencies for review.

Compensatory Mitigation

The Draft EIS is lacking sufficient information regarding compensatory mitigation and with only a few exceptions, defers details on mitigation until the permitting process. According to NEPA, the Draft EIS must include a discussion of the means to mitigate adverse environmental impacts (40 CFR 1502.16(h)). In addition, the Council on Environmental Quality's Forty Questions No. 19(b) states that all relevant and reasonable mitigation measures that could alleviate project impacts must be identified. The Draft EIS (mitigation measure BIO 34, Section 3.3.2.4) only states that impacts to jurisdictional waters will take place at a ratio at least 1 to 1, that roadside ditch impacts will be replaced by new roadside ditches, and that unavoidable impacts to wetlands and other waters will be offset by wetland/riparian creation, enhancement, or restoration within the San Jacinto watershed or at a Corps approved mitigation bank. Checkpoint 3 of the NEPA/404 process occurs between the Draft EIS and Final EIS and calls for the Corps to concur

and for EPA to agree on the preliminary LEDPA and the conceptual mitigation plan. The EPA anticipates Checkpoint 3 will include a more robust identification and description of specific compensatory mitigation options (e.g., permittee-responsible, Corps approved mitigation bank, or in-lieu fee (ILF) program). However, we do not consider the level of information provided in the Draft EIS enough to demonstrate that sufficient mitigation opportunities are available for consideration and do not consider it sufficient to defer mitigation discussion until the permitting process.

Recommendation:
The Final EIS should provide a conceptual mitigation plan that has undergone Checkpoint 3 of the NEPA/404 process, including a description of the locations and types of projects and/or mitigation bank and ILF opportunities as well as measures to comply with the 2008 Corps and EPA Compensatory Mitigation Rule.[1]

The Draft EIS and the Corps approved jurisdictional determination (JD) have identified several "erosional channels" draining the West Hemet Hills that are not considered jurisdictional waters of the U.S. but that could be considered waters of the State. These features should be avoided and unavoidable impacts considered as part of an overall compensatory mitigation plan. Representative photos in Appendix D of the JD appear to be of ephemeral drainages that are vegetated with "high quality sage scrub" from toe to top of bank. They likely provide a variety of functions and beneficial uses, including water filtration, groundwater percolation, and nutrient cycling. As described in the Draft EIS, they also provide wildlife habitat and direct connections to grasslands and the vernal pools located northwest of the California and Stowe Road intersection and are part of the West Hemet Hills to Hemet-Ryan Airport and West Hemet Hills to Lakeview Mountains Corridors.

Recommendation:
Compensatory mitigation should be developed to offset unavoidable impacts to West Hemet Hills ephemeral drainages that would be directly impacted by Segments G and H. EPA recommends that this mitigation be described in the Final EIS.

Coordination and Consultation with Tribal Governments
The Draft EIS indicates outreach to representatives from several tribal governments began in 2005 for this Project. Consultation with tribes under Section 106 of the National Historic Preservation Act will be ongoing for the duration of the Project, including an upcoming Phase II evaluation for several archeological sites after selection of the Preferred Alternative.

Recommendations:

- In the Final EIS, describe any additional coordination that occurs prior to the Final EIS publication and the outcome of consultation; additional issues that were raised (if any); and how those issues were addressed. Describe how impacts to tribal or cultural resources will be avoided or mitigated consistent with Section 106 of the National Historic Preservation Act.

[1] 33 CFR Parts 325 and 332 & 40 CFR Part 230, Compensatory Mitigation for Losses of Aquatic Resources

- Include any finalized Memorandum of Agreement in the Final EIS and Record of Decision (ROD) to commit to identified mitigation measures.

Air Quality

Mobile Source Air Toxics (MSAT)

EPA disagrees with the claim in the Draft EIS that "Tools for estimating MSAT emissions, performing dispersion modeling, and assessing project-specific health impacts have not yet been developed" (page 3-368). Tools and models are available that EPA (as well as other agencies) routinely use effectively. EPA recommends striking this and related incorrect statements that tools have not been developed and eliminating discussion under Section Incomplete or Unavailable Information for Project Specific MSAT Health Impact Analysis regarding technical shortcomings and uncertain science. The March 2007 report entitled "Analyzing, Documenting, and Communicating the Impacts of Mobile Source Air Toxic Emissions in the NEPA Process" conducted for the American Association of State Highway and Transportation Officials (AASHTO) Standing Committee on the Environment and funded by the Transportation Research Board (http://www.trb.org/NotesDocs/25-25(18)_FR.pdf) discusses available methodologies and tools. Procedures for toxicity-weighting, which EPA has found to be especially useful for the targeting of mitigation, are described in EPA's Air Toxics Risk Assessment Reference Library (Volume 3, Appendix B, beginning on page B-4, http://www.epa.gov/ttn/fera/risk_atra_main.html).

Construction Emissions Reductions

EPA recommends incorporating the following mobile and stationary source control measure as a way to further reduce anticipated construction-related emissions:

> If practicable, lease new, clean equipment meeting the most stringent of applicable Federal[2] or State Standards[3]. In general, meet and ideally go beyond California Air Resources Board requirements for in-use diesel engines and equipment, particularly for non-road construction fleets. Through December 31, 2014, ensure that all construction equipment meets or exceeds equivalent emissions performance to that of U.S. EPA Tier 3 standards for non-road engines. From January 1, 2015 onward, ensure that all construction equipment meets or exceeds equivalent emissions performance to that of U.S. EPA Tier 4 standards for non-road engines.

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[2] EPA's website for nonroad mobile sources is http://www.epa.gov/nonroad/.

[3] For ARB emissions standards, see: http://www.arb.ca.gov/msprog/offroad/offroad.htm.