UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

April 21, 2008

Mr. David J. Castanon
Chief, Regulatory Division
Department of the Army
Los Angeles District, Corps of Engineers
P.O. Box 532711
Los Angeles, CA 90053

Subject: Draft Environmental Impact Statement (DEIS) for the Special Area Management Plan/Watershed Streambed Alteration Agreement Process for the San Diego Creek Watershed, Orange County, CA (CEQ# 20080077)

Dear Mr. Castanon,

We appreciate the opportunity to review the DEIS for the Special Area Management Plan/Watershed Streambed Alteration Agreement Process for the San Diego Creek Watershed (SAMP). The DEIS is intended to evaluate the impacts of the federal action to adopt the SAMP and associated Clean Water Act (CWA) Section 404 permit procedures from the US Army Corps of Engineers (Corps) for fill of waters of the U.S. (WOUS) in the San Diego Creek Watershed. EPA has reviewed the DEIS and provides comments consistent with our authority provided by Section 309 of the Clean Air Act, the National Environmental Policy Act, and Section 404 of the CWA. Our detailed comments are enclosed and should be considered in the development of the Final EIS (FEIS).

EPA recognizes the significant effort that has gone into the development and preparation of the SAMP and the SAMP DEIS. The result is a watershed-based approach to permitting and mitigation for activities in Corps and California Department of Fish and Game (CDFG) jurisdictions. We note that the SAMP is consistent with several efforts to improve management of aquatic resources including the National Research Council's recommendation to conduct watershed-scale conservation and mitigation as described in their June 2001 report, "Compensating for Wetland Losses Under the Clean Water Act." The SAMP is consistent with the National Wetlands Mitigation Action Plan, an effort that included the EPA and Corps, to make compensatory mitigation decisions within a watershed context. The SAMP is also consistent with compensatory mitigation criteria that emerged from the EPA and Corps co-sponsored 2004 "National Symposium on Compensatory Mitigation and the Watershed Approach," that included the importance of resource assessment, the need for readily attainable data, and the utility of screening and decision tools. Finally, EPA recognizes efforts of the Corps to incorporate the "Compensatory Mitigation for Losses of Aquatic Resources" Final Rule published in the Federal Register on April 10, 2008.

Based on our review, we have rated this DEIS as EC-2, Environmental Concerns - Insufficient Information (see attached "Summary of the EPA Rating System"). While EPA supports the efforts of the Corps to develop the SAMP and provide a way to improve long-term aquatic resource conservation in the San Diego Creek Watershed, we have concerns with the lack of sufficient information in some key areas of the DEIS. To address these concerns, we recommend that the FEIS include additional discussions of the reasonableness of the alternatives, alternatives that were not considered for detailed analysis, and past impacts to resources in a cumulative effects context. We also recommend the FEIS include a discussion of why specific Nationwide Permits are proposed for revocation while others would be retained, and a historical ecology study to better inform aquatic resource decision making.

We appreciate having had the opportunity to coordinate with Corps staff and to discuss our questions and comments on the DEIS, and we are available to further discuss our recommendations for the FEIS. When the FEIS is released for review, please send one hard copy and one CD copy to the address above (mailcode: CED-2). If you have any questions, please contact me at 415-972-3846 or Paul Amato, the lead reviewer for this project. Paul can be reached at 415-972-3847 or amato.paul@epa.gov.

Sincerely,

Nova Blazej, Manager
Environmental Review Office

Enclosure:
Summary of EPA Rating Definitions
EPA Detailed Comments

Cc:
Terri Dickerson, California Department of Fish & Game
Erinn Wilson, California Department of Fish & Game
Mark Adelson, Santa Ana Regional Water Quality Control Board

ENVIRONMENTAL PROTECTION AGENCIES' DETAILED COMMENTS ON THE SPECIAL AREA MANAGEMENT PLAN/WATERSHED STREAMBED ALTERATION AGREEMENT PROCESS FOR THE SAN DIEGO CREEK WATERSHED (SAMP) DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS), APRIL 21, 2008

Alternatives Analysis

The FEIS should include a discussion of why the alternatives are considered reasonable. The alternatives considered in the DEIS include No Project (Existing Case-by-Case Permitting) – Alternative 1, Complete Avoidance (No Permits Issued) – Alternative 2, Avoidance Except for Bridges and Utility Lines (Limited Permitting) – Alternative 3, and General Plan Build-out without Avoidance (Full Permitting) – Alternative 4. The DEIS does not adequately explain why these are reasonable alternatives as required by the Council on Environmental Quality (CEQ) National Environmental Policy Act Regulations (Section 1502.14). "Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant" (Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18026). Alternatives 2, 3 and 4 appear to describe permitting scenarios that are potentially impractical and infeasible in that they range from full denial of all Clean Water Act Section 404 permits, to issuance of 404 permits with no avoidance of jurisdictional areas for all development in local general plans and zoning requirements in the San Diego Creek Watershed. Alternative 1 is equivalent to the no federal action alternative and is considered reasonable by EPA.

> *Recommendation:*
> The alternatives section of the FEIS should explain the rationale used to develop the alternatives and why the Corps determined that they are reasonable. The discussion should speak specifically to why the alternatives are practical and feasible.

The FEIS should include a discussion of other alternatives considered but not fully evaluated in the DEIS and why. CEQ Regulations require a rigorous and objective evaluation of all reasonable alternatives and a brief discussion of alternatives that were eliminated from detailed study and why (CEQ NEPA Regulations Section 1502.14(a)). The DEIS does not include a discussion of alternatives that were eliminated from further detailed consideration.

> *Recommendation:*
> The FEIS should briefly discuss the alternatives that were eliminated from detailed analysis and why.

The FEIS should clarify the Corps' definition of "bioengineering". The DEIS evaluation of alternatives describes un-grouted riprap as a bioengineering solution that could be used to address fragmentation impacts (p. 5-5). EPA appreciates the Corps' regulatory program efforts to promote the use of bioengineering techniques for stream bank stabilization in order to better protect and preserve aquatic resources. However, we recommend the FEIS not refer to riprap as an example of bioengineering and instead use an example that is consistent with the Corps' proposed Regional General Permit No. 68: Bioengineered Bank Stabilization (RGP). This RGP

states, "unlike traditional or conventional bank stabilization, bioengineered bank stabilization does not rely on a hard revetment or armoring to prevent erosion at a particular site."

Recommendation:
The FEIS should provide an example of bioengineering, instead of un-grouted riprap, that is consistent with RGP No. 68: Bioengineered Bank Stabilization.

Cumulative Effects Analysis

The cumulative effects analysis should include a discussion of past impacts to aquatic resources in the San Diego Creek Watershed. The DEIS approach to cumulative impact analysis is focused on direct cumulative impacts of all future activities in the watershed that are regulated by the Corps and the Department of Fish and Game, and indirect impacts in the greater watershed associated with future build-out over the next 20 years (p. 6-1). The DEIS does not describe past impacts to environmental resources which are essential in understanding how present and future activities will result in cumulative effects. As described in the DEIS, the CEQ defines cumulative impacts as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable actions..." (CEQ NEPA Regulations Section 1508.7).

Recommendation:
The FEIS cumulative effects analysis should include a description of past impacts to the environment for determining whether present and future activities will result in significant cumulative effects or not. We recommend that the Corps refer to the Cumulative Impact Guidance jointly prepared by the California Department of Transportation (Caltrans), the Federal Highway Administration (California Division) and EPA Region 9 in the preparation of the cumulative impacts analysis for this project. While this guidance was developed for transportation projects in California, the principles and the 8-step process in this guidance can be applied to other types of projects. Specifically see "Step 3: Describe the Current Health and Historical Context for Each Resource." http://www.dot.ca.gov/ser/cumulative_guidance/approach.htm#step3

The SAMP Analytical Framework should include a historical ecology study. In addition to better informing the cumulative effects analysis, an understanding of past conditions can help improve aquatic resource decisions in the watershed. An understanding of the historical ecology of wetland and riparian resources would be of benefit in determining appropriate goals for future preservation and restoration efforts.

Recommendation:
The Corps should initiate a historical ecology study for the San Diego Creek Watershed to better inform aquatic resource decision making.

Proposed SAMP Process

The FEIS would benefit from a discussion of why specific Nationwide Permits (NWPs) are proposed for revocation for the SAMP area. Revocation of specific NWPs is discussed in

Section 2 of the DEIS, but there is no rationale for why certain NWPs are considered while others would remain in affect. The document describes why revocation of approximately half the existing NWPs is proposed but does not differentiate between those revoked and those retained.

Recommendation:
The discussion of revocation of specific NWPs should be expanded in the FEIS to include the rationale for revoking some and retaining others..