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

OCT 29 2014

Will Metz, United States Forest Service
Cleveland National Forest
605 Third Street
Encinitas, California 92024

Subject: Proposed Master Special Use Permit and Permit to Construct Power Line Replacement Projects Joint Draft Environmental Impact Report/Draft Environmental Impact Statement, San Diego and Orange Counties, CA (CEQ#20140246)

Dear Mr. Metz:

The U.S. Environmental Protection Agency has reviewed the Joint Draft Environmental Impact Report/Environmental Impact Statement for the proposed Master Special Use Permit and Permit to Construct Power Line Replacement Projects 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.

We have rated the Draft EIS as *Lack of Objections* (LO). Please see the enclosed "Summary of EPA Rating Definitions." To assist in providing improved analyses and additional disclosure in the Final EIS, our detailed comments include recommendations to ensure compliance with Clean Water Act Section 404, consideration of air quality impacts from potential helicopter use, and mitigation of potential impacts to tribal and cultural resources.

We appreciate the opportunity to review this Draft EIS and are available to discuss our comments. Please send a hard copy of the Final EIS to this office (Mail Code: ENF-4-2) when it is officially filed with EPA's new electronic EIS submittal tool: *e*-NEPA. If you have any questions, please contact me at (415) 972-3521, or contact Scott Sysum, the lead reviewer for this project, at (415) 972-3742 or sysum.scott@epa.gov.

Sincerely,

Connell Dunning

FOR

Kathleen Martyn Goforth, Manager
Environmental Review Section

Enclosures:
(1) Summary of EPA Rating Definitions
(2) EPA's Detailed Comments

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) 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 Environmental Impact Statement.

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 should 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. The 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 Council on Environmental Quality.

ADEQUACY OF THE IMPACT STATEMENT

Category "1" (Adequate)

The 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 analyzed 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)

The 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 analyzed in the draft EIS, which should be analyzed 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.

US EPA DETAILED COMMENTS ON THE JOINT DRAFT ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED MASTER SPECIAL USE PERMIT AND PERMIT TO CONSTRUCT POWER LINE REPLACEMENT PROJECTS, SAN DIEGO AND ORANGE COUNTIES, CA, OCTOBER 28, 2014

Aquatic Resources

Geographic Extent of Waters of the United States and Section 404(b)(1) Guidelines

The purpose of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of WUS. These goals are achieved, in part, by prohibiting discharges of dredged or fill material that would result in avoidable or significant adverse impacts on the aquatic environment. Pursuant to Section 404 of the CWA, discharge of dredged or fill material to WUS requires a permit issued by the Army Corps of Engineers. If a permit is required, the EPA will review the project for compliance with the Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230) (Guidelines), promulgated pursuant to Section 404(b)(1) of the CWA. The Guidelines presume that practicable alternatives to discharges in special aquatic sites exist for non-water dependent projects, unless clearly demonstrated otherwise.

According to the Draft Environmental Impact Statement, an assessment of potential jurisdictional WUS for all project areas was not conducted (p. D.4-6). A formal jurisdictional delineation would be required prior to project implementation by the various regulatory agencies to determine if permitting would be necessary. The Draft EIS also states that project activities in drainage and wetland feature areas will be carried out under non-notifying Nationwide Permit No. 12 (NWP 12) issued by ACOE, and a 401 Certification from the Regional Water Quality Control Board (Certification 11C-114; Categorical Exemption) (p. D.4-119). Permanent impacts to WUS associated with pole removal and replacement are approximately 26.8 square feet (< 0.001 acre). Temporary impacts to WUS and streambeds affect 0.21 acre. Compensatory mitigation was not required. We also note that sensitive biological communities including southern riparian forests, freshwater seep/open water, and wet montane meadows occur within the proposed power line replacement project area (p. D.4-16).

The extent of direct and indirect impacts to WUS cannot be determined without completion of a jurisdictional delineation. This information is necessary in order to ensure that only the Least Environmentally Damaging Practicable Alternative (LEDPA) is authorized by the ACOE as required by the Guidelines. It is unclear how the Draft EIS can conclude that impacts to waters will be authorized under a non-notifying NWP 12, without an approved jurisdictional delineation. While NWP 12 authorizes discharges of dredged or fill material into WUS associated with utility line activities, there are limits on the extent of discharge authorized under NWP 12, as well as conditions requiring pre-construction notification to the district engineer prior to commencing the activity (33 CFR Part 330).

Given the scale and nature of the action, a planning level assessment of aquatic resources will help identify the environmentally preferred alternative. This evaluation includes utilization of existing water resource data contained in the National Hydrography Dataset, National Wetland Inventory, USGS topographic maps and high resolution digital photography, as well as necessary field checking of the

alternatives. Once the environmentally preferred alternative is identified, a jurisdictional delineation should be conducted prior to final design of the selected transmission line alignment. With a jurisdictional delineation, the applicant can use the design flexibility inherent in transmission line design (e.g., adjust tower placement and access roads) to demonstrate the alignment is the LEDPA, in compliance with the Guidelines.

Recommendations:
Discuss, in the Final EIS, the process to be used to demonstrate compliance with the CWA Section 404 (b)(1) Guidelines.

The EPA recommends that the United States Forest Service require completion of a planning level assessment for potential impacts to WUS prior to issuance of the Final Environmental Impact Statement.

The Final EIS should state CWA Section 404 permit authorization will be obtained for any discharges into waters as it is premature to conclude impacts will be authorized under NWP 12.

The EPA recommends that the Final EIS include additional measures to further minimize of impacts to aquatic resources, such as, reducing the width of access roads and constructing bridges over WUS.

Ephemeral Washes and Other Aquatic Resources

The Final EIS should include additional detailed information on the function and acreage of ephemeral washes that may be impacted. Natural ephemeral washes perform a diversity of hydrologic and biogeochemical functions that directly affect the integrity and functional condition of higher-order waters downstream. Healthy ephemeral waters with characteristic plant communities control rates of sediment deposition and dissipate the energy associated with flood flows. Ephemeral washes also provide habitat for breeding, shelter, foraging, and movement of wildlife. Many plant populations are dependent on these aquatic ecosystems and adapted to their unique conditions. Potential damage that could result from disturbance of flat-bottomed washes includes alterations to the hydrological functions that natural channels provide in arid ecosystems: adequate capacity for flood control, energy dissipation, and sediment movement, as well as impacts to valuable habitat for desert species.

Recommendations:
The FEIS should quantify the likely impacts to ephemeral streams from the proposed project, for each project alternative, and discuss potential mitigation.

The Final EIS should commit to avoiding, if possible, or minimizing direct and indirect impacts to ephemeral streams (such as erosion, migration of channels, and local scour).

Air Quality

The Draft EIS describes the formation of ozone from nitrogen oxides and volatile organic compounds in the presence of ultraviolet radiation, and states that ideal conditions for ozone formation occur during summer and early autumn, on days with low wind speeds or stagnant air, warm temperatures, and cloudless skies. We note that helicopters may be used to deliver and remove construction material and personnel from areas with rugged terrain and where ground access would not safely accommodate the required construction equipment and vehicles (p. B-42). The EPA recommends the consideration of scheduling of heaviest helicopter usage during the fall and winter months when ozone formation is lowest. We also recommend the best available control technologies be used to reduce helicopter emissions.

Recommendations:
The Final EIS should consider minimizing helicopter construction during the spring and summer months and discuss the feasibility of scheduling the heaviest helicopter use during the fall and winter when ozone production is the lowest. Quantify the potential benefits to air quality and discuss whether impacts to other resources could result from construction during cooler, and potentially wetter, months.

Identify, and commit to using, the best available control technologies to reduce helicopter emissions.

Cultural Resources and Coordination with Tribal Governments

It is important that effective tribal consultation continue to occur, and the EPA commends the USFS on its consultation efforts conducted so far. 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.

Recommendation:
The Final EIS should discuss how any concerns raised by the Tribes were addressed and resolved. Provide an update on the status of the coordination with the Tribes and whether it is still ongoing. We recommend that any measures to reduce impacts to tribal and cultural resources that are developed be identified in the Final EIS and adopted in the Record of Decision.