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

December 18, 2006

Ms. Tiffany Kayama
CESPL-PD-R
U.S. Army Corps of Engineers
Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

Subject: Draft Supplemental Environmental Impact Statement San Luis Rey Flood Control Project, San Diego County, CA (CEQ# 20060444)

Dear Ms. Kayama:

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

Based upon our review, we have rated this Draft Supplemental Environmental Impact Statement (DSEIS) as EC-2, Environmental Concerns - Insufficient Information (see enclosed "Summary of the EPA Rating System"). The San Luis Rey River Flood Control channel provides designated endangered species critical habitat and recreational and aesthetic benefits. While we commend the US Army Corps of Engineers efforts to balance flood protection and endangered species needs, we remain concerned with the potential level of impacts to waters of the U.S., wetlands, and riparian habitat which would occur with the proposed vegetation mowing and sediment removal action.

Of specific concern are compliance with Section 404(b)(1) of the Clean Water Act, performance of a comprehensive alternatives analysis, and identification of the Least Environmentally Damaging Practicable Alternative. The DSEIS states that the basic project purpose is flood control maintenance. We note that actions to provide a specific level of flood control and protection are not limited to, or dependent on, activities within waters of the U.S. or special aquatic sites. Our detailed comments are enclosed.

We appreciate the opportunity to review this DSEIS and are available to discuss our detailed comments. Please send two copies of the Final SEIS to this office at the same time it is officially filed with our Washington, D.C. office. If you have questions, please contact Laura Fujii, the lead reviewer for this project, at (415) 972-3852 or at fujii.laura@epa.gov.

Sincerely,

/s/

Paula Bisson, Manager
Environmental Review Office

Enclosures: Summary of EPA Rating System
Detailed Comments

cc: David A. Zoutendyk, US Fish and Wildlife Service

EPA DETAILED COMMENTS, DSEIS SAN LUIS REY FLOOD CONTROL PROJECT, SAN DIEGO COUNTY, CA, DECEMBER 18, 2006

Clean Water Act Section 404(b)(1) Alternatives Analysis

Introduction

The purpose of Section 404(b)(1) of the Clean Water Act (Guidelines) is to restore and maintain the chemical, physical, and biological integrity of waters of the United States. These goals are achieved, in part, by controlling discharges of dredged or fill material (40 CFR 230.1(a)). Fundamental to the Guidelines is the principle that dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that there is no less environmentally damaging practicable alternative that achieves the basic project purpose.

The U.S. Corps of Engineers (Corps) is proposing to physically alter the San Luis Rey Flood Control channel with extensive sediment excavation and vegetation mowing. Given the extent of the impacts associated with the proposed operation and maintenance plan, the final Supplemental Environmental Impact Statement (FSEIS) must include a comprehensive alternatives analysis and clearly demonstrate that the preferred alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the overall project purpose while not causing or contributing to significant degradation of the aquatic ecosystem.

Project Purpose

The first step in completing a comprehensive alternatives analysis is the project purpose statement. The SEIS states that the basic project purpose is "flood control maintenance, which is water dependent.[1]" The definition of water dependent as stated in the Guidelines is limited to "activities requiring access or proximity to or siting within a special aquatic site to fulfill the basic project purposes (40 CFR 230.10(a)(3))." Flood control and flood protection are not limited to siting within waters of the U.S. or special aquatic sites. There are flood control measures to maintain and improve the level of flood protection that does not involve discharges of dredged and fill material into waters of the U.S.

> **Recommendation:**
> The Corps and local sponsor should reassess the conclusion that the basic project purpose of flood control maintenance is water dependent. We note that flood control is not a water dependent activity. For instance, placing development outside the 100-year floodplain, increasing levee heights, and providing additional flood detention areas, bypass systems, and a flood warning system would all serve to maintain and improve flood control and protection. These examples demonstrate that flood control and related maintenance does not require filling within waters of the U.S., including wetlands, and is therefore, by the definition in the Code of Federal Regulations, not a water dependent activity.

[1] Appendix B-2 Clean Water Act Section 404(b)(1) Evaluation and Section 401 Correspondence, p. 2.

Alternatives Analysis

The DSEIS alternatives analysis limits the range of alternatives to alternatives which achieve a minimum flow conveyance of 71,200 cfs (175-year flood protection) to negate the need for Congressional reauthorization which would be triggered by a change greater than 20% in the previously authorized flow conveyance capacity. Although the Corps states that reauthorization may result in greater environmental impacts and project delay, there is no information or data provided to support these statements. The avoidance of Congressional reauthorization is not a valid reason for eliminating alternatives. We also note that the DSEIS concludes "that it is now expected that completing the remaining work will result in exceeding the Section 902 limit, thereby requiring additional authorization by Congress (p. ES-15, #25)." Thus, it appears the project may already need Congressional reauthorization due to the increase in total project costs.

EPA believes that the alternatives analysis in the DSEIS does not demonstrate compliance with the Guidelines. A reasonable range of alternatives that meet the project purpose while avoiding and minimizing damage to the San Luis Rey River should be evaluated in the FSEIS.

Recommendations:

We recommend the Corps and local sponsor consider flood control activities that are not water dependent, with the presumption that an alternative that does not propose fill in waters of the U.S. or a special aquatic site is available and capable of being implemented.

To achieve the basic project purpose and comply with the Guidelines, the FSEIS should evaluate alternatives for flood protection through setback levees or increasing the height of existing levees, alternatives for flood protection through an in-channel non-native plant removal program, and 100-year flood protection alternatives. Invasive species may result in excessive flood debris which block flood flows. Thus, their removal may improve flood flow capacity. We also note that 100-year flood protection is consistent with FEMA regulations for removing flood insurance requirements (www.FEMA.gov).

Other flood protection measures to consider are reduction of impervious surfaces that are a source of runoff, levee reinforcement such as shear walls, and additional detention basins. These alternatives and measures may eliminate or reduce the need for in-channel vegetation and sediment management and the associated adverse impacts to endangered species critical habitat.

The FSEIS should clearly demonstrate that the preferred alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the overall project purpose while not causing or contributing to significant degradation of the aquatic ecosystem.

The DSEIS lists a variety of management measures that were evaluated and then screened (pps. 4-1 to 4-2). However, the DSEIS does not describe the screening process and criteria, state whether these measures are incorporated in the analyzed alternatives, or whether the measures are considered for implementation.

Recommendation:
The FSEIS should provide a detailed description and evaluation of the listed management measures. Describe for each measure whether it is part of an analyzed alternative, whether the measure has been adopted for implementation, or, if not adopted, the reasons the measure was eliminated from further consideration.

Environmental Consequences

The DSEIS states that sediment outflow to the ocean would increase over the existing geologic processes as a result of vegetation management and sediment removal (p. 5-7). Mitigation measures include cessation of management activities during significant rain events, regular inspections, evaluation of the effectiveness of channel and management activities, and implementation of Best Management Practices. However, the increase in sediment outflow may remain significant even with these proposed mitigation measures (p. 5-8).

Recommendations:
We recommend evaluation of potential effects of increased sediment outflow on the outlet of San Luis Rey River and Oceanside beaches. For instance, evaluate the potential for blockage of the river mouth and changes to beach formation processes.

The Corps and local sponsor should also evaluate and consider additional means to minimize project induced sediment outflow. The FSEIS should describe the "appropriate measures" which will be implemented if inspections and monitoring identify excessive channel incision or systemic scour of vegetation referenced in Mitigation Measure ER-3.2 (p. 5-8).

Chapter 5 Environmental Consequences evaluates the magnitude of impacts for each resource area in comparison to specific significance criteria. If the impact is deemed significant, mitigation measures are described to reduce these impacts. The evaluation of biological resource impacts does not appear to follow this analysis format (pps. 5-41 to 5-100). Instead, impacts to specific biological resources are described without reference to significance criteria or potential mitigation measures to reduce identified impacts. While we understand that the Proposed Action has undergone significant design changes to avoid and minimize biological resources impacts, the FSEIS should provide public disclosure of the significance criteria and data supporting the conclusions of minimal or no biological resource effects.

Recommendation:
We recommend the evaluation of biological resources follow the same format as used for other resource areas by highlighting significance criteria, the significance level of anticipated effects, data supporting the level of effect conclusions, and potential additional mitigation measures.

Mitigation

Proposed management actions are inaccurately described as mitigation measures in the DSEIS. An example is the evaluation of the potential impact--ER-2 *Substantially alter topography beyond that which would result from natural erosion and deposition*. This evaluation states that the proposed removal of sediment would be sudden and result in a significant impact. To reduce the magnitude of this significant impact, mitigation measure ER-2.1 is provided. However, measure ER-2.1 appears to describe the proposed sediment removal management process that would result in the previously identified significant impact (pps. 5-4 to 5-5).

Recommendation:
Mitigation includes avoiding, minimizing, rectifying, reducing and compensating for a significant effect (40 CFR 1508.20). The goal of a mitigation measure should be a physical change to the proposed action that will actually reduce or eliminate the identified impact. We recommend the FSEIS provide specific tangible actions that will reduce the identified significant physical environmental effects.

The Proposed Action would mow vegetation in rotating in-channel strips to provide at least one vegetation corridor between 5-10 years of age. The goal is to maintain a minimum level of critical habitat for the endangered least Bell's vireo. However, if sediment removal is deemed necessary, multiple rotational areas may be subject to sediment management removal simultaneously (p. 4-22). This would require unscheduled removal of vegetation within the critical habitat vegetation corridor (p. 5-7). The DSEIS does not describe measures to mitigate for this unscheduled removal of critical habitat.

Recommendation:
The FSEIS should include a description and commitment to mitigation for the unscheduled loss of critical habitat which may be removed by a sediment removal action.

Sediment Reuse

The DSEIS states that future use of the channel sediment for beach replenishment is potentially viable based on informal consultation with the Corps' Project Delivery Team for the in-progress Oceanside Beach Replenishment Study. Coordination with appropriate resource agencies would occur at the time beach disposal of sediment is considered (p.2-2).

Recommendation:
If an alternative is selected that involves removing sediment, EPA supports use of clean sediment for beach replenishment reuse. Consideration of channel sediment for beach nourishment should comply with the September 25, 2006 Regional General Permit 67 (RGP-67) for Discharges of Dredged or Upland-Derived Fill Materials for Beach Nourishment.

General Comments

The DSEIS includes seemingly conflicting statements regarding the water quality status of the lower San Luis Rey River, stating that the lower San Luis Rey River is not listed as an impaired water body (p. 5-37) while also stating the San Luis Rey River at Oceanside is in the Total Maximum Daily Load (TMDL) program (p. 5-33). We note that a TMDL is triggered when a water body is listed as impaired.

Recommendation:
The FSEIS should provide an accurate and clear description of the water quality status of the project area, lower San Luis Rey River, and San Luis Rey River at Oceanside and the boundaries of each geographic area.

The DSEIS has numerous errors, inconsistencies, and poorly written passages. For example, different dates are quoted for the same Biological Opinion; text is repeated, missing, or misplaced; words are misspelled or incorrect (e.g., “USFWSs” instead of services, pps. 5-125 to 5-126); and tables and charts are mislabeled and hard-to-read. As a result, the DSEIS is difficult to understand which raises doubt regarding the accuracy of the evaluation and conclusions.

Recommendation:
We recommend the FSEIS be more carefully written and thoroughly edited and proof-read prior to release for public review.