



SANTA ANA RIVER WASH AREA COORDINATED PLANNING SUBCOMMITTEE AGENDA

SUBCOMMITTEE MEMBERS

JODY SCOTT, MEMBER

JOHN P. TIMMER, MEMBER

Monday, January 24, 2011
2:30 p.m.
Upright Conference Room
27215 Base Line
Highland, California

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Jody Scott, Member

John Timmer, Member

SANTA ANA RIVER WASH AREA COORDINATED PLANNING SUBCOMMITTEE

January 24, 2011 – 2:30 p.m.

CALL TO ORDER

1. Update Wash Plan Activities
ACTION:

ADJOURN

I, Elena Rodrigues, Administrative Assistant III, of the City of Highland, California, certify that I caused to be posted this Agenda on the 20th of January 2011, by 5:30 p.m. in the following designated areas:

City Hall
27215 Base Line

Highland Branch Library
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Elena Rodrigues, Administrative Assistant III



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

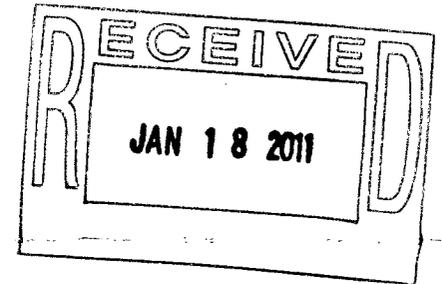
1630 West Redlands Boulevard, Suite A
Redlands, CA 92373-8032
(909) 793-2503
Fax: (909) 793-0188

P.O. Box 1839
Redlands, CA 92373-0581
Email: info@sbvwcd.dst.ca.us
www.sbvwcd.dst.ca.us

January 6, 2011

John Jaquess
City of Highland
27512 Baseline
Highland, CA 92346

RE: Status Report on Wash Plan Activities



Dear Mr. Jaquess,

It has been a several months since the last Wash Plan Task Force meeting and I believe that a brief status report on Wash Plan activities is in order to keep you informed of our progress.

You will recall that at the March 04, 2010 Task Force meeting, Water Conservation District staff reported that the draft Habitat Conservation Plan (HCP) had been completed and that the administrative draft Final Environmental Impact Statement (EIS) on the Land Exchange had been submitted to the BLM for approval and public release. The BLM did issue the EIS, and public comment was received, and draft responses were prepared. BLM also initiated informal consultation with the U.S. Fish and Wildlife Service (USFWS) on the EIS. A preliminary review draft of the HCP had been submitted to Nancy Ferguson with USFWS back in September, 2009, and up until September of this year, and the District had been awaiting the results of her review. The final steps in the approval process, both in terms of finalizing the EIS and ultimately issuing the ESA incidental take permits, primarily hinge on the USFWS.

You may recall that discussion at the March Task Force meeting also focused on current fiscal issues associated with the Wash Plan. Based on the presentation at the Task Force meeting, the governing committee recommended that the District invoice Task Force members for future project management costs and any other anticipated costs necessary to complete the Wash Plan, and obtain the incidental take permits required for project implementation. The Task Force directed the District to make a careful estimate of final project completion costs, given the sensibilities of any additional funding requests, in the current fiscal climate. In order to prepare a reliable estimate of future costs, the District was awaiting USFWS feedback on the HCP and the Section 7 process.

Unfortunately, we had great difficulty engaging the USFWS in completing the Wash Plan review process, until recently. After several requests for a meeting, we finally met on September 9th with Ms. Ferguson and her new boss, Assistant Field Supervisor Ken Corey, at a meeting also attended by the BLM. We have had a series of meetings with the BLM and the USFWS since September, with the last meeting on October 28th.

The direction and feedback we have received from USFWS was not what we had hoped, and unfortunately not consistent with representations USFWS had made through the many years of negotiating the compromises on mining and mitigation properties through the development of the Wash Plan. The bottom line is that the USFWS will not support the land exchange as it is presented currently configured, and will require extensive revisions to the HCP.

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MANAGER

Daniel B. Cozad

Additionally, the BLM is concerned with the adequacy of the EIS based on the comments from the Center for Biological Diversity, and a recent case holding from the Ninth Circuit on a similar factual situation in Arizona.

Our meeting of October 28th was designed to get the two federal agencies communicating with each other productively again on processing the Wash Plan, and to flush out exactly what defects USFWS found with the plan it had helped develop for land uses after the exchange. We also sought, and received, technical comment on the HCP. Attached is the first formal response that we have received from the USFWS regarding their views on the overall plan and what is needed to complete the federal review process.

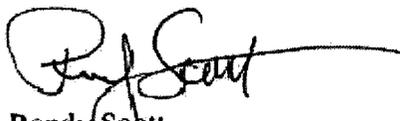
At our October 28th meeting, the USFWS and the BLM did offer an approach to changing the current documents in manner that would remedy the existing problems, as they see them. Their proposed approach would entail preparing a new draft EIS that presents the land exchange and the HCP as combined projects. The new draft EIS would include an expanded alternatives analysis for the EIS and a full environmental analysis of "Plan A". The USFWS and the BLM would be "co-lead agencies" for the NEPA document.

This approach offers the benefit of providing a single NEPA compliance for all federal actions involved in implementing the Wash Plan, and it would greatly simplify the Section 7 consultation process associated with the land exchange. (Indeed, this was our original approach, before USFWS directed us in 2006 to process the Land Exchange and ESA permitting separately.) The approach carries the burden, however, of the need for extensive changes to the HCP, and EIS. We have reviewed the changes the federal agencies have requested, and have concluded that they are possible, but there will be considerable cost and time involved in making these changes.

We are in the process of obtaining cost estimates and an estimate of the time involved in the revisions so that we can present a complete financial picture, to enable the Task Force to make an informed decision on how, or whether, to proceed. We anticipate convening a Task Force meeting in late January or early February to present this information.

Thank you for your patience and support of the Wash Plan program. Please do not hesitate to contact me or Daniel Cozad, General Manager, with any questions that you may have regarding this update.

Sincerely,



Randy Scott
Wash Plan Project Manager

Enclosure: USFWS letter dated December 8, 2010

Cc: Task Force Governing Committee Members



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services

Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011

In Reply Refer To:
FWS-SB-08B0318-10TA0126

DEC 08 2010

Mr. Daniel B. Cozad
General Manager
San Bernardino Valley Water Conservation District
1630 Redlands Boulevard, Suite A
P.O. Box 1839
Redlands, California 92373

Subject: Upper Santa Ana River Habitat Conservation Plan (USARHCP), Cities of Highland and Redlands, San Bernardino County, California

Dear Mr. Cozad:

The San Bernardino Valley Water Conservation District (SBVWCD) submitted a draft of the Upper Santa Ana River Habitat Conservation Plan (informally known as "Plan B") to us on January 12, 2010 (ICF Jones & Stokes, dated January 12, 2010). The implementation of this proposed Habitat Conservation Plan (HCP) is dependent upon two Federal actions to be undertaken by the Bureau of Land Management (BLM): specifically, an amendment to the South Coast Resource Management Plan (RMP) for which the Record of Decision was signed in June of 1994, and an exchange of federally owned land currently managed pursuant to this RMP for land owned by the SBVWCD. The lands currently owned by the BLM proposed for exchange are designated as Areas of Critical Environmental Concern in the RMP. The draft HCP addresses the federally endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*, "SBKR"), Santa Ana River woolly-star (*Eriastrum densifolium* ssp. *sanctorum*, "woolly-star"), and the slender-horned spineflower (*Dodecahema leptoceras*, "spineflower"), collectively referred to as the "covered species" in the draft HCP. Designated critical habitat for the SBKR is within the HCP area. The RMP addresses the woolly-star and spineflower; both of these plant species are also listed as endangered under the California Endangered Species Act.

We provided written comments on the draft HCP to David Cosgrove and Randy Scott, representatives of the SBVWCD, via electronic mail on September 30, 2010. We met with Dave and Randy and personnel from ICF Jones & Stokes at various times during the months of September and October of this year; the BLM was involved in some, but not all, of these meetings. At our most-recent meeting of October 28, 2010, we were asked to identify in writing our primary concerns regarding Plan B above so that the SBVWCD and stakeholders in this HCP would have more specific direction from our agency on how to proceed.

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We provide the following information in keeping with our responsibilities under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), and in keeping with our agency's mission to work "with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."

Plan B is primarily a management-based HCP. We have agreed that management to benefit the covered species on Federal lands is an acceptable part of the overall, broader conservation strategy; however, because the loss of species and their habitat would be into perpetuity, the assurances of long-term conservation and management of lands to offset these losses must be into perpetuity as well. To date, the BLM and our agency have not yet determined how such protection and management assurances could be provided on public lands.

A sufficiently robust management plan to address the management-based aspects of the conservation strategy in Plan B is currently lacking in the draft HCP. Habitat management to benefit the proposed covered species would be experimental in nature. Although our agency is working with the U.S. Army Corps of Engineers (Corps) on the implementation of a long-term management plan for these species within the Woolly-star Preserve Area which is within the boundaries of Plan B, some of the experimental manipulations of habitat are just being initiated and no conclusive results have yet been obtained.

Financial assurances that the proposed management would be carried out are also needed. An Implementing Agreement that identifies the means by which those financial commitments would be met will be necessary before the HCP can be circulated for public review.

We are aware that the mining stakeholders in Plan B, Robertson's Ready Mix (RRM) and CEMEX, are proposing to pursue mining on privately-owned lands within the Plan B boundary and are beginning the pre-application phase with the Corps for issuance of a § 404 permit from pursuant to the Clean Water Act [33 U.S.C. § 1251 *et seq.* (1972)]. Representatives of RRM and Cemex have stated that they consider this proposal an interim strategy until the Federal actions and the HCP process are completed. If so, we anticipate that our agency would be asked to consider a proposal to mine within the Plan B boundary under section 7 of the Act. If implemented, this activity would result in significant revisions to the draft HCP.

We were asked to provide this information in part, so that your agency and the Plan B stakeholders could better-consider future financial commitments that may be needed in order to complete the HCP process; specifically, document preparation. In addition to the consideration that should be given to the proposal to mine on private lands within the Plan B boundary, we strongly recommend that serious consideration be given to the development of the critical management aspects of Plan B and a realistic timeframe for implementation of the BLM actions. Should the HCP process move forward, our agency is considering including our evaluation of the draft HCP in a single, revised NEPA Environmental Impact Statement for the BLM's proposed amendment of the RMP Amendment and exchange of Federal lands.

Mr. Daniel B. Cozad (FWS-SB-08B0318-10TA0126)

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We are available to assist in further discussions regarding the above. Any questions or comments regarding this should be directed to Nancy Ferguson at (760) 431-9440, extension 244.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy Ferguson".

 Kennon A. Corey
Assistant Field Supervisor

cc:

John Kalish, Bureau of Land Management, Palm Springs, California

David B. Cosgrove, Rutan & Tucker LLP, Costa Mesa, California

Christine Geoyvaert, Robertson's Ready Mix, Corona, California

Scott Hess, Cemex, Moorepark, California 93020

Robin Maloney-Rames, California Department of Fish and Game, Ontario, California