

F

COMMENTS AND RESPONSES ON THE DRAFT EIS/SEIR AND HCP

F. O INTRODUCTION

This appendix contains the comments received on the Draft Wash Plan Habitat Conservation Plan and EIS/SEIR. Each comment has been assigned a unique number from 1 to 192. The General Response to Comments is Comment 1, therefore the response to individual comments starts with comment 2.

The appendix is organized by presentation of each comment immediately followed by the responses to that comment. The comment letters are presented in section F.3 at the end of the appendix, with the exception of letter 1, which we couldn't photocopy. **Table 1** summarizes the comment letter, agency or individual that submitted the letter, and date of the comment letter

TABLE 1 Summary of Comment Letters

No	Date	From	Comments/Concerns
1.	9-Jan-20	Chuck Jojola	Interest in gold panning in/adjacent to Upper Santa Ana River Wash
2.	13-Jan-20	City of Redlands Municipal Airport (REI)	Adjust HCP boundaries to incorporate REI Master Plan, Land Uses , associated Airport Capital Improvement Plan, Existing Air Space and Noise Plans, etc. into the HCP/EIS. Revise HCP and EIS to address impacts/implications for adding these items to the HCP as well as recognizing REI in FAA's National Plan of Integrated Airport Systems
3.	20-Jan-20	California Pilots	Concerns with land use compatibility with airports
4.	21-Jan-20	City of Highland	Would like to provide clarifications to maps and languages used to describe City properties and facilities in various parts of the HCP, and will not in any way affect the technical analyses or conclusions of the associated EIS and Supplemental EIR
5.	21-Jan-20	Dennis Barton	Supports the balance the Wash Plan HCP provides
6.	21-Jan-20	Center for Biological Diversity	Concerns of survival and recovery of listed species. Requests to address potential deficiencies in HCP, clarification of conservation lands and further justification of take. Concerned HCP does not provide adequate analysis that full mitigation will be achieved.

No	Date	From	Comments/Concerns
7.	22-Jan-20	U.S. Environmental Protection Agency	Supports the overall goals of environmental stewardship of the HCP. Concerns about potential impacts from activities covered by the HCP to several resource areas. Need further clarification on: Water Quality, groundwater, aggregate mining, Waters of the U.S., flood control, air quality, Santa Ana Sucker, and SBKR impacts. HCP does not address concomitant management with HCP Preserve lands. Clarification of BLM land classifications after land exchange. Address Children's Environmental Health and Safety as affected by mining activities. Provide more information regarding Consultation and Coordination with Tribal Governments. Address environmental justice. Provide most current data.
8.	22-Jan-20	Albert Kelley, Bettina MacCleod	Concerns about exact usage for the acreage designated as "conserved", who will be in control of patch work of ownership of conservation lands, water recharge basin expansion effects to species, mitigation lands, label of "neutral land" on the borrow pit site. Request additional mitigation land for BLM land transfer. Disagree with 30% reduction in mining land use. Concerns about effects to RAFSS
9.	22-Jan-20	Save Lytle Creek Wash/Jane Hunt, Lynn Boshart	Concerns about adequate mitigation lands set aside for SBKR in perpetuity
10.	22-Jan-20	Redlands Airport Association	Redlands Airport Association
11.	23-Jan-20	US Federal Aviation Administration	Concerns of land use and separation criteria for potential wildlife hazard attractants and increase of aviation hazards with implementation of HCP
12.	23-Jan-20	Vulcan Materials Company Western Division	Concerns with the conservation strategy
13.	27-Jan-20	California Dept of Fish and Wildlife	Concerns about spatial/temporal isolation of spineflower island

NEPA and CEQA regulations direct the lead agencies to make a “good faith, reasoned analysis” in response to “significant environmental issues raised” in comments on a Draft EIS/SEIR (see State CEQA Guidelines Section 15088(c); 40 CFR 1503.4). Most of the comments addressed the issuance of an Incidental Take Permit and various elements of the Habitat Plan itself (i.e., the Proposed Action in the EIR/SEIS). All other comments were considered to be related to the Habitat Plan. Nevertheless, to streamline documentation and avoid confusion, all public comments received during the comment periods are responded to in this Final EIS/SEIR. Per CEQA and NEPA guidance, where there has been voluminous response, similar comments have been summarized and consolidated; however, all substantive issues raised in comments received on the Draft EIR/SEIS are addressed. This section contains General Responses that address common comments received and responses to other comments that do not fall within the scope of the general responses.

F.1 GENERAL RESPONSES TO COMMENTS

The Local Partners and the Service and BLM reviewed and responded to each of the 192 public and agency comments on the Draft Habitat Plan and EIS/SEIR. In the review of all public comments received on the Draft Habitat Plan and EIS/SEIR, the Local Partners and the Service identified 8 recurring themes, which are expressed in this introductory section. Instead of repeating responses to these themes throughout the individual responses, the Local Partners and Wildlife Agencies are responding to them in this introductory section. When individual comments can be addressed (or partially addressed) by a General Response, the individual response directs the reader to this introductory section. General Response to Comments: 1) Adequacy of alternatives; 2) Need to recirculate; 3) Climate Change-Impact to Species HCP authorizes otherwise lawful activities (e.g. other permits needed); 4) Adequacy of Mitigation; 5) Additional Permitting/Scope of EIS/SEIR; 6) Specificity of Comments; 7) Edge Effects; 8) Possible Future Changes to ACEC by BLM.

ADEQUACY OF ALTERNATIVES

The EIR/SEIS considered nine different alternatives, and brought three alternatives forward for detailed analysis. [EIS, p. 2.0-1] These were the No Project Alternative, the proposed action, and the 2008 land use plan. It should be noted in this respect that the 2008 plan, which was described in the predecessor EIR of the San Bernardino Valley Water Conservation District, was itself formulated after consideration of a series of alternatives in that 2008 environmental document. Those included not only the “No Project” alternative, but also mining of then-existing leases, limited mining in then-existing quarries, and a reduced mining footprint.

The NEPA requirements for consideration of alternatives appear in 40 CFR section 1502.10(E), and section 1502.14. The discussion of alternatives is subject to a standard of reasonableness, which admits to no hard and fast rules. (“Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg 18, 026 (1981), Question 1(b).”) (Cited as “Forty Questions” herein.) Further, the reasonableness of the defined range of alternatives may be viewed in light of a project’s purpose. (*City of Carmel by the Sea v. U.S. Department of Transportation*, 123 F 3d 1142 (9th Cir 1997.) When a project’s purpose is to protect the environment, the alternatives requirement is interpreted less strictly. (*Kootenai Tribe v. Veneman*, 313 F 3d 1094, 1120 (9th Circuit 2002).)

The Wash Plan is such a project to protect the environment. Its consolidation of existing “checkerboard” mining properties, increased connectivity through conservation of habitat areas into contiguous conservation areas, enhanced benefits of coordinated habitat management on current and future conservation lands (including the Woolly Star Preserve Area (“WSPA”) to be dedicated as part of the conservation mitigation strategy, and BLM lands that will be exchanged pursuant to congressional dictate, all advance environmental objectives.

In this light, the three alternatives given specific, NEPA-level analysis are sufficient to represent the spectrum of alternatives available. The required “no action” analysis is present, and is consistent with consideration of no change from current habitat management or intensity. (Forty Questions, Question 3.) The 2008 land use plan synthesizes over a decade of prior history of the

project's processing and analysis, and offers meaningful comparison to both the "no project" and proposed project scenarios.

No commenting party has suggested any specifically formulated additional alternative that it contends is consistent with the project's purpose, as set forth in the "Purpose and Need" section, which has gone unanalyzed.

Moreover, in establishing new conservation areas, selection of a reasonably determined amount and location of acreage for the conservation preserve is justified. Where there are a potentially very large number of alternatives (involving innumerable potential ranges of acreages devoted to habitat or conservation uses), only a reasonable number of examples need be analyzed and compared. (Forty Questions, Question 1(b).)

Those alternatives considered, but not brought forward for analysis, have also been adequately described in the EIS. (EIS, pages 2.1-14; 2.5-1, 2.) Given congressional legislation that directs the completion of the land exchange¹, the elimination of other potential BLM-related alternatives, such as those previously considered in the 2008 EIR, is appropriate. The considered alternatives of complete take avoidance and/or avoiding any spineflower impact, have also been discussed, and their infeasibility adequately described.

Regarding CEQA, the requirements for alternatives discussion are less detailed. CEQA does not require that a discussion of alternatives be exhaustive, but only that agencies make an objective, good-faith effort to comply. (*Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 910 ["Absolute perfection is not required."].) "Under the 'rule of reason,' an EIR's discussion of alternatives is adequate if it provides sufficient information to compare the project with a reasonable choice of alternatives." (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1264 ["An EIR need not consider every conceivable alternative but must consider a range of alternatives sufficient to permit the agency to evaluate the project and make an informed decision, and to meaningfully inform the public."].)

In addition to the Proposed Project (Alternative B), the EIS/EIR analyzed 2 alternatives in detail, including a No Action Alternative and the 2008 Land Management Plan Alternative. It also considered and rejected several additional alternatives, and explained while they were not selected for detailed analysis.

Accordingly, the EIS/EIR satisfied CEQA's requirement that a reasonable range of alternatives be analyzed. In addition, notwithstanding comments suggesting that feasible alternatives are available to ensure a more biologically robust conservation plan can be adopted, no commenter actually identifies any such alternative.

NEED TO RECIRCULATE

Under 40 CFR 1502.9(c)(1), supplemental environmental impact statements are required only if: (i) the agency makes substantial changes in the proposed action that are relevant to

¹ See, discussion of P.L. 116-9, *infra*.

environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Neither situation is presented here. The proposed project has not been changed in any meaningful way in response to comments. For example, a supplemental air quality analysis has been performed, and shows that, given updated emissions analytics, the applicable air quality thresholds of significance are not met, and therefore project modifications are not necessary. Clarification to conservation area acreages clearly define prior estimates, and do not constitute significant new information. None of the circumstances under NEPA that would require a supplemental or recirculated EIS are present here. It might also be noted that NEPA processes are expected to require some 12 months total. (Forty Questions, Question 35.) The scoping on this particular EIS/EIR occurred in 2015, taking this environmental review process well beyond that expected timeframe. Preparation of a supplemental EIS, and re-circulation of same, would prolong an already protracted process.

With regard to CEQA, recirculation is required only in specified circumstances, *e.g.*, where significant new information shows a new significant impact would result from the project, or where a “draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” (Guidelines, § 15088.5(a).) Recirculation is expressly not required where the new information added to the EIR “merely clarifies or amplifies” the information contained in the draft EIR. (Guidelines, § 15088.5(b); *Laurel Heights Improvement Assn. v. U.C. Regents* (1993) 6 Cal.4th 1112, 1138.)

As indicated above, none of the additional information that has been added to the record on this EIS/EIR changes the conclusions on environmental impacts, or mitigation. Rather, such information merely clarifies and confirms the information contained in the EIS/EIR by adding additional context to the determinations made therein. Accordingly, recirculation is not required under CEQA or NEPA.

CLIMATE CHANGE-IMPACT TO SPECIES

Certain comments acknowledge that the EIS/EIR discusses the Project’s potential contribution to global climate change, but request that an analysis of the potential impacts of climate change on the Santa Ana River wash and its flora and fauna be included.

The impacts of climate change in the wash are discussed in the Wash Plan, which is part of the Project analyzed in the EIS/EIR. (*See, e.g.*, Wash Plan, pp. 6-6 to 6-7.) As explained therein, although, “the extent and nature of impacts from climate change within the Plan Area are unknown,” “[p]rotection of habitat connectivity, especially along ecological gradients such as elevational gradients and along natural hydrologic features, provides the opportunity for species to shift their range and area of occupied habitat in response to climate change.” (Wash Plan, p. 6-7.) The Wash Plan further notes that “[a]dditional adaptive management may be needed to enhance connectivity at key locations, or to translocate individuals across existing barriers to movement.” Accordingly, the EIS/EIR has considered the interplay between global climate change and the impact to species and their habitats. In addition, the detailed land management plan based on the current AMMP will further analyze the interplay of climate changes and species persistence utilizing data from the Bureau of Reclamation Climate Change Analysis for

the Santa Ana River Watershed and recommendations from NWF's Climate Smart Conservation: Putting Adaptation Principles into Practice.

ADEQUACY OF MITIGATION

A number of comments call into question the EIR/EIS determination of the adequacy of the conservation mitigation strategy, and seem to urge standards of mitigation that are not supported by law.

Recognizing that the long-term goal of the Endangered Species Act is to bring species to a point where Endangered Species Act protections are no longer necessary (*see*, Comment 11), that does not mean that every project must assure full recovery for every species listed under the FESA. Under section 10 of the FESA, HCP applicants must minimize and mitigate the impacts of the taking to the maximum extent practicable and ensure that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. 16 U.S.C. section 1539(a)(2)(B)(ii) and (iv); 50 CFR 17.22(b)(2)(i)(B) and (D)/17.32(b)(2)(i)(B) and (D).

The Wash Plan HCP mitigates for permanent (585.3 acres) and temporary (99.7 acres) impacts to natural and/or non-native vegetation through permanent conservation of 892.5 acres of natural and/or non-native vegetation along with management of an additional 665.8 acres of lands owned by BLM or other partners. The conservation and management of 1,558.2 acres of rare, threatened and endangered species and habitats will support long-term persistence of the Covered Species in an area subject to strong development pressure. The development of the HCP Preserve focused on both the amount and location of lands needed to mitigate for Covered Activities, resulting in a pattern of conservation that minimizes edge effects, strengthens existing preserves, and maximizes connectivity across the Upper Santa Ana River Wash. Management efforts, funded through the Wash Plan endowment, will further limit fragmentation through active land management and monitoring including access control, habitat enhancement, restoration, and monitoring. Additionally species-specific avoidance and minimization measures are included (Final EIS/SEIR Table 2.0-3). The conservation strategy offsets the effects of the takings on the species, and the long-term conservation and management provided by implementation of the HCP will contribute to the recovery of the listed species.

Finally, it might be noted that while a number of comments take issue with the mitigation strategy, no commenting party has suggested any specific, feasible mitigation measures that allegedly should have been incorporated, but were not. In the face of non-specific complaints regarding methodology, an agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS, including the mitigation strategy. (Forty Questions, Question 29(A).)

ADDITIONAL PERMITTING/SCOPE OF EIS/SEIR

A number of commenters note that additional permitting, including permits relating to waters of the United States or streambed alteration permits, may be required for various covered activities. This is acknowledged. Section 10(A) of the Federal Endangered Species Act allows for permitting only for activities that are "otherwise lawful." Comments indicating that individual

covered activities may require individual specific additional permitting, including permits from the California Department of Fish and Wildlife, are acknowledged. In compliance with 40 CFR section 1502.25(b), a list of anticipated additional permits, potentially implicated by various of the covered activities referenced in the EIS/EIR, has been included as Section B1.1 of Appendix B of the EIS/EIR.

It should be noted, however, that a number of commenting parties seem to have misconstrued the scope of the proposed project. For example, the project does not propose any substantial increase in groundwater production. The Covered Activities include two wells, both of which are intended to serve ground water management functions, consistent with existing groundwater management under the applicable adjudication. The Bunker Hill Ground Water Basin, over which the Wash Plan area lies, is an adjudicated basin, and regulations for its groundwater administration occurred in *Western Municipal Water District, et al. v. East San Bernardino County Water District, et al.*, Case No. 78246-County of Riverside. This project neither regulates, nor expands, any party's right to groundwater production pursuant to that adjudication regulatory regime. Though the Wash Plan project does contemplate additional groundwater recharge basins, those recharge basins are proposed only as a potential facility option for groundwater recharge, and once developed will exist independent of diversion practices or changes in water rights, which fall outside the scope of this project. No expansion or relocation of diversion facilities, or diversion practices, are included in the Wash Plan Covered Activities. Further, to the extent that such diversion practices are derived from operation of the Seven Oaks Dam, that facility already operates under a Biological Opinion from 2002, and nothing in the Covered Activities intends to, or actually does, implicate any change in dam operations under that BO. Asserted impacts to the Santa Ana Sucker fish species, or other alleged impacts resulting from dam operations, must be directed to the Army Corps of Engineers, and the Local Sponsors who operate the seven Oaks Dam in cooperation with it. Such issues are beyond the purview of this project, and this EIS/EIR.

Last, the formation of the Upper Santa Ana Valley Bunker Hill Groundwater Council in 2018 provides the oversight mechanism for area-wide, coordinated groundwater management, including the import of groundwater recharge supplies, and replenishment. Such activities would therefore not occur unilaterally by any of the parties implementing the Wash Plan, but rather, would be subject to that organization's joint, and cooperative, activities.

Regarding streambed impacts from mining, it must be noted that no mining activity is proposed to occur within any active streambed. All mining will occur in upland areas not regulated as waters of the United States. Existing mining haul roads that cross streambed areas were constructed under permits previously processed, and are considered a part of the existing environmental condition baseline. New or expanded crossings either have, or as part of project implementation will have, permit applications in process.

SPECIFICITY OF COMMENTS

Some commenting parties, including the Center for Biological Diversity (*see*, Comment 9) attempt to incorporate, in wholesale fashion, comments made to the San Bernardino Valley Water Conservation District Draft Environmental Impact Report prepared in 2008, a document no longer under review. The Conservation District provided full responses to all of those

comments made by Center for Biological Diversity on 2008, and such responses were included in the Final EIR as Appendix K, Response to Comment Letter M. The EIR for which those comments were submitted was certified as final by the Conservation District, and no litigation or other legal challenge to the adequacy of the EIR, or its response to comments, was ever brought. Prior comments have therefore already been addressed. Further, such wholesale incorporation as is attempted here by the comment does not appear to be sufficient to raise, or preserve, issues relating to this EIS/EIS. It should also be noted that in 2008, the EIR had been undertaken prior to the development of the HCP. This EIS/EIR proceeds with the HCP for which incidental taking permits will be sought already prepared, and fully vetted for public review and comment. This EIS/EIR therefore proceeds under entirely different circumstances.

It is incumbent upon those who wish to participate in NEPA processes to structure their participation so that it is meaningful, in a manner that alerts the agency to the commenting party's position and contentions. (*Vermont-Yankee Nuclear Power Corp v. Natural Resources Defense Council*, 435 US 519, 553 (1978).) Passing reference to a 2008 comment letter fails to meet this standard. Moreover, issues raised by Center for Biological Diversity in the scoping processes here have been met. (See EIS/EIR, page 5.0-2.) Center for Biological Diversity submitted a March 4, 2015 letter, that called for complete surveys, enforceable mitigation, and an update of an air quality analysis. Each of these has been done and incorporated either directly into the EIS/EIR or in this response to comments. As such, detailed responses to each and every comment to the 2008 comment letter from Center for Biological Diversity to the San Bernardino Valley Water Conservation District Draft Environmental Impact Report prepared in 2008 are not required, and have not been provided here.

EDGE EFFECTS

Commenting parties have criticized the consideration of “edge” effects of uses adjacent to conservation areas. (*See, e.g.*, comments 23, 24.) These comments fail to acknowledge that the project, and the habitat conservation plan for which the incidental take permits will be sought, occur within an urban matrix. The proposed action maximizes habitat and conservation area contiguity, combines management of existing and new habitats, and also propagates interstitial areas to minimize occurrence of “edges” themselves. Therefore, the project – by definition – reduces “edges,” and therefore, of necessity, “edge effects.” By combining all of these project features, the proposed action minimizes “edge” effects, and maximizes cohesive benefits. The proposed action also takes otherwise fragmented and unconnected mining properties, consolidating them into a single contiguous mining area, further reducing “edges.” In essence, the entire proposed land exchange with BLM itself is a “edge” mitigation measure.

POSSIBLE FUTURE CHANGES TO ACEC BY BLM

Various comments, including those by the United States Environmental Protection Agency, question the management by the Wash Plan of exchanged lands, and raise the prospect of future revision by the Bureau of Land Management of ACEC, or other land use policies, governing its lands. BLM's existing commitment to environmental management of its lands is governed by the South Coast Resource Management Plan, which is in the process of being amended to conform with conservation objectives already determined to occur as a result of the project, in

the land exchange legislation passed by Congress. (*See*, P.L. 116-9.) At this juncture, any such changes by BLM are purely speculative. It cannot be determined, with any level of certainty meaningful for environmental analysis at this juncture, whether, when, or how such policy changes would occur. An agency need not discuss remote or speculative impacts of a proposed action in its EIS. *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission* 449 F.3d 1016, 1031 (9th Cir. 2006). Further, any such policy changes by BLM would be subject to its internal NEPA review, should they occur at some point in the future.

It should also be noted that to the extent land exchange activities are alleged to create impacts, the passage of legislation by the U.S. Congress has effectively eliminated the discretion of BLM with respect to such exchanges. P.L. 116-9 was signed by the President on March 12, 2019, and in Section 1003, directs the BLM to accept offered exchange lands by the Conservation District, and convey defined exchange lands from the BLM. That land exchange is in specific furtherance of the Wash Plan proposal analyzed by this EIS/EIR. Any future regulatory actions by BLM, however they may occur, could not countermand the congressional directive for the exchange.

F.2 RESPONSE TO COMMENT LETTERS

Comment 2

Barton, Dennis

If the Upper Santa Ana River Wash Habitat Conservation Plan had to be described with one word, that word would have to be “balance”. It balances the need to protect sensitive and endangered species and their habitats with the needs to serve an ever-growing population with water, transportation, recreation, construction materials.

Response

Thank you for your comment.

Comment 3

Barton, Dennis

I am a father, a grandfather, and hopefully in 10 years or so, a great-grandfather. An observation I share when people lament the population growth and its impacts is, we have children, our children have children and we refuse to die! We have to provide housing, water, transportation and other infrastructure to support them. At the same time, we need to protect species and their habitat. The Upper Santa Ana River Wash Habitat Conservation Plan provides for both. Balance.

Response

Thank you for your comment.

Comment 4

Barton, Dennis

I commend the those who have developed the Upper Santa Ana River Wash Habitat Conservation Plan, and in particular the resource agencies such as the US Fish and Wildlife Service. Everyone has had to give a little to make this plan work; we cannot think only of ourselves and our specific needs or wants. Balance.

Response

Thank you for your comment.

Comment 5

Barton, Dennis

I trust that the Upper Santa Ana River Wash Habitat Conservation Plan will come to fruition for the benefit of all.

Response

Thank you for your comment.

Comment 6

CDFW

The Conservation District has not applied for an Incidental Take Permit (ITP) for covered activities listed under the HCP and does not have authorization to "take" CESA Listed species. CESA authorizes CDFW to issue ITPs only when the impacts of the authorized take associated with the activity will be minimized and fully mitigated, and when the project permittee has ensured adequate funding to carry out all mitigation, compliance, and effectiveness monitoring. Additionally, CDFW is prohibited from issuing an ITP if in doing so, the activities would jeopardize the continued existence of the species. Documentation for an ITP application and required measures in an ITP may differ from federal documentation and authorizations. CDFW encourages the Conservation District to apply for an ITP to ensure coverage and compliance with the CESA.

Response

SBVWCD agrees that State permitting is an important step for Wash Plan Covered Activities and has prepared the Wash Plan with the goal of supporting the Conservation District's request to CDFW for an ITP pursuant to Section 2081(b) of the CESA (Wash Plan Page ES-2, Section 1.1.1). The District and CDFW have met to discuss this topic, most recently on October 17, 2019. In coordination with CDFW staff, SBVWCD presented options for State permitting to the Wash Plan Task Force for feedback on December 10, 2019. Following review of Task Force feedback, SBVWCD will evaluate appropriate process and next steps and ITP application for State permitting.

Comment 7

CDFW

Page 4.4-10 discusses the contingency parcel, "an island of habitat (for slender-horned spineflower) surrounded by existing and future aggregate mining operations." The footnote at the bottom of page 4.4-10 states "The contingency parcel, while initially conserved, could be mined in the future contingent upon the successful establishment of spineflower elsewhere in the HCP Preserve." Though CDFW appreciates the Conservation District's attempts to preserve the spineflower population while, and until, new populations of spineflower can be established, the Conservation District should consider the isolation of the population on the "island of habitat" as an impact, itself. Were attempts to establish new populations of spineflower unsuccessful, the isolation of the existing population could be detrimental to the continued existence of the species, and should therefore be considered an impact, and mitigated appropriately.

Response

Due to Wash Plan phasing (Wash Plan HCP Table 1-3) and the annual limits on mine production per the Conditional Use Permit (CUP) for the East Quarry North Mine and Reclamation Plan (January 2009), Covered Activity CRM.01, Aggregate Mining, locations adjacent to this spineflower population area are not expected to be mined until approximately 2040. Per the CUP, the Johnson North Silt Ponds (approximately 18 acres), which are located to the north of the spineflower contingency parcel, will be backfilled with silts, allowed to dry, graded for positive drainage, covered with 1-2 feet of alluvium and revegetated (see also SMARA-approved Mine and Reclamation Plan for the Upper Santa Ana River Wash Aggregate lands to be Operated by CEMEX Construction Materials L.P. [March 2006].) These actions would limit impacts from isolation over the long-term regardless of the results of efforts to establish new spineflower populations. Wash Plan HCP Section 4.3.1 and DEIS/SEIR Page 4.4-10 have been updated for clarification, and DEIS/SEIR Section 3 has been updated to remove the incorrect reference to spineflower impacts from Wells and Water Infrastructure as consistent with the Wash Plan HCP.

Comment 8

CDFW

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, §21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDBFieldSurveyForm.pdf>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <http://www.dfg.ca.gov/biogeodata/cnddb/plantsandanimals.asp>.

Response

Relevant biological data has been reported to the California Natural Diversity Database (CNDDDB).

Comment 9

Center for Biological Diversity

The Center has been involved in Santa Ana River issues for years, including numerous scoping and comment letters on previous iterations of the Wash Plan and BLM land exchange including comments on the Draft Environmental Impact Report (DEIR) for the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan SCH No. 2004051023 dated May 23, 2008, and comments on Draft South Coast Resource Management Plan Amendment And Draft Environmental Impact Statement (EIS) for the Santa Ana River Wash Land Exchange DOI-BLM-CA-D060-2009-0005-EIS - OPEC Control No. DES 09-12, BLM/CA/ES-2009-022+8300 dated October 22, 2009, and scoping comments on the Upper Santa Ana River Wash Project. (80 FR 11463) submitted on 5-4-15. We incorporate all of those comments herein.

Response

Refer to General Response, Specificity of Comments.

Comment 10

Center for Biological Diversity

The HCP must not “appreciably reduce the likelihood of survival and recovery” of covered species in the wild. ESA § 10(a)(2)(B)(iv); *see also* Cal. Fish & Game Code § 2081 (providing equivalent protections under state law). In addition, the HCP must provide additional biological protections where feasible (“the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such a taking.”). ESA § 10(a)(2)(b)(ii); Cal. Fish & Game Code § 2081; *see also* Cal. Pub. Res. Code §§ 21002, 21002.1, 21801 (under CEQA, projects may not be approved where feasible alternatives and mitigation measures available to avoid or lessen environmental impacts). In ESA Section 10, the term “conservation plan” must be consistent with the term “conservation” as described in Section 3, meaning “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.” Regulated taking should occur *only* “in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved,” ESA § 3(3). The HCP must abide by these principles to ensure the survival and contribute to the recovery of all the species covered by the plan. While this version of the HCP is an improvement over previous proposals, feasible alternatives and mitigation measures are available to ensure a more biologically robust conservation plan can be adopted. The San Bernardino Valley Water Conservation District has the opportunity – and the legal mandate under both state and federal law – to undertake such actions when feasible.

Response

Refer to General Response, Adequacy of Mitigation.

Comment 11

Center for Biological Diversity

The HCP must include measures that will bring federal and state-listed species to a point where ESA protections are no longer necessary. The foundation of the proposed Wash Plan is the Habitat Conservation Area that would provide habitat and management for covered species. The Plan Area is comprised of lands under both federal and private land ownership where important habitat areas will be set aside to contribute to the conservation of covered species. While the DEIS/SEIR appears to base its proposal on the best available data on species and habitat, we request a supplemental document address the following potential deficiencies in the proposed HCP.

Response

Refer to General Response, Recirculation.

Comment 12

Center for Biological Diversity

A variety of acres is attributed to the Conservation Lands both within the DEIS/SEIR and between the DEIS/SEIR and the Final Draft Upper Santa Ana River Wash Habitat Conservation Plan (HCP). For example, the DEIS/SEIR identifies a 2,302-acre Conservation Area (at pg. 1.0-3) yet in Section 4.4, it states “approximately 1,659.5 acres of habitat in the Plan Area that will be conserved and managed and make up the HCP Preserve” (at pg. 4.4-4). At pg. 4.4-5, the DEIS/SEIR states “implementation of the HCP conservation program, including the conservation and management of 1,529.8 acres of habitat in the Plan Area”. The Final Draft Upper Santa Ana River Wash Habitat Conservation Plan identifies that 1659.4 acres will be included in the Conservation area (at pg. ES-3, Table ES-1). These differing numbers add confusion to the environmental analysis and potentially the on-the-ground conservation in the future. We request that consistent acreages for conservation and impacts analysis be included, and that consistent number be used for analysis of impacts and mitigations.

Response

Conservation Area refers to the total contiguous area in conservation following implementation of the Wash Plan, including existing conservation such as the Santa Ana River Woolly-star Preserve Area. The HCP Preserve is 1659.5 acres in size, including 1529.8 acres of sage scrub habitat, 28.4 acres of non-native vegetation types, and 101.3 acres of existing disturbed/developed lands (refer to DEIS/SEIR Table 4.4-1 and Wash Plan Table 4-2). Acreages were determined with reference to the use of GIS, therefore rounding inconsistencies are inevitable with the use of this tool and small discrepancies in numbers cannot be avoided.

Comment 13

Center for Biological Diversity

The proposed “take” of species/habitat is a net loss to the existing habitat in the Wash area as presented in the DEIS/SEIR. In some instances, no mitigation is proposed for the impacts to important habitats and species. For example, for Riversidean Sage Scrub (RSS), a rare plant community, and habitat for California gnatcatchers which is proposed as a covered species under the Wash Plan, is proposed to have permanent impacts to 7.8 acres (at 4.4-8, Table 4.4-1), yet no RSS is located on the proposed conservation lands in order to offset the impact.

Response

The Wash Plan (Section 3.3.1) and associated EIS/DEIR (Appendix C.4.1.2) note that 9.4 acres of RSS are found within the Plan area, where it “predominantly occurs on cut slopes that have been revegetated where no alluvial processes are present.” The 7.8 acres to be lost are revegetated RSS on cut slopes within an active mining pit and were assessed as low quality (Wash Plan Figure 4-5). No California gnatcatcher have been recorded within the impacted RSS within the Plan Area (Wash Plan Figure 3-8). California gnatcatcher are known to utilize alluvial fan scrub (Atwood 1993) and have been observed in Riversidean Alluvial Fan Sage Scrub in the Plan Area (Wash Plan Figure 4-5). The species is also known to utilize RAFSS found on adjacent conserved lands such as the Woolly-star Preserve Area and Redlands Conservancy Lands. The conservation strategy includes conservation and management of a total of 1,292.1 acres of high, medium, and low quality habitat to support gnatcatchers, including nesting, wintering and dispersal within the Plan Area (Wash Plan Section 5.1.2, Coastal California Gnatcatcher Species Objectives). Refer to Pages 4.4-6-4.4-7 of the DEIS/SEIR for analysis of the impacts to RSS, which were determined to be less than significant. Refer to General Response, Adequacy of Mitigation.

Comment 14

Center for Biological Diversity

Similarly, riparian vegetation, another rare plant community particularly in southern California, is proposed to have permanent impacts to 0.2 acres and temporary impacts of 2.7 acres (at 4.4-8, Table 4.4-1), yet no riparian vegetation is included on the proposed conservation lands in order to offset the impact.

Response

The willow thickets occurring within the Plan Area is the result of ponding from sand washing as part of mining operations. This vegetation community does not persist within the Plan Area without a sustained, artificial provision of water. The Wash Plan minimizes impacts to riparian communities as a whole with 0.2 acres of permanent impacts to willow scrub and 2.7 acres of temporary impacts to mule fat scrub, which represents 0.35% of the total impact associated with Covered Activities. The loss of this habitat does not represent a significant loss of this habitat type within its range or appreciably reduce the likelihood of survival/recovery of associated listed species. In the Plan Area portion of the Upper Santa Ana River Wash, riparian scrub and riparian forest area not naturally occurring vegetation communities. Refer to Pages 4.4-6-4.4-7 of the DEIS/SEIR for analysis of the impacts to riparian habitat, which were determined to be less than significant.

Comment 15

Center for Biological Diversity

This troubling issue also occurs for covered species. For example, the 13.4 acres of permanent impact to cactus wrens' cactus patches for primary nesting habitat represents a 29% impact to the existing habitat with only 32.5 acres of existing habitat and 0.2 acres of temporary impacts (presuming the temporary impacts are temporary) occurring in the conservation area (at 4.4-9, Table 4.4-2). In general, for all of the habitats and species, the proposed action would decrease the habitat and population of the covered species. To date, we are not aware of successful rehabilitation of habitat or covered species that moves them away from the ongoing declines that caused the need for Endangered Species Act protections. These species need an increase in occupied habitat and population size.

Response

In addition to both conservation and long-term management of 32.5 acres of existing cactus wren habitat, the Wash Plan requires an expansion of suitable habitat within the Upper Santa Ana River Wash per CAWR Objective 2: Establish and manage eight new cactus patches suitable for nesting cactus wren in the HCP Preserve (DEIS/SEIR Pages 4.4-11-4.4-12, Wash Plan HCP Page 5-6). Thus, mitigation is proposed to cover the impacts to cactus wren habitat by Covered Activities. Four total areas that have supported nesting cactus wrens would be affected by Covered Activities: One area for VD.01, Enhanced Recharge, and three for CRM.01, Aggregate Mining. While VD.01, Enhanced Recharge, is likely to proceed within the first five years of Wash Plan HCP implementation, CRM.01, Aggregate Mining, is expected to proceed in phases over the next 30-40 years. Thus, CAWR Objective 2 is likely to precede take at some of the mining areas, allowing for both spatial and temporal replacement prior to total take of the areas that have supported nesting. In addition, CAWR Action 2 references translocation of cactus pads and/or cholla stems from areas that will be permanently impacted (Wash Plan HCP Page 5-6). CAWR Objective 2 (Wash Plan HCP Page 5-6) has been updated to incorporate recently available data on successful cactus wren habitat restoration (e.g. https://sdmmp.com/view_species.php?taxaid+917698, Winchell et al. in press). Overall, the Wash Plan includes the goal of providing for the conservation of the five Covered Species and their habitat within the Plan Area through conserving land in a configuration and area sufficient to maintain ecological processes, including connectivity (Wash Plan HCP Page ES-1, ES-10). The Wash Plan also provides funding to monitor and adaptively managed these conserved lands in perpetuity to alleviate threats (e.g. illegal access, invasive species) that may degrade the habitat over time and space (Wash Plan HCP Page ES-10, Sections 5 and 7). Refer to General Response, Adequacy of Mitigation.

Comment 16

Center for Biological Diversity

The analysis for the critically endangered slender-horned spineflower is inadequate regarding the methodology used to evaluate the species occurrences. While we recognize the challenges intrinsic to evaluating annual plant species population numbers, the methodology used here does

not adequately inform the reader as to the actual extent of the species' occurrence in the Wash Plan. What is a patch? How does that compare to a Historic Occurrence? Have the Historic Occurrences been extirpated due to disturbance or is the habitat still present? (at 4.4-9, Table 4.4-2) While we appreciate that "permanent conservation and management of 100 acres of spineflower habitat adjacent to extant and historic spineflower occurrences and/or other habitat determined through modeling and subsequent onsite evaluation to be suitable" (at 4.4-10) is proposed, it is unclear why only 100 acres was chosen. To our knowledge, the pollination regime for the slender-horned spineflower is unknown, although other members of the Polygonaceae are insect pollinated. It is essential that adequate habitat for the spineflower's pollinator(s) be conserved, likely through adaptive management requirements. However, we believe that the DEIS/SEIR is premature to conclude that no future mitigation will be required for this species, particularly as climate change advances (Memmett et al. 2007).

Response

Patch is a delineated area occupied by a more or less continuous distribution of spineflower individuals following *2010 Patch Characteristics and Interannual Variability in the Santa Ana River Woolly-star Preserve Area, San Bernardino County California* (SAIC 2010) as referenced in the Wash Plan HCP. Historic Occurrences are defined as observations recorded prior to 2005 (Wash Plan HCP Section 4.3.1, Figure 4-2). The Wash Plan will permanently conserve and manage 20 extant patches of spineflower and 36 historic spineflower locations within the HCP Preserve, as well as a science-based Spineflower Restoration Program to address the potential establishment of six new populations in potential habitat, including historically occupied areas (Wash Plan HCP Section 5.1.2). In addition, Covered Activity impacts to both extant patches and historic occurrences were analyzed (Wash Plan HCP Table 4-5, DEIS/SEIR Page 4.4-10). One hundred acres of permanent conservation and management represents an approximate 250 foot buffer around extant and historic spineflower patches within HCP Preserve lands. We recognize that the pollination regime for the species is unknown at this time and agree that it is likely to be insects based on research within the family. As a whole, the HCP Preserve will be monitored and managed to maintain and enhance the quality of the native plant communities, supporting native insect populations through improving the expression of native annuals on over 1,600 acres (Preserve Objective 4 [Wash Plan HCP Page 5-10], Preserve Objective 10 [Wash Plan HCP Page 5-12]). In addition, prioritized intensive invasive species treatments will be conducted within suitable spineflower habitat, with an additional 15 meter buffer of treatment area (SHSF Objective 6 [Wash Plan HCP Page 5.3]). The intent is to protect ecological processes that maintain spineflower habitat and to accommodate future changes in spineflower distribution in response to environmental conditions (SHSF Objective 2 [Wash Plan HCP Page 5-2]). The conservation strategy includes establishment of six new patches of spineflower of at least 35 square meters expressing in 5 years of any 8 year period in the HCP Preserve (SHSF Objective 4 [Wash Plan HCP Page 5.3]). Establishment of these new populations along with the conservation and management described above offsets the loss of up to three extant populations due to Covered Activities. Failure of the Slender-horned Spineflower Enhancement and Relocation Program is included as a Changed Circumstance in Section 6.4.1 of the Wash Plan HCP. Refer to General Response, Adequacy of Mitigation.

Comment 17

Center for Biological Diversity

The proposed HCP Purpose and Need include: “The purpose of the USFWS action is to protect and conserve multiple Endangered Species Act (ESA) listed species and other native species; to conserve, enhance and restore the habitat and ecosystems upon which these species depend upon; and to ensure the long-term survival of these species, within the Santa Ana River Wash.” “The need for the proposed action is to respond to the Conservation District’s application for an ITP under the authority of section 10(a)(1)(B) of the ESA to take certain Covered Species as a result of their proposed aggregate mining, water conservation, wells and water infrastructure, transportation, flood control, trails, habitat enhancement, and agriculture.”

Response

Agreed.

Comment 18

Center for Biological Diversity

Unfortunately, the HCP does not provide adequate analysis that full mitigation under CEQA, ESA, and CESA for impacts to species and their habitats will be achieved. Because not all acres have the same habitat values for every species, adaptive management will be key.

Response

Refer to General Response, Adequacy of Mitigation and DEIS/SEIR Chapters 2 and 4. The Conservation Strategy provides for the conservation and/or management of approximately 1,659.4 acres adjacent to 764 acres of conservation at the Woolly-star Preserve Area (WSPA). Legal protection of the HCP Preserve and long-term, adaptive management will provide for the long term conservation of the species. The species and preserve management objectives (Wash Plan HCP Section 5.1.2) combined with the stay ahead provisions (Wash Plan HCP Section 6.2.1) of the HCP will ensure that Covered Activity impacts are offset and less than significant. We agree that monitoring and adaptive management over the life of the HCP are critical; thus, adaptive management and associated funding is included in the Wash Plan (see Section 5.2.2, 5.2.3, 5.3, 5.4 and 7).

Comment 19

Center for Biological Diversity

The HCP identified that: "Preparation of a detailed Adaptive Management and Monitoring Program (AMMP) for the protection and management of multiple habitats and species in the Wash, as indicated in the Mitigation Monitoring and Reporting Plan (MMRP) for the Wash Plan HCP EIR (anticipated to occur by the end of 2018)" Final Draft HCP at pg. 1-4 However, we could not locate an AMMP. Absent this important plan, the DEIS/SEIR environmental review is incomplete.

Response

The AMMP is included in the Wash Plan as Appendix B, as referenced in Wash Plan Section 5.3.

Comment 20

Center for Biological Diversity

In approving an incidental take permit for the plan, the Fish and Wildlife Service must find that the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking. 16 U.S.C. § 1539(a)(2)(B). Section 15021 of CEQA states that a public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant environmental effects of the project.

Response

CEQA regulation has been accurately quoted.

Comment 21

Center for Biological Diversity

The Council on Environmental Quality, which wrote the NEPA regulations, describes the alternatives requirement as the “heart” of the environmental impact statement. 40 C.F.R. § 1502.14. The purpose of this requirement is to insist that no major federal project should be undertaken without intense consideration of other more ecologically sound courses of action, including no action. “The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Alaska Wilderness Recreation & Tourism v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995). *The DEIS/SEIR must “[r]igorously explore and objectively evaluate all reasonable alternatives” to a proposed action. 40 CFR § 1502.14(a) (emphasis added). See City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990).

Response

The alternatives analyzed in the DEIS/SEIR were designed to meet basic project objectives. It is unclear what viable but unexamined alternatives remain to be analyzed. Please see response to General Response, Alternatives.

Comment 22

Center for Biological Diversity

The DEIS/SEIR must specify any harmful effects of the proposed action in order to meet the requirements of the ESA (10(a)(2)(a)(i)), CESA, and CEQA. Without a full analysis of all effects of a proposed action, any choice among alternatives and mitigation measures is uninformed. The DEIS/SEIR must include comprehensive analyses of edge effects, such as urban versus agricultural matrix, domestic pets, roads and trails (currently within the proposed Conservation Area, and any new roads/trails anticipated in the Planning Area), and increased air pollution in the Plan Area, including cumulative effects. Such harmful effects will negatively affect the

recovery and survival of covered species. The proposed DEIS/SEIR does not analyze in detail these harmful edge effects. More detailed edge analyses should be conducted on a species-specific basis.

Response

We agree with the commenter's statements regarding the importance of a comprehensive analysis of edge effects. The Wash Plan Conservation Program recognizes goals to conserve land in a configuration and area sufficient to maintain ecological processes and to protect core habitat areas and the connections between them, in addition to avoiding and minimizing effects from Covered Activities and actively managing conserved lands to counteract indirect effects/edge effects (Wash Plan HCP Page ES-10; DEIS/SEIR Section 4.4.1.2). In addition, the San Bernardino Valley Conservation District has purchased 25 acres adjacent to the HCP Preserve to provide an additional buffer between Wash Plan conservation areas and potential future development, with additional Neutral Lands adjacent to the HCP Preserve set aside for conservation for non-Wash Plan projects. The adverse effects from Covered Activities on live-in and foraging habitat, wildlife movement and connectivity, as well as disturbance from noise, light and dust are analyzed in DEIS/SEIR Section 4.4.1.2 (Page 4.4-3, 4.4-4, 4.4-5, 4.4-24, and 4.4-25). Acreage of breeding habitat was used to estimate take of wildlife species (Wash Plan HCP Section 4.3.2). Within the Santa Ana River Wash, urban growth has caused the river to become constrained, forming isolated blocks of land (DEIS/SEIR Page 4.13-14). Wash Plan implementation would reconfigure land ownership to conserve Covered Species habitat in largely intact blocks with high connectivity within and among habitat types (DEIS/SEIR Page 4.13-15), thus limiting negative edge effects on the HCP Preserve. Refer to General Response, Edge Effects.

Comment 23

Center for Biological Diversity

Habitat fragmentation affects numerous ecological process across multiple spatial and temporal scales, including changes in abiotic regimes, shifts in habitat use, altered population dynamics, and changes in species compositions (Schweiger et al. 2000). Patch size has been identified as a major feature influencing the plant and small mammal communities, and native rodent populations are vulnerable to collapse in habitat fragments. The composition, diversity, and spatial configuration of patch types, distances from sources, edge-to-area ratios, and ecotonal features may also structure the plant and small mammal communities. More detailed species-specific analyses on patch size is needed in the conservation analyses. Habitat fragmentation can also increase impacts on rodent predators. Housecats, coyotes, striped skunks, opossums, great-horned owls, and red-tailed hawks are as abundant or more abundant in fragments than in unfragmented habitat (Bolger et al. 1997).

Response

We agree with the commenter's statements regarding the importance of habitat connectivity to the long-term persistence of Covered Species. Within the Santa Ana River Wash, urban growth has caused the river to become constrained, forming isolated blocks of land (DEIS/SEIR Page

1.0-5 and 4.13-14). The Wash Plan Conservation Program recognizes goals to conserve land in a configuration and area sufficient to maintain ecological processes and to protect core habitat areas and the connections between them (Wash Plan HCP Page ES-10; DEIS/SEIR Section 4.4.1.2). These goals are implemented in part through reconfiguration of land ownership to conserve Covered Species habitat in largely intact blocks with high connectivity within and among habitat types (DEIS/SEIR Page 4.13-15). Acreage of breeding habitat was used to estimate take of wildlife species (Wash Plan HCP Section 4.3.2). The adverse effects from Covered Activities on live-in and foraging habitat, wildlife movement and connectivity are analyzed in DEIS/SEIR Section 4.4.1.2 (Page 4.4-24). Also see response to Comment 22; General Response, Edge Effects; and General Response, Sufficiency of Mitigation.

Comment 24

Center for Biological Diversity

The same edge can evoke different kinds of effects with different species (Joppa et al. 2008). No species-specific analysis was offered in the proposed Wash Plan on the type of edge that each covered species might experience in the Conservation Area, and whether the matrix will provide some measure of permeability. The level of connectivity needed to maintain a population will vary with the demography of the population, including population size, survival and birth rates, and genetic factors such as the level of inbreeding and genetic variance (Rosenberg et al. 1997). These factors must be obtained to be able to conduct any reasonable analyses of the viability of populations of covered species in the proposed reserve.

Response

Covered Species natural history requirements (e.g. home range, territory) are provided in Wash Plan HCP Table 3-8). The best available data were utilized in development of the Wash Plan HCP (e.g. *Genetic Structure in the Cactus Wren in Coastal Southern California* [Barr et al. 2013]); remaining uncertainty is addressed through long-term monitoring (Wash Plan HCP Section 5.2.3) and adaptive management (Wash Plan Section 5.3.2), funded in perpetuity (Wash Plan Section 7.1.1), as well as additional research on Covered Species (e.g. *Range-wide Genetics of the Endangered San Bernardino Kangaroo Rat* *Dipodomys merriami parvus* (Shier et al. [2018]). Edge effects are further minimized, beyond the requirements of the Wash Plan, through additional land purchases and conservation easements contiguous with the HCP Preserve (e.g. San Bernardino Valley Conservation District purchase of 25 acres in 2018, conservation easements on over 400 acres of Neutral Lands for non-Wash Plan project mitigation. Refer to responses to Comments 23 and 24; General Response, Edge Effects; and General Response, Sufficiency of Mitigation.

Comment 25

Center for Biological Diversity

The DEIS/SEIR relies on the 2008 air quality analysis and contends that new regulations will reduce various pollutants identified in the 2008 report. While new regulations will reduce pollutants, the DEIS/SEIR fails to evaluate the increase in pollution from the massive expansion of warehouse fleets in the proposed project area. While the air pollution from cleaner mining

fleet haul trucks and processing equipment and limitations on idling of commercial/construction vehicles will reduce sourced emissions, the cumulative impact to air quality is likely to still be degraded beyond its already poor air quality. The DEIS/SEIR fails to adequately identify this cumulative impact.

Response

Air quality has improved since 2008 for pollutants affecting the wash area: SCAQMD air quality monitoring data (<http://www.aqmd.gov/home/air-quality/historical-air-quality-data/historical-data-by-year>) indicate lower concentrations of PM10 and ozone due to implementation of significant permit conditions on stationary sources and Tier >4 mobile source requirements. Thus the regulations imposed subsequent to 2008 have further reduced degradation on air quality from the baseline condition, and implementation of the Wash Plan will not increase the production of pollution in the Plan Area. In addition, due to a continuation on current limitations for mining production of 3 million tons per year, applicable evidence indicates no negative impacts to air quality. However, due to the increase in the number of years in which mining will occur due to the Wash Plan, we have identified significant and unavoidable impacts to Air Quality in the DEIS/SEIR Section 4.1.1.2.

Comment 26

Center for Biological Diversity

The DEIS/SEIR discusses climate change in the context of production and reduction of greenhouse gas emissions. However, we did not find an analysis of the potential impacts on the Santa Ana River wash and its flora and fauna as the effects of climate change continue to manifest. An analysis of the interplay between global climate change and the impact to species and their habitats must be included and the analyses used as a basis for the AMMP.

Response

Although localized in scope, the Wash Plan HCP supports resiliency of Covered Species and associated habitats through provision of long-term conservation in a configuration designed to provide maximum connectivity through one of the largest remaining alluvial fan ecosystems in California. (DEIS/SEIR Pages 1.0-5, 4.13-14 and Section 4.4.1.2, Wash Plan HCP Page ES-10). The Adaptive Monitoring and Management Plan recognizes annual variations in climate and climate change as key uncertainties to be addressed (Wash Plan HCP Appendix B, Page B-8). In addition, climate change is listed as a Changed Circumstance in Wash Plan HCP Section 6.4.1, noting: The Wash Plan HCP conservation strategy protects and enhances through restoration and management the habitat connectivity of the region. Protection of habitat connectivity, especially along ecological gradients such as elevational gradients and along natural hydrologic features, provides the opportunity for species to shift their range and area of occupied habitat in response to climate change. Additional adaptive management may be needed to enhance connectivity at key locations, or to translocate individuals across existing barriers to movement. Refer to General Response, Climate Change - Impact to Species.

Comment 27

Center for Biological Diversity

The DEIS/SEIR has not demonstrated that “the applicant will ensure that adequate funding for the plan will be provided.” 16 U.S.C. 1539(a)(2)(B)(iii) (emphasis added); *see also* Cal. Fish & Game Code § 2080. Assured funding is critical to the success of the conservation strategy and is a mandatory requirement of any HCP. *See, e.g., National Wildlife Federation v. Babbitt*, 128 F.Supp.2d 1274 (E.D.Cal. 2000). As a preliminary matter, neither the DEIS/SEIR nor the HCP clearly delineates and specifies all funding needs for implementation of the plan, including but not limited to costs associated with adaptive management for the reserves and covered species, and scientific and compliance monitoring, law enforcement and other activities. Only with this baseline information can the DEIS/SEIR accurately calculate and assure the amount of funding necessary to carry out the necessary measures for the life of the permit. The DEIS/SEIR must ensure sufficient funding for all agencies (whether local, state, or federal) with implementation responsibilities related to the Conservation Area. The HCP does identify some aspects of where the funding could come from, but the necessary assurances for funding are not clear. Funding without an identified source is an exercise in speculation.

Response

HCP permit issuance requires funding assurances for direct and indirect costs (Wash Plan HCP ES-14, Section 7.1.1), with Participating Entities implementing Covered Activities with permanent impacts paying their proportional mitigation fee to the Conservation District six months prior to the planned initiation of ground disturbing events (Wash Plan HCP Section 7.1.2). Additional details of Wash Plan funding are discussed in Chapter 7, including land acquisition, stewardship (e.g. patrol/enforcement, legal support, access control, trash removal, etc.), adaptive species and habitat management, monitoring and reporting, and costs for emergencies, contingencies and overhead. Funding assurances are described in Wash Plan Section 7.1.2; Wash Plan Appendix A, Implementing Agreement for the Upper Santa Ana River Wash Habitat Conservation Plan, Section 8; and Wash Plan Appendix A, Implementing Agreement for the Upper Santa Ana River Wash Habitat Conservation Plan, Exhibit D, Certificate of Inclusion Agreement, Section 5.3. Note that while the Wash Plan Certificate of Inclusion requires payment of funds prior to project implementation, the majority of the Participating Entities have signed the MOU and deposited the required funds prior to approval of the Wash Plan. At this time, more than \$2.8 million of the required Wash Plan non-wasting endowment is held by the San Bernardino Valley Conservation Trust to fund implementation (e.g. management of the HCP Preserve and Covered Species) upon issuance of the ITP.

Comment 28

Center for Biological Diversity

The HCP states: "lands that will be placed into conservation are primarily owned by the Conservation District, with additional holdings by the BLM, Flood Control, and Redlands (see Table 3-1). Appropriate assurances of long-term conservation will be provided within the first two years of the plan implementation (and before any impacts on Covered Species are allowed by Covered Activities), either through conservation easements or other agreement acceptable to the Wildlife Agencies" (HCP at 7-1). Permanent conservation easements may work for the lands

controlled by the Conservation District, Flood Control and Redlands, but, as the HCP recognizes, BLM does not allow for conservation easements on the public lands that they manage. The HCP then relies on a BLM land use designation of an Area of Critical Environmental Concern (ACEC). However, ACEC land use designations can be changed by a subsequent land use plan amendments, so reliance on this impermanent designation is not possible.

Response

The Wash Plan HCP conservation strategy has been designed to offset the impacts of the Covered Activities as a whole, with funding for monitoring and management of District Managed (e.g. BLM) lands at the same level as District Conserved lands in perpetuity (Wash Plan HCP Sections 1.2.2, 6.2.1, and 7.1.1). The District and BLM are coordinating to develop a Memorandum of Understanding for District management of BLM lands to provide further assurances that the habitat enhancement provided by the Wash Plan endowment will not be at risk. In addition, Wash Plan HCP Section 6.4, Responses to Changed Circumstances, has been revised to include an approach for addressing this unlikely event, with an associated increase in the reserve fund cap for Changed Circumstances to \$150,000 in Wash Plan Section 6.4.1. At this juncture, any revision to the ACEC is remote and speculative and, were it to occur, would be subject to its own environmental and public review. Refer to General Response, Possible Future Changes to ACEC by BLM.

Comment 29

Center for Biological Diversity

The above comments highlight the failure of the DEIS/SEIR and HCP to adequately ensure protection of species and conservation of habitat. The above sections reveal not only the failure of the environmental review documents to comply with the federal and state ESA, but also the (1) lack of detailed analysis of significant direct, indirect, and cumulative impacts (and adequate explanation for why other impacts are considered insignificant); (2) lack of adequate analysis of irreversible significant environmental effects that cannot be avoided if the project is implemented; (3) and lack of analysis and adoption of sufficient mitigation measures to reduce the impacts to less than significant levels (or that mitigations and alternatives identified in the DEIS/SEIR are infeasible and the unmitigated effects are outweighed by the project's benefits). The DEIS/SEIR is inadequate under CEQA for the above-listed reasons and a host of additional environmental impacts, including but not limited to (1) air quality impacts; (2) loss of open space; and (3) cumulative impacts of past, present, and reasonably foreseeable activities.

Response

Refer to General Response, Adequacy of Mitigation.

Comment 30

Center for Biological Diversity

The Final Draft HCP needs to be revised to clarify the final language regarding jurisdictional responsibilities, provide an updated Implementing Agreement, provide the AMMP and other required plans and recirculate the updated version for public comment.

Response

We understand the term "jurisdictional" in the comment to refer to the roles and responsibilities in HCP implementation among those implementing the Covered Activities. Such responsibilities are clarified in Wash Plan Appendix A, Implementing Agreement for the Upper Santa Ana River Wash Habitat Conservation Plan, Exhibit D, Certificate of Inclusion Agreement. See Wash Plan Appendix B for the AMMP. Refer to General Response, Recirculation.

Comment 31

Center for Biological Diversity

Thank you for the opportunity to comment on this important DEIS/SEIR. We urge the Agencies to fully address our comments and incorporate the missing following changes to the proposed Wash Plan to ensure a biologically adequate plan that will meet the goals of the HCP. Please include us on all subsequent notices/documents on this project.

Response

We thank you for your comments and have provided responses in response to Comments 9-30 and General Responses, Specificity of Comments, Adequacy of Mitigation, Recirculation, Edge Effects, Climate Change - Impact to Species, Possible Future Changes to ACEC by BLM, and Recirculation. The Wash Plan HCP and/or DEIS/SEIR have been corrected/clarified where needed to reflect the correct acreages for preservation, conservation, and management, and additional information has been provided where necessary.

Comment 32

City of Highland

The City of Highland would like to offer the following comments relative to the Upper Santa Ana River Wash Habitat Conservation Plan (Draft Final dated May 2019). The City's comments are intended to provide clarifications to the maps and languages used to describe City properties and facilities in various parts of the HCP, and will not in any way affect the technical analyses or conclusions of the associated EIS and Supplemental EIR.

Response

Thank you for your comment.

Comment 33

City of Highland

A. City-owned Properties Within the boundaries of the HCP, the City owns in fee two 10-acre parcels located south of Greenspot Road west of Plunge Creek. In addition, the City owns in fee a 1.3-acre parcel, which consist of a 57' wide strip of land, on which the south half of the newly-realigned Greenspot Road was constructed by the City several years ago. The City acquired this 1.3-acre strip of land out of a larger parcel owned by East Valley Water District. (See attached Grant Deed for reference.) However, the entire larger parcel is erroneously shown to be owned by the City in the HCP.

Response

Refer to response to Comments 34-36.

Comment 34

City of Highland

Therefore, the City suggests that the following revisions be made: 1. Section 3.2.2 "Ownership and Easement" - Change the last sentence to read, "Highland owns a 57'-wide strip of land consisting of the south half of the re-aligned Greenspot Road in the northeast portion of the Plan Area (1.3 acres), as well as two parcels in the north-central portion of the Plan Area just west of Plunge Creek (19.9 acres)."

Response

Wash Plan Section 3.2.2 has been revised as requested.

Comment 35

City of Highland

2. Figure 3-1 (Ownership Map) - Correct the map to reflect that the 57'-wide strip of land, being used as Greenspot Road right-of-way is under Highland ownership, and that the larger parcel is under East Valley Water District ownership. Change color of the larger parcel from brown to green.

Response

HCP Figure 3-1 and EIR Figure 1.0-3 have been revised as requested.

Comment 36

City of Highland

3. Table 3-1 "Ownership in the Plan Area" - Correct "Acres in Plan Area" for City of Highland from 39.9 acres to 21.2 acres.

Response

Wash Plan Table 3-1 has been revised as requested.

Comment 37

City of Highland

B. Highland Biological Mitigation Area. The City of Highland owns two 10-acre parcels located in the north-central portion of the Plan Area just west of Plunge Creek. As correctly stated under "Other Areas within the Plan Area Boundary" on Page 1-6 of the HCP, and under "Existing Conserved Lands" on Page 10-2 of the HCP, these two 10-acre parcels are available for Highland to mitigate impacts not associated with the HCP Covered Activities.

Response

Agreed.

Comment 38

City of Highland

For internal consistency of the HCP document, the City suggests that the following revisions be made: 1. Section 5.6.2 "City of Highland Biological Mitigation Area" - Modify the paragraph to read, "The City of Highland owns two 10-acre mitigation parcels on the south side of Greenspot Road, with one parcel located on the east side of the BLM property and the other on the west side of the BLM property. These two 10-acre parcels are available for Highland to mitigate impacts not associated with the HCP Covered Activities.

Response

Wash Plan Section 5.6.2 has been revised as requested.

Comment 39

City of Highland

2. Figure 1-2 (Plan Area Subcomponents Map)- Delineate the boundaries of the City of Highland's 10-acre parcel located on the east side of the BLM property and label it "Highland BMA".

Response

Figure 1-2 was reviewed to confirm that the boundaries and label are shown as requested.

Comment 40

City of Highland

C. Greenspot Road Improvements While Figure 2-1 (Covered Activities Map) correctly shows the location of the southeasterly extent of Greenspot Road Improvements (High.03), the southeasterly project limit of High.03 is not clearly described in the HCP.

Response

Refer to Response to Comment 41.

Comment 41

City of Highland

Therefore, the City suggests the following revisions be made: 1. Section 2.2.4 "Transportation, City of Highland Activities", Page 2-18 "Greenspot Road Improvements (High.03)" - Revise the first sentence to read, "Greenspot Road will be widened on the south side between Weaver Street and Santa Paula Street and on both sides between Santa Paula Street and the southeasterly limit of the realigned portion of Greenspot located south of the new bridge at Santa Ana River."

Response

Wash Plan Section 2.2.4 has been revised as requested.

Comment 42

City of Highland

D. General Road Maintenance. As stated under Section 2.2.4 "Transportation, General Road Maintenance", Page 2-18, "long-term road maintenance includes drainage facility management, which should take place at least once a year at the inlets and outlets of drainage facilities." In addition, Footnote 14 of this paragraph specifies that "All work will take place within the defined ROWs of the roads and as depicted and defined in the HCP."

Response

Thank you for your comment.

Comment 43

City of Highland

It is common for general road maintenance to include cleanup of soil deposits and debris in culverts that carry drainage flows under and across a public road that requires the cleanup work be extended upstream and downstream of the culverts beyond the street ROWs. For example, there is an existing 12' -wide x 8' -tall concrete box culvert across Greenspot Road at the north-east portion of the Plan Area, and proper maintenance of this culvert involves clearing of dirt and vegetation both upstream and downstream of the culvert. Depending on the amount of buildup, it is possible that clearing of the flow path could extend beyond the street ROW in order to obtain the minimum grade needed for positive flow. Since Footnote 14 specifies that all work is to take

place within street ROW, the City may not be able to properly perform all needed general road maintenance under this section of the HCP.

Response

General Road Maintenance includes a description of drainage facility management. The Wash Plan conservation analysis is based on the description of General Road Maintenance (Wash Plan Section 2.2.4). Covered Activities will be reviewed via the Certificate of Inclusion process, including review of all proposed impacts and associated HCP coverage.

Comment 44

City of Highland

Therefore, the City requests that under Section 2.2.4 "Transportation, General Road Maintenance", Page 2-18, a new sentence be added as the 5th sentence of the paragraph, to read as follows: "Maintenance of roadway drainage inlets and outlets includes clearing of the upstream and downstream drainage flow paths located within or outside of street ROW to the extent needed to achieve the minimum grade for positive drainage flow."

Response

Refer to response to Comment 43.

Comment 45

City of Highland

E. Greenspot Bridge and Road Realignment Several years ago, the City of Highland constructed a new 4-lane bridge across the Santa Ana River approximately 250' downstream from the existing historic iron bridge, and realigned approximately 3,500' of Greenspot Road to match the location of the new bridge. While the new bridge was built to its ultimate width of 98', which is wide enough to provide for 4 future travel lanes, the realigned portion of Greenspot Road was only built to its interim configuration, with the pavement widened from 26' to 40' and remains to be a 2-lane road.

Response

Thank you for your comment.

Comment 46

City of Highland

Since the scope of this project was not accurately described in the Wash Plan, the City suggests that the following changes be made: 1. Section 2.3.4 "Greenspot Bridge and Road Realignment" Page 2-28, change the first sentence to read, "The City of Highland recently realigned a portion

of the Greenspot Road and upgraded the width of the realigned roadway from 26'"to 40', providing for 2 travel lanes and 2 striped bike lanes.

Response

Wash Plan Section 2.3.4 has been revised as requested.

Comment 47

City of Highland

F. Greenspot Road Drain Outlets (High.11). The City's roadway drainage systems currently outlet onto the east side of Plunge Creek south of Greenspot Road and onto the west side of Plunge Creek north of Greenspot Road. (See attached aerial photo.) While the attached enlarged Covered Activities Map clearly shows the Wash Plan boundary to include the north side of Greenspot Road at Plunge Creek covering the locations of all City drainage outlets at Plunge Creek located on both sides of Greenspot Road, the drainage outlet locations are not fully described in the HCP.

Response

The description of Covered Activity High.11, Greenspot Road Drain Outlets, is based upon information provided by the Participating Entity. Covered Activities High.11 and FC.01 overlap within the impact area. Covered Activities will be reviewed via the Certificate of Inclusion process, including review of all proposed impacts and associated HCP coverage. Changes or refinements to the Covered Activities may not result in additional take or reduced conservation.

Comment 48

City of Highland

Therefore, the City requests that the following revisions be made: 1. Section 2.2.5 "Flood Control, City of Highland Activities", Page 2-21 "Greenspot Road Drain Outlets (Highl.12) - Revise the first sentence to read, "Maintenance and operation of the existing outlets of two city storm drains in Greenspot Road would occur on the east side of Plunge Creek south of Greenspot Road and on the west side of Plunge Creek north of Greenspot Road, and would include the concrete headwalls, grouted riprap, and the dirt channel area near the outlets."

Response

See response to Comment 47.

Comment 49

U.S. Environmental Protection Agency

Water Resources: Water Quality The Draft Environmental Impact Statement acknowledges that covered activities have the potential to affect surface and groundwater quality in the Plan Area

by increasing sediment and other pollutants in stormwater runoff, but does not fully disclose impacts of each covered activity. Such information is necessary to assure compliance with state and federal water quality regulations, assess impacts to species of concern, and to support a determination of the potential impacts of such activities. For example, the DEIS does not disclose that the Enhanced Recharge Project, upon completion, would remove 500 cubic feet per second (cfs) from the Santa Ana River 1 and no potential impacts to the Santa Ana sucker are disclosed or analyzed.

Response

The construction of the Enhanced Recharge basins, as well as the capacity to utilize them within the existing water diversion of 190 cfs, are included as a Wash Plan Covered Activity and provide operational flexibility for recharge of water with existing diversion facilities. Covered Activity VD.01, Enhanced Recharge, will add basins but do not implicate any changes to the regulatory permits or physical practices of water diversion to fill them. Alteration of hydrologic conditions at and below the point of current diversion for the Enhanced Recharge Project are not part of this project nor covered under this HCP, and will not otherwise be allowed until the effects of such hydrologic changes on the endangered Santa Ana sucker have been analyzed and permitted as appropriate under the FESA (Wash Plan Page 2-10). In addition, any hydrologic changes are subject to regulation by the Santa Ana Regional Water Quality Control Board. Water quality issues were addressed in a prior EIR for Wastewater Change Petition WW-0045 under proceedings by the State Water Resources Control Board. Reference General Response, Additional Permitting/Scope of EIS/EIR.

Comment 50

U.S. Environmental Protection Agency

As noted in the DEIS, Reach 4 of the Santa Ana River downstream of Plan Area is listed as impaired under Section 303(d) of the Clean Water Act (p. 3.3-4). Aggregate mining may worsen existing impairments and adversely affect beneficial uses throughout the watershed. Certain activities associated with the Habitat Conservation Plan, such as aggregate mining, require National Pollutant Discharge Elimination System permitting pursuant to CWA Section 402. The DEIS determines that implementing best management practices through regulatory requirements would prevent the degradation of water quality and that the potential to violate waste discharge requirements would be significantly reduced (p.4.13-12). However, more analysis and discussion are needed to support this determination.

Response

The existing mining operations and proposed expansions (e.g. Covered Activity CRM.01, Aggregate Mining) are located in upland habitats (Wash Plan Table 4-3) within the larger floodplain of the upper Santa Ana River and tributaries including Mill Creek, Plunge Creek and City Creek as shown in DEIS/SEIR Figures 2.0-1, Covered Activities, and 3.3-1, Surface Hydrology, but not within the active low flow channels of these drainage features (DEIS/SEIR Page 4.3-12). As identified in the Cemex and Robertson's Mining and Reclamation Plans, mining would be restricted to no less than 20 feet above ground water, with no operations allowed in

standing groundwater (DEIS/SEIR Page 4.3-6). This is to ensure that sediment and other potential contaminants resulting from mining excavation activities are not directly discharged to the groundwater table and the basin (DEIS/SEIR Page 4.3-5). Therefore, CRM.01 is not likely to contribute to degradation of surface or groundwater quality or hydrology, and is not likely to contribute to degradation of the Santa Ana River within Reach 5 or downstream of the Plan Area (Reach 4) which is impaired due to pathogens.

Comment 51

U.S. Environmental Protection Agency

Recommendation for the Final EIS: 1) Identify all water quality impacts to the Santa Ana River and its tributaries. Discuss the monitoring protocols and the water quality thresholds to be used to ensure the Santa Ana River is not further impaired due to covered activities, specifically the mining expansion, Enhanced Recharge Project, and Elder/Plunge Creek Restoration Project.

Response

Covered Activity CRM.01, Aggregate Mining, occurs in upland habitats (with the exception of 0.2 acres of impact to willow scrub) outside of the Santa Ana River (Wash Plan Table 4-3, DEIS/SEIR Figure 2.0-1). Covered Activity VD.01, Enhanced Recharge, occurs entirely in upland habitats outside of the Santa Ana River (Wash Plan Table 4-3, DEIS/SEIR Figure 2.0-1). Covered Activity FC.09, Elder/Plunge Creek Restoration, restores braided channel structure and sedimented stream channels, implements lead remediation, and constructs new flood control facilities in Plunge and Elder Creeks. Thus, CRM.01, VD.01, and FC.09 are not likely to impact water quality within the Santa Ana River and its tributaries. Monitoring protocols for discharge from upland activities are detailed in the approved Stormwater Pollution Prevention Plans for mining and construction projects (e.g. WDID No. 836I005066 and WDID No. 836I005074).

Comment 52

U.S. Environmental Protection Agency

2) Provide additional detail specifying how covered activities would comply with state and federal industrial storm water regulations, including CWA Section 402 and requirements at 33 CFR 323.4. The EPA is available to provide technical assistance related to the CWA Section 402 program.

Response

While the Wash Plan has been developed to support permitting under the federal Endangered Species Act, compliance with federal and state wetland laws and regulations must be achieved through the permit process established by the regulatory agencies (Wash Plan Section 1.3.6). Statutory criteria for Habitat Conservation Plans include the requirement for taking to be incidental to otherwise lawful activity (Wash Plan Section 1.3.1); thus, all required state and/or federal permits must be obtained prior to utilizing federal Endangered Species Act 'take' for Wash Plan Covered Activities. DEIS/SEIR Page 4.4-27 - 4.4-28 contains Mitigation Measure BIO MM-2, Jurisdictional Permitting, which includes the requirements for Covered Activities

with potential wetland impacts to conduct formal delineations and obtain additional permits as appropriate. Permitted mining activities within the Wash Plan boundary operate under State Water Resources Control Board Water Quality Order 2014-0057-DWQ and NPDES General Permit No. CAS000001, as well as approved Stormwater Pollution Prevention Plans. Robertson's Ready Mix also holds an Industrial Stormwater NPDES General Permit No. CAS000001 effective July 1, 2015. They operate under two Stormwater Pollution Prevention Plans covering the Rock Plant (WDID No.: 836I005066) and the Batch Plant (WDID No.: 836I005074). Neither facility has any violations since permits issuance.

Comment 53

U.S. Environmental Protection Agency

3) Include the updated and finalized plan of operations and storm water pollution prevention plans for the Cemex and Robertson's Ready Mix mines.

Response

Mining facilities operate under the following Stormwater Pollution Prevention Plans: 1) Cemex - WDID No. 36100190 and 361001908, and 2) Robertson's Readymix - WDID No. 836I005066 and 836I005074.

Comment 54

U.S. Environmental Protection Agency

Water Resources: Groundwater In recent years, water usage in the Bunker Hill groundwater basin has led to decreases in groundwater storage levels.² The HCP would allow for eight to 14 new groundwater wells to be installed and used in conjunction with other wells for aggregate mining. These proposed wells are not anticipated to substantially deplete groundwater supplies or interfere with groundwater recharge (p.4.3-11), but the DEIS does not quantify any groundwater usage aside from aggregate mining. Therefore, when all wells are in use, it is unclear what the impacts would be to water resources.

Response

See Wash Plan HCP Section 2.2.3, San Bernardino Valley Municipal Water District Activities, for details of water extraction from the proposed wells. The Bunker Hill Basin is adjudicated per Western Municipal Water District et al. vs. East San Bernardino County Water District et al. (Case No. 78426 - County of Riverside), with responsibility for basin management assigned to the San Bernardino Valley Water Conservation District and the San Bernardino Valley Municipal Water District. Covered Activities VD.09, Redl.13, Redl.11, EVWD.08 and CD.03 function as part of the comprehensive groundwater basin management plan as described in Wash Plan Section 2.2.3. Refer General Response, Additional Permitting/Scope of EIS/EIR.

Comment 55

U.S. Environmental Protection Agency

According to San Bernardino County's Community Indicators Report, the county is estimated to experience a 28 percent increase in population growth between 2020 and 2045. The DEIS also lists multiple housing and commercial developments adjacent to the Plan Area that would contribute to increases in population during the HCP term (Section 4.13.2). This population growth and the adjudication of the groundwater basin could lead to cumulative impacts that are not discussed in the DEIS. Section 4.13.3.3 states that the HCP covered activities would include projects that would allow the water resource agencies to continue to provide and maintain a secure source of water for residents and businesses in the watershed, but does not provide details for these projects, such as the Enhanced Recharge Project. Implementation of these projects could result in further impacts.

Response

The groundwater basin and surface water diversions have been adjudicated or permitted since 1969 (DEIS/SEIR Page 4.3-9). The purpose of the Covered Activities is to sustainably manage existing supply of water. Recharge mitigates the impacts to groundwater basins. The San Bernardino Regional Urban Water Management plan updated in 2017 indicated that adequate supplies from surface, groundwater and imported water are available in single and multiple dry year scenarios with expected increased demand due to projected growth that are contained in City and County General Plans. In addition, SBX7-7 requires additional conservation and will reduce future demand. SB 610 and SB 221 of 2001 require each substantial development to demonstrate adequate water is available to serve the development. Recharge activities continue to be an important part of water sustainability for the groundwater basin as they have been since the early 1900's. While the EIR/EIS does not analyze development or other projects outside the Wash Plan, area groundwater and water supply are expected to be enhanced by Wash Plan Covered Activities (DEIS/SEIR Pages 4.3-10 - 4.3-11). Refer to General Response, Specificity of Comments.

Comment 56

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Include a quantitative analysis of how implementation of new pumping wells and additional mining water may impact water resources in the project area. This may include a water balance approach that summarizes current water usage and projects future water usage that would result from increased groundwater pumping.

Response

Refer to response to Comment 54. If extractions exceed the safe yield of the basin, the District will work with Robertsons and Cexmex to replenish the basin (DEIS/SEIR Section 4.3). Average mining-related production approximately 360 AF per year, or 0.225% of the 166,000 AF produced from the basin (SBVWCD Engineering Investigation, 2020).

Comment 57

U.S. Environmental Protection Agency

Evaluate the cumulative impacts to the Bunker Hill groundwater basin. Include baseline hydrologic data, hydrogeologic characterization of the project area, and overall water usage to assess potential impacts from land-use changes and implementation of the HCP. Provide more detailed information about proposed water conservation activities.

Response

Adjudication (Western Municipal Water District et al. vs. East San Bernardino County Water District et al., Case No. 78426 - County of Riverside) requires preparation of an Annual Report of the Western-San Bernardino Watermaster with baseline data from 1954 to present for the Bunker Hill Basin. In addition, the San Bernardino Valley Water Conservation District prepares an annual Engineering Investigation (EI) which assesses the hydrologic condition of the Bunker Hill Basin, including the Plan Area (Wash Plan Figure 1-1). Data for overall water usage in the Bunker Hill Basin are reported annually in the EI. For example, in 2019, the EI notes that users produced approximately 157,354 acre feet of water from the Bunker Hill Basin, which is lower than prior drought years and represents an above average rainfall year. Basin storage increased by 152,408 acre feet from the prior year, with the basin remaining 418,310 acre feet below its maximum in 1993 (following multiple wet years). In cooperation with Groundwater Council partners, the San Bernardino Valley Water Conservation District recharged over 70,000 acre feet in 2019. The San Bernardino Valley Water Conservation District recharges flows not needed by surface water treatment plants as well as available imported water. In addition, all local water agencies comply with California conservation requirements and coordinate conservation programs through the Basin Technical Advisory Committee of the Integrated Regional Water Management Plan. This combination of monitoring, recharge and conservation required by the adjudication ensure no significant long term impacts to groundwater in the Bunker Hill Basin. Wash Plan HCP Implementation will provide facilities to benefit the Bunker Hill groundwater basin (e.g. VD.01). There are no land use changes proposed for the Plan Area as all land uses are compatible with existing zoning designations (DEIS/SEIR Section 4.5.1.2). Refer to responses to Comments 54 -56 for additional information.

Comment 58

U.S. Environmental Protection Agency

Expanded mining operations would result in 401.5 acres of permanent impacts to covered species' habitat (p. 2.0-4). The DEIS does not provide adequate information to fully assess the potential impacts from mine expansion, including impacts to surface and groundwater quality and hydrology. Also, the DEIS does not analyze impacts from the new haul road that would cross Plunge Creek and City Creek (HCP p. 2-7).

Response

Refer to DEIS/SEIR Section 4.3.1.2 for analysis of impacts to surface and groundwater quality and hydrology from Covered Activity CRM.01, Aggregate Mining. The existing mining operations and proposed expansions are located within the larger floodplain of the upper Santa Ana River and tributaries including Mill Creek, Plunge Creek and City Creek as shown in Figure 3.3-1, *Surface Hydrology*, but not within the active low flow channels of these drainage features

(DEIS/SEIR Page 4.3-12). As identified in the Cemex and Robertson's Mining and Reclamation Plans, mining would be restricted to no less than 20 feet above ground water, with no operations allowed in standing groundwater (DEIS/SEIR Page 4.3-6). This is to ensure that sediment and other potential contaminants resulting from mining excavation activities are not directly discharged to the groundwater table and the basin (DEIS/SEIR Page 4.3-5). Therefore, CRM.01 is not likely to contribute to degradation of surface or groundwater quality or hydrology. Covered Activity CRM.02, Haul Road Expansion, improves haul road conditions on crossings of Plunge and City Creeks. These crossings would be subject to additional permitting as appropriate (e.g. Clean Water Act) (Wash Plan HCP Section 1.3.6). The current crossings are permitted under appropriate regulations. Revisions have been made to clarify mining-associated impacts (refer to DEIS/SEIR Page 4.4-26).

Comment 59

U.S. Environmental Protection Agency

According to the DEIS, new mining operations would be located outside the low flow channels of the Santa Ana River, Plunge Creek, and City Creek, and would not include any earthmoving activities or structures that would alter the course of these drainages (p. 4.3-13). However, existing berms around quarries would be extended as the quarries expand to prevent stormwater from flowing into them (p. 4.3-4). The DEIS concludes that these actions would not alter the course of Santa Ana River, Plunge Creek, or City Creek and that potential impacts are less than significant (p. 4.3-13). Additional analysis is needed to support this conclusion.

Response

Wash Plan HCP Section 2.2.1 and DEIS/SEIR Page 2.0-3 have been updated to clarify that the berms are located within the footprint of Covered Activity CRM.01. Covered Activity CRM.01, Aggregate Mining, occurs in upland habitats (Wash Plan Table 4-3, DEIS/SEIR Figure 2.0-1) and are located within the larger floodplain of the upper Santa Ana River and tributaries including Mill Creek, Plunge Creek and City Creek as shown in Figure 3.3-1, Surface Hydrology, but not within the active low flow channels of these drainage features (DEIS/SEIR Page 4.3-12). Thus, the existing analysis is sufficient to support the conclusion. Additional alleged impacts are therefore speculative and, if they occur, would require additional environmental review (e.g. RWQCB, ACOE permits).

Comment 60

U.S. Environmental Protection Agency

The DEIS states "the mining activities are considered an irreversible commitment of resources as the riverine hydraulic functions and values for habitat are lost for an extremely long period of time" (p. 4.13-25). The Santa Ana River and its tributaries are complex systems that have developed in a climatic regime of wide precipitation fluctuation ranging from drought to flood. Given the scale of the proposed mining expansion (both spatial and temporal), the project would have long-term adverse effects on river geomorphology, and therefore, adverse effects on biological communities. The EPA would expect the amount and scope of the proposed mine

expansion to impact the hydrologic and ecological functions of rivers/streams on and off-site. The DEIS does not discuss the loss of these functions.

Response

The comment correctly identifies the extraction of aggregate as an irreversible commitment of resources. Following the completion of the Seven Oaks Dam, which interrupts what otherwise might have been natural replenishment of the aggregate material over time, the extraction and use of aggregate renders the resource non-renewable. Regarding geomorphology, the existing mining operations and proposed expansions (e.g. Covered Activity CRM.01, Aggregate Mining) are located in upland habitats (Wash Plan Table 4-3) within the larger floodplain of the upper Santa Ana River and tributaries including Mill Creek, Plunge Creek and City Creek as shown in DEIS/SEIR Figures 2.0-1, Covered Activities, and 3.3-1, Surface Hydrology, but not within the active low flow channels of these drainage features (DEIS/SEIR Page 4.3-12). The construction of Seven Oaks Dam eliminated the hydrogeomorphic processes upstream of the project on the Santa Ana River, thus it is no longer able to refresh and provide aggregate material for the covered species. The irreversible commitment of resources is the loss of this aggregate. The loss of habitat is analyzed and mitigated in the HCP and EIS/EIR.

Comment 61

U.S. Environmental Protection Agency

Recommendations for the FEIS: Complete additional analysis to determine the direct, secondary and cumulative impacts from mine expansion. We recommend addressing: 1) anticipated changes to vegetation communities and channel morphology both upstream and downstream of the project; 2) anticipated changes to stream substrate; 3) and potential adverse effects to aquatic and terrestrial life dependent on the aquatic ecosystem. The potential secondary effects to be analyzed include: 4) changes in hydrology and sediment transport capacity of waters; 5) changes to water velocity; 6) the potential for headward and downstream erosion; 7) impacts from excavation proposed in the 100-year floodplain; 8) increases in the volume and velocity of polluted stormwater; 9) increase in discharge of pollutants associated with mining and transport activities; 10) decreases in water quality from the impairment of floodplain and ecosystem services including water filtration, groundwater recharge, and flood attenuation; and 11) disruption of hydrological and ecological connectivity.

Response

Refer to responses to Comments 58-60. In summary: 1) There are no impacts or significant changes to riverine hydrology and riparian vegetation as mining has been carefully sited in upland areas (e.g. Wash Plan HCP Section 1.1.2 and 1.1.3). 2) No changes to stream substrate are anticipated as the result of current or proposed mining. 3) No potential adverse effects to aquatic or terrestrial species depending on the aquatic ecosystem, except those identified and mitigated in the DEIS/SEIR, are anticipated as a result of Covered Activities, including mining. 4) The proposed project would not result in changes to hydrology or sediment transport. 5) The proposed project would not result in changes to water velocity. 6) The proposed project would not result in changes to headward or downstream erosion. 7) Current mining is conducted within

the 100-year floodplain; however, risks to mining are minimal due to flood control features such as levees and the Seven Oaks Dam. Other effects of mining are analyzed in DEIS/SEIR Section 4.3. 8) There are no expected increases in volume or velocity of polluted stormwater due to the proposed project. However, if identified, these would result in revisions to the required SWPPPs. 9) No increase in pollutants are expected due to continuation of mining and transport beyond those analyzed in DEIS/SEIR Section 4.3. If identified, an increase would result in revisions to the permits issued by SCAQMD for compliance with the Clean Air Act. 10) No impacts to water quality are identified. Groundwater quality and recharge will be increased through the proposed project. 11) The proposed project does not result in disruptions to hydrologic connectivity. Impacts to ecological connectivity were addressed through Wash Plan HCP Preserve design.

Comment 62

U.S. Environmental Protection Agency

Impacts to Waters of the U.S. The scale of the covered activities within the Plan Area and the magnitude of potential impacts requires a detailed evaluation impacts to waters of the U.S. (WOTUS), including the Santa Ana River, Plunge Creek, and City Creek. These waters provide hydrologic connectivity, facilitating movement of water, sediment, nutrients, wildlife and plant propagules throughout the watershed. Other ecosystem processes include dissipation of energy as part of natural fluvial adjustment and the movement of sediment and debris. Currently, there is insufficient information in the DEIS to evaluate the effects of covered activities (e.g., aggregate mining, flood control, water conservation) on the Santa Ana River and its tributaries.

Response

The majority of Covered Activities, including mining, occur in upland areas that are not regulated as WOTUS. However, existing mining haul roads include creek crossings. Maintenance of existing haul roads, which include creek crossings, is included in Covered Activity CRM.03, Ongoing Aggregate Mining Operations. The Plunge Creek and City Creek crossings are being reengineered to minimize impacts and have applicable permit application in preparation (e.g. Army Corps [404], RWQCB [401], CDFW [1600]). Wetland waters impacts that cannot be avoidance will be mitigated in accordance with the appropriate permit requirements. DEIS/SEIR Figure 4.4-7 has been updated to include Covered Activities. Refer to response to Comment 63 and to General Response, Additional Permitting/Scope of EIR/EIS.

Comment 63

U.S. Environmental Protection Agency

Several covered activities may require a permit under Section 404 of the Clean Water Act from the U.S. Army Corps of Engineers (USACE). A Section 404 permit can only be issued for the Least Environmentally Damaging Practicable Alternative. It is unclear from the information provided in the DEIS whether the covered activities, as proposed, would satisfy the requirements for such a permit.

Response

While the Wash Plan has been developed to support permitting under the federal Endangered Species Act, compliance with federal and state wetland laws and regulations must be achieved through the permit process established by the regulatory agencies (Wash Plan Section 1.3.6). Statutory criteria for Habitat Conservation Plans include the requirement for taking to be incidental to otherwise lawful activity (Wash Plan Section 1.3.1); thus, all required state and/or federal permits must be obtained prior to utilizing federal Endangered Species Act 'take' for Wash Plan Covered Activities. Table B.1-1 has been added to DEIS/SEIR Appendix B, Section B.1.1, for additional details.

Comment 64

U.S. Environmental Protection Agency

The DEIS estimates that permanent impacts to WOTUS from covered activities is 7.8 acres (p. 4.4-26). The DEIS also indicates that implementation of covered activities would not affect the hydrology of Santa Ana River, Plunge Creek, or City Creek (p. 4.3-4), but does not support this determination with its impact analysis. A verified wetland delineation and jurisdictional determination would be needed before the CWA Section 404 permitting process can proceed, and an assessment of wetland conditions is needed to fully evaluate the potential impacts of the project, as well as to identify potential opportunities to mitigate such impacts.

Response

We agree that verified wetland delineations and/or jurisdictional delineations may be needed for individual projects to support applicable, non-Endangered Species Act permits, which is required by Mitigation Measure BIO MM-2 (DEIS/SEIR Page 4.4-27). In addition, Wash Plan HCP Avoidance and Minimization Measure: Streams and Drainages and Runoff states, "Construction activity and access roads will be minimized to the extent practicable in all drainages, streams, pool, or other features that could be under the jurisdiction of the USACE, State Water Board, and/or CDFW. If impacts on these features are identified, a formal jurisdictional delineation and permit applications to the regulatory agencies may be required." The following Covered Activities may include separately permitted aquatic impacts based on initial evaluation and modeling: 1) High.04, Orange Street/Boulder Avenue Improvements; 2) Redl.09.2, Santa Ana River Trail; 3) Redl.15, Orange Street Improvements; 4) Redl.02, Church Street Drainage Pipe; 5) VD.04, Orange Street Connector; 6) VD.09, Wells and Connector Pipeline; 7) CRM.01, Aggregate Mining; 8) CRM.02, Haul Road Expansion; 9) High.23, Highland/Redlands Regional Connector; 10) FC.09, Elder/Plunge Creek Restoration; 11) CD.07, Plunge Creek Project; 12) High.02, Alabama Street Improvements; 13) Redl.14, Alabama Street Improvements; 14) VD.10, Alabama Street Connector Pipeline; 15) High.03, Greenspot Road Improvements.

Comment 65

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Disclose the ecosystem functions provided by the specific wetland or WOTUS that could be impacted by the covered activities.

Response

Ecosystem functions for specific wetlands and/or WOTUS that may be impacted by Covered Activities will be determined through appropriate permitting prior to project implementation. Refer to response to Comment 64.

Comment 66

U.S. Environmental Protection Agency

2) Disclose steps taken to achieve compliance with the CWA Section 404(b)(1) Guidelines.

Response

Each individual Covered Activity will comply with the Clean Water Act as necessary. Refer to Wash Plan Section 1.3.6 and General Response, Additional Permitting/Scope of EIS/EIR. Table B.1-1 has been added to DEIS/SEIR Appendix B, Section B.1.1, for additional details.

Comment 67

U.S. Environmental Protection Agency

3) Describe any efforts to work with the USACE to obtain a formal jurisdictional delineation of WOTUS in the Plan Area. If available, include a map of the delineated waters and the anticipated impacts to those waters to streamline future Section 404 compliance efforts.

Response

Refer to DEIS/SEIR Section 3.3.1.1, HYD MM-1 (DEIS/SEIR Page 4.3-21), and BIO MM-2 (DEIS/SEIR Page 4.4-27 - 4.4-28).

Comment 68

U.S. Environmental Protection Agency

4) Conduct an assessment of the aquatic resources in the project footprint, using a scientific method such as the California Rapid Assessment Method, and include the results.

Response

Assessment of project-specific effects to aquatic resources is premature at this time. Refer to response to Comment 64, 65, 66 and 67.

Comment 69

U.S. Environmental Protection Agency

5) Discuss avoidance of, minimization of, and mitigation for impacts separately to clarify how aquatic resources are preserved and avoided to the greatest extent feasible by selecting the least damaging project type, spatial location, and extent compatible with achieving the purpose of the covered activity.

Response

Refer to response to Comment 64 and General Response, Additional Permitting/Scope of EIS/EIR. The configuration of the Wash Plan HCP Preserve was based on optimizing the land use based on conservation values regardless of ownership, including significant evaluations least environmentally damaging project type and location (Wash Plan Section 1.1.3).

Comment 70

U.S. Environmental Protection Agency

Flood Control Extensive flood control features are included in the HCP as covered activities (HCP p. 2-19 to 2-22). Disconnecting the active channels from their floodplains reduces a channel's capacity to dissipate flow volumes and energy on their floodplains and has a negative impact on a full spectrum of ecosystem functions. The DEIS does not provide a complete description of these cumulative impacts and does not include an analysis of direct and secondary impacts to waters from anticipated flood control activities.

Response

No Covered Activities which disconnect active channels from their floodplains are included in the Wash Plan. As currently designed, Covered Activity FC.09, Elder/Plunge Creek Restoration, collects flows from the upstream, urbanized, impervious environment and delivers them directly to the historic flood plain to support ecological function in the Wash Plan Preserve (DEIS/SEIR Pages 4.3-7, 4.3-8, 4.3-11, 4.3-14, 4.3-15, 4.3-20). Other Flood Control projects are In-Stream Maintenance (FC.01), Access Road Maintenance (FC.02), Levee Maintenance (FC.03), and Stockpiling (FC.04) which will not result in a decrease in connection between active channels and their floodplains from baseline.

Comment 71

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Disclose all direct, secondary and cumulative impacts from flood control activities, including the Elder/Plunge Creek Restoration Project, to the floodplain within the Plan Area and downstream.

Response

Refer to DEIS/SEIR Pages 4.3-7, 4.3-8, 4.3-11, 4.3-14, 4.3-15, 4.3-20 for analysis of impacts from Flood Control activities.

Comment 72

U.S. Environmental Protection Agency

Air Quality The EPA's regulations at 40 CFR 93.150-165 provide a method for federal agencies to demonstrate general conformity with the National Ambient Air Quality Standards (NAAQS).

Estimated annual emissions from a federal action are compared to the de minimis thresholds through an applicability assessment. If the emissions exceed the de minimis threshold, general conformity is applicable to the federal action and the EPA's regulations offer methods to demonstrate conformity as well as other requirements for the conformity demonstration, such as public involvement.

Response

Thank you for your comment. Refer to DEIS/SEIR Section 4.1 for EPA thresholds and criteria. DEIS/SEIR Section 4.1 and Appendix C.1.4 have been revised to provide a General Conformity Determination Assessment based on the updated mobile source model as requested in Comment 75.

Comment 73

U.S. Environmental Protection Agency

The Plan Area is located within the South Coast Air Basin (SCAB), which the EPA currently designates as extreme nonattainment for ozone, serious nonattainment for particulate matter of less than 2.5 microns (PM_{2.5}), and maintenance for particulate matter of less than 10 microns (PM₁₀), carbon monoxide (CO), and nitrogen dioxide. The DEIS indicates there would be short-term degradation of air quality during the construction of several covered activities and long-term degradation of air quality during mining operations. It also appears that general conformity de minimis thresholds may be exceeded, thus requiring a demonstration of conformity.

Response

An assessment of proposed project emissions with EMFAC 2017 indicates increases that remain below the Southern California Air Quality Management District (SCAQMD) de minimis thresholds in the approved State Implementation Plan (SIP). Mining entities have SCAQMD Permits to Operate for stationary sources, while mobile sources are below Clean Air Act NAAQP thresholds as shown in DEIS/SEIR Table 4.1-2 and Appendix C.1.4 General Conformity Determination Assessment. Therefore, project does not result in violations of NAAQS, nor does it significantly worsen or delay attainment of NAAQS. The permitted quarry, ready mix and crushing operations are reasonably expected to be in the growth projects by SCAG and including the SCAQMP in compliance with the approved SIP. This determination of compliance is clarified in Section 4.1 of the Final EIS/SEIR.

Comment 74

U.S. Environmental Protection Agency

Appendix B of the DEIS incorrectly states that "SCAQMD [South Coast Air Quality Management] is the authorized state agency to determine the General Conformity of the present project with de minimis requirements of the Clean Air Act (Rule 1901)" (p. B-12). Rule 1901 states that SCAQMD is "the 'State agency primarily responsible for the applicable implementation plan as used in Part 51, Subchapter C, Chapter I, Title 40, of the CFR.'" Under Section 176(c)(1) of the Clean Air Act, each agency has an affirmative responsibility to assure

compliance with the applicable implementation plan. The DEIS does not appear to address general conformity beyond this brief sentence and does not include a comparison of annual emissions to the de minimis thresholds.

Response

Appendix C.1.4 has been revised to include a General Conformity Determination Assessment. In addition, revisions to DEIS/SEIR Table 4.1-4 update net increases in regional emissions from Covered Activity CRM.01, Aggregate Mining, at maximum capacity for CO, ROG, NO_x, PM₁₀, PM_{2.5} and CO₂; none of which exceeds SQAMD thresholds. Because Covered Activity CRM.01, Aggregate Mining, contributes to meeting the goals of the Project, MM AQ-1 and MM AQ-2 are retained. Additionally, an assessment of emissions under EMFAC 2017 indicates increases are in compliance with 40 CFR 93.153 de minimis thresholds.

Comment 75

U.S. Environmental Protection Agency

Table 4.1-4 provides the change in daily emissions resulting from the expansion of aggregate mining, and notes that the emissions estimate is derived from the San Bernardino Water Conservation District's November 2008 Final Environmental Impact Report for the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan (p. 4.1-8). The daily nitrogen oxides (NO_x) emissions rate, 59 pounds per day, multiplied over a year would exceed the 10 ton per year de minimis threshold for the SCAB. This would trigger the need for a new emissions estimate, because a conformity determination is required to use the latest and most accurate emission estimation techniques (e.g., EMFAC 2017, California's EPA-approved mobile source model for estimating on-road emissions).

Response

Mobile emissions for PM₁₀, PM_{2.5} and NO_x were reevaluated using EMFAC 2017 and related guidance for Covered Activity CRM.01, Aggregate Mining. Mining production is assumed to go from 4.5 million tons average up to a maximum of 6 million tons per year per adopted Conditional Use Permits. The updated results for PM₁₀, PM_{2.5} and NO_x are shown in Appendix C.1.4. The General Conformity Determination Assessment indicates that the increase in emissions for the proposed project are below the de minimis thresholds. Refer to revisions to DEIS/SEIR Table 4.1-4 and response to Comment 73.

Comment 76

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Provide documentation of the emissions estimate from the Conservation District's November 2008 Final Environmental Impact Report for the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan.

Response

Refer to Appendices D and J in the Final Environmental Impact Report for the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan (November 2008) available online at www.sbvwd.org.

Comment 77

U.S. Environmental Protection Agency

2) Include a draft conformity determination, if appropriate. If you have questions about general conformity, we encourage your staff to contact Tom Kelly with our Air Planning Office at (415) 972-3856 or kelly.thomasp@epa.gov.

Response

A General Conformity Determination Assessment has been included as DEIS/SEIR Appendix C.1.4. We greatly appreciate the EPA's assistance in Clean Air Act conformity documentation.

Comment 78

U.S. Environmental Protection Agency

Biological Resources Santa Ana Sucker According to the DEIS, designated critical habitat for the Santa Ana sucker includes 462.2 acres of the Santa Ana River and City Creek, or nine percent of the Plan Area (p. 4.4-16). The DEIS notes that "City Creek and the Santa Ana River provide stream and storm waters required to transport coarse sediments that are necessary to maintain preferred substrate conditions in portions of the Santa Ana River occupied by Santa Ana sucker" and concludes that these water bodies "were determined to be essential for the conservation of the species" (p. 4.4-16). The EPA is concerned that the DEIS does not address impacts to the Santa Ana sucker, including loss of flow due to the Enhanced Recharge Project, reduction in coarse sediment transport due to mining, or hydrological changes due to the Seven Oaks Dam.

Response

Refer to response to Comment 49 regarding potential impacts to Santa Ana Sucker. Refer to response to Comment 57 regarding potential mining impacts. Seven Oaks Dam is not a Covered Activity within the Wash Plan, nor does it occur within the Wash Plan Plan Area or boundary. Seven Oaks Dam is an existing condition. All mining is located outside of the available to the Santa Ana River for sediment transport. VD.01, Enhanced Recharge Project, will not result in a change in diversion from Seven Oaks Dam or elsewhere on the Santa Ana River. Refer to General Response, Additional Permitting/Scope of EIS/EIR.

Comment 79

U.S. Environmental Protection Agency

The USFWS Recovery Plan for the Santa Ana Sucker lists aggregate mining as a threat to the recovery of the Santa Ana sucker due to the removal of necessary substrates from the watershed

and discharge of fine residual sediment back into the watershed (Recovery Plan p. I-13).⁴ The DEIS does not provide a hydrogeomorphic or sediment transport study to evaluate mining impacts to the downstream population of Santa Ana sucker (and critical habitat) on the Santa Ana River between South La Cadena Drive to Prado Dam. The USFWS states that "with the implementation of the proposed conservation measures, impacts to Santa Ana sucker and its critical habitat would be less than significant" and that "additional mitigation is not required," but does provide analysis to support this determination (p. 4.4-16).

Response

Refer to response to Comment 57 and 78. Thus, a hydrogeomorphic or sediment transport study is not needed because no mining will occur within the Santa Ana River. Refer to General Response, Additional Permitting/Scope of EIS/EIR.

Comment 80

U.S. Environmental Protection Agency

The Recovery Plan states that hydrological modifications are major threat to the Santa Ana sucker and that the presence of water is vital to the species (I-24). According to the Conservation District's website, the Enhanced Recharge Project, upon completion, would divert up to 500 cfs from the Santa Ana River. In addition, the USACE's approved mitigation for the Seven Oaks Dam required water releases "to mimic pre-dam hydrologic processes (scour and deposition) upon which the endangered species are dependent" (Seven Oaks Dam Water Control Manual p. 7-8). It is unclear in the DEIS if these releases have occurred. If releases have not occurred, the EPA anticipates that hydrological and ecological processes that have historically maintained habitat for Santa Ana sucker have been reduced or eliminated. The DEIS does not disclose or discuss the impacts of these projects.

Response

Refer to response to Comment 49 regarding potential impacts to Santa Ana Sucker. Operation of the Seven Oaks Dam is not a Covered Activity within the Wash Plan, nor does it occur within the Wash Plan Plan Area or boundary. The EPA is correct in the observation that the referenced releases have not occurred. However, the Covered Activities will not affect the criteria for or feasibility of such releases.

Comment 81

U.S. Environmental Protection Agency

The USFWS provided comments pertaining to the Santa Ana sucker for a proposed project adjacent to the Plan Area in June 4, 2014. The letter states that coarse sediment into the Santa Ana River has been substantially reduced by the presence of Seven Oaks Dam and modifications to Plunge Creek, and that any further reduction of coarse sediment is a potentially significant cumulative impact. At that time, the USFWS requested a sediment transport study to analyze hydrological and sediment transport changes, but the current DEIS does not discuss the need for such an analysis for the current proposal.

Response

Refer to response to Comment 57 regarding potential mining impacts. A sediment transport study is not needed because the Santa Ana River does not transport sediment through areas affected by current or future mining.

Comment 82

U.S. Environmental Protection Agency

According to a call with the USFWS on January 3, 2020, impacts to the Santa Ana sucker will be considered as part of the Upper Santa Ana River Habitat Conservation Plan, which includes the entire Plan Area. However, the current HCP covers activities that may adversely affect the Santa Ana sucker and the DEIS does not include analysis of impacts from these activities.

Response

Anticipated consultation would be for any future increase in diversions. Refer to response to Comment 49 regarding potential impacts to Santa Ana Sucker.

Comment 83

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Fully analyze impacts to the Santa Ana sucker from activities covered by the proposed HCP, including cumulative impacts of any past, present and future projects. Describe sediment transport conditions in City Creek, Plunge Creek and the Santa Ana River. Include projects adjacent to the Santa Ana River and its tributaries, including Lytle and Cajon Creeks, and Mill Creek as well as adjacent fluvial terraces and watersheds which provide or provided coarse sediments to the Santa Ana River and its major tributaries.

Response

Refer to response to Comment 49 and 78-82 regarding potential impacts to Santa Ana Sucker. Covered Activities do not change the sediment transport conditions in City Creek, Plunge Creek or the Santa Ana River from baseline (Wash Plan Table 4-3, DEIS/SEIR Figure 2.0-1).

Comment 84

U.S. Environmental Protection Agency

2) Complete a hydrogeomorphic or sediment transport study to fully assess the impacts to the Santa Ana sucker due to the coarse sediment removal by the Seven Oaks Dam and proposed mine expansion as well as the Plunge Creek settling basin.

Response

Refer to response to Comment 49 and 78-82 regarding potential impacts to Santa Ana Sucker. Covered Activities do not change the sediment transport conditions in City Creek, Plunge Creek or the Santa Ana River from baseline (Wash Plan Table 4-3, DEIS/SEIR Figure 2.0-1).

Comment 85

U.S. Environmental Protection Agency

3) Explain how the HCP and covered activities are consistent with the goals of the Recovery Plan.

Response

Santa Ana Sucker is not a Covered Species under the Wash Plan. The Wash Plan does not impede or prevent the Recovery Goal and Objectives included in the U.S. Fish and Wildlife Service Recovery Plan for the Santa Ana Sucker (*Catostomus santaanae*) (2017).

Comment 86

U.S. Environmental Protection Agency

4) Include information from the Section 7 consultation and append the Biological Opinion.

Response

The intra-Service section 7 consultation will be completed after the FEIS/SEIR and prior to the Record of Decision.

Comment 87

U.S. Environmental Protection Agency

San Bernardino Kangaroo Rat The DEIS indicates that the Seven Oaks Dam dramatically reduced the downstream potential for flooding in the Plan Area, resulting in the loss of early successional Riversidean Alluvial Fan Sage Scrub habitat required by the San Bernardino kangaroo rat (p. 4.4-6). However, the DEIS further states that "the majority of the area which is still subject to the levels of intermittent flooding necessary to rejuvenate RAFSS would be conserved" (p. 4.4-6). This determination does not appear to be supported by analysis in the DEIS or any documents related to intermittent flooding, including planned releases from the dam.

Response

Significant portions of the channel of the Santa Ana River subject to intermittent flooding (from both Santa Ana River and Mill Creek) following construction of Seven Oaks Dam will be conserved as part of District Conserved, SBCFCD Conserved, Future SBCFCD Mitigation Area and District Managed lands (Wash Plan HCP Figure 1-2, DEIS/SEIR Figures 1.0-6 and 4.4-7). In addition, some portions of the active channel currently lie within the existing conservation lands

such as the Woolly-star Preserve Areas (Wash Plan HCP Figure 1-2, DEIS/SEIR Figures 1.0-6 and 4.4-7).

Comment 88

U.S. Environmental Protection Agency

The EPA requests clarification of critical habitat acreage within the Plan Area. The DEIS states that the entire Plan Area is included within designated critical habitat. Appendix B of the DEIS states that critical habitat designation includes approximately 561 acres (B-31). The HCP states that the entire Plan Area is designated critical habitat, except for the Seven Oaks Dam borrow pit area (HCP p. 4-13).

Response

The DEIS and HCP correctly state that the entire Plan Area is designated critical habitat for San Bernardino Kangaroo Rat. Appendix B has been revised for correctness.

Comment 89

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Provide analysis to support the efficacy of intermittent flooding resulting in early successional RAFSS. Describe the frequency of intermittent flooding.

Response

Refer to response to Comment 87. Significant differences in RAFSS total vegetative cover were recorded following flooding at intervals of 1-40, 41-70 and 70+ years (Smith 1980, Wheeler 1991, Burk et al. 2007 as referenced in Wash Plan HCP Section 3.3.1). Additional studies on flood frequency related to the operations of Seven Oaks Dam are currently in progress (e.g. High Flow Study of Seven Oaks Dam: Phase 1 [March 2019]); applicable findings will be utilized in Wash Plan implementation where feasible.

Comment 90

U.S. Environmental Protection Agency

2) Correct the DEIS and its appendices to clarify the area of SBKR critical habitat. We recommend adding a table in the FEIS to list the critical habitat, as was done for the Santa Ana sucker on page 4.4-16 of the DEIS.

Response

Refer to response to Comment 88 regarding SBKR critical habitat. Table 4.4-3: San Bernardino Kangaroo Rat Critical Habitat in the Plan Area has been added to DEIS/SEIR Page 4.4-14.

Comment 91

U.S. Environmental Protection Agency

3) Summarize and append any relevant documents associated with the Section 7 consultation, including the Biological Opinion, SBKR translocation plan, and SBKR long-term monitoring plan. Discuss additional mitigation and monitoring measures that may result from consultation. Include specific timeframes and metrics of success to evaluate successful translocation of SBKR.

Response

Refer to response to Comment 86. Prior to ground disturbance by Covered Activities, the U.S Fish and Wildlife Service will review and approve standardized translocation procedures for San Bernardino kangaroo rat within the Wash Plan area.

Comment 92

U.S. Environmental Protection Agency

HCP Preserve The HCP notes that 1,095 acres of separate mitigation areas are located within the Plan Area: Woolly-Star Preserve Area (WSPA), City of Highland mitigation area, and future flood control mitigation (HCP p. 5-34, 35). As these properties are critical to the conservation of the covered species within the Plan Area, the EPA is concerned that the HCP does not address concomitant management with HCP Preserve lands.

Response

Management of existing mitigation lands is pursuant to approved, project specific requirements, e.g. Santa Ana River Woolly Star Preserve Area, San Bernardino, California, Final Multi-Species Habitat Management Plan (2012). Wash Plan Section 1.2.2 states: The HCP Preserve will be managed in coordination with the entities responsible for the Existing Conserved Lands. HCP Preserve-wide Objectives, Preserve Objective 2, Preserve Action C, states: Coordinate with local entities (including the Cities of Highland and Redlands, County of San Bernardino, and BLM) to limit potential impacts from unauthorized access and illegal activities (Wash Plan Page 5-10). HCP Preserve-wide Objectives, Preserve Objective 2, Preserve Action E, states: Establish communication with local government and social services to monitor and address repeated trespass (Wash Plan Page 5-10). Wash Plan Section 5.4 states: Planning for all management activities will include ongoing coordination among the Wildlife Agencies, Conservation District, Participating Entities, and SBCFCD, as well as among managers of other conserved lands in the area. Wash Plan Table 7-2, Habitat Management Cost Estimate per Year, includes \$4,200 annually for 'Coordination Meetings, Coordination with adjoining land managers.' Wash Plan Section 8.4 states: Further, implementation of the HCP will be coordinated with the USACE's proposed Multi-species Habitat Management Plan for the WSPA.

Comment 93

U.S. Environmental Protection Agency

It is unclear whether the D-Dike and adjacent groundwater recharge basins are included as mitigation lands. The EPA is also concerned that fragmented lands in between the proposed

Enhanced Recharge Project's groundwater basins (VD.01) would be counted as part of the HCP Preserve.

Response

Temporary impacts associated with maintenance of existing recharge basins, including D-dike, are included in Covered Activity CD.01, Existing Recharge Basis and Access Roads. Temporary impact areas are depicted within the HCP Preserve area for overall mapping purposes (Wash Plan HCP Figure 1-2); however, they are clearly characterized as "Existing Features" (e.g. not habitat) in conservation calculations (Wash Plan HCP Tables 4-2, 4-6 and 5-1). In addition, D-dike was not included in vegetation or species conservation analyses or management areas (Wash Plan HCP Figures 4-1, 4-4, 4-5, 4-6, 5-10, 5-11, 5-12). Refer to response to Comment 97.

Comment 94

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Describe how the non-HCP mitigation areas would be managed concomitantly with HCP Preserve lands. We recommend that the FEIS and Record of Decision commit the USFWS to working with the USACE, Conservation District, and the City of Highland to ensure HCP requirements are incorporated into the management of these lands.

Response

Refer to response to Comment 92.

Comment 95

U.S. Environmental Protection Agency

2) Clarify the WSPA acreage. The HCP lists the WSPA as 764 acres (HCP p. 1-6) and the DEIS lists the WSPA as 544.5 acres (p. 1.0-4).

Response

DEIS/SEIR Section 1.1.3 has been revised for correctness.

Comment 96

U.S. Environmental Protection Agency

3) Clarify if the D-Dike and adjacent groundwater recharge basins are counted as mitigation lands. Discuss how lands fragmented by the proposed Enhanced Recharge Project recharge basins (VD.01) can be counted as mitigation. Update the mitigation figures and ratio, as needed.

Response

Refer to responses to Comments 93 and 97.

Comment 97

U.S. Environmental Protection Agency

BLM Lands The HCP proposes to mitigate the impacts of "take" partly through conservation of existing Bureau of Land Management lands, which would include the land exchange between the Conservation District and the BLM. Reliance of the BLM lands as mitigation assumes that a major management goal would provide for the conservation and protection of covered species and sensitive resources. However, the BLM manages its lands for multiple uses, such as mineral resources, water conservation, and recreation, which can have adverse effects on sensitive species and habitats. According to the 2015 Integrated Regional Water Management Plan for the Upper Santa Ana River Watershed, the administration of valid existing rights supersedes the BLM's conservation abilities in the Santa Ana River Area of Critical Environmental Concern (p. 2-52). As such, the Enhanced Recharge Project would fragment nearly half of the estimated 320 acres that the BLM would receive, which is already fragmented by the D-Dike and groundwater recharge basins (Figure 2.0-1).

Response

Covered Activity VD.01, Enhanced Recharge Project, will occur on lands that will be transferred from the San Bernardino Valley Water Conservation District to BLM through the Santa Ana River Wash Plan Land Exchange Act (Wash Plan HCP Figure 3-3). The Act recognizes the Enhanced Recharge Project, stating: "The exchange of lands under this section shall be subject to continuing rights of the Conservation District under the Act of February 20, 1909 (35 Stat.641), on the non-Federal land and any exchanged portion of the non-Federal exchange parcel for the continued use, maintenance, operation, construction, or relocation of, or expansion of, groundwater recharge facilities on the non-Federal land, to accommodate groundwater recharge of the Bunker Hill Basin to the extent that such activities are not in conflict with any Habitat Conservation Plan or Habitat Management Plan under which such non-Federal land or non-Federal exchange parcel may be held or managed." Approximately 654 acres of BLM lands which are outside the boundaries of Covered Activities will be enhanced through perpetual funding for monitoring and management (Wash Plan Table ES-1, Figure 5-1, Section 7.1.1). These lands are included as District Managed lands within the Wash Plan conservation strategy (Wash Plan HCP Section 6.2.1). The IRMWP does not have land use authority and does not modify ACEC. In addition, BLM proposes to place ACEC protections on the land they receive in the land exchange (Wash Plan HCP Section 7.1.1). The Enhanced Recharge project was sited in low quality habitat to limit impacts (Wash Plan Figures 4-2 - 4-5), with restoration land management to improve the overall habitat of the Wash Area.

Comment 98

U.S. Environmental Protection Agency

It is unclear how many acres of BLM land would be part of the HCP Preserve, though Figures 1.0-3, 1.0-6, and 1.0-7 indicate that the majority of BLM land would be counted (p. A-4, 7, and 8). Given that these lands would provide an estimated half of the HCP Preserve, the EPA is concerned that the DEIS does not discuss the legal assurances or long-term management

commitments beyond right-of-way avoidance (HCP p. 7-2). Additional land may need to be acquired to meet the HCP conservation requirements for covered species if assurances not cannot be provided in perpetuity.

Response

Approximately 654 acres of BLM lands will be included as District Managed Lands (Wash Plan HCP Section 1.2.2, Table 1-3). A FESA Section 7 consultation between U.S. Fish and Wildlife Service and the Bureau of Land Management would evaluate any effects on listed species on federal lands in connection with activities covered by the Wash Plan (Wash Plan HCP Page ES-2). Refer to response to Comment 28.

Comment 99

U.S. Environmental Protection Agency

The DEIS states that a separate Section 7 consultation would be completed for BLM lands (p. 1.0-2). However, it is unclear if mining would occur on BLM lands prior to the land exchange, potentially requiring two formal consultations over the term of the HCP.

Response

Wash Plan Covered Activity CRM.01, Aggregate Mining, will occur in a phased manner to ensure that the land exchange authorized by the Santa Ana River Wash Plan Land Exchange Act (approved March 12, 2019) will be complete prior to the implementation of mining on exchanged lands (Wash Plan Table 1-3, ES-13). A FESA Section 7 consultation between U.S. Fish and Wildlife Service and the Bureau of Land Management would evaluate any effects on listed species on federal lands in connection with activities covered by the Wash Plan, prior to implementation of Covered Activities (Wash Plan HCP Page ES-2).

Comment 100

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Provide details about the legal instrument(s) that would ensure BLM lands would fulfill the goals and objectives of the HCP in perpetuity.

Response

Refer to response to Comment 28.

Comment 101

U.S. Environmental Protection Agency

2) Provide the total BLM acreage included as mitigation. Clarify the BLM land classifications within the Plan Area after the land exchange.

Response

Refer to response to Comment 98. BLM proposes to designate the lands transferred from the San Bernardino Valley Water Conservation District as ACEC for habitat preservation and water conservation purposes (Wash Plan HCP Page 3-5).

Comment 102

U.S. Environmental Protection Agency

3) Clarify the Section 7 timeline for the BLM Lands, both pre- and post-land exchange. Describe how the process for assuring Section 7 consultation(s) and HCP decisions would be consistent and complementary.

Response

Refer to response to Comment 99.

Comment 103

U.S. Environmental Protection Agency

Children's Environmental Health and Safety Executive Order 13045 on Children's Health and Safety directs each federal agency, to the extent permitted by law, to make it a high priority to identify and assess environmental health and safety risks that may disproportionately affect children, and to ensure that its policies, programs, activities, and standards address these risks. Analysis and disclosure of these potential effects under NEPA is necessary because some physiological and behavioral traits of children render them more susceptible and vulnerable than adults to environmental health and safety risks. The DEIS does not describe the potential direct, indirect, and cumulative impacts of the project on children's health. For example, localized increases in PM_{2.5} emissions could lead to an increase in PM_{2.5} exposure at the four schools located within a mile of the Plan Area. We also note that Figure 4.1-1 Sensitive Receptors (p. A-34) does not identify sensitive receptor locations, including schools and daycare facilities, adjacent to the Plan Area.

Response

The California Air Resources Board identifies standards for air quality which are implemented by the local air quality management districts. Older adults with chronic heart or lung disease, children and asthmatics are identified as the groups most likely to experience adverse health effects with exposure to PM₁₀ and PM_{2.5} (refer to <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health>).

Comment 104

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Evaluate the potential direct, indirect, and cumulative health impacts of mining activities on children's health, including potential respiratory impacts, such as asthma, from air pollutant emissions and generation of fugitive dust.

Response

The Upper Santa Ana River Wash Land Management and Habitat Conservation Plan EIR (2008) included an evaluation of nearby sensitive receptors (Figure 4.1-3). Figure 4.1-1 in the DEIS/SEIR has been updated to show Beattie Middle school which is approximately one half mile to the north, with other schools significantly further from the project area. Tables 4.3.S and 4.3.T in the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan EIR (2008) show that the concentrations PM2.5 and PM10 for the proposed project at residences are indistinguishable from no project condition. Therefore, the approval of the Wash Plan HCP and subsequent implementation of Covered Activity CRM.01, Aggregate Mining, do not result in a violation of Executive Order 13045. Despite these findings, MM AQ-3 has been added to require notification of areas schools when mining production reaches six million tons per year, with assistance for schools to implement maintenance and limit exposure provided by Cemex and Robertsons.

Comment 105

U.S. Environmental Protection Agency

2) Identify mitigation measures to reduce impacts from the proposed project's construction and operation to schools and child care centers near the proposed project area. Measures may include those identified in the School Siting Guidelines (https://www.epa.gov/sites/production/files/2015-06/documents/school_siting_guidelines-2.pdt) and Development and Implementation of a School Environmental Health Program (<https://www.epa.gov/schools/read-state-school-environmental-health-guidelines>). Commit to engaging local school districts, child care providers, and others to identify mitigation measures.

Response

Refer to response to Comment 104.

Comment 106

U.S. Environmental Protection Agency

3) Include Beattie Middle School, Highland Grove Elementary, Arroyo Verde Elementary, and Citrus Valley High School on Figure 4.1-1 Sensitive Receptor Map. Update sensitive receptor information in Chapter 4 (p. 4.1-17).

Response

DEIS/SEIR Figure 4.1-1, Sensitive Receptor Map, has been updated to show schools near the Plan Area.

Comment 107

U.S. Environmental Protection Agency

Consultation and Coordination with Tribal Governments The DEIS states that the USFWS and the Conservation District separately consulted with tribes in 2015 and 2017, respectively. The Conservation District also established a Memorandum of Agreement between itself and the San Manuel Band of Serrano Mission Indians for traditional gathering and management of culturally important plants on the HCP Preserve (p. 1.0-13).

Response

Thank you for your comment.

Comment 108

U.S. Environmental Protection Agency

Recommendations for the FEIS: 1) Provide an update on consultation between the USFWS and tribal governments. Discuss issues that were raised, how those issues were addressed, and how impacts to tribal or cultural resources would be avoided or mitigated, consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, Section 106 of the National Historic Preservation Act, and Executive Order 13007, Indian Sacred Sites.

Response

Refer to DEIS/SEIR Appendix E, AB 52, summary of outreach and consultation with tribal governments regarding the Wash Plan. In addition, the San Bernardino Valley Water Conservation District holds a Memorandum of Agreement with the San Manuel Band of Mission Indians for collection activities on District lands, which was considered during development of the Wash Plan conservation strategy. The District and representatives from San Manuel met on several occasions to discuss the Wash Plan HCP and, based on requests from the Band, notification for herbicide use, preservation of a tobacco tree area, a commitment to coordinate during Wash Plan implementation were added to the MOU and/or Wash Plan as appropriate (e.g. Wash Plan Table 5-4, Avoidance and Minimization Measures, Traditional Gathering by Native American Tribes; Wash Plan Section 5.2.2). On January 15, 2020, the District met with representatives from San Manuel to review inclusion of these requests into the Draft Final Wash Plan HCP; tribal representatives indicated that revisions to address their requests were acceptable. No other tribal governments requested additional meetings or follow up after the 2015 notification letter from U.S. Fish and Wildlife Service or the 2017 notification letter from the Conservation District. No comments on the DEIS/SEIR or Draft Final Wash Plan HCP were received from tribal governments.

Comment 109

U.S. Environmental Protection Agency

2) Describe the difference between the Conservation District and the USFWS' consultations and how the tribes were identified for each.

Response

Notification of the project was provided to San Manuel Band of Mission Indians, Gabrieleno Band of Mission Indians - Kizh Nation, Morongo Band of Mission Indians, and Soboba Band of Luiseno Indians, with coordinated AB-52/Section 106 meetings held interested tribal governments representatives. DEIS/SEIR Appendix E has been revised to list all tribal governments who were notified of the Wash Plan HCP and associated projects.

Comment 110

U.S. Environmental Protection Agency

3) Include the tribes in the distribution list for the FEIS and Record of Decision.

Response

Tribes were confirmed to be included in FEIS distribution list.

Comment 111

U.S. Environmental Protection Agency

Ensure to consistency between the information provided and corresponding determinations.

Response

DEIS/SEIR and Wash Plan have been updated as noted in other response to comments for correctness and/or clarity where needed.

Comment 112

U.S. Environmental Protection Agency

Provide estimated timelines for when major covered activities would occur during the HCP term.

Response

The Covered Activities are expected to occur within the 30-year permit timeframe following issuance of the Wash Plan HCP Incidental Take Permit under which they are covered (e.g. San Bernardino Valley Water Conservation District, San Bernardino County Flood Control District). Covered Activity CRM.01, Aggregate Mining, occurs in phases tied to conservation thresholds (DEIS/SEIR Tables 2.0-4 and 4.2-1). Conservation and management will occur ahead of impacts through the Jump Start and Stay-ahead Phasing requirements (Wash Plan HCP Sections 6.2.1 and 7.1.1). All Covered Activities will occur after issuance of a project-specific Certificate of Inclusion, including associated requirements such as funding (Wash Plan HCP Section 6.3.1).

Comment 113

U.S. Environmental Protection Agency

Ensure the most current data available in analyzing impacts.

Response

DEIS/SEIR and Wash Plan have been updated as noted in other response to comments for to utilize most current data available. For example, mobile emissions for air quality were updated using EMFAC 2017 data.

Comment 114

U.S. Environmental Protection Agency

Include the aquatic resources plan referenced on page 2.0-2.

Response

The reference to the aquatic resources plan on DEIS/SEIR Page 2.0-2 has been removed. Refer to General Response, Additional Permitting/Scope of EIS/EIR.

Comment 115

U.S. Environmental Protection Agency

Provide the reference list.

Response

Section 6.0, References, has been added to the DEIS/SEIR.

Comment 116

U.S. Environmental Protection Agency

Include a map with all known mining operations, as was done in Figure 4.10.2 of the 2008 EIR.

Response

Existing and future mining operations within the Wash Plan area are shown in the Figures 1.0-6, 1.0-7, and 2.0-1, as well as others. Limitation on length of of EIR/EIS Documents necessitates references to non-critical information. No new significant mining operations have been added in the intervening eleven years.

Comment 117

U.S. Environmental Protection Agency

Ensure the most up-to-date data is used in the environmental justice analysis. We note the most current ACS data is from 2013-2017, but the DEIS uses 2009-2103. EnviroScreen is a resource

that may make updating ACS data easier. Please let me know if you or your staff has any questions.

Response

ACS data referenced in DEIS/SEIR Section 3.6.3.1 have been updated to utilize 2014-2018 estimates.

Comment 118

U.S. Environmental Protection Agency

As a minority population refers to individuals who list their racial status as a race other than white, consider adding a column to Tables 3.6-2 and 3.6-3 (p. 3.6-3) to document the total minority populations in each jurisdiction.

Response

DEIS/SEIR Tables 3.6-2 and 3.6-3 have been updated to include a total minority percentage.

Comment 119

U.S. Environmental Protection Agency

Correct the poverty threshold to the 2019 level of \$25,750. Consider that poverty and low income can be measured in various ways, and the ACS does not account for California's housing costs or other critical family expenses and resources.

Response

DEIS/SEIR has been updated to reflect the 2019 poverty threshold.

Comment 120

U.S. Environmental Protection Agency

Include sulfur oxide (SO_x) emissions in Table 3.1-2 and Table 4.1-2. Add a row totaling each emission. Include state and federal averaging times for each pollutant.

Response

These tables are sourced from the Final EIR (SCh No. 2004051023) for the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan. Emissions rates for SO_x associated with the Wash Plan were very low (DEIS/SEIR Table 4.1-4). SO_x was also analyzed as part of the General Conformity Determination Assessment included in Appendix C.1.4.

Comment 121

U.S. Environmental Protection Agency

Include NAAQS and State AAQS thresholds and total mine emissions in Table 4.1-4.

Response

Federal de minimus thresholds for emissions were added to DEIS/SEIR Table 4.1-4. NAAQS and State AAQS standards are included in DEIS/SEIR Table 3.1-1.

Comment 122

U.S. Environmental Protection Agency

Create a new table (combining Tables 3.1-2 and 4.1-4) to capture total aggregate mining emissions and exceedances for NOX , PM2.5, and PM10. Include state and federal averaging times for each pollutant.

Response

DEIS/SEIR Table 3.1-2 includes existing Wash Plan area emissions. DEIS/SEIR Table 4.1-4 was updated with EMFAC 2017 data for mobile sources and includes Federal De Minimus thresholds. DEIS/SEIR Table 4.1-5 was added as part of the General Conformity Determination Assessment. DEIS/SEIR Table 3.3-1 includes state and federal averaging times for each pollutant. See response to Comment 75.

Comment 123

U.S. Environmental Protection Agency

Repeat of paragraphs on p. 4.3-10.

Response

We were unable to find a repeat of paragraphs on this page.

Comment 124

U.S. Environmental Protection Agency

P. 4.3-9 has different AFY numbers than Table 3.3-7 in paragraph 1 of Aggregate Mining.

Response

We were unable to locate DEIS/SEIR Table 3.3-7. DEIS/SEIR Table 3.3-5, Existing Cemex and Robertson's Operations Water Use, is consistent with paragraph three under Aggregate Mining on DEIS/SEIR Page 4.3-9, which discusses current water use. Paragraph one under Aggregate Mining outlines the approximate water use based on the Mine and Reclamation Plans for both Cemex and Robertson's.

Comment 125

Chuck Jojola

We are interested in gold panning activities within the Wash Plan area (map attached).

Response

Regarding gold panning within the Wash, San Bernardino County Flood Control District owns the majority of the area of interest shown in the map. Contact information Flood is available at <http://cms.sbcounty.gov/dpw/FloodControl.aspx>.

Comment 126

Federal Aviation Administration

The Federal Aviation Administration (FAA) has reviewed the Proposed Upper Santa Ana River Wash Habitat Conservation Plan (HCP) and Draft Environmental Impact Statement (EIS); San Bernardino County, California. The U.S. Fish and Wildlife Service (USFWS) is proposing issue incidental take permits for the federally endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*, SBKR), Santa Ana River woolly-star (*Eriastrum densifolium* ssp. *sanctorum*, woolly-star), slender-horned spineflower (*Dodecahema leptoceras*, spineflower); the threatened coastal California gnatcatcher (*Polioptila californica*, gnatcatcher); and the cactus wren (*Campylorhynchus brunneicapillus*) consistent with the HCP. The HCP covered activities include construction and/or operation and maintenance of land or facilities associated with the following: Aggregate mining; Water conservation; Wells and water infrastructure; Transportation; Flood Control; Trails; Habitat Enhancement; and Agriculture. These activities would include land adjacent to the boundaries of Redlands Municipal (REI) and San Bernardino International (SBD) Airports.

Response

Thank you for your comment.

Comment 127

Federal Aviation Administration

A significant part of the FAA mission is to ensure a safe and efficient national airport system. The FAA does this is by establishing standards and guidance including Advisory Circular (AC) 150/5200-33 Hazardous Wildlife Attractants On or Near Airports. This AC provides guidance on land uses that have the potential to attract hazardous wildlife on or near public-use airports like REI and SBD. These requirements are important for all airports, but the Federal government has a particular duty to help protect the safety of those airports that are available for public use. There are even more stringent requirements for airports that serve certain levels of scheduled commercial service. The FAA certicates these airports (including San Bernardino International) under 14 CFR Part 139.

Response

Thank you for your comment.

Comment 128

Federal Aviation Administration

Wildlife in or near the airport environment is a safety hazard to aircraft due to the possibility of wildlife/aircraft strikes. Striking even a single bird can cause aircraft or engine damage. Striking multiple birds, such as a flock, can cause major aircraft damage and risk to human life. Wildlife strikes can and do occur with great frequency, and have caused hundreds of millions of dollars in damage and have resulted in fatalities on more than one occasion.

Response

Thank you for your comment.

Comment 129

Federal Aviation Administration

The FAA (2019) Wildlife Strikes to Civil Aircraft in the United States 1990-2018 report States that: "Aircraft collisions with birds and other wildlife (wildlife strikes) have become an increasing concern for aviation safety in recent years. Factors that contribute to this increasing threat are increasing populations of large birds and increased air traffic by quieter, turbofan-powered aircraft. Globally, wildlife strikes killed more than 282 people and destroyed over 263 aircraft from 1988-2018. The number of strikes annually reported to the Federal Aviation Administration (FAA) increased 8.7-fold from 1,850 in 1990 to a record 16,020 in 2018. The 2018 total was an increase of 1,356 strikes (9 percent) compared to the 14,664 strikes reported in 2017. For 1990-2018, 214,048 strikes were reported (209,950 in USA and 4,098 strikes by US-registered aircraft in foreign countries). In 2018, birds were involved in 94.7 percent of the reported strikes, bats in 3.2 percent, terrestrial mammals in 1.8 percent, and reptiles in 0.3 percent. For commercial and GA aircraft, 71 and 72 percent of bird strikes, respectively, occurred at or below 500 feet above ground level (AGL). Above 500 feet AGL, the number of strikes declined by 34 percent for each 1,000-foot gain in height for commercial aircraft, and by 44 percent for GA aircraft. Strikes occurring above 500 feet were more likely to cause damage than strikes at or below 500 feet." A full copy of this report can be found at https://www.faa.gov/airports/airport_safety/wildlife/media/Wildlife-Strike-Report-1990-2018.pdf. Other resources on wildlife strikes can be found on the FAA website https://www.faa.gov/airports/airport_safety/wildlife/resources.

Response

Thank you for your comment.

Comment 130

Federal Aviation Administration

In 2003, a Memorandum of Agreement (MOA) was signed between the FAA and several federal agencies, including the USFWS (attached). In this agreement, the signatory agencies agreed to "diligently consider the siting criteria and land use practice recommendations stated in FAA Advisory Circular (AC) 150/5200-33, Hazardous Wildlife Attractants On or Near Airports (attached).

Response

Thank you for your comment.

Comment 131

Federal Aviation Administration

Airport sponsors have made legal commitments ("assurances") to operate those airports in accordance with FAA standards, regulations and orders, by having accepted either Federal funding through the Airport Improvement Program (AIP) and/or by accepting land and property through the Surplus Property Act. These assurances are attached to and become part of the formal legally binding grant agreement that every airport sponsor signs when accepting AIP grants. FAA Order 5190.6B covers the grant assurances an airport sponsor shall comply with when receiving a grant from the FAA. The following grant assurances could be impacted for the City of Redlands (sponsor of REI) and City Highland (as a member of the San Bernardino Airport Authority, sponsor of SBD) with the implementation of this HCP.

Response

Thank you for your comment.

Comment 132

Federal Aviation Administration

Grant Assurance 20 (Hazard Removal and Mitigation) requires airport sponsors to "take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards." This includes wildlife hazards. "Land use practices that attract or sustain hazardous wildlife populations on or near airports can significantly increase the potential for wildlife strikes. As such, the airport sponsor must take appropriate action to mitigate those hazards."

Response

Thank you for your comment.

Comment 133

Federal Aviation Administration

Grant Assurance 21 (Compatible Land) requires airport sponsors "to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft." PerFAA Order 5190_6b, Section 21.6.f(6).

Incompatible Land Uses include, "Introducing a wildlife attractant or failure to take adequate steps to mitigate hazardous wildlife at the airport can also result in an incompatible land use. Incompatible land uses can include wastewater ponds, municipal flood control channels and drainage basins, sanitary landfills, solid waste transfer stations, electrical power substations, water storage tanks, golf courses, and other bird attractants."

Response

Thank you for your comment.

Comment 134

Federal Aviation Administration

While certain threatened or endangered species may not pose a direct threat to aviation safety because of their small size, their presence on or near the airport frequently attracts larger predatory animals to the vicinity, the presence of these predators, such as coyotes or raptors, poses a strike risk to aircraft taking off or landing. Airport operators have a responsibility to deter wildlife from the airport environment, using both passive (e.g. fencing) and active (e.g. hazing) measures to reduce wildlife attractants. In short, an airport environment is specifically designed to deter wildlife and will seldom be an appropriate refuge for threatened or endangered species.

Response

Thank you for your comment.

Comment 135

Federal Aviation Administration

Based on the information, references, and MOA provided above the USFWS should reevaluate the following sections: Land-use needs to consider FAA AC 150/5200-33B guidance on land uses and separation criteria for potential wildlife hazard attractants. Non-compatible land uses near the airport includes natural resources, natural areas and wetlands.

Response

FEIS/FSEIR Section 4.5.1.2 has been revised to include the following: Federal Aviation Administration Advisory Circular No. 150/5200-33B provides guidance on land uses and separation criteria from airports for potential wildlife hazard attractants such as water management facilities and wetlands. The Wash Plan HCP Preserve will remain in the existing undeveloped condition. No change is proposed to the historic condition which is compatible with airport operations.

The Wash Plan HCP Preserve does not include creation or restoration of wetlands as defined in FAA Advisory Circular 150/5200-33B, nor are riparian/aquatic vegetation types conserved within the Preserve. In addition, no mitigation is proposed on airport lands as part of the Wash Plan. Proposed Projects relating to water management are sited as far as possible from airport operations within the appropriate geomorphology and are for ground water recharge purposes only. Recharge operations are dependent upon precipitation and/or other water availability, with significant dry periods during typical years.

Approximately 115 acres of native vegetation in the Plan Area are within the San Bernardino International Airport 5,000 foot Airport Influence Zone and 449 acres are within San Bernardino International Airport 10,000 foot Airport Influence Zone. The native habitat areas include the Santa Ana River and City Creek.

The City of Redlands is considering an expansion of Airport facilities. We have included the proposed expansion area in our discussion of the Airport Influence areas. Approximately 1,183 acres of native vegetation in the Plan Area are within the Redlands Municipal Airport 5,000 foot Airport Influence Zone. There are an additional 231 acres of native vegetation within this zone outside of the Plan Area. Approximately 2,937 acres are within the Redlands Municipal Airport 10,000 foot Airport Influence Zone. There are an additional 663 acres within this zone outside of the Plan Area. The native habitat areas include the Santa Ana River and Mill Creek.

Operation and maintenance of the Covered Activities will result in the development of 135 and 255 acres of native vegetation the 5,000, and 10,000 -foot Redlands Municipal Airport Zones of Influence respectively. These areas will not provide habitat for wildlife after development of the Covered Activities.

See also responses 145 and 152.

Comment 136

Federal Aviation Administration

Aviation hazards - need to include wildlife hazards to aviation. There is a potential to increase aviation hazards with the implementation of the HCP.

Response

DEIS/SEIR Section 3.11.2.1 has been revised to include the following: Federal Aviation Administration Advisory Circular No. 150/5200-33B (AC) provides guidance on land uses and separation criteria from airports for potential wildlife hazard attractants. For example, the AC recommends a minimum separation distance of 5,000 feet from airports serving piston-powered aircraft, 10,000 for airports serving turbine-powered aircraft, and 5 statute miles from approach, departure airspace for all airports for the following: waste disposal operations, water management facilities, wetlands, dredge spoil containment areas, agricultural activities, golf courses and landscaping. The AC incorporates by reference the Memorandum of Agreement between the Federal Aviation Administration, the U.S. Air Force, the U.S. Army, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture to Address Aircraft-Wildlife Strikes (MOA). The MOA encourages local coordination between federal resource agencies to address these issues in the planning process, including those related to conservation/mitigation habitats or other land uses that could attract hazardous wildlife to airports or nearby areas. The MOA notes that federal resource agencies may approve exceptions to the siting criteria for habitats that provide unique ecological functions or values (e.g. critical habitat for federally-listed endangered or threatened species, ground water recharge).

There are approximately 2,176 acres of undeveloped native habitat which support a variety of wildlife species in the Plan Area. There are no large wetlands or notable resident flocks of large or medium sized birds supported by the undeveloped habitat. Of the common species, coyote (*Canis latrans*) is most likely to present a hazard on a runway or taxiway. The Conservation District operates approximately 69 acres of groundwater recharge basins in the north east corner of the Plan Area. While the basins are opportunistically visited by small numbers of water fowl, basin maintenance practices prevent the development of vegetation which would foster use of the basins by water fowl. In addition, because the basins are only seasonally ponded, they do not provide the conditions necessary to provide food or nesting habitat for waterfowl.

DEIS/SEIR Section 4.11.1.2 has been revised to include the following: The Federal Aviation Administration Advisory Circular No. 150/5200-33B (AC) guidance on land uses and separation criteria from airports for potential wildlife hazard attractants was utilized for analysis of the Plan HCP. The Plan Area includes natural lands to be conserved in perpetuity for habitat values; however, these will remain in their existing undeveloped condition, thus no change is proposed which is incompatible with airport operations. The Wash Plan HCP Preserve does not include creation or restoration of wetlands as defined in FAA Advisory Circular 150/5200-33B, nor are riparian/aquatic vegetation types conserved within the Preserve. In addition, no mitigation is proposed on airport lands as part of the Wash Plan. Proposed Projects relating to water management are sited as far as possible from airport operations within the appropriate geomorphology and are for ground water recharge purposes only. The presence of surface water in the proposed ground water recharge basins is dependent upon precipitation and/or other State water availability. The basins are subject to lengthy dry periods during typical years. Basin maintenance requires the removal of surface material and any vegetation from the basins each year. This prevents the development of food resources and vegetation that would foster use by waterfowl. Implementation of the Covered Activities will result in the development of 135 and 255 acres of native vegetation the 5,000, and 10,000 -foot Redlands Municipal Airport Zones of

Influence respectively. These areas will not support wildlife after the development of the Covered Activities.

See also responses 145 and 152.

Comment 137

Federal Aviation Administration

The FAA strongly supports efforts to protect threatened and endangered species, as a matter of principle and consistent with the Endangered Species Act of 1973. We appreciate your cooperation with the FAA on the protection of threatened and endangered species, and your consideration of these critical issues as we continue to work together to achieve these goals while also protecting the traveling public and our critical national transportation system.

Response

We thank you for your comments and support.

Comment 138

MacCleod, B; Kelley, A

We would like to comment on the Upper Santa Ana River Wash Plan. We have concerns about the exact usage for the acreage designated as "conserved". We are concerned about duplicative mitigation areas which are already preserved as part of the Seven Oaks project.

Response

Proposed HCP Preserve lands have not been previously utilized for mitigation; however, they are adjacent to Existing Mitigation Lands for projects such as Seven Oaks Dam (Wash Plan Figure 1-2, Section 1.2.2).

Comment 139

MacCleod, B; Kelley, A

According to the interview with Betsy Miller, the land resources manager, SBVWCD, in the January 17th Redlands Community Newspaper, and her presentation on the 9th at the SBVWCD office, she stated that the wash plan has a comprehensive preserve program. "There are 778 acres set aside in new conservation land and over 880 acres managed by 'public owner's? There are also an additional 600 acres owned by San Bernardino County Flood Control, for future 'preservation' and 750 acres of existing preserve" and we wonder who will be in control of this patch work of ownership. We are concerned that part of the expansion of the water recharge basin will destroy over 40 acres of intact Upland Woodland Holly-leaved Cherry that harbors California Legless Lizard, Coast Horned Lizard, and Coastal Cactus Wren. We also don't know what the "public owners" intentions are for their future management of the 880 acres.

Response

Refer to response to Comment 92 regarding coordination of land management within the Upper Santa Ana River Wash. Details of Covered Activity impacts are described in Wash Plan Chapter 2, Table 2-1, and analyzed in DEIS/SEIR Chapter 4. Refer to Wash Plan Chapter 5 for details on land management requirements within the HCP Preserve.

Comment 140

MacCleod, B; Kelley, A

The 600 acres for "future preservation" owned by the county flood control in the wash plan should be used as mitigation for the city of Yucaipa/SBC's flood control Wilson Creek project that contains the 2nd highest population of Parry's Spineflower and the largest intact Alluvial Fan Sage Scrub habitat through out the east valley. The Santa Ana River Woolly Star Mainstem habitat area, south of the river, east of Boulder needs to be restored where 75 acres was bulldozed by a Redlands land owner. SBCWCD already has a \$10 million endowment for monitoring and management activities for the wash plan. It should not be used as a mitigation bank.

Response

Utilization of the Future SBCFCD Mitigation Area is at the discretion of San Bernardino County Flood Control District and subject to approval by appropriate regulatory agencies. The Wash Plan requires recordation of conservation easements on District Conserved Lands; thus, those lands may not be utilized as a mitigation bank for other projects (Wash Plan Sections 6.7 and 7.1.1).

Comment 141

MacCleod, B; Kelley, A

We disagree with the label of "neutral land " on the borrow pit site because it is already classified as mitigation for the Seven Oaks dam construction and is not conserved in this wash plan.

Response

The borrow pit was permanently impacted during construction of Seven Oaks Dam with mitigation for impacts occurring in the Woolly Star Preserve Area Biological (refer to Biological Opinions 1-6-88-F-6 and 1-6-98-F-21). Thus, the site does not currently support natural habitat values and is not proposed for conservation in the Wash Plan.

Comment 142

MacCleod, B; Kelley, A

The local congressmen, Aguilar and Cook, arranged to 'transfer' BLM public land, without public comment, for aggregate mining use. This action did not include any mitigation for this

change in land ownership. When asked about land swaps at the Jan. 17, we were told there had been no "land swaps", which was technically true but not done under the HCP plan so they could deny it. We would like to see additional mitigation land set aside for this to be honest about the congressional obfuscation.

Response

The BLM and San Bernardino Valley Water Conservation District land exchange was authorized on March 12, 2019, under the Santa Ana River Wash Plan Land Exchange Act. For additional details on the exchange, please see Wash Plan Pages ES-4, ES-11, ES-12, ES-13, 1.4, and Sections 1.2.6 and 6.2.1, and Figure 1.0-7 in the DEIS/SEIR.

Comment 143

MacCleod, B; Kelley, A

We disagree with SBVWC statement that the mining land use was reduced by 30%. Was it reduced by 30% from the time when their plan was to mine most of the wash? We think it looks like an expansion from what they are currently using, an expansion of 401.5 acres without mitigation. They used to have to mitigate for all expansions of mining, but under the HCP they don't have to because they are seeking a biological opinion and incidental take permit under the fish and wildlife service and signing a Record of Decision.

Response

Covered Activity CRM.01, Aggregate Mining, permanently impacts 400.7 acres (Wash Plan Tables 2-1 and 4-7). Mitigation is achieved through land conservation, restoration, management and dedicated funding in perpetuity required by the Wash Plan (Wash Plan Page ES-10, Tables 4-5 and 4-6, and Chapters 5 and 7).

Comment 144

MacCleod, B; Kelley, A

Your newsletter about the Upper Santa Ana River Wash Habitat Conservation Plan says it consists of relatively rare habitat called Riversidian Alluvial Fan Sage Scrub. In fact it is the rarest habitat in the USA, with over 99% of it being destroyed already. It is incumbent upon us all to save as much as possible and we expect the SBVWCD and partners to do better!

Response

We agree that Riversidean Alluvial Fan Sage Scrub is highly endangered. The Wash Plan conserves, funds and manages 1529.8 acres of Sage Scrub within the Plan Area (Wash Plan Table 5-1, Chapter 7).

Comment 145

City of Redlands

Thank you for the presentation and discussions yesterday at the public meeting hosted at your offices. In response to the information presented as well as the referenced documents, the City of Redlands Municipal Airport (REI) has prepared the below comments expressing our concerns and requests: 1.) Adjust the HCP boundary to REI's northern boundary, see example Figure and Exhibits included below: Figure I-2 -Plan Area Subcomponents; Exhibit 1 - Existing REI Master Plan and Airport Capital Improvement Plan; C) Exhibit 2 - Existing Airport Layout Plan.

Response

Section 2.3.6, Redlands Municipal Airport, has been added to Wash Plan Section 2.3, Projects and Activities Not Covered by the HCP: "The City of Redlands Municipal Airport (REI) lies to the south of the Wash Plan, with approximately 34.86 acres of undeveloped Neutral Lands owned by the City within the Wash Plan boundary. REI is a long-standing local and national asset in FAA's National Plan of Integrated Airport Systems, and airport operations are considered compatible with the Wash Plan. The REI Master Plan and Airport Capital Improvement Plan are not Covered Activities. Adoption of the Wash Plan does not restrict the use, maintenance or future development of REI whether inside or outside the Wash Plan boundary." The Wash Plan recognizes that San Bernardino County Flood Control District owns approximately 150.9 acres of alluvial habitat within the active channel of the Santa Ana River which may be used as mitigation for future projects not identified in or covered by the Wash Plan (Section 1.2.2). Future mitigation proposed for these lands should be reviewed by the FAA and appropriate airport operator(s) per the MOA for compliance with Advisory Circular 150/5200-33B Section 2.4. The location of the Wash Plan boundary is based on requests for inclusion of Covered Activities (e.g. Redl.09) by Wash Plan Task Force member agencies. See Wash Plan Section 1.2.2 for details on Neutral Lands.

Comment 146

City of Redlands

2.) Request approved REI Master Plan, Land Uses and associated Airport Capital Improvement Plan be incorporated as covered projects in the HCP, see Exhibits included below: Exhibit 1 - Existing REI Master Plan and Airport Capital Improvement Plan, Exhibit 2 - Existing Airport Layout Plan

Response

See response to Comment 145.

Comment 147

City of Redlands

3.) Request REI's Existing Air Space Plan be incorporated/recognized in the HCP/EIS, see Exhibit 3 - Existing Air Space Plan.

Response

See response to Comment 145. Refer to DEIS/SEIR Sections 3.5.2.5, 3.11.2, 4.5, 4.5.1.2, and 4.11.1.2 for analysis of potential hazards and land use conflicts related to REI, including a detailed evaluation of the Redlands Municipal Airport Land Use Compatibility Plan.

Comment 148

City of Redlands

4.) Request REI's Approved Land Use Compatibility Plan be incorporated/recognized in the HCP/EIS. See Exhibit 4 - REI Land Use Compatibility Plan.

Response

See response to Comment 145. Refer to DEIS/SEIR Sections 3.5.2.5, 3.11.2, 4.5, 4.5.1.2, and 4.11.1.2 for analysis of potential hazards and land use conflicts related to REI, including a detailed evaluation of the Redlands Municipal Airport Land Use Compatibility Plan.

Comment 149

City of Redlands

5.) Request REI's Existing Noise Plan, Fixed Wing and Helicopter Patterns be incorporated/recognized in the HCP/EIS. See Exhibit 5 - REI Existing Noise Plan, Fixed and Wing and Helicopter Patterns.

Response

See response to Comment 145. Refer to DEIS/SEIR Sections 3.5.2.5, 3.11.2, 4.5, 4.5.1.2, and 4.11.1.2 for analysis of potential hazards and land use conflicts related to REI, including a detailed evaluation of the Redlands Municipal Airport Land Use Compatibility Plan.

Comment 150

City of Redlands

6.) Revise HCP and EIS documents including actions and analysis to address and consider impacts/implications to Exhibits listed and included below: Exhibit 1 - Existing REI Master Plan and Airport Capital Improvement Plan; Exhibit 2 - Existing Airport Layout Plan; Exhibit 3 - Existing Air Space Plan; Exhibit 4 - REI Land Use Compatibility Plan; Exhibit 5 - REI Existing Noise Plan, Fixed and Wing and Helicopter Patterns

Response

See response to Comment 145. Refer to DEIS/SEIR Sections 3.5.2.5, 3.11.2, 4.5, 4.5.1.2, and 4.11.1.2 for analysis of potential hazards and land use conflicts related to REI, including a detailed evaluation of the Redlands Municipal Airport Land Use Compatibility Plan.

Comment 151

City of Redlands

7.) Revise HCP and EIS including actions and analysis to properly recognize, reference and analyze REI airport as a long standing local and national asset in FAA's National Plan of Integrated Airport Systems:

a. FAA Advisory Circular, dated 8/28/2007, AC No. 150/5200-33B.

Response

See response to Comment 145. Refer to DEIS/SEIR Sections 3.5.2.5, 3.11.2, 4.5, 4.5.1.2, and 4.11.1.2 for analysis of potential hazards and land use conflicts related to REI, including a detailed evaluation of the Redlands Municipal Airport Land Use Compatibility Plan.

Comment 152

City of Redlands

i. Mitigation must not inhibit the airport operations to effectively control hazardous wildlife on or near the mitigation sites or effectively maintain other aspects of safe airport operations.

Response

See response to Comment 145. The Wash Plan HCP Preserve (i.e. mitigation lands) do not include creation or restoration of wetlands as defined in FAA Advisory Circular 150/5200-33B, nor are riparian/aquatic vegetation types conserved within the Preserve (Wash Plan Table 4-2). The Wash Plan HCP Preserve will remain undeveloped, thus no change is proposed to the historic condition which is not in conflict with airport operations. In addition, no mitigation is proposed on airport lands as part of the Wash Plan HCP. The MOA Between the Federal Aviation Administration, the U.S. Air Force, the U.S. Army, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture to Address Aircraft-Wildlife Strikes (2003) notes that “development of conservation/mitigation habitats or other land uses that could attract hazardous wildlife to airports or nearby areas” is “of most concern” to achieving the MOA’s purpose (Section 1.C). Section 1.F notes that “not all habitat types attract hazardous wildlife” and recommends that “the signatory agencies will diligently consider the siting criteria and land use practice[s]...stated in FAA AC 150/5200-33” (Section 1.H).

Regarding the Wash Plan, five species are listed as “Covered Species”:

1) Slender-horned spineflower (*Dodecahema leptoceras*) is a 1-3 inch tall plant that is known to occur within the Wash Plan HCP Preserve.

2) Santa Ana River woolly-star (*Eriastrum densifolium ssp. sanctorum*) a 24-40 in tall plan that is known to occur within the Wash Plan HCP Preserve.

3) Cactus wren (*Campylorhynchus brunneicapillus*) is a 1.65 oz. bird species that is known to occur within the Wash Plan HCP Preserve. This species is normally found in pairs or family groups on established territories (Anderson and Anderson 1957 and 1973 in The Birds of North

America Online), thus they are not expected to form the large flocks noted to cause 97% of reported civilian aircraft-wildlife strikes (MOA Page 2, Background).

4) California gnatcatcher (*Polioptila californica californica*) is a less than one ounce bird species that is known to occur within the Wash Plan HCP Preserve. This species is normally found in pairs throughout the year, although foraging groups of up to five individuals were occasionally observed in habitat outside known territories during the non-breeding season (Preston et al. 1998b in The Birds of North America Online), thus they are not expected to form the large flocks noted to cause 97% of reported civilian aircraft-wildlife strikes (MOA Page 2, Background).

5) San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is the smallest kangaroo rat in the United States. Its body is about 3.7 inches long with a long tail, up to 6 inch tail. Individuals are primarily solitary but have overlapping home ranges (Randall 1993), resulting in low population densities across the landscape. The species exhibits nocturnal behavior, foraging from dusk to dawn and sheltering from high daytime temperatures in underground burrows. Given this population density and lack of daytime activity, this species is not anticipated to attract common, large-bodied birds such as red-tailed hawks which are noted to cause 97% of reported civilian aircraft-wildlife strikes (MOA Page 2, Background).

The Wash Plan recognizes that San Bernardino County Flood Control District owns approximately 150.9 acres of alluvial habitat within the active channel of the Santa Ana River which may be used as mitigation for future projects not identified in or covered by the Wash Plan (Section 1.2.2). Future mitigation proposed for these lands should be reviewed by the FAA and appropriate airport operator(s) per the MOA for compliance with Advisory Circular 150/5200-33B Section 2.4.

MOA Section 1.F notes that “exceptions to the...siting criteria...described in Section 2.4b of the AC will be considered because they typically involve habitats that provide unique ecological functions or values (e.g. critical habitat for federally-listed endangered or threatened species, ground water recharge).” The Wash Plan boundary is entirely within designated critical habitat for San Bernardino kangaroo rat (Figure 3-9). Wash Plan Covered Activities CD.01, CD.07, VD.01, and EVWD.04 are related to ground water recharge.

Comment 153

City of Redlands

ii. Mitigation areas must be designed to avoid attracting hazardous wildlife in a manner the meets FAA safety standards.

Response

See response to Comments 135, 136, 145 and 152.

Comment 154

City of Redlands

iii. City of Redlands and FAA will review any proposed and or future onsite mitigation proposals to determine compatibility with safe airport operations.

Response

See response to Comments 135, 136, 145 and 152.

Comment 155

City of Redlands

iv. A wildlife damage management biologist should evaluate any mitigation projects that are needed to protect unique habitat functions and that must be located in the separation criteria in Sections 1-2 through 1-4 of FAA AC 150/5200-33B, before the mitigation is implemented.

Response

See response to Comments 135, 136, 145 and 152.

Comment 156

City of Redlands

v. A Wildlife Hazard Assessment (WHA) should be developed to reduce all wildlife hazards and depending on the WHA findings, the HCP may need a Wildlife Hazard Management Plan.

Response

See response to Comments 135, 136, 145 and 152.

Comment 157

City of Redlands

b. FAA, Memorandum of Agreement between FAA and USFWS and other federal airport air and ground operations, signed 2002.

Response

See response to Comments 136 and 145.

Comment 158

City of Redlands

c. FAA Wildlife Hazard Management at Airports, second edition July 2005.

Response

See response to Comments 135, 136, 145 and 152.

Comment 159

City of Redlands

d. FAA Airport Sponsor Assurances, dated 2014, https://www.faa.gov/airports/aip/grant_assurances/.

Response

See response to Comments 136, 145, and 152.

Comment 160

City of Redlands

e. FAA CERTALERT dated 11/21/2006 No. 06-07.

Response

See response to Comments 136 and 145.

Comment 161

City of Redlands

f. Exclude REI lands from all HCP actions that would place REI in violation of Assurance 19, 20 and 21, FAA Airport Sponsor Assurances, dated 2014, https://www.faa.gov/airports/aip/grant_assurances/.

Response

See response to Comments 136 and 145.

Comment 162

Save Lytle Creek Wash

"Without adequate mitigation and conservation lands set aside for SBKR in the HCP by SBVWCD and in Lytle Creek by FFWS, the species won't survive anywhere."

Early in 2010, on a walk through of the Lytle Creek Ranch Specific Plan project site under the DEIR comment period, ACOE representative Crystal Huerta took notes to record the major events and discussions that took place between the participants. One entry in Huerta's notes came from a Service representative stating that the project as proposed would trigger a Jeopardy Opinion. Under Karin Cleary-Rose that Jeopardy Opinion seems to have been removed. The developer has not changed the LCRSP project's intent to destroy nearly all of SBKR's habitat and refugia, so why no JO from Karin Cleary-Rose?

Response

Lytle Creek is not a Covered Activity within the Wash Plan nor does it occur within the Wash Plan Boundary, thus issues raised regarding Lytle Creek are outside the purvue of this project. Preservation of San Bernardino kangaroo rat in additional locations throughout their range, such as Lytle Creek, would be complimentary to the Wash Plan HCP. Our project commentary shows no record of quoted remarks referenced here.

Comment 163

Save Lytle Creek Wash

In fact Karin Ceary-Rose, a lead on the SBVWCD's HCP wasn't present to showcase the wash plan on January 9, 2020, and therefore couldn't address that question. Neither was Gary Hund, the USFWS consulting biologist.

Response

Thank you for your comment. Geary Hund has retired from USFWS.

Comment 164

Save Lytle Creek Wash

Although, the HCP addresses SBKR's survival there, without adequate mitigation lands set aside in perpetuity in both areas of concern, SBKR's march toward eventual extinction continues. This is unacceptable.

Response

We agree that Riversidean Alluvial Fan Sage Scrub is highly endangered. The Wash Plan conserves, funds and manages 1529.8 acres of Sage Scrub within the Plan Area (Wash Plan Table 5-1, Chapter 7).

Comment 165

Save Lytle Creek Wash

NEPA and CEQA clearly demonstrate the need to study cumulative impacts of any and all projects that could affect this Wash Plan.

Response

Thank you for your comment.

Comment 166

Save Lytle Creek Wash

The approval of the East Gate project at the former Norton Air Force Base requires no mitigation, however does take 17 acres of critical habitat for California Gnatcatcher and Woolly Star. Up to 100 flights of cargo planes directly over the wash will impact species in the Wash Plan with high intensity sound and potentially bird/aircraft conflict. In addition to this was the proposal at the Wash Plan January 9th meeting by Redlands Airport official to open a helibase on site.

Response

Redevelopment of the former Norton Air Force Base and potential future Redlands Airport improvements are not Covered Activities in the Wash Plan HCP and thus would be analyzed in separate environmental documents. The San Bernardino International Airport Eastgate Building 1 Project EIR (SCH #2018071038) indicates that impacts to biological resources were mitigated to a less than significant level, with no comments received to the contrary (Page 217).

Comment 167

Save Lytle Creek Wash

One of the Wash Plan maps illustrated a continuous line around Lytle Creek, Cajon Creek, and the Santa Ana River project area. In light of the California Department of Fish and Wildlife unanimous decision to accept petition for listing SBKR for state endangered listing in 2019 and the recent NJO issued by the USFWS, the approval of the SBVWCD Wash Plan should be postponed until all these issues are resolved.

Response

Adoption of the Wash Plan will provide conservation, funding and management for 1,622.5 acres of land modeled to support San Bernardino Kangaroo Rat (Wash Plan Table 4-5). The conditions and measures in the Wash Plan HCP were designed to meet the issuance criteria for 2081 permits for all Covered Species (Wash Plan Section 1.3.2; see also Wash Plan Page ES-2 and Section 1.1.1). Refer to response to Comment 6 for additional details of coordination with CDFW on the Wash Plan HCP.

Comment 168

California Pilots Association

The California Pilots Association mission is to Preserve, Protect and Promote and the state's airports. As a statewide volunteer organization, we work tirelessly to maintain the State's airports in the best possible condition.

Response

Thank you for your comment.

Comment 169

California Pilots Association

The California Pilots Association and the San Carlos Airport Pilots Association share the same concerns as the City of Redlands and the Redlands Airport Association (RAA) about the proposed HCP as it relates to the airport. We do not believe the property associated with Redlands Municipal Airport (REI) should be included in the HCP. We are requesting the northern boundary of the HCP be changed to the northern boundary of Redlands Municipal Airport for the same following reasons:

Response

The location of the Wash Plan boundary is based on requests for inclusion of Covered Activities (e.g. Redl.09) by Wash Plan Task Force member agencies, with property to the north of REI designated as Neutral Lands (refer to Wash Plan Section 1.2.2). Thus, adoption of the Wash Plan does not restrict the use, maintenance or future development of REI whether inside or outside the Wash Plan boundary. See response to Comment 145.

Comment 170

California Pilots Association

1) The REI Airport Master Plan and Airport Layout Plan include future improvements on the north side of REI's runway. They also include plans for a runway extension. These proposed plans are well documented with Caltrans Division of Aeronautics and the Federal Aviation Administration. The costs and challenges associated with developing these improvements inside of the proposed HCP area may make them impractical to construct.

Response

See response to Comment 145. Analysis of the Redlands Municipal Airport Land Use Compatibility Plan and the City of Redlands General Plan and Zoning did not determine any project conflicts with these adopted land use plans (DEIS/SEIR Sections 3.5.2.5 and 4.5.1.2).

Comment 171

California Pilots Association

2) The future improvements identified in the REI airport master plan will contribute economic benefit to the airport enterprise fund. Any development limitations created by the proposed HCP boundaries within the airport could reduce any potential development related revenue. This could make the cost of operating the airport an economic burden for the City of Redlands.

Response

See response to Comment 169.

Comment 172

California Pilots Association

We also believe that the creation of the HCP should include the development of an FAA approved Wildlife Hazard Mitigation Plan to mitigate any associated wildlife hazard impacts on aircraft operating at REI.

Response

See responses to Comments 135-136 and 152-158.

Comment 173

Redlands Airport Association

We have reviewed the Draft EIS associated with the Proposed Upper Santa Ana River HCP. We are concerned regarding its impact on Redlands Municipal Airport (REI) and offer the following comments. The HCP boundaries appear to include property within REI. This property belongs to the City of Redlands. We are also aware the City of Redlands does not want this property included in the HCP.

Response

The location of the Wash Plan boundary is based on requests for inclusion of Covered Activities (e.g. Redl.09) by Wash Plan Task Force member agencies, with property to the north of REI designated as Neutral Lands (refer to Wash Plan Section 1.2.2). Thus, adoption of the Wash Plan does not restrict the use, maintenance or future development of REI whether inside or outside the Wash Plan boundary. See response to Comment 145.

Comment 174

Redlands Airport Association

The RAA shares the same concerns as the City of Redlands about the proposed HCP as it relates to the airport. We do not believe the property associated with Redlands Municipal Airport should be included in the HCP. We are requesting the northern boundary of the HCP be changed to the northern boundary of Redlands Municipal Airport for the following reasons.

Response

See response to Comment 145.

Comment 175

Redlands Airport Association

1) The REI Airport Master Plan and Airport Layout Plan include future improvements on the north side of REI's runway. They also include plans for a runway extension. These proposed plans are well documented with Caltrans Division of Aeronautics and the Federal Aviation

Administration. The costs and challenges associated with developing these improvements inside of the proposed HCP area may make them impractical to construct.

Response

See response to Comment 145. Analysis of the Redlands Municipal Airport Land Use Compatibility Plan and the City of Redlands General Plan and Zoning did not determine any project conflicts with these adopted land use plans (DEIS/SEIR Sections 3.5.2.5 and 4.5.1.2).

Comment 176

Redlands Airport Association

2) The future improvements identified in the REI airport master plan will contribute economic benefit to the airport enterprise fund. Any development limitations created by the proposed HCP boundaries within the airport could reduce potential development related revenue. This could make the cost of operating the airport an economic burden for the City of Redlands.

Response

See response to Comment 169.

Comment 177

Redlands Airport Association

REI users have coexisted with the Santa Ana River environment since the airport was founded in 1947. We believe the Santa Ana Wash area to the north of the airport is a great buffer for aircraft noise and overflight. REI users have also had to deal with the wildlife impacts associated with the Santa Ana wash area. We do believe that the creation of the HCP should include the development of an FAA approved Wildlife Hazard Mitigation Plan to mitigate any associated wildlife hazard impacts on aircraft operating at REI.

Response

See responses to Comments 135-136 and 152-158.

Comment 178

Redlands Airport Association

The City of Redlands purchased REI in 1962 from private owners. Since that time, it has grown responsibly to serve the aviation needs of Redlands and the surrounding communities. There are approximately 220 aircraft based at REI. The airport facilitates about 60,000 annual operations from visitors, business and personal travel, recreational flights, flight training activities, air ambulance operations and firefighting activities. The flight training activities at the airport are significant and provide valuable training to the next generation of pilots. The airport is also part of US National Plan of Integrated Airport Systems and will be used to facilitate emergency air

support to the community during civil emergencies. The airport generates about \$5 million a year in revenue. There are approximately 50 people employed at the airport and is estimated to support another 1500 jobs. REI's net worth to the community (Land Buildings and Revenue) were recently estimated to be \$80,000,000.

Response

Thank you for your comment.

Comment 179

Redlands Airport Association

The RAA believes the economic and societal impacts of the proposed HCP to REI should be thoroughly considered before implementation.

Response

See response to Comment 145. Analysis of the Redlands Municipal Airport Land Use Compatibility Plan and the City of Redlands General Plan and Zoning did not determine any project conflicts with these adopted land use plans (DEIS/SEIR Sections 3.5.2.5 and 4.5.1.2).

Comment 180

Redlands Airport Association

The RAA represents users and friends of Redlands Airport. We are a Chapter of the California Pilots Association, and many of our members are members of the Aircraft Owners and Pilots Association.

Response

Thank you for your comment.

Comment 181

Vulcan Materials Company – Western Division

On behalf of Vulcan Materials Company – Western Division (Vulcan), I have reviewed the draft Environmental Impact Statement/Supplement Environmental Impact Report for the Habitat Conservation Plan and Section 10 Permit for the Upper Santa Ana River Wash Plan, San Bernardino County, California and have the several comments for your consideration. The comments largely center about the potential impacts to the species covered by the draft HCP – the federal endangered San Bernardino kangaroo rat (SBKR), Santa Ana River woolly star (SARWS), and slender-horned spineflower (SHSF) as well as the threatened coastal California gnatcatcher (CAGN) and State Species of Concern Cactus wren (CAWREN).

Response

Thank you for your comment.

Comment 182

Vulcan Materials Company – Western Division

As you are aware, I have been aiding Vulcan with management of Riversidian alluvial fan sage scrub (RAAFSS) habitat on their Cajon Creek properties since the early 1990s. This effort culminated in the establishment of the Cajon Creek Habitat Conservation Management Area (Conservation Area) in 1996 through a Memorandum of Understanding (MOU). It is acknowledged by the three signatory agencies (i.e., the U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers) that the Conservation Area does or has the high potential to provide habitat for the five species covered by the proposed Wash Plan. During the first 20 years of managing the Conservation Area, Vulcan successfully restored over 200 acres of the RAFSS community and continues to undertake RAFSS enhancement/restoration projects on-site. On the twentieth anniversary of the establishment of the Conservation Area, Vulcan undertook a major revision of the management plan that is part of the MOU based on their management experience. The revisions were adopted in the 2017 amendment to the MOU. The amendment added significant new management and monitoring measures to ensure the maintenance of habitat suitable for SBKR and the other forty-four special status species that have been recognized as being present or having a high potential to be present. Because of Vulcan's interest in protecting RAFSS habitat and the species that use it, Vulcan also is sponsoring academic studies on habitat maintenance methodologies and has provided other researchers access to the Conservation Area to aid in undertaking their studies. These efforts has lead to the new information being published regarding RAFSS habitat and management needs for SBKR. The following comments are provided for your consideration.

Response

Wash Plan Permittees appreciate Vulcan's 20 years of experience in SBKR management and look forward to coordination and collaboration during Wash Plan implementation.

Comment 183

Vulcan Materials Company – Western Division

It would be helpful if consistent numbers regarding the amount of impacts and conservation were used throughout the document or the differences explained. Based on the initial description in the document, it appears that the seven project proponents would be allowed to permanently impact approximately 1,050 acres of habitat used by the covered species for proposed aggregate mining, water conservation, water infrastructure, transportation, flood control, and trail projects within the 4,892.2-acre Plan Area. Table 1 has been prepared based on the information on pages 2.0-3 to 2.0-6 of the document. However, in Section 4.0, the numbers associated with permanent impacts are much smaller. Table 4.4-1 provides that the permanent impacts total 615.7 acres and the temporary impacts total 216.6 acres in the Plan Area. Table 4.4.-2 where there is an analysis of impacts on the covered species also provides different numbers than that based on the project description in Section 2. Based on the two tables, it can be assumed that the impacts by species may have been caused by the double counting of some lands because the five species can be

found in similar habitats. Nevertheless, it would be helpful if numbers in the document were either consistent or an explanation provided.

Response

As described in the comment, the discrepancies in impact numbers relate to the overlap in species' habitat areas on a finite portion of land. For example, Aggregate Mining impacts a total of 401.5 acres, of which 289.9 acres are identified as habitat for California gnatcatcher and 380.8 acres are identified as habitat for San Bernardino kangaroo rat, including approximately 286 acres of habitat that are identified as habitat for both species. DEIS/SEIR Section 2.3 has been updated to include the following: "Acreages of species impacts may sum to a number greater than the total impact acreage due to overlap among species habitats (see Figures 3.4-3-3.4-7)."

Comment 184

Vulcan Materials Company – Western Division

This problem is again present in the discussions describing the proposed offsets for these losses. In the description of alternatives, the document states that to offset this loss, the project proponents would implement both avoidance and minimization measures as well as conserve and manage approximately 1,569.1 acres. Table 2.0-2 in the document provides a summary of conserved natural communities. However, the text in the document states that an "additional 156.3 acres of non-native grasslands" (NNG) will be conserved. The table from the document is provided below, however NNG is not included as a community in this table. It is unclear if the NNG being conserved is a component of one or more natural communities and if it is included in this table. This is further complicated because in the Section 4 of the document (page 4.4-4), the document states that the proponents would provide for the permanent conservation of 963.3 acres along with 696.2 acres of District Managed Lands. These two numbers add up to the 1,659.5 acres which is different from either the 1569.1 or the 1,735.4, if the NNG is added to the numbers in the above table.

Response

DEIS/SEIR Table 2.0-2, Summary of Conserved Natural Communities, does not include non-native grassland because it is not a native plant community conserved to support Covered Species. The total acreage of NNG within the Plan Area is 156.3 (Wash Plan HCP Table 3-3); thus the DEIS/SEIR Page 2.0-7 has been corrected to state that 28.4 acres of NNG will be conserved within the HCP Preserve (Wash Plan HCP Table 4-2). DEIS/SEIR Table 2.0-2, as well as other references within the DEIS/SEIR, have been corrected to state that the Wash Plan would conserve and manage approximately 1,529.9 acres to correct the inadvertent double-counting of the 39.3 acres of chamise chaparral. The HCP Preserve is 1659.6 acres in size, including 1529.9 acres of sage scrub habitat, 28.4 acres of non-native vegetation types, and 101.3 acres of existing disturbed/developed lands (refer to DEIS/SEIR Table 4.4-1 and Wash Plan Table 4-2).

Comment 185

Vulcan Materials Company – Western Division

The primary management approach defined in the document is as follows: 1) The primary habitat management approach is focused on the maintenance and enhancement of overall habitat quality for Covered Species through (1) the control of non-native annual grasses and other invasive non-native plants, and (2) the restoration and enhancement of spineflower and woolly-star populations. 2) All prescribed management actions will be implemented within an adaptive management context, and therefore will be modified as new information is gained to improve the effectiveness of the management actions in meeting the biological goals and objectives.

Response

DEIS/SEIR has been accurately quoted.

Comment 186

Vulcan Materials Company – Western Division

The proposed management activities are said to include the following: 1) Habitat enhancement, restoration, and creation. 2) Operational changes to enhance in-stream habitat. 3) Control of invasive plant species (e.g., mowing, grazing, herbicide application, prescribed fire and hand clearing). 4) Relocation of Covered Species from impact sites to the HCP Preserve (e.g., in cases where impacts are unavoidable and relocation has a high likelihood of success). 5) Vegetation thinning using livestock grazing, manual labor, herbicide application, or prescribed burning. 6) Monitoring activities in the Plan Area and mitigation areas. 7) Species surveys and research. 8) Fire management including prescribed burning, mowing, and establishment of temporary fuel breaks.

Response

DEIS/SEIR has been accurately quoted.

Comment 187

Vulcan Materials Company – Western Division

It would have been helpful if more information regarding management from the Habitat Conservation Plan had been included because there appears to be inconsistencies between the habitat requirements on the species and the management plan. In the petition to the California Fish and Wildlife Commission to list SBKR as endangered, the following was stated: “The Wash Plan HCP, which also incorporates some BLM properties, is expected to be completed in late 2019. As proposed by the draft Wash Plan HCP, 570.9 acres of permanent impacts and 109.1 acres of temporary impacts to SBKR would be offset by conservation of 1,622.5 acres of conserved and managed lands. However, over half (54%) of the total Wash Plan HCP Preserve SBKR conservation lands are considered low or very low suitability for SBKR, and only 18% of the conservation lands are considered high suitability for SBKR (ICF 2018). While the plan impacts relatively little highly suitable habitat, and seeks to balance interests, it nevertheless

would permit the continued loss of SBKR habitat and relies on unproven management measures.” From Petition at page 34.

Response

Additional details on proposed management are available in Wash Plan HCP Chapter 5. The Wash Plan HCP is incorporated by reference in the DEIS/SEIR. The petition referenced in the comment accurately summarizes information included in Wash Plan HCP Table 4-5.

Comment 188

Vulcan Materials Company – Western Division

One of the biggest problems appears to be the lack of hydrology to maintain habitat for three of the covered species (i.e., SHSF, SARWS, and SBKR) and how this will be addressed. For example, the section on SHSF states that the approximately 100 acres of the site would be managed for SHSF. The document also mentions that sheet flows of water during storm events is important to maintaining SHSF habitat. However, hasn't this entire area been shut-off from such flows with the construction of Seven Oaks Dam, even though the approval for that project required that such releases be made?

Response

While large-scale flooding and hydrogeomorphic processes are not likely to occur following the construction of Seven Oaks Dam, sheet flow from rainfall during storm events is anticipated within the Wash. Wash Plan HCP Section 5.1.2 includes Slender-horned Spineflower Species Objectives, including permanent conservation and management of 100 acres of spineflower habitat in a manner that preserves ecological processes. In addition, development of a science-based Spineflower Restoration Program is required to address issues unique to the maintenance and enhancement of existing spineflower populations, including adaptive management actions necessary to replicate natural processes where necessary. Development of the Spineflower Restoration Program will include input from the Spineflower Working Group. Failure of the Slender-horned Spineflower Enhancement and Relocation Program is included as a Changed Circumstance (Wash Plan Section 6.4.1).

Comment 189

Vulcan Materials Company – Western Division

In addition, one of the major parcels to be managed for this species appears to be further isolated from potential scour flows because it is located between on-going and future mining operations. Further explanation regarding how this area will be preserved and managed is needed. Similar issues arise with the management of the SARWS and SBKR.

Response

See responses to Comments 7 and 187.

Comment 190

Vulcan Materials Company – Western Division

Another problem is the document may be overly optimistic in the amount of habitat that can be managed for each of the species. For example, the document states that the plan would impact approximately 424 acres of CAGN habitat and conserve/manage approximately 1,292 acres of habitat for the benefit of this species. The only way that this is feasible is if habitat for SARWS and SBKR is included in the CAGN conservation total. Since these three species can be found using the same plant community, this may appear to be reasonable. However, this could be considered misleading because CAGN tends to prefer habitat that is much denser than that preferred by SBKR and SARWS.

Response

See response to Comment 183. Species-Based Management (Wash Plan HCP Pages 5-20 - 5-22) discusses when co-management of species is appropriate. Coastal California Gnatcatcher Management (Wash Plan HCP Pages 5-21 - 5-22) notes that the majority of the habitat in the Plan Area does not contain sufficient shrub cover and structure to support nesting and wintering gnatcatchers.... Suitable habitat areas within the HCP Preserve will be managed to benefit the gnatcatcher, primarily through measures to maintain the suitability of nesting habitat and adjacent wintering and foraging habitat. Co-management of gnatcatcher habitat will also occur as part of non-native controls and related measures for SBKR and woolly-star.

Comment 191

Vulcan Materials Company – Western Division

As to the management of SBKR, the proposed plan does not appear to reflect the latest recommendations for managing this species. Recent studies have refined the preferred habitat structure for this species. A recent habitat use model developed by the San Diego Zoo Institute for Conservation Research (ICR) indicates that the SBKR generally is confined to areas with low shrub cover (less than 20 percent), low annual grass cover (less than 30 percent), appropriate soil openness and texture (greater than 50 percent bare ground with exposed sand with a gravel component greater than 25 percent), and low cover of woody debris (6-13 percent) (Shier *et al.* 2019). These numbers have been further refined by Chock et al (2020).

Response

The Wash Plan HCP includes the results of studies available during document development. New data will be incorporated into management actions as required by Wash Plan Section 5.3.2, Adaptive Management, which states that adjustments to/evaluation of methods should occur "When new information from the literature or other relevant research indicates that a feasible and superior alternative method for achieving biological goals and objectives exists.

Comment 192

Vulcan Materials Company – Western Division

In addition, recent SBKR genetic studies have found that the three remaining SBKR populations (i.e., the Santa Ana River, Lytle-Cajon Creek, and San Jacinto River) exhibit low effective population size and are well below the level at which a long-term loss of genetic diversity is expected. This indicates that a genetic management plan that includes translocation and likely captive breeding will be necessary to conserve and recover SBKR. While recent reports also mention that there is little information on translocation success, this could be corrected by adequate monitoring studies. For example, in the previously cited petition to State list SBKR, it was noted that in 2015 and 2016, 366 SBKR were relocated from a site within the Santa Ana River floodplain to the Cajon Conservation Area. The petition notes that “Only 59 SBKR were captured at the receiver site in 2018” and assesses this as a low success rate for the translocation. However, the petition fails to note that the monitoring requirement was only for the translocation site and there was nothing preventing the animals from leaving the site. Debra Shier, who was working on a range-wide genetics study of SBKR, indicated that one of the SBKR ear snip samples that was provided her from the 2017 Cajon Wash trapping survey showed genetic characteristics of animals from the Santa Ana River population of SBKR. This animal was trapped approximately 4,000 feet upstream of the relocation area. At the time of this trapping effort, it was noted that because this individual SBKR was trapped at a randomly placed trapping plot suggested that other animals from the relocation effort may have also moved out of the original site. Therefore, the relocation monitoring study may have been insufficient in geographical scope to adequately monitor the relocation results of the project. Nevertheless, the goal of the two populations interbreeding would have been achieved. It appears that based on these study results, any mitigation for impacts to SBKR should have a twofold approach. The first is to ensure that the size of the population being impacted is retained or increased. The second is that individuals impacted be moved or relocated in one of the other two population centers for this species. The 2020 study by Chock et al explains the importance of the use of these two strategies.

Response

In alignment with Chock, et al. 2020, the Wash Plan provides for permanent conservation and management of SBKR habitat, maintenance of a stable or increasing SBKR population within the HCP Preserve, and prevention/minimization of impacts to SBKR by covered activities, including relocation/translocation where appropriate (Wash Plan Section 5.1.2 [SBKR Objective 1, SBKR Objective 3, SBKR Objective 5, SBKR Objective 6], Table 5-4).

F.3 COMMENT LETTERS