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Date: 6/29/2010 3:00 PM
Subject: Imperial Valley Solar Project (IVSP) - Applicant's Proposed LEDPA/404(b)(1) Analyzed

Hi,

I've just had a short conversation with a few of the other regulatory agencies that are looking to the Corps' regulatory evaluation process prior to proceeding in their evaluation. Because of this, I thought it would be best to clarify when the Corps and EPA will be making a determination on the LEDPA. The Corps is pleased with the progress that Tessara has made to reduce regulated impacts to waters of the U.S. through narrowing/limiting roads, removing sediment basins, avoiding several main-stem streams, re-evaluating the vegetation removal plan, etc. In addition, we are doing our best to coordinate with the applicant and their consultant, Mike Fitzgerald of Ecosphere, on the development of the draft 404(b)(1) analysis, but the Corps and EPA have not fully reviewed the analysis nor will we have the time to make a final determination on the LEDPA prior to the release of the FEIS. The draft 404(b)(1) analysis will be included in the FEIS as an Appendix with a clear statement that this is the APPLICANTS PROPOSED 404(B)(1) ANALYSIS AND LEDPA. The Corps and the EPA need the time following the release of the FEIS to complete our detailed determination. The cost analysis presented by the applicant is complicated and will need review by Corps and EPA legal counsel. Thus, the project may change to further reduce impacts to waters of the U.S. or other sensitive resources.

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There are impacts on-site that the Corps doesn't regulate including vegetation removal. Although the Corps will be accounting for some of the vegetation removal on the project by estimating the indirect impacts to the functions and services of the desert streams [modifying California Rapid Assessment Method (CRAM) scores] and requiring mitigation for these indirect impacts, this is a different accounting than direct acreage removal of vegetation or fencing foraging areas, etc. for the purposes of evaluating impacts to Big Horn Sheep.

The Corps is working with the applicant to develop a mitigation approach for unavoidable adverse impacts. At this time, the Corps is directing the mitigation planning effort to Carrizo Creek located west/northwest of the project on the Anza Borrego State Park because its proximity to the project, its currently protected status (State Park)/surrounded by open space, and because its within known Big Horn Sheep territory. The project is located in the HUC 8 Salton Sea Watershed and Carrizo Creek is located in the HUC 8 Carrizo Creek watershed directly to the north, also draining into San Felipe Creek and the Salton Sea. Ecosphere is preparing a draft enhancement plan that will cover approximately 20 miles of the Carrizo Creek from the headwaters through the marsh. State Parks has provided preliminary Tamarisk infestation mapping, methods for removal, and potential costs. State Parks estimates that there is approximately 1500 acres of tamarisk from the headwaters of Carrizo Creek through Carrizo Marsh. The enhancement plan will include detailed methods for the initial removal, retreatment methods/strategy, limited native replanting [honey and screw bean mesquite trees and arrow weed (Pluchea sericea)], and monitoring protocols. The Corps is unlikely to require the applicant to enhance this entire reach of Carrizo Creek to mitigate on-site impacts of approximately 50 acres (direct and

indirect) to desert streams. Our mitigation requirement will likely be on the order of 3:1 to 5:1 depending on the enhancement plan and other details we currently do not have. It is our current approach that the applicant will initiate the first phase of the enhancement effort equal to their final mitigation requirements by the Corps and that the remainder will be completed as required by other agencies (USFWS or CDFG) or completed by other applicants either through establishing an in-lieu fee program, additional permittee-responsible mitigation (Sunrise Powerlink, Eco-Substation, etc.), or by the State Park through grant funding.

Jim Dice and Mark Jorgenson with State Parks explained that Carrizo Marsh was historically an important feeding/watering source for the Big Horn Sheep. If I recall correctly, a flood in the 1980's transported the tamarisk seed into the marsh and subsequently the Big Horn Sheep can't see the water source and thus no longer utilize the marsh for foraging. The USFWS has recently suggested several conservation measures for the Big Horn Sheep, the most important of which is PURCHASE OR RESTORE wash foraging habitat equal to Corps jurisdictional waters of the U.S. (881 acres) within the perimeter fence of the project site. Enhancement/restoration of Carrizo Creek and marsh would meet this requirement. Any requirement by the CDFG and RWQCB could also be met here. Currently, the CDFG mitigation is dependent on the acreage and quality of streams purchased as part of the flat tailed horned lizard (FTHL) mitigation property. This is complicated since we don't currently know where FTHL habitat will be purchased and we don't know if desert streams will be included. I suggest we divert that CDFG mitigation effort to Carrizo Creek and Tessara and BLM can deal with the FTHL property purchase separately and therefore wouldn't have to evaluate every potential purchase for CDFG stream acreage/quality.

I hope this helps clarify the Corps' current stage in the permitting process and our approach to the mitigation effort. If you have any questions or comments, please feel free to e-mail or call me. I would like to have an agency coordination meeting shortly if possible. Although the Corps is not the federal lead agency, we must agree to the terms and conditions of the Section 7 Consultation.

Thanks,
Michelle

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