

**MEETING NOTES**  
**TASK GROUP #3 REGULATORY ISSUES**  
**RIVERSIDE, CALIFORNIA**  
**JANUARY 26, 2000**

**Stakeholder Group Members Present:** Anderson, Brashear, Condon, Dodson, Everly, Ferguson, Good, Hogan, Jonoy, Kiriakos, Kober, LaClaire, Landowski, Rudnick, Schroeter, Sheets, Veale, Waldheim

**Staff Present:** Bell, Diggins, Haigh, LaRue, Pilmer, Knaster

**Agenda Item #1 Presentation on NEPA/CEQA Issues**

Jim Good provided an overview of the distinctions between NEPA and CEQA procedural requirements. NEPA requires the lead agency to demonstrate that it has taken a "reasoned action"; there is considerable focus on feasible alternatives used to compare environmental impacts. CEQA puts less reliance on the examination of alternatives and greater emphasis on mitigation that will be provided. Environmental impacts identified must be mitigated to "less than significant" levels unless the agency makes a finding of "overriding consideration". There are also differences between the two acts with respect to the timeframes for public input. Jim noted that the definition of a project is important to keep in mind. He defined project as *an action or series of actions that result in a physical change to the environment*. The change may be positive or negative.

Tom Dodson described how a Program EIS/EIR is applied with respect to future actions. A Program EIS/EIR examines a full array of potential impacts in categories of actions that might occur as a result of the program that will be implemented, in this case the West Mojave Plan. It does not look at site specific activities. Under a Program EIS/EIR, one assumes that the mitigation for some of the individual losses that might occur are overridden by the benefits of having a long term program in place. An agency looking at a specific project in the future, e.g. a new shopping center, still must utilize a checklist in evaluating the project. However, the agency assumes that the biological impacts of the project are addressed through the Program EIS/EIR and the ESA/CESA permits that have been granted. The agency can rely on the programmatic review unless there are changed circumstances not envisioned, e.g. additional species have been listed that might be affected by the project. The West Mojave EIS/EIR will not provide coverage for other environmental factors such as air or water impacts. These must still be addressed for each individual project in a *project EIS/EIR*.

The tradeoff provided by a Plan is that there is a faster mechanism in place for reviewing species impacts in exchange for a greater level of assurance re species protection afforded by the comprehensive aspects of the Plan.

The Task Group had an initial discussion of possible procedures that it would want in place for

NEPA/CEQA review post Plan adoption. Task Group members indicated that they would want to further explore three procedures: 1) adding language to the checklist regarding whether or not there are changed circumstances with respect to species issues and 2) adding member interest groups to the notification list. 3) approach for updating the Program EIS/EIR.

There was also some discussion of whether there should be a Program or Master EIR/EIS for the West Mojave Plan. Tom emphasized that under a Master EIR/EIS one has to review the document every 5 years. In his opinion, this would be extremely onerous and might override the advantages of having gone through the Plan effort; also a Master EIR/EIS may not provide sufficient assurances to Fish and Game and Fish and Wildlife. He added that there should be mechanisms in the HCP and in the permits for addressing the issue of whether or not the Plan is recovering the species. One can also do supplemental EIR/EIS documents to update information in the initial Program documents.

The Task Group also requested to add a discussion re selection of the "Lead Agency" for the EIR. BLM will serve as the Lead Agency for the EIS.

## **Agenda Item #2 Exemptions**

Valerie Pilmer provided an overview of her research on fee structures, covered activities and exemptions from fees for a number of existing HCPs. She noted that there were three exemptions common to all of the Plans : agriculture, public facilities construction by public agencies and "minor permits" such as remodels or minor home modifications.

The Task Group attempted to clarify some of the distinctions regarding exemptions that need to be considered. The Group was discussing exemptions from fees, but the exemption could apply to fees or whatever other mitigation requirements may be set under the Plan. An exemption could also apply to the survey requirement, e.g. for areas that historically have not had any species of concern present or do not have appropriate habitat. The Task Group also discussed whether to distinguish exemptions that are outside the DWMA versus those that are inside the DWMA.

The Task Group began to develop a list of possible exemptions ( for areas outside DWMA's)

- Maintenance of public works facilities
- Maintenance of trails
- Habitat enhancements as part of Plan implementation
- Agriculture

However, this list generated further questions requiring decisions.

1. Should a loop constructed to connect two routes (designed to prevent further impacts) be exempted?
2. What aspects of flood control projects might be a concern? One option is to exempt this

activity from a fee, while still requiring a review.

3. Is paving maintenance or an improvement? One option was to define paving an existing corridor as maintenance; however, if the road footprint was expanded and paved, this would not be exempt.

4. Is all agriculture exempt or only on lands that are under production or have been utilized for agriculture in the past? How shall we define "fallowed" land?

5. Do we distinguish trails from open areas and if so, how? Are recreational activities for which there already is a fee charged to be subject to another fee?

### **Agenda Item #3 Schedule and Next Agenda**

Task Group 3 will meet again on February 23, 2000 from 9 a.m. to 12:30 p.m. The meeting will be held at the BLM Riverside office.

**Task Group members will e-mail or fax to Bill Haigh their proposals for exemptions, and should do so by no later than Wednesday, February 9, 2000. They should begin by examining the list proposed in the Draft Plan ( see meeting notes from Dec. 16 ) as well as the proposals and topics discussed in Agenda Item #2.**

**Also, Task Group members should include their proposals re how best to handle the issue of equity under the Plan- i.e. should there be some areas of a city subject to a fee because they are in prime habitat but others not subject to a fee because they are in areas that do not have critical habitat? Should all jurisdictions be subject to the same requirements? Should all like activities be subject to the same requirements- grazing, mining, road building etc. Could there be a sliding scale for requirements?**

The facilitation team will compile the recommendations into a proposal for Task Group consideration at the next meeting.