



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OFFICE OF THE
REGIONAL ADMINISTRATOR

MEMORANDUM

TO: Benjamin Grumbles
Assistant Administrator
Office of Water

FROM: *Wayne Nastri* *11/7/2006*
Wayne Nastri
Regional Administrator, Region IX

RE: Request for review of Department of Army Permit

I am writing to request that you consider review by the Assistant Secretary of the Army (Civil Works) (ASA(CW)) of the proposed Department of Army Permit # 200401247SDM. This request for higher review is in response to the Corps' Notice of Intent to issue the permit for a proposed Cotton Lane Road bridge over the Gila River and 5-mile mining and flood control project within the City of Goodyear, Arizona and pursuant to the *Clean Water Act Section 404(q) Memorandum of Agreement (MOA) Between the Environmental Protection Agency and the Department of the Army*, Part IV, paragraph 3(d)(2).

We are requesting higher-level review because the proposed permit would allow substantial degradation to aquatic resources of national importance in violation of CWA section 404(b)(1) guidelines (Guidelines) promulgated at 40 CFR 230. In our view, the proposed permit does not comply with the Guidelines for the following reasons: (1) it is not the Least Environmentally Damaging Practicable Alternative (LEDPA); (2) the applicant selected one of the most environmentally damaging alternatives based on an unconventional practicability argument that relies on private subsidies from a nearby developer; (3) the proposed project will cause or contribute to significant degradation of the Gila River and will set a precedent for numerous, similar, and reasonably foreseeable projects with similar results; (4) the secondary and cumulative effects of the proposed project have not been adequately evaluated; and (5) the proposed compensatory mitigation plan does not adequately replace the functions and values of waters lost to the impacts from the proposed discharges. We do not believe that the project can be permitted without substantial improvements to the project design.

We have worked collaboratively with the Corps and the applicant to correct problems with the pending permit application so the proposed project can proceed in an environmentally acceptable manner. We made some progress with the applicant regarding the alternatives analysis, however, however the Corps chose to proceed to permit issuance for a project that does not comply with the Guidelines, has an unnecessarily high level of adverse impacts, and is justified with an unconventional cost/benefit rationale. As a result, Region 9 is seeking higher

level review pursuant to the requirements of the aforementioned MOA. We hope our request for higher-level review begins a process that will both improve the proposed project, and set the tone for other projects envisioned along the 17-mile Gila River corridor corresponding with the County's El Rio Watercourse Master Plan.

We have been working closely with your staff on this issue and will continue to do so if we proceed to the next stage of the MOA elevation process. We will continue to keep the Corps informed at their District and Division offices of our commitment to negotiate a resolution of this matter with the applicant. If you have any questions, please contact me at (415) 947-8702, or have your staff contact Alexis Strauss at (415) 972-3572.