

EWP DRAFT PEIS COMMENTS AND RESPONSES

Summary of Changes to the Draft PEIS

Changes to the document have been made since the publication of the Draft PEIS. A majority of these changes were minor or editorial in nature, but several changes merit mention as significant changes to the document:

1. NRCS evaluated the environmental and socioeconomic impacts of three alternatives for future administration of the EWP Program in a Draft Programmatic Environmental Impact Statement (Draft EWP PEIS). A No Action alternative (Alternative 1) was used to establish a baseline of impacts assuming the EWP would not be changed in any way from the way it is currently run. NRCS' Draft PEIS Proposed Action (Alternative 2) incorporated 15 specific program improvements and expansions. The third alternative—Prioritized Watershed Planning and Management—was evaluated to consider how EWP decisions might be integrated with decisions on other watershed-based program decisions in particular in flood-prone watersheds. The three Draft EWP PEIS alternatives are described and fully evaluated in this Final EWP PEIS in Chapter 3. This Final EWP PEIS includes a fourth alternative—NRCS' Preferred Alternative—that incorporates many of the elements of the Draft PEIS Proposed Action, but that leaves some elements unchanged or introduces only minor changes when compared with the No Action. The Preferred Alternative was developed based on comments from other agencies and the public on the Draft EWP PEIS, on comments on the Proposed EWP Rule (7 CFR 624) published in November 2003, and on internal agency considerations concerning management, funding, and implementation feasibility. A Final EWP Rule will be published simultaneously with the Final EWP PEIS Record of Decision a minimum of 30 days after the publication of this PEIS.
2. The habitat condition classes used in Chapter 4 (see Section 4.2.1.2) have been updated to reflect the most current EPA guidance regarding stream classification.

Agency and Public Comments

The following sections contain the agency and public comments received by NRCS during the public review period for the Draft PEIS. Comments are organized as noted below:

- Section I. Federal Agency Commenters
- Section II. State Agency Commenters
- Section III. Comments from Local Agencies and Tribal Governments
- Section IV. Private Individual Commenters
- Section V. Comments Not Requiring a Response

The comment letters and accompanying responses are presented as follows:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
COMMUNITY RELATIONS AND
OUTREACH

FEB 7 2008

Mr. Bruce Julian
Watersheds and Wetlands Division
U.S. Department of Agriculture
Natural Resources Conservation Service
PO Box 2800
Washington, DC 20013

Dear Mr. Julian:

The Environmental Protection Agency (EPA) has reviewed the Natural Resources Conservation Service (NRCS) Draft Programmatic Environmental Impact Statement (EIS) for the Emergency Watershed Protection Program. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 109 of the Clean Air Act (CAA).

EPA supports the proposed effort by the NRCS to improve implementation of the Emergency Watershed Program (EWP), and is encouraged by many of the changes in the Proposed Alternative 2. "EPA Program Improvement and Expansion" provides for appropriate responses to watershed impairments. Despite our support, we also believe that Alternative 3 ("Prioritized Watershed Planning and Management") provides even more benefits and opportunities to address the current and future needs of watersheds. We support the changes from Alternative 2 and also provide for additional disaster readiness and mitigation planning and management efforts in priority watersheds.

Alternative 3 appears to be the most consistent with the goals of the Administration's Clean Water Action Plan, which envisions a collaborative effort by federal, state, tribal, and local governments; the public; and the private sector to restore and sustain the health of watersheds. There is little, if any, net loss of funding in the proposed Alternative 3. The proposed Alternative 3 should be reflected in the Draft Programmatic EIS provides the best reason for why Alternative 3 should be reflected in the Proposed Alternative:

"[I]f this administrative effort or comprehensive approach that would meet fully address the impacts of the broad variety of activities in a watershed, the natural processes at work in shaping the watershed and

Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP EIS

USEPA page 1

1) NRCS recognizes that Alternative 3 "Prioritized Watershed Planning and Management" would likely be the environmentally preferable alternative. However, the agency continues to support Alternative 2 "EWP Program Improvement and Expansion" as its preferred alternative because:

- a. Current law, as interpreted by NRCS, legal counsel, limits, activities conducted under EWP primarily to disaster recovery work. Alternative 3 would add a substantial increment of preventative measures to reduce future flood damages. Legislative authority would be required to implement such a major expansion of the purpose of EWP under Alternative 3.
- b. All EWP work now accomplished by the agency primarily uses existing NRCS staff and funding. Alternative 3 would require NRCS to hire a minimum of 600 staff would be required to meet added EWP requirements under Alternative 3, assuming 15 percent of the nation's watersheds are rated as priority watersheds. Without a substantial staff increase, Alternative 3 would require a much greater commitment of current staff time to EWP and result in an unacceptable decrease in the delivery of non-emergency NRCS programs.
- c. EWP funding is provided through supplemental appropriations, not an annual line item in the budget. Funding is sporadic and an unreliable source to pay the salaries of personnel that would be needed to sustain EWP efforts under Alternative 3.


the risk of threats to life and property from floods and other disaster events. It would form a sound basis for ongoing NEPA-related analyses and decisions regarding the proposed Alternative 2. The impacts of Alternative 2 on the watershed would be evaluated and reviewed within the context of a specific watershed. (Draft Programmatic EIS, page 3-23).

We strongly suggest that unless the Final Programmatic EIS provides information as to why its implementation is not feasible or desirable, Alternative 3 should be adopted by NRCS as the proposed Alternative.

Based on the potential for Alternative 2 to better deal with watershed management in the context of responses to watershed impairments and the lack of information as to why it was not chosen, we believe that Alternative 2 is the environmentally preferable alternative. We request that you provide us with the "Environmental Concerns/Insufficient Information" (see enclosed "Summary of EPA Rating System" for a more detailed definition of the ratings). Additional, more detailed comments regarding the Draft Programmatic EIS are enclosed.

We appreciate the opportunity to review this Draft EIS. If you have any questions, please call me or Cliff Ruder of my staff at (202) 564-7119.

Sincerely,


Richard E. Sanderson
Director
Office of Federal Activities

Enclosures

cc: EWP Draft EIS Comments
PO Box 745
Falls Church, VA 22040-0075

In landscape format, comment letters were reduced in size and consolidated to two letter pages per page. NRCS' responses to the commenter's concerns are presented on the corresponding facing page.

Federal Comments and Responses

Comments were received from the following Federal agencies:

U.S. Environmental Protection Agency (EPA)

U.S. Environmental Protection Agency (Supplement)

U.S. Department of the Interior (DOI)

Federal Emergency Management Agency (FEMA), Region 10

National Marine Fisheries Service (NMFS)

Seattle District Emergency Management Branch, U.S. Army Corps of Engineers (USACE)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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FEB 7 2000

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Bruce Julian
Acting Director
Watersheds and Wetlands Division
U.S. Department of Agriculture
Natural Resources Conservation Service
PO Box 2890
Washington, DC 20013

Dear Mr. Julian:

The Environmental Protection Agency (EPA) has reviewed the Natural Resources Conservation Service's Draft Programmatic Environmental Impact Statement (EIS) for the Emergency Watershed Protection Program. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act (CAA).

EPA supports the proposed efforts by the NRCS to improve implementation of the Emergency Watershed Program (EWP), and is encouraged by many of the changes in the Proposed Alternative (Alternative 2 - "EWP Program Improvement and Expansion"). These changes will minimize adverse environmental impacts and allow for more environmentally appropriate responses to watershed impairments. Despite our support, we also believe that Alternative 3 ("Prioritized Watershed Planning and Management") provides even more benefits and apparently does not have any significant adverse impacts. Alternative 3 would incorporate all of the program changes from Alternative 2 and also provide for additional disaster-readiness and mitigation planning and management efforts in priority watersheds.

1 Alternative 3 appears to be the most consistent with the goals of the Administration's Clean Water Action Plan, which envisions a collaborative effort by federal, state, tribal, and local governments; the public; and the private sector to restore and sustain the health of watersheds. There is little, if any, information in the Draft Programmatic EIS to suggest why it was not selected as the Proposed Alternative. In fact, the Draft Programmatic EIS provides the best reason for why Alternative 3 should be selected as the Proposed Alternative:

[T]his alternative offers a comprehensive approach that would most fully address the impacts of the broad variety of activities in a watershed, the natural processes at work in shaping the watershed and

the risk of threats to life and property from floods and other disaster events. It would form a sound basis for ongoing NEPA-based analyses and documentation of cumulative watershed effects. Environmental aspects of EWP Program projects and of other NRCS projects in the watershed would be evaluated and reviewed within the context of a specific watershed. (Draft Programmatic EIS, page 3-23).

We strongly suggest that unless the Final Programmatic EIS provides information as to why its implementation is not feasible or desirable, Alternative 3 should be adopted by NRCS as the Proposed Alternative.

1 Based on the potential for Alternative 3 to better deal with watershed management in the context of responses to watershed impairments and the lack of information as to why it was not selected as the Proposed Alternative, we have assigned the Draft EIS a rating of **EC-2 (Environmental Concerns-Insufficient Information)** (see enclosed "Summary of EPA Rating System" for a more detailed definition of the ratings). Additional, more detailed comments regarding the Draft Programmatic EIS are enclosed.

We appreciate the opportunity to review this Draft EIS. If you have any questions, please call me or Cliff Rader of my staff at (202) 564-7159.

Sincerely,

Richard E. Sanderson
Director
Office of Federal Activities

Enclosures

cc: EWP Draft PEIS Comments
PO Box 745
Falls Church, VA 22040-0075

**Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP PEIS**

USEPA page 1	USEPA page 2
<p>1) NRCS recognizes that Alternative 3 "Prioritized Watershed Planning and Management" would likely be the environmentally preferable alternative. However, the agency supports Alternative 4 as its Preferred Alternative because:</p> <p>a. Current law, as interpreted by USDA legal counsel, limits activities conducted under EWP primarily to disaster recovery work. Alternative 3 would add a substantial increment of preventative measures to reduce future flood damages. Legislative authority would be required to implement such a major expansion of the purpose of EWP under Alternative 3.</p> <p>b. To a large extent, NRCS has integrated the management of its watershed programs as described in Alternative 3 within the Water Resources Branch of the NHQ Financial Assistance Programs Division working closely with the NHQ Easement Programs Branch. Together they oversee the recovery practices and floodplain easements portions of EWP and provide funding and technical assistance and training to the NRCS State Offices. But NRCS is limited in fully implementing the scope of Alternative 3 primarily by funding constraints. Several NRCS watershed programs currently exist under P.L. 566 and P.L. 534 that address watershed planning and management and include measures for watershed protection and flood prevention, as well as the cooperative river basin surveys and investigations. Under the new Watershed Rehabilitation Program, NRCS works with local communities and watershed project sponsors to address public health and safety concerns and potential adverse environmental impacts of aging dams. NRCS so far has undertaken 118 projects in 20 States to assess the condition of and repair of more than 10,000 upstream flood control structures built since 1948. The structural and non-structural practices implemented and the easements purchased under those programs have greatly reduced the need for future EWP measures in project watersheds. Nevertheless, EWP must remain available to deal with the aftermath of major disasters regardless of improvements under the other watershed programs.</p>	<p>1) NRCS has expanded the discussion of Alternative 3 in Section 3.2.3 of Chapter 3 to include the rationale of the page 1 response #1.</p>

SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTION

Environmental Impact of the Action

LO--Lack of Objections

The EPA review has not identified any potential impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC--Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO--Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU--Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1--Adequate

EPA believes that draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2--Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3--Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Enclosure 2: EPA Detailed Comments

Natural Resources Conservation Service
Draft Programmatic Environmental Impact Statement
Emergency Watershed Protection Program
February 2000

Assessment Methodology

1 - The Draft Programmatic EIS uses sample sites to help evaluate potential programmatic impacts of the alternatives. Only three sample sites are located west of Texas. Watersheds in the west can have unique and very different characteristics to those of the east. For instance, fluvial geomorphology and hydrological cycles can be very different encompassing flash floods, desert geomorphology and hydrology, and tropical island conditions (e.g., Hawaii). Thus, potential impacts of the alternatives could be very different in these ecosystems. We recommend expanding the list of sample sites to ensure full representation of the diverse conditions in the US. For instance, consider sample sites in Hawaii, the Rocky Mountain Region, and the Nevada/Arizona/California deserts.

Elements of the Proposed Action

2 - Element 5 stipulates that practices must be economically, environmentally, and socially defensible and identify the criteria to meet those requirements. We suggest that it would be useful if this discussion included recognition of the societal values of a properly functioning watershed in addition to a requirement to review alternatives in the social context of the "ideals and background of the community and individuals" directly affected.

3 - Element 7 would remove the current restriction on the use of long-term structural protective measures such as rip-rap to protect agricultural lands. The Draft Programmatic EIS indicates that even with this lifting of the restriction, less rip-rap would be installed. It is not clear how this conclusion was reached; we suggest that the Final EIS make it clear that the use of armoring measures to protect agricultural lands are not preferred, and will only be used when other measures are determined not to be feasible.

4 - Element 8 discusses a proposal to limit EWP activities to twice in a 10-year period. We strongly support this general concept. However, since this proposal is primarily for replacement of hard structures, we recommend that the time period be lengthened to at least 25 years. Standard engineering practices should assure that hard protective structures such as rip-rap and levees be designed to withstand relatively frequent events. We would not expect any structure implemented under the EWP to fail in a 10 year event.

5 - We also have concerns with the approach in this element that indicates that repeated repair of a single levee can be made as long as the repair occurs at a different place on the levee each time. Again, the entire levee should be originally constructed and maintained to withstand a specific design event.

**Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP PEIS**

USEPA page 3	USEPA page 4 (continued)
<p align="center">No response required.</p> <p align="center">USEPA Page 4 Response Begins Below</p>	<p>3) In the past, EWP did use structural measures to protect agricultural lands, but riprap was too often the method of choice. Because of this over-use of riprap, NRCS decided to cease structural protection of agricultural lands. More recently, in response to concerns about disaster threats to high value crops and in order to offer a reasonable level of protection to all landowners, use of structural measures to protect agricultural land is being reintroduced to the Program. The Preferred Alternative will offer better options for repair methods. The intent of this Program Element is not to resume use of riprap for all high-value agricultural land, but as would be the case for the improved EWP Program in general, to emphasize use of restoration design based on natural stream dynamics and bioengineering. Nevertheless, riprap may prove to be the only technically feasible solution on certain sites, particularly where high flow velocities occur. It is anticipated that the emphasis on using the principles of natural stream dynamics will help offset any increase in hard structures (see Draft PEIS Proposed Action and Preferred Alternative Elements 5 and 10). The description of Program Element 7 in Chapter 3 has been revised to clarify the fact that riprap is not the only solution, nor is it the preferred solution, for repairs to agricultural lands, but only one of the possible solutions that may be used.</p>
<p align="center">USEPA page 4</p> <p>1) The PEIS uses a representative sample of sites and States where a major portion of recent EWP work has been performed. The sample does incorporate a variety of geographic conditions although it does not represent every region of the U.S. NRCS believes this level of analysis is sufficient to cover the range of typical EWP situations for the purposes of comparing the environmental and socioeconomic impacts of the Program alternatives. NRCS believes that adding more sites in more States to represent all regional conditions would not change the results of the Program alternatives analysis because the Program improvements are generic in nature and do not specify that any particular practice, practice element, or installation technique is to be used agency-wide or in any region. These installation decisions are to be made at the project level and NRCS State Office staff would adapt their use of specific restoration practices and easements to the conditions in their region.</p> <p>2) The intent of the EWP Program is not to be a watershed management program, but rather is limited to removal of threats to life and property that remain in the Nation's watersheds in the aftermath of natural disasters. To that limited extent the Program does implicitly acknowledge the societal value of a properly functioning watershed. The floodplain easement portion of EWP has as its goal the restoration of floodplain function that is clearly a recognized societal value. Other NRCS programs such as WRP and EQIP more broadly focus on restoration and enhancement of watershed functions.</p> <p align="center"><i>(response continued at top of next column)</i></p>	<p>4) NRCS believes that Element 8 of both the Preferred Alternative and the Draft PEIS Proposed Action strikes a reasonable balance between the goals of reducing repetitive spending by the government and fairness in responding to the needs of landowners.</p> <p>5) Levee failures at previous breaks could be considered repetitively damaged and would be repaired only if approved by the State Conservationist who would have discretion in this matter. In cases where the levee was not maintained or designed properly, it would not be eligible for EWP assistance.</p> <p>Specific procedures will not be provided at the national level. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationist will continue to be responsible for determining specific procedures for their state in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p>

1

- Element 9 proposes to eliminate the requirement that there be multiple beneficiaries of an action. The current practice for the need for multiple beneficiaries has been in place, according to the Draft Programmatic EIS, to "avoid windfall benefits to a single landowner and to ensure that the general public benefits from the Federal funds spent." We believe the current practice makes the most sense regarding federal expenditures, and since most projects do benefit multiple landowners, it is unclear why this requirement would be eliminated. We recommend retaining the current practice without modification.

Clean Water Act/Section 404

2

- We suggest including a single section in the Final Programmatic EIS that discusses the various permits and licenses that would be necessary to implement program practices. We are especially concerned over the need for coordination with EPA and the Corps of Engineers on ensuring compliance with Section 404 of the Clean Water Act for program practices.

Miscellaneous Comments

3

- Explain more thoroughly the integration and overlap of the EWP Program and other federal disaster relief programs (we suggest including a table in the EIS that includes all agencies and jurisdictions).

4

- Include affected tribes in all planning and review procedures.

5

- Replace the term "streamside buffer" with "riparian corridor" to denote the connectivity of the areas along streams to the streams itself and the hydrologic and biologic importance of the corridor area.

6

- Base decisions to restore versus purchase easements on a cost/benefit analysis (rather than a least cost practical benefit analysis) that assigns environmental values and is focused on the floodplain restoration.

7

- Additional emphasis should be placed on analyzing the effects and impacts that the proposed action may have on low income and/or minorities populations in light of the Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

**Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP PEIS**

USEPA page 5	USEPA page 5 (continued)
<p>1) Multiple beneficiaries are implicit in the type of work performed. NRCS has recognized in the past, and will continue to fully recognize EWP benefits to downstream landowners and environmental resources. The only substantive Program change would be that downstream beneficiaries would be assumed to exist and no longer would need to be individually identified and documented on the Damage Survey Report (DSR).</p> <p>2) The description of Draft PEIS Proposed Action Element 6 in Section 3.2.2.1 of Chapter 3 has been revised to include the U.S. Environmental Protection Agency (EPA) with U.S. Army Corps of Engineers (USACE) and to specifically refer to Section 404 of the Clean Water Act. Under Draft PEIS Proposed Action Element 6, improvements would be made in inter-agency coordination for disaster response, including ensuring acquisition of proper permits. This aspect of Element 6 is wholly adopted under the Preferred Alternative. In addition, under the Preferred Alternative, NRCS has lengthened the timeframe to accomplish exigency measures from 5 to 10 days. The additional 5 days would provide time for project sponsors to secure any necessary permits for NRCS and sponsors to comply with all Federal laws and regulations. A list of applicable Federal laws and regulations has been added to the Consultation and Coordination Chapter of the PEIS. Each NRCS State Office would address applicable laws, permits, and other requirements for their State.</p> <p>3) Section 2.1.1 of PEIS Chapter 2 outlines the important Federal agency programs dealing with disaster emergencies and how EWP interacts with the agencies and programs. NRCS does not consider discussing individual state emergency programs appropriate for a programmatic level document.</p> <p>4) The description of Draft PEIS Proposed Action Element 6 in Section 3.2.2.1 of Chapter 3 has been revised to include tribal governments as participants in the Emergency Recovery Plan (ERP) process. This aspect of Draft PEIS Proposed Action Element 6 has been wholly adopted under the Preferred Alternative.</p> <p><i>(response continued at top of next column)</i></p>	<p>5) Streamside buffers and riparian corridors refer to different features. Riparian forest buffers, NRCS practice code 391, are perennial plantings installed along streams to provide a minimum level of protection from runoff from nearby agricultural fields. Riparian corridor is a broader term applied to the land adjacent to a stream course, which may support natural or planted streamside vegetation as well as other natural or man-made features. The PEIS has been reviewed to ensure it uses appropriate terminology for the feature described.</p> <p>6) The decision on whether or not to implement a project, and what type of restoration measures should be used (i.e., restoration practices verses easement purchases) is done on a cost/benefit analysis basis. Where two or more possible measures will produce similar watershed effects, a least-cost approach will often be used. However, costs alone would not dictate which solution is selected, as the solution must also be environmentally and socially defensible. Solutions are only considered acceptable if they do not harm social and environmental resources. All conservation easements and practices must be economically, environmentally, socially, and technically defensible. The costs of restoration of lands and structures, costs associated with the repeat of future disasters, and the costs of efforts that would be required to prevent a repeat of such events may be considered in the analysis of cost-efficiency of the easement alternative. The easement alternative must be cost-effective in comparison with other traditional measures.</p> <p>7) Please refer to Section 3.4.3 of Chapter 3, Section 4.3.3 of Chapter 4, Section 5.3.3 in Chapter 5, and the Draft PEIS Proposed DSR form in Appendix C, which demonstrate NRCS' awareness and consideration of environmental justice concerns. Environmental justice has been added to the bulleted list of items that will be addressed in the ERP in Draft PEIS Proposed Action Element 6 of Section 3.2.2.1. This aspect of Draft PEIS Proposed Action Element 6 has been wholly adopted under the Preferred Alternative. In addition, under the Preferred Alternative, in areas qualifying as limited resource areas, NRCS would apply a higher cost-share rate (up to 90 percent) for the implementation of Program measures. Waivers may also be granted allowing up to 100 percent cost-sharing in limited resource areas, or situations involving environmental justice.</p>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 11 2000

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Bruce Julian
Acting Director
Watersheds and Wetlands Division
U.S. Department of Agriculture
Natural Resources Conservation Service
PO Box 2890
Washington, DC 20013

Dear Mr. Julian:

Please accept the following comments as a supplement to our earlier comments (February 7, 2000) to you regarding the Draft Programmatic Environmental Impact Statement (EIS) for the Emergency Watershed Protection Program. Unfortunately we received some additional comments from other EPA reviewers after our original letter had already been sent to you.

Environmental Defensibility and Cumulative Impacts

1 We strongly recommend that the standard for determining whether proposed work under the EWP is "environmentally defensible" explicitly require that an analysis of the potential for cumulative adverse impacts upon the aquatic ecosystems be conducted. In addition, we recommend that NRCS provide guidance on how to determine when and under what conditions an unacceptable cumulative adverse impact threshold has been reached/crossed.

The consideration of cumulative impacts is important because of the nature of EWP activities – generally small in scope, but often numerous within a particular waterbody/watershed. For example, we are aware of a one-mile reach of the White River in Vermont where there are at least 10 EWP projects. While a state/federal workgroup was recently formed in New England (partially in response to the above example) to address EWP issues more comprehensively, we believe it is essential that overall programmatic guidance deal with how the cumulative effects of EWP projects will be considered.

Use of Natural Stream Dynamics and Bioengineering in Designing EWP Projects

1 We are encouraged that NRCS proposes to incorporate the principles of natural stream dynamics and bioengineering when designing EWP projects, and to be more sensitive to the environment in the design and installation of EWP practices. However, we are concerned that Element 10 of the Proposed Action would apparently limit this approach to only those cases where it represents the "least-cost" solution. We strongly recommend that NRCS revise this element to make clear that when designing EWP projects, the principles of natural stream dynamics and bioengineering should always be considered and environmentally-sensitive measures should be utilized unless the costs are unreasonable. The guidance should also make clear that regardless of what specific practices are utilized, they must always be environmentally defensible.

We appreciate the opportunity to review this Draft EIS. If you have any questions, please call Cliff Rader of my staff at (202) 564-7159.

Sincerely,

B. Katherine Biggs
Acting Director
NEPA Compliance Division
Office of Federal Activities

**Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP PEIS**

USEPA Supplement page 1	USEPA Supplement page 2
<p>1) NRCS will require that event-wide cumulative impact analyses be performed. NRCS is currently engaged in a pilot program in Oregon that studies watershed level cumulative impacts of all NRCS programs operating in the watershed. Because all agency actions are at issue, responsibility for cumulative impacts assessment would not reside in any one individual program; rather the analysis would be agency wide and cover all NRCS programs. As a first step in adapting this process for EWP, NRCS would develop and maintain mapped data on EWP activity to better gauge where cumulative impacts may be an important issue and would provide guidance for these activities in the EWP manual and handbook. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationist will continue to be responsible for determining specific procedures for their state in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p>	<p>1) Upon consideration of the fundamental goals of the Program improvement, NRCS has changed its basic approach to approval of EWP work. The title of Draft PEIS Proposed Action Element 10 of Section 3.2.2.1 of Chapter 3 has been revised. The term “least-cost” has been eliminated and the Element now reads: “Apply the principles of natural stream dynamics and, where appropriate, use bioengineering in the design of EWP restoration practices.” Hydrogeomorphic design and use of bioengineering would be among the solutions considered in all cases. Costs alone would not dictate which solution is selected, as the solution must also be environmentally and socially defensible. NRCS believes these changes reflect the intent of the comment, as the focus is no longer on least cost solutions. Other factors, such as environmental resources, also would be used to determine the best solution as indicated in the related revision to Draft PEIS Proposed Action Element 5, paragraph 2. These aspects of Draft PEIS Proposed Action Elements 5 and 10 have been wholly adopted under the Preferred Alternative.</p>



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



Rec'd 2/23/00

ER 99/1080

FEB 16 2000

Mr. Bruce A. Julian, Acting Director
Watersheds and Wetlands Division
Natural Resources Conservation Service
U.S. Department of Agriculture
P.O. Box 2890
Washington, D.C. 20013

Dear Mr. Julian:

The U.S. Department of the Interior has reviewed the Draft Programmatic Environmental Impact Statement on the (Nationwide) Emergency Watershed Protection Program (PDEIS). We offer the following comments for your consideration.

GENERAL COMMENTS

1 The Department strongly supports the efforts of Natural Resources Conservation Service to improve the Emergency Watershed Protection Program. We are pleased to see many of the changes that NRCS is proposing, which should address a number of concerns that the Fish and Wildlife Service has had with the Emergency Watershed Protection Program over the years. We particularly support the objectives listed in Chapter 1 which were determined by the Oversight and Evaluation Team as needing attention. The O&E Team focused on the apparent lack of consistency in how the EWP Program was administered from state to state, including interpretation of the policy on exigency situations, and its application to situations that were not truly urgent. The FWS has long had concerns over the "exigency" classification and program consistency. We also support efforts to increase the consideration of environmental concerns and restoration opportunities. The movement toward more environmentally desirable methods of responding to emergency situations has been dramatically demonstrated in several areas of the country. NRCS is to be commended for reevaluating the program and expanding its coverage.

The Proposed Action (Alternative 2, EWP Program Improvement and Expansion) represents an improvement over the current practices in a number of its components, as does Alternative 3 (Prioritized Watershed Planning and Management). Both the Proposed Action and Alternative 3 place greater emphasis on bioengineering, purchase of easements, and working with natural

stream dynamics than do current practices. Alternative 3 places even more emphasis on easements and would include prioritized watershed planning and management. The NRCS states in the EIS that Alternative 3 may result in contiguous easement sections and contiguous riparian areas. The Proposed Action would probably not result in the contiguous areas, although it would increase natural areas along streams and improve wildlife access to the streams.

We recommend the selection of Alternative 3 as the Proposed Action. This alternative would include all the improvements contained in the Proposed Action. Its provision for actions on a prioritized watershed basis is consistent with the watershed approach being implemented by many agencies including the FWS. Under this Alternative, which would be more proactive and comprehensive, prioritized watershed planning would combine the specific Program improvements and expansion of the Proposed Action with program-neutral disaster readiness and mitigation planning for selected high-priority watershed. As such, the selection of Alternative 3 would go further toward accomplishing EWP Program goals while also emphasizing watershed with the greatest needs.

The greatest benefit of some of the key components of Alternative 3 would be restoring native habitats and the populations of sensitive species associated with them. The majority of species in the United States currently listed as threatened and endangered are associated with aquatic, wetland, and riparian ecosystems. Alternative 3 could help restore lost habitats and recover these species. Alternative 3 offers the greatest funding for floodplain easements. The emphasis placed on removing high-risk human activities from high-risk areas will result in improved resource conditions since natural disasters are part of the ecological processes.

1 If the NRCS elects to retain Alternative 2 as the Proposed Action, we recommend that the Proposed Action be expanded to provide for at least a portion of the pro-active work, as described under Item 5 for Alternative 3 on pages 3-22 and 3-23 (Coordinate disaster-readiness and mitigation planning and management efforts with Federal, State and local agencies and interested stakeholders). For example, a watershed analysis may identify undersized culverts under a county road just above some rural residences. With pro-active cooperation, such culverts could be replaced before a disaster occurred. Such a program would provide great opportunities for cost sharing among counties, states, private landowners, and many federal agencies, thereby significantly leveraging federal dollars and improving watershed protection.

Program Implementation

2 In the past, lack of coordination with the FWS on the natural resource issues, and failure to consult with the FWS pursuant to Section 7 of the Endangered Species Act of 1973 have been major concerns. While the basic concept of the EWP Program has always had merit, it has been used inappropriately in some locations. In some instances, work performed has not appeared to be "Emergency," in that no threats to life or property were identified. In some areas, work performed involved clearing and snagging that went beyond the scope of the EWP Program, with whole segments of rivers and streams were stripped of riparian vegetation resulting in excessive

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DOI page 1	DOI page 2
<p>1) NRCS recognizes that Alternative 3 "Prioritized Watershed Planning and Management" would likely be the environmentally preferable alternative. However, the agency supports Alternative 4 as its Preferred Alternative because:</p> <p>a. Current law, as interpreted by USDA legal counsel, limits activities conducted under EWP primarily to disaster recovery work. Alternative 3 would add a substantial increment of preventative measures to reduce future flood damages. Legislative authority would be required to implement such a major expansion of the purpose of EWP under Alternative 3.</p> <p>b. To a large extent, NRCS has integrated the management of its watershed programs as described in Alternative 3 within the Water Resources Branch of the NHQ Financial Assistance Programs Division working closely with the NHQ Easement Programs Branch. Together they oversee the recovery practices and floodplain easements portions of EWP and provide funding and technical assistance and training to the NRCS State Offices. But NRCS is limited in fully implementing the scope of Alternative 3 primarily by funding constraints. Several NRCS watershed programs currently exist under P.L. 566 and P.L. 534 that address watershed planning and management and include measures for watershed protection and flood prevention, as well as the cooperative river basin surveys and investigations. Under the new Watershed Rehabilitation Program, NRCS works with local communities and watershed project sponsors to address public health and safety concerns and potential adverse environmental impacts of aging dams. NRCS so far has undertaken 118 projects in 20 States to assess the condition of and repair of more than 10,000 upstream flood control structures built since 1948. The structural and non-structural practices implemented and the easements purchased under those programs have greatly reduced the need for future EWP measures in project watersheds. Nevertheless, EWP must remain available to deal with the aftermath of major disasters regardless of improvements under the other watershed programs.</p>	<p>1) Coordination for disaster readiness will take place, but this suggestion relates to flood prevention, not flood recovery. Local sponsors might seek assistance for such needs from NRCS under the PL-566 program.</p> <p>2) Please refer to the Purpose and Need. The past performance of EWP was admittedly lacking in coordination, which was part of the impetus for initiating the process of re-evaluating the program and preparing the PEIS. Under the Preferred Alternative, time to respond to exigent situations is lengthened from 5 to 10 days, allowing for more time to conduct appropriate agency coordination. Clearing and snagging of the extent you describe would not likely be judged environmentally defensible by project reviewers.</p>

bank failure and erosion causing stream widening and permanent changes in stream morphology that ultimately had negligible effect on recurrent flooding. The result has been loss of certain riverine and stream habitats including deeper runs and pool habitats, and shifts in species composition in affected streams.

1

This situation has been changing in recent years in some areas. For example, in States such as North Carolina, NRCS is utilizing environmentally sensitive techniques implemented in coordination with other agencies, resulting in vastly improved projects. Effective implementation of either the Proposed Action or Alternative 3 will depend on conscientious implementation of formal procedures, guidelines and policies at the local level with substantive oversight at the Washington level. Projects are identified, planned, coordinated, and implemented at the lowest level of the NRCS organization. Without a way to ensure consistent application throughout the country, change may be slow in some areas.

2

Specific coordination procedures, protocols and mandates developed at the national level for evaluating various project elements will help to ensure consistency in the program nationwide. Topics should include how to determine if significant, unacceptable adverse impacts to the environment would occur, and defining how the determination of environmental defensibility will be made. NRCS should develop protocols and procedures for addressing ESA and other environmental and fish and wildlife coordination and analyses. They should include information on additional requirements such as those in the EWP Program rules. Procedures should be developed for advance coordination with agencies to address "urgent and compelling" emergency actions. NRCS will need to ensure that adequate safeguards are in place to ensure that the "urgent and compelling" designation is not misused. Guidance on these aspects should be provided by the DART Teams during training. Local procedures would be developed by the disaster readiness teams and included in the Emergency Action Plan.

Item 6 of the Proposed Action provides for improved disaster-recovery readiness through interagency coordination, planning and training. We applaud this proposal, and have made some suggestions on this element in the comments below.

National Environmental Policy Act

3

The process that NRCS proposes to use seems out of sequence and reduces the value of NEPA to the decision making process. NRCS is planning on completing a record of decision by March 4, 2000. NRCS should recognize that this will not be possible, as the FEIS must first be published and distributed and, after a 30-day period, the record of decision is then issued. Further, we believe the record of decision should not be issued until the final rulemaking stage, since the public review of the proposed rule could result in changes to the Proposed Action, affecting the analysis in the EIS. The rulemaking, which was to have been included in the PDEIS, will now be proposed at a later date. This creates a disconnect that could complicate the process and necessitate changes to the EIS.

Endangered Species Act

1

Section 7(a)(1) of the ESA, as amended requires that Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in the furtherance of the purposes of this Act by carrying out programs for the conservation of listed species and the ecosystems on which they depend. Section 7(a)(2) of the ESA requires each Federal agency to insure that any action it either funds, authorizes or carries out will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat, unless such agency has been granted an exemption under section 7(h). Further, section 7(d) of the ESA states that, after initiation of consultation, the Federal agency must not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection 7(a)(2). These guiding principles of the ESA direct our agencies to work in concert to protect federally listed species and the ecosystems on which they depend. We believe these principles should be incorporated into the NRCS proposed action to provide for the conservation and recovery of listed, proposed and candidate species and their habitats throughout their range and we would be happy to work with the NRCS to address this.

The FWS recommends that a proactive approach be taken to address effects on listed threatened and endangered species and their critical habitats by EWP prior to the actual occurrence of a disaster. This should be done through early coordination and development of guidance through the pre-disaster planning process. Thus during the emergency, steps can be taken to minimize and avoid adverse effects to listed species, and information can be gathered to assess the extent of unavoidable effects. In 50 CFR §402.05, emergency consultation procedures are defined. This provision applies to situations involving acts of God, disasters, casualties, and national defense or security emergencies, among others. In other words, emergencies where there is an imminent threat to health and human safety. In these situations, formal consultation is initiated as soon as practicable after the emergency is under control. The federal agency responsibility is to submit information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. While consultation as described in the PDEIS would be on a case by case basis, the FWS also recommends periodic state-level consultation to develop procedures to comply with the ESA during pre-disaster planning and update their list of endangered and threatened species.

2

The document should correct the sections describing the responsibilities of NRCS in consulting with the FWS under the ESA, as amended. The document states in several locations that NRCS would consult with the FWS in any situation where there is a potential for jeopardy to a threatened or endangered species. However, the regulations for Interagency Cooperation - ESA, as amended, relating to formal consultation (50 CFR 402.14) specify that:

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DOI page 3	DOI page 4
<p>1) NRCS is committed to implementing the training elements of Element 6 of the Preferred Alternative as described in Chapter 3 of this Final EWP PEIS across the nation. The following steps will be used to ensure consistent application of the procedures, guidelines and policies in the field:</p> <ul style="list-style-type: none"> a. Training workshops will be held frequently; the next in Spring 2005 b. Regional Oversight & Evaluation (O&E) staff will continue oversight reviews c. Draft PEIS Proposed Action Element 6 will be stressed throughout—pre-disaster planning will provide the forum to help develop the protocols for a given disaster situation d. Additional technical advisory assistance would be made available from the National Office, if requested, to train State NRCS employees <p>2) Specific procedures will not be provided at the national level. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationists will continue to be responsible for determining specific procedures for their state in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p> <p>3) Since publication of the Draft EWP PEIS, NRCS has conducted rulemaking for the EWP program and has taken public comments on a Proposed EWP rule. The final EWP rule will address comments on the Proposed rule. Comments relevant to the NEPA process have also been considered in preparation of this Final EWP PEIS. The final rule will be published when the Final EWP PEIS Record of Decision (ROD) is published, at least 30 days after publication of the Final EWP PEIS. The final EWP rule will be fully consistent with the Final EWP PEIS Preferred Alternative.</p>	<p>1) NRCS recognizes its responsibilities under the Endangered Species Act (ESA) and the Draft PEIS Proposed Action and the Preferred Alternative (especially Element 6) note that ESA needs and requirements will be met. Specific procedures would be established in pre-disaster coordination at the State level. Specific procedures will not be provided at the national level. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationist will continue to be responsible for determining specific procedures for their State in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p> <p>2) The use of the ESA terminology has been corrected in the PEIS.</p>

"Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required...."

The regulations also provide for exceptions to this requirement. We recommend the text be changed to reflect this rule. Designated critical habitat and habitat areas protected through Habitat Conservation Plans, as defined in Section 10(a)(1)(B) of the ESA should also be protected components of the EWP process. The Environmental Evaluation worksheet should collect more information for the evaluation and documentation of environmental impacts and the effects to threatened and endangered species. The FWS recommends using a Section 7 consultation checklist as a guide for collecting information.

1 NRCS should include by reference all of the listed species potentially affected by its action. For an action area of the entire US, reference should be the latest FWS compilation of listed species for the United States. During site-specific consultation, a request for a species list that contains a map or specific geographic details of the project area should be transmitted to the appropriate Fish and Wildlife Field Office.

2 It is suggested that NRCS coordinate with the Federal Emergency Management Agency on a model relating to its section 7 consultation responsibilities. FEMA is currently working with the FWS in California to address effects of its actions. Funding has been provided to the Sacramento, Ventura, and Carlsbad Fish and Wildlife Offices to take a programmatic approach in dealing with FEMA funding of repairs associated with various disasters. The intent of this effort is to: (1) assemble a packet of ESA materials to provide applicants for FEMA funding with information on their responsibilities for minimizing and avoiding effects to sensitive species and their habitats when proposing repair projects; (2) assemble teams including state and federal emergency staff to address ways of (a) streamlining a process for consulting on individual projects having effects on listed species and their habitats and (b) preventing or lessening future disasters through restoration of naturally functioning ecosystems; (3) funding conservation banks through land acquisition and conservation easements that will help to recover listed species and their habitats and provide replacement habitat for projects that destroy or adversely affect habitat.

Program Implementation Criteria

3 The PDEIS discusses criteria contained in the existing rules that are applicable to the EWP Program. However, the discussion is incomplete when compared to the rules. For example, the rules provide that measures are to be limited to the minimum that will reduce applicable threats to a level not to exceed that which existed before the impairment of the watershed. They also state that EWP measures are to be accomplished using the least damaging construction techniques and equipment that will retain as much of the existing characteristics of the channel and riparian habitat as possible. Since the rules for the program will be revised, all significant

requirements should be addressed in the EIS, along with an indication of which will be changed and criteria for insuring that those included will be met. Material changes to the environment as a result of these rule changes should be addressed in the EIS.

Discontinue use of Non-native plant materials in revegetation efforts

1 We believe that emphasis in the EWP Program should be placed on restoration with native vegetation. The introduction of non-native plants during revegetation efforts should be discontinued, especially in light of the recent Executive Order 13112, dated February 3, 1999. This Executive Order requires Federal agencies to prevent the introduction of invasive species and to not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species. It further defines invasive species as an alien species (alien in respect to what is native to a particular ecosystem) whose introduction does or is likely to cause economic or environmental harm or harm to human health. Introduction of non-native plant species as part of revegetation projects often has far-reaching, long-term adverse effects.

Protection of Anadromous Fish

2 Anadromous fish that cross watershed boundaries may be overlooked in the Proposed Action. The Proposed Action should include compliance with and reference to the Anadromous Fish Conservation Act, a trust authority that was enacted to protect anadromous fish moving in and out of watersheds to the ocean. In addition, a supporting trust authority, the Inter-jurisdictional Fisheries Act of 1986, provides for protective management of inter-jurisdictional commercial fishery resources, i.e., anadromous sea-going fish, many of which are Federally listed salmonids. This is in addition to the requirements of the ESA and consultation with the FWS and NMFS.

Corps of Engineer Permits

3 In some instances, potential adverse impacts of EWP projects are avoided only as a result of the Clean Water Act permit process (i.e., the EWP project is not authorized). In some cases, EWP projects have been implemented that were identical to projects for which the local sponsors had themselves previously failed to gain Clean Water Act authorization. The emergency nature of the EWP program can even provide a means to circumvent the normal permitting process of the Clean Water Act utilizing Nationwide Permit 37.

We recommend that the training provided on the EWP changes address this issue, including NWP 37. Misuses of NWP 37 have occurred because of 1) a misunderstanding of NWP 37 by NRCS staff, or 2) a misunderstanding of the EWP Program by Corps staff. NWP 37 is only applicable to "exigency" (soon to be called "urgent and compelling") situations. However, NRCS sometimes automatically applies for NWP 37 authorization. For example, one Corps District recently found that the projects they have authorized over the years under NWP 37 were seldom true emergencies. With so little time to respond under NWP 37, it is important that it be properly applied only to exigency or urgent and compelling actions.

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DOI page 5	DOI page 6 (continued)
<p>1) The most recent listing of federally listed threatened and endangered (T&E) species has been incorporated by reference in the PEIS as described in revised Section 2.2.2.3 of Chapter 2, Draft PEIS Proposed Action Element #6 and Preferred Alternative Element #6 in Chapter 3.</p> <p>2) NRCS will review the FEMA ESA model to determine applicability for the EWP program. However, due to limited and sporadic funding of the EWP Program, it is unlikely NRCS would provide funding to the U.S. Fish and Wildlife Service (USFWS) for the development of an ESA information packet. NRCS will continue to use available ESA information and ESA coordination requirements with the USFWS and NMFS.</p> <p>3) A table has been added in PEIS Chapter 3 that compares the existing rule with the proposed rule.</p> <p style="text-align: center;">DOI Page 6 Response Begins Below</p>	<p>From a management standpoint, it is important to maintain flexibility in making species selection decisions. When dealing with situations that involve different soils, climatic regimes, moisture conditions, and growing seasons, managers need an arsenal of tools to successfully achieve revegetation. One of these tools needs to be the option of using introduced species. In some circumstances, it may be critical to use introduced species to achieve success in establishing a quick, soil-stabilizing ground cover.</p> <p>The NRCS Plant Materials Program is recognized as an expert in providing critical plant science technology with practical applications. The program primarily evaluates native species, but it also considers some introduced species when appropriate. The outcome of the program's effort is to provide sound land management options with economic and environmental benefit. Native or introduced plants that present environmental and/or invasive problems are eliminated. NRCS also uses a risk assessment process where plants with invasive characteristics may be required. An Environmental Assessment/Environmental Impact Statement (EA/EIS) is prepared to document the impacts of introducing those species.</p> <p>For the reasons outlined above, NRCS feels strongly that the flexibility to use non-native plant species needs to be maintained. Specific applications need to be judged on their own merit, and one option that should be available is the use of non-native plant species that are non-invasive.</p> <p>2) NRCS will continue to comply with all applicable Federal and State laws, including the Anadromous Fish Conservation Act (AFCA). A reference to the AFCA has been added to the text in Section 2.2.2.3 and Draft PEIS Proposed Action Element 6 of Section 3.2.2.1.</p> <p>3) In the past, the EWP Program was admittedly lacking in coordination, but the process of re-evaluating the program is what led to the Draft PEIS Proposed revised procedures and preparation of this PEIS. Implementation of the Preferred Alternative will lead to the determination of specific procedures for declaring "exigency" situations and how to proceed in those cases. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationist will continue to be responsible for determining specific procedures for their State in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p>
<p>DOI page 6</p> <p>1) PEIS Chapter 5 Section 5.2.2 has been revised to reflect information on invasive and non-native plant species. The Executive Order 13112, dated 3 February 1999, deals with invasive species that are "alien" or introduced from other ecosystems. NRCS is in agreement that introduced invasive plants should not be used for restoration purposes. It is important to recognize however, that a non-native plant is not the same as an invasive one. There are many introduced plants that are not invasive.</p> <p>Introduced plants can be used for solving conservation problems, especially when suitable native species are not readily available. Condemning all introduced plants, i.e., non-native species, would eliminate worthwhile species choices while making practical species selection very difficult. With respect to the Wetlands Reserve Program (WRP), for example, "Streamco" willow has been widely used for stream stabilization, and it hasn't posed invasive threats. No other plant has been found which has the attributes of "Streamco": shoot density, vigor, lack of spreading, and utter reliability.</p> <p style="text-align: center;"><i>(response continued at top of next column)</i></p>	

Abandoned Mine Land Inventory System

- 1 Our Office of Surface Mining believes the program should also apply to flood prevention and mitigation projects that are associated with or that may be aggravated by, abandoned or reclaimed coal mine lands where there is not a responsible company of person. The Abandoned Mine Land Inventory System has hundreds of "clogged streams" in its inventory of problem areas. These clogged streams often cause flooding and property damage. The NRCS program should provide funding to help correct these problems before a disaster occurs.
- 2 Both Federal agencies and non-government organizations are increasingly concerned with flood repair and mitigation work that ignores natural habitat conditions. Many federally-assisted flood repair projects have needlessly destroyed prime habitat for trout and other gamefish by ripping out stream substrate, straightening natural meanders, removing vegetation, and hardening the stream cross section with engineered structures. All projects under this program, including emergencies, should be constructed with the consultation of fisheries biologists or other professionals. The EIS should reference the 1998 publication, "Restoring Streams to Reduce Flood Loss" by Trout Unlimited and National Park Service.

SPECIFIC COMMENTS

- 3 **Sensitive Resources:** Throughout the document, there is a tendency to equate "sensitive resources" with threatened and endangered species. While listed species and their critical habitats fit this designation, there are other fish and wildlife resources that may also be important in an area and sensitive to the adverse impact of a project. These could include wetlands, anadromous and resident and anadromous fisheries, and important wildlife populations. The document should be revised to clarify this point and provide a more inclusion definition of what is meant by the term.
- 4 We also recommend that a clear definition of the term "emergency" be provided with an explanation of how this term compares to definitions of this term by other agencies and a "disaster" as declaration by the President.

Summary: The following comments on the Summary section of the PDEIS apply in many instances also apply to later chapter of the PDEIS where these factors are discussed in greater detail.

- 5 **Page S-9, Section S.5:** The statement is made that "potentially affected watersheds include those of the 50 States and territories, except coastal areas and Federal lands not managed by the U.S. Forest Service." The applicability of EWP work to Forest Service lands but not other Federal lands should be explained.

- 1 **Page S-12, Figure S.5-1, Map of location of EWP sites used to evaluate impacts:** The 14 sites used in impact evaluation do not appear to geographically represent all areas the United States. Major portions of the country (New England, the Southeast, the Mountain-Prairie Area and the Southwest have no or limited coverage. The sites used are all located in just 9 States within the coterminous United States. There was greater national coverage both by the reviews conducted by the Oversight and Evaluation Teams and in Table 2.5-6.
- 2 **Page S-12, last sentence:** The statement is made that General Administration changes are "simply procedural in nature and have no environmental impacts." The individual components of the General Administration group should be listed and an explanation provided of why they would have no environmental impact.
- 3 **Page S-13:** "Urgent and compelling" needs to be clarified by adding, "imminent threat to life or property that affects the health and safety of people." Further, improving disaster readiness can be improved by developing protocols established at the national level.
- 4 **Page S-14: Use of natural stream dynamics:** One approach to "the use of natural stream dynamics" would be to take no action. Often, the NRCS has felt the need to act immediately and implement actions without allowing natural processes to reestablish an equilibrium. This "do nothing" alternative is often not analyzed, yet may be the best long term solution and the least expensive. It is important to clarify that restoring channel capacity is not a form of restoration if it does not take into consideration natural stream dynamics.
- 5 In the discussion of the components of the Proposed Action, use of natural stream dynamics receives little more than passing reverence, and bioengineering is not mentioned at all. This discussion should be expanded to include all components of the Proposed Action, as this change in approach and philosophy is one of the most significant, increasing environmental benefits and reducing adverse impacts of EWP projects.
- 6 **Page S-23:** The cumulative impacts of the EWP program alternatives should include a discussion of impacts to upland vegetation or potential change in plant communities from the introduction of non-native species.
- 7 **Page 1-3, Section 1.2, Proposed Action and Purpose and Needs Specified:** A set process for review and certification, with required documentation, developed at the national level would strengthen the recommendation of the Oversight and Evaluation team recommendation to ensure more accurate site eligibility determinations.
- 8 **Page 2-2, Section 2.1.1, EWP Coordination with Other Agencies:** The FWS should be included as one of these agencies. Section 624.8 of the EWP regulations and section 509.30 of Part 509 to the National Watershed Manual provide for FWS involvement. The FWS should be a key player in EWP activities with regard to Section 7 consultation on Federally-listed threatened and endangered species and in making resource impact evaluations and

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DOI page 7	DOI page 8
<p>1) The clogged streams mentioned are pre-existing conditions and are not a result of natural disasters. While they may threaten property, these blockages that are not disaster-related are not under the purview of EWP.</p> <p>2) Please refer to the comments from page 1 of 19 (comment #1) and page 2 of 19 (comment #2) regarding the selection of Alternative 4 and the past performance of the EWP program, respectively. The EIS does make extensive use of the Stream Restoration Handbook, published by the Federal Interagency Stream Working Group.</p> <p>3) NRCS agrees. The PEIS text has been reviewed and revised where appropriate to clarify this distinction.</p> <p>4) Definitions of the terms “emergency” and “disaster” are provided in Section 2.2.1 of Chapter 2—EWP Project Implementation Criteria. From the Draft EWP Final Rule: <u>Watershed emergency</u> means adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property. <u>Natural occurrence</u> includes, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought.</p> <p>5) As of the date of publication of the Draft EWP PEIS, a Memorandum of Understanding (MOU) was in place between NRCS and the U.S. Forest Service (USFS) indicating that NRCS would fund EWP Program work conducted on USFS lands. That MOU expired in July 2003, and no other agreement between the NRCS and USFS has since been signed. Currently, the USFS does not go through NRCS to fund watershed projects, including EWP Program work. NRCS currently funds only its own EWP Program work, and will continue to do so in the future. However, NRCS still provides overall administrative direction and guidance to the USFS for EWP Program work. This information has been added to Chapter 2; however, this depth of information was not deemed appropriate for the Executive Summary.</p>	<p>1) The PEIS used a representative sample of 23 sites in 9 states where a majority of recent EWP work has been performed and does incorporate a variety of geographic conditions (also see the response to USEPA page 4, comment #1). NRCS believes this is an appropriate level of analysis for a programmatic level NEPA document. The Oversight and Evaluation (O&E) team performed a fundamentally different type of evaluation, involving no environmental impacts analysis.</p> <p>2) The “General Administration” category was erroneously noted in the Summary and has been deleted from it and Section 5.2.6 of Chapter 5, because no elements of the Draft PEIS Proposed Action fell into this category.</p> <p>3) A full definition of “urgent and compelling” under Alternative 2 (Draft PEIS Proposed Action) is provided earlier in the Summary on page S-5. It was deemed unnecessary to continue to carry this full definition throughout the document.</p> <p>4) The primary goal of EWP is to protect life and property threatened by sudden watershed impairments. This goal may conflict with allowing the time necessary to re-establish a natural equilibrium for stream restoration. However, efforts are being made to incorporate natural stream dynamics into design of restoration measures wherever possible.</p> <p>5) The description of using the principles of natural stream dynamics has been expanded to define more clearly the methods used.</p> <p>6) Table S.6-4 has been expanded to include uplands analysis and critical area treatment.</p> <p>7) The PEIS does not address the eligibility or certification criteria. The revised EWP Manual and Handbook will describe the criteria and the Draft PEIS Proposed DSR in PEIS Appendix C will be used to document the process. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationist will continue to be responsible for determining specific procedures for their state in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p> <p>8) Section 2.1.1.6 has been added to include the USFWS in the description of coordinating agencies.</p>

recommending mitigation measures. The FWS and NRCS have been partners in a number of EWP projects in recent years involving bioengineering techniques, streambank restoration, restoration of streams to include anadromous fishery measures, and use of easements to protect flood plain habitat important to fish and wildlife resources. (In the section on mitigation, the FWS should also be referenced as a source of information).

1 **Page 2-8, Section 2.2.1.2, Eligibility Criteria:** Several major criteria of the existing program are not included. Section 624.6(a)(4) of the existing regulations states that measures must be limited to the minimum that will reduce applicable threats to a level not to exceed that which existed before the impairment of the watershed. Section 624(c)(1) provides that measures must be the least expensive and environmentally sound. It further provides that measures are to be accomplished using the least damaging construction techniques and equipment that will retain as much of the existing characteristics of the channel and riparian habitat as possible. Section 624(c)(2) provides that measures needed to offset adverse impacts should be planned for installation concurrent with installation of the emergency measures, or within 30 days. The status of these requirements and those already listed in this section should be discussed for the alternative considered.

2 **Page 2-11, Section 2.2.2.3, Environmental Review and Inter-Agency Coordination:** Paragraph 2 references notification of FWS area and field offices. The FWS no longer has Area Offices. Under the ESA, consultation is required with the FWS and the National Marine Fisheries Service on listed species and critical habitats (see section on the ESA above). For example, the existing coordination mechanisms identified in paragraph 2 does not exist in Oregon.

3 **Page 2-13, Section 2.3.1, Practices that Restore Stream Channel (Hydraulic) Capacity:** The need for debris removal from streams needs to be carefully weighed against the need to retain stream debris as an important component of aquatic and fish habitats. This is particularly true as you move upstream into smaller streams. Watershed analyses being completed by many of the federal land management agencies often indicate that streams have been oversimplified, leading to degradation of aquatic and fish habitats. Agencies are actively involved in adding debris to streams through management actions such as tree pulling or placing of in-stream structures. The need to protect structures (such as bridges) is recognized and important. Interdisciplinary work with other agency fish biologists and hydrologists is encouraged when it comes to on-the-ground implementation. (The EIS does briefly discuss the benefits of debris deposition on page 5-6).

4 **Page 2-21, Section 2.3.5.1 Critical Area Planting:** The document provides emphasis on the use of natural materials, live plantings, and soil bioengineering for streambank stabilization, where appropriate. This emphasis is well placed. When considering live plantings, emphasis should be directed toward the use of native plants rather than exotics, when native materials are available. The use of non-native species and aerial seeding should be limited. (The EIS, page 2-22 discusses native and non-native plants without

emphasis on the native component). A concerted effort among all federal agencies to use native plants for stabilization-restoration projects will help encourage the private sector to develop a ready supply of such materials. They are currently often in short supply.

1 **Page 2-28, Economic Justification:** When assessing the cost associated with easements (and other EWP measures), all short-term and long-term costs and benefits should be considered. These should include the benefits to the environmental and natural resources from restoring the ecosystem and the application of methods that consider stream dynamics, bioengineering, and use of vegetation.

2 **Page 3-4, NRCS Proposed Action, Eliminate the term "exigency" and "non-exigency, and Stipulate the "urgent and compelling" situations be addressed immediately upon discovery:** The new "urgent and compelling" designation would have to be addressed immediately upon discovery and completed within 5 days of the site becoming accessible. The General Comments above address this issue.

The third paragraph on this page states that other agencies would be notified as quickly as possible after the fact. An explanation should be provided here or under coordination procedures of how this approach fits with the FWS's emergency ESA procedures for projects that may affect listed species, as described above.

3 **Page 3-6, Table 3.2-3, Priority Order of EWP Funding:** We believe that endangered and threatened species and the critical habitats would need to be addressed in priorities 1-3, since many actions taken for these priorities may impact listed species, especially those with limited distributions and low population numbers.

4 **Page 3-7, et seq., NRCS Proposed Action, Stipulate that practices be economically, environmentally and socially defensible and identify the criteria to meet those criteria:** The addition of a review process to insure that project implementation is socially defensible is a positive step. We understand that NRCS needs a tool which can be applied in a relatively quick manner due to the nature of the nature of the EWP. However, the proposed social/socioeconomic checklist would seem to be an oversimplification of this effort, unless interested local parties are involved in the development of the checklist.

The portion of this element on pages 3-7 and 3-8 that stipulates that practices be environmentally defensible may have significant environmental value; we recommend it be reflected in paragraph 2 of this section, which currently discusses only economic and social Defensibility.

5 **Page 3-8, Discussion and Figure 3.2-1:** The table presents the flow logic for Defensibility review of EWP practices. The social and environmental components of the chart can modify or stop the process. Placing these steps higher in the decision process may save money on design and implementation because NRCS would have input on social and environmental issues before the project is designed, reviewed, and determined technically sound. Under the process as

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DOI page 9	DOI page 10 (continued)
<p>1) A table has been added to Chapter 3 that compares the existing rule with the Proposed rule.</p> <p>2) Section 2.2.2.3 of Chapter 2 was modified to remove references to USFWS Area Offices.</p> <p>3) The benefits of retaining instream woody debris are discussed in Chapter 5 and summarized in Chapter 3.</p> <p>4) Please see the response to page 6 of 19, comment #1 for NRCS' explanation of the agency's policies on invasive and non-native plant species.</p> <p align="center">DOI Page 10 Response Begins Below</p>	<p>2) Comment noted. NRCS' Preferred Alternative retains the terminology "exigency" and would not replace it with "urgent and compelling". In addition, under the Preferred Alternative, time to respond to exigent situations is lengthened from 5 to 10 days, allowing for more time to conduct appropriate agency coordination. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationist will continue to be responsible for determining specific procedures for their state in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p> <p>3) Table 3.2-3 lists priorities for funding of projects not priorities for environmental consideration. Threatened & endangered (T&E) species and their critical habitat would continue to be addressed in project environmental reviews under all priorities.</p> <p>4) This standardized National Program checklist ensures consideration of relevant social values during DSR reviews. It is designed to be completed with local information when filled out at the project level by NRCS field personnel. NRCS field personnel enter specific local information and considerations unique to a particular community at the project level. Thus, DSR review ensures that local social considerations are factored into the design and implementation of projects. Draft PEIS Proposed Action Element 5 from Section 3.2.2.1 has been revised to include environmental factors in addition to the mentioned social factors for determining defensibility. "Environmental values" has also been added to "community values." This aspect of Element 5 is wholly adopted under the Preferred Alternative.</p> <p>5) Any defensibility review must start with a technically sound project plan. The environmental and social defensibility review steps are concurrent with technical design as part of the DSR process.</p>
<p align="center">DOI page 10</p> <p>1) Upon consideration of the fundamental goals of the Program improvement, NRCS has changed its basic approach to approval of EWP work. The title of Draft PEIS Proposed Action Element 10 of Section 3.2.2.1 of Chapter 3 has been revised. The term "least-cost" has been eliminated and the Element now reads: "Apply the principles of natural stream dynamics and, where appropriate, use bioengineering in the design of EWP restoration practices." The purchase of floodplain easements or the use of bioengineering would be among the solutions considered in all cases. Costs alone would not dictate which solution is selected, as the solution must also be environmentally and socially defensible. NRCS believes these changes reflect the intent of the comment, as the focus is no longer on least cost solutions. Other factors, such as environmental resources, also would be used to determine the best solution as indicated in the related revision to Draft PEIS Proposed Action Element 5, paragraph 2. These aspects of Draft PEIS Proposed Action Elements 5 and 10 have been wholly adopted under the Preferred Alternative.</p> <p align="center"><i>(response continued at top of next column)</i></p>	

currently proposed, the project would be designed, reviewed, and determined technically sound before being evaluated for social and environmental Defensibility; therefore, if the project is found lacking in either area, the project would have to be redesigned and go through the process all over again. It would be helpful if agencies that would be consulted in conjunction with the flow logic outlined were also referenced in the figure.

- 1 We assume that the tiered review process discussed on page 3-8 would be used for "urgent and compelling" situations. If it would not, the rationale for not doing so should be provided. The third paragraph on page 3-8 references checklists as part of the Tier 1 environmental and social Defensibility reviews. We recommend samples of these checklists be provided in an appendix.
- 2 **Page 3-9:** The statement is made that "EWP work would be environmentally defensible if 1) the proposed recovery work would not adversely affect the environment or 2) any adverse effects would be adequately mitigated". We recommend that this statement be revised to say that EWP work would be environmentally defensible if 1) the proposed recovery work contains benefits for sensitive species and their habitats, 2) would not adversely affect the environment or 3) any adverse effects would be adequately mitigated.
- 3 This change recognizes NRCS's section 7(a)(1) federal agency responsibility to "utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of the Act." Any EWP work should be scrutinized for opportunities to provide beneficial actions for listed species and their habitats and to proactively restore normal functioning to ecosystems.
- 4 **Page 3-9, NRCS Proposed Action, Training:** We agree that adequate training of emergency response personnel in issues pertaining to sensitive species and their habitats is critical. We recommend that this element include the advance identification of natural resources of importance as well as threatened and endangered species, as discussed above. We are pleased to see the provision of EWP disaster-readiness teams to participate in the development of Emergency Action Plans. The FWS can help NRCS identify sensitive natural resources as well as listed threatened and endangered species and critical habitats. In each geographic area, training should occur on methods of minimizing/avoiding affects on these species and their habitats. An example that has been used is development of a packet of waterproof, informational cards could be provided to each team that contain pictures of sensitive species and provide strategies for minimizing/avoiding impacts. Additionally, this packet could contain a tally sheet where location and level of impact on sensitive species is recorded so that after-the-fact consultation may be facilitated. In addition, consideration should be given to potential impacts of EWP projects on other Federal lands such as those under the National Wildlife Refuge System.
- 5 The section on Interagency Coordination does not mention the Bureau of Land Management nor the U.S. Forest Service. Both of these agencies are actively preparing watershed analyses - sometimes with significant input from large and small private landowners. This information

could be very useful in the implementation of the EWP, particularly if there are pro-active efforts undertaken for watershed protection.

- 1 **Page 3-11, NRCS Proposed Action, Allow repair of impairments to agricultural lands using sound conservation alternatives:** This item is confusing and seems to contradict itself between paragraphs. In addition, the FWS recommends that this provision require use of bioengineering and vegetative techniques to the greatest extent possible. NRCS technical specialists should be encouraged to use natural stream dynamics and seek ways of restoring natural stream processes such as reversing the effects of channelization, placement of in-streams structures, gravel replenishment, and return of natural flow regimes in conjunction with armoring, bioengineering, and vegetation to protect streambanks where appropriate. This would be consistent with the overall goal of the expanded program. The Consultation and Coordination section notes that a large part of the improvement that NRCS proposes to make includes protecting T&E species, cultural resources, wetlands, and other sensitive resources and helping in general to restore watershed health.
- 2 **Page 3-12, NRCS Proposed Action, Eliminate Requirement for Multiple Beneficiaries:** The PDEIS notes that NRCS policy has required multiple beneficiaries primarily to avoid windfall benefits to a single landowner and to ensure that the general public benefits from the Federal funds spent. It is stated that program experience indicates that only rarely does EWP site work result in substantial benefits to a single landowner. It is also stated that NRCS recognizes that natural resource issues affect areas that are not bounded by property ownership lines. Areas downstream of repaired sites benefit from repairs in ways that include sediment reduction and habitat preservation. These reasons argue against eliminating multiple beneficiaries. By keeping it, the program would not be subject to providing the windfall benefits discussed in those "rare" instances when they might occur.
- 3 **Page 3-12, NRCS Proposed Action, Application of Principles of Natural Stream Dynamics and Bioengineering to the design of EWP Practices:** We strongly support this item in the Proposed Action and commend NRCS for designating the document, "Stream Corridor Principles, Processes and Practices." We suggest that NRCS also reference Chapters 13, 16 and 18, in its Engineering Field Handbook, which deal with restoration and protection activities.

This element of the Proposed Action indicates that natural stream dynamics and bioengineering will be applied where they constitute the least cost defensible solution. This evaluation should include the costs of repetitive repairs and subsequent easement purchase, if applicable. The sum total could be more expensive than creating a stable and functioning stream segment through the application of hydrogeomorphic principles and use of bioengineering that will not be as subject to repeat damages.
- 4 We also recommend this section explain how "least-cost" is determined and the extent to which long-term protection (i.e., likelihood of the practice persisting over the long-term, thereby educing costs in the future) is factored into the equation. If long-term protection is not factored

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DOI page 11	DOI page 12
<p>1) The evaluation criteria for reviewing individual sites for environmental and social defensibility are included in Appendix C, in the Proposed DSR.</p> <p>2) Draft PEIS Proposed Action Element 5 of Section 3.2.2.1 has been revised to include further explanation of the Tier 1 and 2 reviews. This aspect of Element 5 is wholly adopted under the Preferred Alternative. Any proposed EWP project must be environmentally defensible, meaning that it cannot adversely affect T&E/sensitive species or their designated critical habitats. Benefits to sensitive species or their habitats are not part of the defensibility review, but would be considered as part of the Tier 2 review, where those benefits could add to the economic or social benefits of protecting property in judging whether to proceed with project installation.</p> <p>3) As noted above, the discussion of the tiered reviewing system in Draft PEIS Proposed Action Element 5 of Section 3.2.2.1 has been revised. Please refer to response #2 above. Under the Preferred Alternative, NRCS would proactively work to restore pre-disaster watershed functions in affected areas. It should also be noted that the EWP program is proposing increased use of bioengineering.</p> <p>4) NRCS will consider these recommendations in implementing EWP training. DART teams were not adopted as part of the Preferred Alternative (Alternative 4). However, the Preferred Alternative does include several provisions to increase and facilitate agency coordination, including coordination with the USFWS to identify sensitive resources. Impacts of EWP projects on other Federal lands, including National Wildlife Refuge System lands, are considered as part of the environmental defensibility review.</p> <p>5) Draft PEIS Proposed Action Element 6 of Section 3.2.2.1 has been revised to add USFS and BLM to the list for agency coordination. This aspect of Element 6 is adopted under the Preferred Alternative.</p>	<p>1) Draft PEIS Proposed Action Element 7 of Section 3.2.2.1 has been revised to clarify the discussion and to include reference to improved restoration practices. This aspect of Element 7 is adopted under the Preferred Alternative.</p> <p>2) The only substantive change in policy is that downstream beneficiaries are assumed to be present and no longer need to be documented on the DSR. Any adverse impact associated with the “rare” instances in which windfall benefits to a single landowner occur are considered to be more than offset by the beneficial effects realized from the valuable time saved by NRCS staff to document downstream landowners. NRCS has recognized and will continue to recognize the benefits to downstream landowners and environmental resources.</p> <p>3) Draft PEIS Proposed Action Element 10 of Section 3.2.2.1 has been revised to include the recommended references.</p> <p>4) The EWP Program is a recovery program and not a program to solve watershed problems or develop long-term solutions. NRCS EWP projects are typically designed to promote near-term damage reduction and repair to the pre-disaster condition. To undertake a project beyond that level would be considered a betterment of the conditions that previously existed prior to the natural disaster and would not be eligible under the EWP Program.</p>

in, we recommend that it be considered as a new element of Alternatives 2 and 3. In addition, it is possible that NRCS could use EWP funds in conjunction with actions under other emergency and non-emergency programs that, in combination, could be used to restore and protect natural functioning systems that have been extensively manipulated. In this way, stream ecosystems could be restored to a greater extent than allowed by EWP alone, creating naturally functioning ecosystems that can buffer and decrease the magnitude of flood and other catastrophic events at the same time.

1

The last sentence of the first paragraph on page 3-13 states that techniques that are more sensitive to the environment are effective only in certain situations and that sites would be evaluated individually. We recommend NRCS provide clarification of situations where environmentally sensitive treatments are not appropriate, taking into consideration long-term benefits.

2

Page 3-13, NRCS Proposed Action, Purchase of Agricultural Easements: The Proposed Action revises the classification system for eligible land and easement type to eliminate Categories 1 and 3 and include only Category 2. We recommend that only Category 3 be eliminated and that Categories 1 and 2 be retained. By eliminating Category 1, the NRCS would prevent full restoration of lands protected under an easement, and a floodplain may not fully recover. The EWP program would not provide adequate protection for fish and wildlife resources, particularly for the FWS's trust resources if Category 1 lands are excluded. Further, the lands under Category 1 often represent the most valuable to fish and wildlife resources. Including Category 1 lands for easements would be consistent with the purposes and restrictions on easements for non-agricultural land that would also be added under the Proposed Action.

3

NRCS should also reconsider the restrictions applied to the Category 2 easements. Landowners would be able to request authorization to use the purchased easements for compatible uses which would include managed timber harvest, periodic haying, or grazing. Cropping would not be authorized and haying and grazing would not be allowed on lands that are being returned to woody vegetation. While the prohibition against cropping would protect these areas, the rest of the allowable authorizations could result in reduced benefits from lands under easement. The language in an easement should require management that promotes restoration of ecosystem functioning and is beneficial to sensitive species and habitats. In some cases, this management may be more intensive and the purchase price for the easement may need to be commensurately higher. The long term benefits of this type of management far outweigh the short term additional costs that may be accrued. This section states that NRCS would make the final decision relative to the amount, method, timing, intensity, and duration of any compatible use that might be authorized. We recommend the language be modified to include consultation with the FWS when our trust resources may be affected before a decision is made because of our expertise and responsibilities under a variety of authorities.

Page 3-13, NRCS Proposed Action, Repair of Enduring Conservation Practices: This provision would allow for the repair of PL 566 project structures that are damaged beyond routine operation and maintenance capabilities. This provision would allow for the upgrading of

1

damaged or undersized structures and measures (such as a damaged levee). This provision should not be used to allow structures to be modified so that they provide greater protection than what existed before the impairment of the watershed (current regulations, section 624.6(a)(4)). We also recommend that the language in the third paragraph be modified to include, and even emphasize, advances that make the structures more environmentally friendly. Consideration should be given in this section to abandoning structures when appropriate for environmental benefits. Environmental rehabilitation criteria should also be established for structures that have been in place for decades that do not meet current environmental standards. The environmental review should require that the structures meet environmental standards and needs when repaired.

2

Page 3-14, NRCS Proposed Action, Partially Fund Improved Alternative Solutions: This provision would allow NRCS to provide planning assistance to a sponsor who wanted to construct a more extensive project than that determined by NRCS to be necessary. Substitution of one practice for another would be allowed if benefits were not reduced and the sponsor paid additional costs. NRCS would discourage sponsors from going out on their own after completion of an EWP project and "adding to it" to ensure protection of EWP work integrity.

Several elements of this provisions are of concern. If the sponsor wishes to conduct work in addition to that identified as necessary by NRCS, then the sponsor should have to pay for the additional planning and environmental evaluation. Further, substitution of one practice for another could result in the substitution of "hard" engineering practices for a project that NRCS planned to include natural stream dynamics and bioengineering features. Sponsors may not understand the concepts involved in "greener" techniques and opt for traditional "hard" structural techniques. Lastly, NRCS should discourage additional actions by land owners on top of EWP projects not only where they jeopardize the EWP work, but also where they would be environmentally or socially unacceptable.

3

Page 3-15-16, NRCS Proposed Action, Allow disaster-recovery work in floodplain areas away from streams and in upland areas; EWP Floodplain Deposition Recovery Practices:

This section states that decisions on what practices to use would be made by first considering removal of sediment or incorporating into underlying soil, then encouraging a floodplain easement where neither of these options is feasible. We recommend that the floodplain easement be considered first, or at least equally with the other two listed options. In addition, the measures discussed here should include revegetation of areas after sediment disposition and grading and shaping have taken place.

4

Page 3-16, EWP Upland Debris Removal Practices: Included in the measures under this provision is the removal of vegetation and wood debris. Consideration should be given to leaving woody debris that does not create a hazard. Fallen timber in wooded areas provide habitat for various forms of wildlife and eventually decays, replacing the organic matter of the forest floor.

5

Page 3-17, Section 3.2.2.1, NRCS Proposed Action, Purchase easements on non-agricultural lands: The last sentence, second paragraph, states that the purchase of easements

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DOI page 13	DOI page 14
<p>1) Draft PEIS Proposed Action Element 10 of Section 3.2.2.1 has been revised to state “There may be some situations where bioengineering would not be effective, and in these instances, structural engineering may be required.” This eliminates the connotation of limited utility or applicability of bioengineering. These provisions are wholly adopted under Element 1 of the Preferred Alternative.</p> <p>2) Although Category 1 easements are eliminated, there will be a requirement for maintaining buffer strips along waterways. The time, costs, and often small acreages involved with Category 1 easements necessitate this change. Surveys are required for Category 1 easements, driving up costs. To offset this, streamside buffers are required of all easements and will provide similar benefits. The width of these buffers will be maintained at a set width, even when the stream channel meanders. The PEIS text describing Draft PEIS Proposed Action Element 11 has been revised to make note of these points. This provision is adopted under Element 11 of the Preferred Alternative.</p> <p>3) The objective of easements is to reduce the Federal expenditure for recurring damages and restore the hydrologic function of the floodplain, to the extent possible, to natural conditions. It is not intended that structural improvements will be made to the ecosystem. However, some improvements will occur as a result of the land treatment carried out to allow the floodplain to function properly. The required streamside buffer strip will provide additional habitat and should other organizations desire to partner with NRCS, there may be opportunities for them to fund practices which would not interfere with the primary objective of the easement purchase. Landowner compatible uses are only authorized if they do not conflict with the protection and enhancement of the easement’s floodplain functions and values. The USFWS or National Marine Fisheries Service (NMFS) will be consulted in any instance where a federally listed T&E species may be affected by NRCS on an easement.</p>	<p>1) Draft PEIS Proposed Action Element 12 of Section 3.2.2.1 has been revised to remove references to “undersized practices” and to reflect that NRCS will only rebuild structures to pre-disaster condition, except in cases where State or local permits require further measures. All structural work will be performed with the intent of minimizing environmental impacts.</p> <p>2) Improved alternative solutions carry the stipulation that a sponsor’s cost-share rate substantially increases. By conducting the environmental evaluation and design work on any sponsored EWP restoration projects, NRCS would ensure the use of natural stream dynamics and bioengineering features, wherever possible whereas, if NRCS did not aid the sponsor in the design of these restoration practices, consideration of “greener” techniques could not be assured. Draft PEIS Proposed Action Element 10 of Section 3.2.2.1 has also been revised to stress that design based on natural stream dynamics will be used whenever feasible. This should eliminate concerns over sponsors using only structural engineering in improved alternative solutions. This aspect of Element 10 is wholly adopted under the Preferred Alternative.</p> <p>3) Under the Preferred Alternative, NRCS would consider floodplain deposition removal or incorporation only for practices not eligible under the ECP Program. Easement purchase, removal of sediment, and incorporation of debris into underlying soil are all considered equally viable alternatives for floodplain restoration. Actual practices used would be determined on a site-specific basis. Floodplain easements would be the first option where a landowner is willing to sell their rights. The floodplain easement restoration plan would determine what seeding or other activity would take place.</p> <p>4) Upland debris will be removed only when it poses a threat and the removal is defensible. Draft PEIS Proposed Action Element 14 of Section 3.2.2.1 has been revised to include: “consideration should be given to leaving woody debris that does not create a hazard.”</p> <p>5) NRCS retains the easement after purchase even if land title is transferred. NRCS would not allow any structural improvements. Draft PEIS Proposed Action Element 15 of Section 3.2.2.1 has been revised to reflect “the Secretary of Agriculture retains the easement but the fee title is owned by the locality.” Compatible uses for floodplain easements would be determined on a site-specific basis and after a site-specific evaluation.</p>

would include deed restrictions that would permit uses compatible with natural floodplain functions as determined by NRCS. The document should: 1) List the types of compatible uses NRCS would allow on easements, and 2) explain, if title for floodplain easements is given to the local town or municipality, what type of restrictions would accompany the deed transfer to assure the habitat remains free of development and permits natural floodplain functions.

1

Page 3-20, Table 3.2-4 Economic, Environmental, and Social Defensibility: The table states that actions would take into consideration threatened and endangered species. Please see our earlier comments on this subject.

2

Pages 3-22 and 3-23 Integration of Alternative 3: Parts 4 and 5 might be easily integrated into the proposed action, particularly in western states or counties with significant federal ownership. These parts of Alternative 3, which deal with a comprehensive watershed approach in high priority watersheds, could take advantage of the significant efforts already in place (completed watershed analyses, functioning watershed councils, etc.).

3

Page 3-28, Aquatic Ecosystem Impacts: Under the Proposed Action, the statement is made that aquatic ecosystems would continue to benefit in the short term from restoration of channel capacity and reduction of bank erosion at EWP repair sites. The hydrology of disaster-damaged stream reaches would be restored and turbidity and sedimentation reduced, which would improve conditions for aquatic life in many respects. This statement is in need of qualifications. Where environmentally acceptable methods are used and natural stream dynamics and bioengineering taken into consideration, this may be true. However, where increased capacity is restored through creation of uniform and straight stream channels and hard engineering on streambanks, measures taken may have an adverse impact of aquatic resources through increased velocity, removal of in-stream habitat and diversity, and instability as the stream attempts to reach a state of hydrologic equilibrium.

4

Page 3-30, Riparian Ecosystem Impacts: This discussion should apply to Streambank Impacts, including the riparian zone. It should also address the impacts associated with conducting EWP work. Equipment access and clearing and snagging activities often remove or adversely impact streambanks and riparian habitat.

5

Page 3-44, Mitigation for [Impacts to] Aquatic Community Resources: It is stated that adverse impacts could be mitigated through reducing the dependence on structural practices that harden stream banks, remove protective riparian vegetation and generally increase runoff and non-point source pollution. This section should also discuss mitigation of the physical impacts to the aquatic community that result from clearing and snagging activities, changes in channel morphology and the use of heavy equipment in streams. These factors are often major contributors to impacts to the aquatic community, particularly where the channel is gouged out and sized without consideration to the hydrology of the stream.

We recommend wording the first sentence of the first paragraph as follows:

"Many potentially adverse impacts to the aquatic community could be minimized by reducing the use of structural EWP practices that harden stream banks, eliminate riparian vegetation, and generally increase runoff and the consequent delivery of pollution sources to the stream."

The second paragraph states that "NRCS would continue to consult with the FWS in any situation where there is a potential for jeopardy to a T&E aquatic species" This should be changed to read "NRCS would continue to consult with the FWS or NMFS in any situation where there is a potential to affect T&E species and critical habitat, and anadromous fish species" Under the authority of the Anadromous Fish Conservation Act, the EIS language could be expanded to include anadromous species. As an example, spawning runs of adult salmon (coming into a watershed) and out-migrating runs of juvenile salmon (leaving the watershed) need to be considered in jeopardy situations. Also, other T&E species as such as grizzly bears, eagles, amphibians etc., that depend upon aquatic resources, need to be considered.

1

Chapter 4 - Affected Environment: The description of the projects that were analyzed for cumulative impacts, EWP practices and easements should be improved to provide a consistent description of the projects, impacts and measures used. The headings used vary from project to project, and the information contained under each section is not the same from project to project.

2

The analytical approach used through the application of Condition Classes discussed in the chapter and outline in Table 4.2-1 and 4.2-2 is so general that it does not account for the regional differences that would be inherent in the evaluation of a program that is nationwide in scope. For example, in Table 4.2.1 Aquatic Ecosystems Condition Classes, the criteria designating "excellent" conditions appears to be biased toward cold water streams. In some parts of the country, even the best streams would probably fall into the poor category for many of the conditions. In particular the Water Quality and Biota sections would seem to relegate most warmwater streams to the "poor" category. For example, Prairie streams in the West are often naturally very warm and shallow in the summer, and are favorable to the native species adapted to these conditions. However, the coldwater conditions that are ranked generally as favorable in the Table would be detrimental to warmwater species. We also have concerns with the "able to support gamefish" and "gamefish present" criteria. A similar condition would be true for many streams and rivers in the Southeastern United States. In addition, if the gamefish listed were present in prairie streams, many of the native minnows would be eliminated due to predation.

Similarly, Table 4.2-2 Riparian Habitat Condition Classes is also biased against prairie environments. Historically, the dominant streamside vegetation along most prairie streams was grass and forbs. Relatively recent human induced changes have allowed trees to become the dominant vegetation along many prairie streams, however, most of our highest quality prairie streams still retain grass and forb dominated streambank vegetation which would throw them into the "fair" category.

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DOI page 15	DOI page 16
<p>1) Comments regarding T&E species were previously addressed (please see responses to page 4 of 19, responses #1 and #2, as well as page 5 of 19, response #1). Additional information regarding T&E species was not deemed necessary for inclusion in Table 3.2-4.</p> <p>2) Please refer to page 1 of 19, response #1 for the rationale for the selection of Alternative 4 as the Preferred Alternative. The EWP Program is administered on a national level. States or counties with significant Federal ownership are encouraged to develop their own specific watershed management plans. Additionally, the level of planning proposed in the comment has merit, but any personnel and funding required for such work would be at the expense of other NRCS programs, making such additional planning impractical at this time.</p> <p>3) The reviewer appears to have the Draft PEIS Proposed Action and the No Action alternative confused. The reviewer states that, under the Draft PEIS Proposed Action, aquatic ecosystems would continue to benefit in the short-term from restoration of channel capacity and reduction of bank erosion. This statement is actually made under the discussion for Alternative 1, which is the No Action alternative. The discussion of aquatic ecosystem impacts is provided in Section 5.2.3 of this Final EWP PEIS.</p> <p>4) Final EWP PEIS Section 3.4.2.2 has been expanded to address those impacts. A further discussion of riparian ecosystem impacts is provided in Section 5.2.3 of this PEIS.</p> <p>5) The text has been revised to include a discussion of mitigation practices for aquatic resources.</p>	<p>1) Inconsistencies between projects are noted; however, only the most relevant information was included in Chapter 4 for each project.</p> <p>2) The analytical approach and habitat/ecosystem condition classes used for the PEIS analysis are general but are deliberately chosen to be most useful as broadly applied to the ecological principles under consideration Program-wide. They are broad enough to account for the general range of regional differences in conditions that need to be addressed in the evaluation of this nationwide program.</p> <p>This is a programmatic document designed to give the reader a general understanding of the processes involved in implementing the NRCS EWP Program. It is to be used as guidance for State Conservationists; however it must be understood that the methods and procedures described in this document must be adjusted based on regional conditions.</p> <p>The habitat condition classes and other biological indicators are not intended for use by NRCS field staff in making detailed biological assessments at each EWP site. They are included as general guidelines to the biological conditions that NRCS staff need to be cognizant of when surveying disaster sites.</p>

1 **Page 4-2, Section 4.1, Second Paragraph:** Designated critical habitat and areas under Habitat Conservation Plans, as defined by the ESA, should also be protected in the EWP process.

2 **Pages 5-6 and 5-8, Section 5.2.2.1.1. Impacts of Current EWP Watershed Restoration Practices. Practices that Restore Channel Capacity (Debris Removal). Effects of Disaster Debris on Stream and Related Ecosystems:** We recommend the paragraph on page 5-7 on effects of disaster debris on riparian, floodplains, and wetland ecosystems include the following:

"Flooding can be of benefit to wetlands and aquatic ecosystems even though it may change species composition or hydrologic function. Although debris deposition modifies topography so that some wetlands are negatively affected, new wetlands and riparian zones can develop. Scouring of a riparian area may remove decadent woody vegetation, providing a substrate for seed deposition and germination. Deposition of coarse debris in previously fine grain sediment areas can increase structural diversity of the ecosystem and increase biological diversity."

3 **Pages 5-0 to 5-13, Section 5.2.2.1.1. Impacts of Current EWP Watershed Restoration Practices. Practices that Restore Channel Capacity (Debris Removal). Effects of Current EWP Practices to Restore Hydraulic Capacity (Debris Removal):** This and other sections of Chapter 5 frequently mention that the EWP practice involved seeding or tree plantings. The FWS recommends that the EIS specify that native plant species indigenous to the area are used and that the goal of the planting (bank stabilization, habitat restoration, etc.) be established during the planning phase.

4 **Page 5-11, Summary of Impacts on Aquatic Ecosystem Parameters:** We recommend the section on biota indicate that removal of coarse woody debris may decrease the habitat created by the disturbance.

5 **Page 5-12, Effects on floodplain, wetland, and riparian community parameters:** We recommend that the paragraph on bank stability and erosion mention that, although debris jams that divert flows into wetlands may adversely affect the wetland hydrology, there are situations in which wetland hydrology may benefit.

6 **Pages 5-23 and 5-24, Table 5.2-2, Impacts Comparison of Streambank Protection Techniques:** We recommend that the sections of the table that discuss habitat structure and biota emphasize impacts to aquatic systems with include discussion of effects on riparian wildlife. Armoring would provide very little habitat for riparian ecosystem terrestrial species, whereas vegetative planting and seeding would have the potential to restore the riparian community, thereby providing habitat for amphibians, reptiles, birds, and mammals. We are particularly interested in improving habitat conditions for migratory birds, and use of natural materials would achieve this result.

1 **Page 5-26, Section 5.2.2.3.2. Impacts of EWP Dam, Dike, and Levee Repair or Removal:** The portion of this section entitled Summary of Impacts on Aquatic Community Parameters should mention that the long-term effects of dam removal on aquatic ecosystems would likely be positive, and that removal of the threat of dam failure could be beneficial to downstream communities as well.

2 **Consultation and Coordination:** This section is intended to comply with Section 40 CFR 1502.25 of the Council on Environmental Quality NEPA regulations. The NEPA document should make clear what environmental laws and Executive Orders must be complied with, and how that has or will be done. No information is provided that demonstrates how the activities carried out under the various alternatives would comply with state water quality standards including antidegradation, state and federal permits for stream alteration activities (dredging, riprap or other filling), endangered species consultation and watershed plans including total maximum daily loads (TMDLs) for water bodies on the 303(d) list of impaired waters. Where as here, the proposed action is a broad Federal action, the environmental document should have a focus on the method or methods of implementation. This would by necessity include mechanisms to ensure that NRCS program staff know what permits, consultations or authorizations are required for activities contemplated in each of the 50 states. This list required by sections 1502.4 and 1502.25(b) is not included.

The second paragraph, last sentence states that a large part of the improvement that NRCS proposes to make involves better communication, coordination, and planning with Federal, State, and local agencies in implementing EWP restoration work and easements and in protecting T&E species, cultural resources, wetlands, and other sensitive resources and helping in general to restore watershed health. The FWS recommends adding "...in protecting listed threatened and endangered species and critical habitats species through site-specific consultations ...". This summarizes NRCS's strategy for dealing with its section 7(a)(2) responsibility with the FWS.

3 NRCS should solicit more input from Indian Tribes. During the scoping process, only one Tribe provided comments. This may indicate that the Tribes have poor access to the program. The document should include a section on the federal trust responsibility and what steps will be taken to facilitate Tribal participation in the program.

Appendix B— Impact Analysis Methods

Section B.1.4.2 Impacts Flow Diagrams:

4 **Aquatic Impacts Flow chart** – The box titled Associated Vertebrates (black outline) includes: Fish-eating mammals, fish-eating birds, and others. Listed threatened and endangered species and critical habitats should be added to this list.

**Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP PEIS**

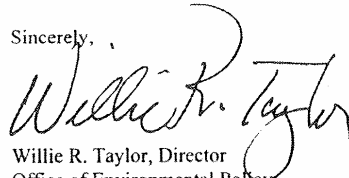
DOI page 17	DOI page 18
<p>1) The text has been modified to refer to T&E species protected under Habitat Conservation Plans (HCPs). As outlined in previous comments (page 4 of 19, comments #1 and page 5 of 19 comment #1), pre-disaster planning and coordination will provide USFWS and other agencies the opportunity to help develop the emergency response protocols for sites involving T&E species.</p> <p>2) The text has been modified to include further discussion of the benefits of flooding.</p> <p>3) Please refer to page 6 of 19, comment #1 for information on NRCS' policies on the use of invasive and non-native plant species.</p> <p>4) Section 5.2.2.1.2 has been revised to include additional discussion on the benefits of woody debris.</p> <p>5) Section 5.2.2.1.2 has been revised to include additional discussion on the benefits of debris jams on wetland hydrology.</p> <p>6) Table 5.2-2 has been revised to include additional discussion on the impacts to riparian habitat.</p>	<p>1) Section 5.2.2.3.2 has been revised to include additional discussion on the benefits of dam removal.</p> <p>2) A table has been added to the Consultation and Coordination section, listing the applicable laws and Executive Orders that will be complied with in executing the EWP program.</p> <p>3) Tribal organizations were contacted with regard to the scoping sessions described in Appendix A and were invited to participate. Many of these organizations chose not to attend or submit comments. NRCS has worked with many tribes and tribal organizations under the EWP program to protect homes, ceremonial grounds, and other culturally significant resources.</p> <p>4) The Aquatic Impacts Flow Chart in Appendix B has been revised to include T&E species and critical habitat.</p>

1

Aquatic Impacts Question sheet – Under Short-term effects, in the Fish Box (lt. blue box) Add two questions to this box: Will construction activities be permitted when anadromous fish are migrating out of the watershed or returning to the watershed? If so, how will these runs be protected? Salmon and steelhead are protected under the authority of the Anadromous Fish Conservation Act and the Interjurisdictional Fisheries Act of 1986. Construction activities that might interfere in these crucial life stages of salmon need to be evaluated.

Thank you for the opportunity to provide these important comments.

Sincerely,



Willie R. Taylor, Director
Office of Environmental Policy
and Compliance

cc: Mangi Environmental Group
EWP - PDEIS Comments
P.O. Box 745
Falls Church, VA 22040-0075

**COMMENTS ON THE EMERGENCY WATERSHED PROTECTION PROGRAM
DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT PREPARED
BY THE NATIONAL RESOURCE CONSERVATION SERVICE
January 31, 2000**

FEMA Region 10 has the following comments:

Alternative actions presented in the draft PEIS include:

- 1) No Action, which would continue the program and program goals as they are now implemented;
- 2) EWP Program Improvement and Expansion, which would improve program delivery and expand the EWP Program to include disaster work that is not now eligible and include improved property in the easement purchase program;
- 3) Prioritized Watershed Planning and Management, which, combined with alternative #2 measures, emphasizes coordinating, prioritizing and funding for local watershed planning efforts, including watershed disaster readiness and mitigation.

1

We recommend Alternative #3, Prioritized Watershed Planning and Management for implementation. This alternative is more in line with the goals outlined in the FEMA Project Impact initiative, Flood Mitigation Assistance Program (FMA) and the post planning emphasis of the Hazard Mitigation Grant Program (HMGP). All these programs share the goal of planning and coordinating elements that would prepare a community for future disasters and involves "interested stakeholders" (private and corporate) in the process of disaster readiness planning and mitigation. Additionally, increased funding for the purchase of floodplain easements with improvements is in line with most, if not all, state/local hazard mitigation plans and with the goals of the FEMA HMGP and FMA. Although the NRCS' preferred alternative is presented as #2, Alternate #3 would best complement FEMA's mission and goals.

2

2) Only one site in Region 10 was used as an example site to determine impacts of the proposed actions. This site was an upland burn site in Boise, ID that required revegetation to prevent erosion and did not involve anadromous fish species. Additionally, the sites in California do not address the impacts on anadromous fish species. This precluded an evaluation of the analysis of the proposed measures regarding in-stream and/or riparian project impacts on salmon and steelhead species designated as threatened or endangered in Washington, Oregon, Idaho, and California.

3

3) The only indication that the National Marine Fisheries Service (NMFS) was consulted is found in App. A. The NMFS has jurisdiction over the salmon and steelhead species that are listed as threatened or endangered, and regulatory authority over actions taking place in the species range. Recommend, subject to the absence of their input, that the document include the NMFS with the USFWS for any reference regarding Threatened and Endangered Species.

**Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP PEIS**

DOI page 19	FEMA Region 10 page 1
<p>1) The Aquatic Impacts Question Sheet in Appendix B has been revised to include anadromous fish.</p> <p align="center">FEMA Region 10 Response Begins Below</p>	<p>b. To a large extent, NRCS has integrated the management of its watershed programs as described in Alternative 3 within the Water Resources Branch of the NHQ Financial Assistance Programs Division working closely with the NHQ Easement Programs Branch. Together they oversee the recovery practices and floodplain easements portions of EWP and provide funding and technical assistance and training to the NRCS State Offices. But NRCS is limited in fully implementing the scope of Alternative 3 primarily by funding constraints. Several NRCS watershed programs currently exist under P.L. 566 and P.L. 534 that address watershed planning and management and include measures for watershed protection and flood prevention, as well as the cooperative river basin surveys and investigations. Under the new Watershed Rehabilitation Program, NRCS works with local communities and watershed project sponsors to address public health and safety concerns and potential adverse environmental impacts of aging dams. NRCS so far has undertaken 118 projects in 20 States to assess the condition of and repair of more than 10,000 upstream flood control structures built since 1948. The structural and non-structural practices implemented and the easements purchased under those programs have greatly reduced the need for future EWP measures in project watersheds. Nevertheless, EWP must remain available to deal with the aftermath of major disasters regardless of improvements under the other watershed programs.</p>
<p align="center">FEMA Region 10 page 1</p> <p>1) NRCS recognizes that Alternative 3 "Prioritized Watershed Planning and Management" would likely be the environmentally preferable alternative. However, the agency supports Alternative 4 as its Preferred Alternative because:</p> <p>a. Current law, as interpreted by USDA legal counsel, limits activities conducted under EWP primarily to disaster recovery work. Alternative 3 would add a substantial increment of preventative measures to reduce future flood damages. Legislative authority would be required to implement such a major expansion of the purpose of EWP under Alternative 3.</p> <p align="right"><i>(response continued at top of next column)</i></p>	<p>2) The environmental analysis does generally address salmonid species. Please see Table 4.2.1 for information on the aquatic ecosystem condition classes. Additionally, Draft PEIS Proposed Action Element 6 of Section 3.2.2.1 addresses pre-disaster coordination with wildlife agencies, and would include coordination on specific measures to protect salmonids or other sensitive species. This coordination is adopted under the Preferred Alternative.</p> <p>3) Draft PEIS Proposed Action Element 6 of Section 3.2.2.1 has been revised to include NMFS in the list of coordinating agencies. This coordination is adopted under the Preferred Alternative.</p>



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE

777 Sonoma Ave, Suite 325
 Santa Rosa, CA 95404

FEB 14 2000 F/SWR4:JD

EWP Draft PEIS Comments
 P.O. Box 745
 Falls Church, Virginia 22040-0075

To Whom it May Concern,

This letter serves to provide comments on the draft programmatic environmental impact statement (DPEIS), prepared by the Natural Resources Conservation Service (NRCS), which describes the Emergency Watershed Protection Program (EWP). The purpose of the EWP program is to protect lives and property largely in the event of flooding and its related processes such as stream bank erosion. In cases of imminent threats to someone's life or property, the NRCS is authorized to conduct emergency repairs to waterways. Throughout the document, the plan refers to consultations with the USFWS in cases where threatened and endangered (T&E) species may be impacted by their actions in this program. The requirement for these consultations comes from the Endangered Species Act of 1973, section 7 (a)(2) which states "Each Federal agency shall . . . insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species . . ." The National Marine Fisheries Service (NMFS) is the consulting agency for the species that fall in our jurisdiction. Here in California this most often refers to anadromous salmonid species, coho and chinook salmon and steelhead trout. This is a minor point since NRCS recognizes that consultations are a part of the current EWP process and will continue to be so in the proposed revisions. The vast majority of EWP work in this region is conducted in the dry months and requires these consultations in all cases. Even during a storm event, NRCS proposes a sequential checklist that must be completed before a project can begin (page 3-5, second paragraph). An emergency consultation with NMFS or The United States Fish and Wildlife Service (USFWS) needs to be added to this list for NRCS to be in compliance with their Endangered Species Act (ESA) responsibilities described at 50 CFR 402.05.

The proposed action (alternative #2) is acceptable to the NMFS's interests. It involves streamlining current parts of the program to eliminate confusion, expedite processing and boost eligibility for participation. It also seeks to expand the EWP program to incorporate greater use of property easements for floodplain development or restoration. The proposed action would allow continuing use of the purchased properties for agriculture, silviculture or grazing on a case-by-case basis only. Currently the program allows for three different types of easements. NMFS and/or USFWS must

be consulted in those locations that contain T&E species before granting use rights if NRCS determines that such uses might affect listed species.

The proposed plan would also eliminate sites from funding consideration which are impacted more than twice in a ten year period. This could help encourage the retirement of these lands and the development of floodplains in these obviously flood prone areas. These actions have the potential to greatly benefit our T&E species.

All actions in the proposed action must be considered in a watershed context. We believe NRCS is incorporating this approach into the program through element five of the proposed action. Element five calls for proposed EWP emergency actions to be environmentally defensible. Language explicitly recognizing effects of proposed actions on the watershed and the anticipated effectiveness of the action based on watershed conditions should be incorporated into this section. This type of consideration would be automatic under alternative three.

Alternative three in the DPEIS calls for large scale watershed planning and management to allow the NRCS to proactively address watershed problems. Most of this plan is similar to the preferred alternative (#2). NMFS would prefer to see this alternative adopted as the advance planning could prove beneficial to T&E species. EWP project priorities should be determined through conjunction with other watershed based programs to maximize benefits. Other programs or plans that should be consulted include the Clean Water Action Plan, states' TMDL programs and unified watershed assessments, the National Estuary Program and state nonpoint source pollution prevention plans. This level of analysis could allow NRCS and its partner agencies, such as NMFS, USFWS and EPA, to protect human lives and property while making improvements to watersheds that provide critical habitat to T&E species. In essence the EWP could solve multiple problems at one time. NMFS recognizes that the scale of the endeavor may require deployment of significantly more resources by the NRCS. We also know that planned activities may be delayed due to unforeseen emergencies which take funding priority. Still the analysis could be used as a tool by other agencies to determine their funding priorities, where applicable, and build strong partnerships between federal, state and local agencies.

Specific Page and Section Comments:

1. Page S-5 - Number 10
 Natural stream dynamics and bioengineering should be the first choice in designing EWP measures whether they are the lowest cost practical solution or not. We recognize that during some storm situations there will not be time to choose these methods. However it must be noted that allowing the stream to function naturally is generally the best manner to avoid repeated problems at the site while avoiding the creation of problems downstream. The DPEIS itself makes this point and recognizes the benefit of using bioengineering techniques and natural stream dynamics instead of armoring practices such as riprap and gabions to threatened and endangered species on page S-15 and in other locations in the proposal. It should also be recognized that



**Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP PEIS**

NMFS CA page 1	NMFS CA page 2 (continued)
<p>1) The PEIS cannot specifically state what procedures will be followed for each disaster at each site, but the pre-disaster coordination and planning outlined in Draft PEIS Proposed Action Element 6 in Section 3.2.2.1 would determine what response would be taken for sites involving T&E species, cultural resources, and other sensitive resources. This aspect of Element 6 is adopted under the Preferred Alternative. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationist will continue to be responsible for determining specific procedures for their state in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p> <p>2) NRCS complies with Endangered Species Act (ESA) Section 7 consultation requirements in all cases. This language has been added to Draft PEIS Proposed Action Elements 11 and 15 of Section 3.2.2.1. These aspects of Elements 11 and 15 are wholly adopted under the Preferred Alternative. The EWP Manual will address easements and how compatible uses will be reviewed so as to not affect T&E species or other protected resources. NRCS would consult with USFWS and the National Marine Fisheries Service (NMFS) on compatible uses if protected resources are found at the easement site. Specific procedures will not be provided at the national level. Headquarters will provide guidance in the EWP Manual and EWP Handbook, but the State Conservationist will continue to be responsible for determining specific procedures for their state in coordination with various Federal and State agencies to comply with the requirements of applicable Federal, State, and local rules and regulations.</p>	<p>a. Current law, as interpreted by USDA legal counsel, limits activities conducted under EWP primarily to disaster recovery work. Alternative 3 would add a substantial increment of preventative measures to reduce future flood damages. Legislative authority would be required to implement such a major expansion of the purpose of EWP under Alternative 3.</p> <p>b. To a large extent, NRCS has integrated the management of its watershed programs as described in Alternative 3 within the Water Resources Branch of the NHQ Financial Assistance Programs Division working closely with the NHQ Easement Programs Branch. Together they oversee the recovery practices and floodplain easements portions of EWP and provide funding and technical assistance and training to the NRCS State Offices. But NRCS is limited in fully implementing the scope of Alternative 3 primarily by funding constraints. Several NRCS watershed programs currently exist under P.L. 566 and P.L. 534 that address watershed planning and management and include measures for watershed protection and flood prevention, as well as the cooperative river basin surveys and investigations. Under the new Watershed Rehabilitation Program, NRCS works with local communities and watershed project sponsors to address public health and safety concerns and potential adverse environmental impacts of aging dams. NRCS so far has undertaken 118 projects in 20 States to assess the condition of and repair of more than 10,000 upstream flood control structures built since 1948. The structural and non-structural practices implemented and the easements purchased under those programs have greatly reduced the need for future EWP measures in project watersheds. Nevertheless, EWP must remain available to deal with the aftermath of major disasters regardless of improvements under the other watershed programs.</p>
<p align="center">NMFS CA Page 2 Response Begins Below</p>	<p>3) Upon consideration of the fundamental goals of the Program improvements, NRCS has changed its basic approach to approval of EWP work. The title of Draft PEIS Proposed Action Element 10 of Section 3.2.2.1 of Chapter 3 has been revised. The term “least-cost” has been eliminated and the Element now reads: “Apply the principles of natural stream dynamics and, where appropriate, use bioengineering in the design of EWP restoration practices.” Hydrogeomorphic design and use of bioengineering likely would not be the least cost solution in all cases. However, costs alone would not dictate which solution is selected, as the solution must also be environmentally and socially defensible. NRCS believes these changes reflect the intent of the comment, as the focus is no longer on least cost solutions. Other factors, such as environmental resources, also would be used to determine the best solution as indicated in the related revision to Draft PEIS Proposed Action Element 5, paragraph 2. These aspects of Elements 10 and 5 have been wholly adopted under the Preferred Alternative.</p>
<p align="center">NMFS CA page 2</p>	
<p>1) The event-wide DSR and cumulative impacts discussion (as described in response to EPA Supplement page 1, response #1) will address watershed level impacts.</p> <p>2) NRCS recognizes that Alternative 3 "Prioritized Watershed Planning and Management" would likely be the environmentally preferable alternative. However, the agency supports Alternative 4 as its Preferred Alternative because:</p> <p align="right"><i>(response continued on top of next column)</i></p>	

the use of bioengineering for stabilization may allow for subsequent planting in the riparian areas. The plants may provide shade to the stream to help keep temperatures lower, provide debris to the waterway and habitat for important riparian species.

2. Page S-8 - bottom of page

1 Repairing roads in watersheds where the roads are a main cause of the flooding problem (e.g. logging or ranch roads which have caused excessive erosion that reduces the carrying capacity of the stream) should be considered, particularly for the preventative work proposed under alternative three. These roads should be decommissioned where possible or hydrologically disconnected from the streams in other cases.

2 3. Page S-9 - 1st paragraph

2 A better definition of coastal areas would be helpful. We are assuming that it refers to the actual beach and shoreline areas and not the entire coastal river or stream watershed. We also assume that lands under the control of the Bureau of Land Management are not eligible for consideration in this program. An explanation of this would be helpful.

3 4. Page S-17 - 4th paragraph

4 "Streamside buffers would be required on all easements." This is consistent with NMFS requirements with respect to critical habitat for listed salmonids. The DPEIS should describe in more detail how streamside buffers are designed. For instance, do they incorporate a margin of safety for waterways containing T&E species? Riparian zones are critical habitat areas for salmonids. They provide stabilization to the stream banks and are a source of food and the large woody debris required by salmonids for cover and pool formation. They also aid in regulating stream temperature not only by shading the stream but also serving as wind buffers. In sufficiently thick riparian zones this maintains higher humidity around the streams which reduces temperature fluctuations. The ESA requires NRCS to consult with NMFS and/or USFWS for all funded projects which may impact T&E species. Buffer design on newly acquired federal lands could fall under this clause.

5 5. Page 1-3 - Last paragraph

5 In limiting the use of the term "exigent", include consideration that the work can only qualify if T&E species are not present or an emergency consultation is acquired from NMFS and/or USFWS, as appropriate.

6 6. Page 1-4 - 3rd paragraph

6 Revise policy to emphasize restoration and consider bioengineering and natural stream dynamics as the first option for planning and design.

7 7. Page 2-2 - 6th paragraph

7 Consider authorizing improvements while repairing and restoring flood-control structures. For example if a check dam washes out, it should be replaced by a structure that has fish ladders or some other means of passage available. The

additional cost for minor or well known improvements that benefit T&E species may be negligible or covered by another entity. Consider these improvements at upstream sites even if structures downstream do not yet allow passage. This can increase the possibility of restoring the waterway downstream of the repair site and NRCS could get the credit for starting the process on the impaired waterbody.

8. Page 2-26 - 6th paragraph

1 NRCS must consult with the NMFS or USFWS on possible compatible uses and their intensities where T&E species are present and when NRCS determines that such uses may affect listed species or critical habitat.

9. Page 3-5 - 2nd paragraph

2 Include an emergency consultation concerning T&E species in your list of actions. There is plenty of time available (can be a same day phone call for many situations) if all of the other actions are taken. Consultations may help avoid worst case scenarios for T&E species in these situations, if at all possible. We are concerned that the urgent and compelling designation would be used to circumvent the permitting process for T&E species concerns in some cases without NRCS personnel being aware of possible conflicts. The emergency consultation provision (50 CFR 402.05) describes the emergency consultation process under section 7 of the ESA. The objective is to facilitate emergency work needed to preserve lives and property while ensuring that adverse impacts will be remedied.

10. Page 3-9 - Paragraph 3

3 We are pleased that this section recognizes that EWP actions may be affected by T&E species considerations including the possibility that work may not be able to be conducted. Minimization of impacts is required in all situations involving T&E species. Mitigation is typically thought of as creating habitat at a location in response to altering or destroying it in another location. Mitigation of impacts to habitat may be approved on a case-by-case basis by the consulting agency. However the loss of T&E species themselves cannot be mitigated and must be avoided or minimized as much as possible. Where "take" of listed species occurs pursuant to EWP actions, such take will be addressed in the Incidental Take Statement produced by the emergency consultation conducted according to 50 CFR 402.05.

11. Page 3-13 - Element 11

4 As mentioned elsewhere, NRCS may need a T&E consultation for these easement situations to determine appropriate compatible land uses.

12. Page 3-14 - Element 13

5 Even if the sponsor chooses not to pay for an upgrade or additional work, consider looking to outside sources for that funding if an upgraded project can benefit a T&E species. In no situation should an improperly functioning structure or a structure with a flawed design (whether known at the initial time of installation or not) be reinstalled just because it was previously in place. Any structure installed will need to meet NMFS and/or USFWS criteria.

**Emergency Watershed Protection Program Programmatic Environmental Impact Statement
Responses to Comments on the Draft EWP PEIS**

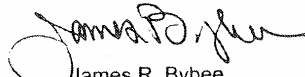
NMFS CA page 3	NMFS CA page 4
<p>1) The EWP program has no authority to decommission roads, unless the road falls within a floodplain easement. Additionally, EWP would not be repair any roads, paved or unpaved. Not repairing these roads will serve much of the same function as decommissioning them, since future use of the road will be discouraged.</p> <p>2) The assumption is correct. The definition of coastal areas has been revised to include beaches, dunes, and coastlines.</p> <p>3) Chapter 2 and the Executive Summary have been revised to clarify that NRCS does not fund EWP Program work on any lands administered by other Federal agencies, including the Bureau of Land Management.</p> <p>4) In the case of salmonids, consultation on certain conservation practices (including buffers) has been initiated. Please refer to Appendix C for the conservation practice standard for buffer strips (listed as forested conservation buffer strip). Each state has the authority to modify the national standards, and can incorporate concerns that individual states may have, such as salmonids. NMFS, USFWS, and the public are all provided an opportunity to comment on the development of these state standards. Draft PEIS Proposed Action Element 6 of Section 3.2.2.1 also outlines the pre-disaster planning process, where such concerns could be raised. This aspect of Element 6 is wholly adopted under the Preferred Alternative.</p> <p>5) Chapter 1 discusses the current program and the Purpose and Need for the Draft PEIS Proposed Action. These sections are simply stating the results of the Oversight and Evaluation (O&E) team results.</p> <p>6) Chapter 1 discusses the current program and the Purpose and Need for the Draft PEIS Proposed Action. These sections are simply stating the results of the O&E team results.</p> <p>7) The comment refers to activities under the purview of the USACE. These activities are not subject to NRCS review. Any improvements done during the repair of enduring, structural, or long-life conservation practices would be considered on a case-by-case basis.</p>	<p>1) NRCS would continue to comply with Section 7 consultation requirements in all cases of compatible use determination on floodplain easements.</p> <p>2) The PEIS will not specifically state what procedures will be followed for each disaster site, but the pre-disaster coordination and planning outlined in Draft PEIS Proposed Action Element 6 in Section 3.2.2.1 will help determine what response will be taken for sites involving T&E species, cultural resources, and other sensitive resources. The interagency coordination and planning aspects of Element 6 are wholly adopted under the Preferred Alternative. Any site eligible for EWP Program work under the Preferred Alternative, whether an exigency or emergency, would be required to be environmentally and socially defensible.</p> <p>3) No response required.</p> <p>4) Please see the response to page 4, comment #1 (above) for NRCS' explanation of the consultations required under Section 7 of the ESA.</p> <p>5) NMFS and USFWS will be consulted in compliance with the ESA if any solution may possibly result in adverse effects to T&E species. In these cases, NMFS and USFWS would help develop improved alternatives.</p>

13. Page 4-9 - Table 4.2.1 (continued)

Under the dissolved oxygen column - Excellent should be >7ppm (looks like a typo)
For the fair and poor categories, consider 5-6 ppm and <5 ppm respectively. This may seem to be a minor change, but anytime the dissolved oxygen is below 5 ppm, the water quality is considered poor for our salmonid species. Not only is there insufficient oxygen for the fish that are present, but the low levels also serve as a block to further migration and are detrimental to developing eggs and alevin. It may be necessary to determine the beneficial uses of each individual water body before determining the appropriate dissolved oxygen for that body due to the different habitat requirements for cool and warm water fish.

If you have any questions regarding these comments, please contact Mr. Joe Dillon at the above address or by telephone at (707) 575-6093.

Sincerely,



James R. Bybee
Northern California
Habitat Manager

cc: J. Slawson
J. Ambrosius

NWS-OD-EM

15 Feb 2000

Memorandum For: OD-EM, ERS, Natural Resources Conservation Service (NRCS), Interagency Levee Vegetation Management Committee

Subject: Seattle District Emergency Management Branch Comments: Draft Programmatic Environmental Impact Statement, Emergency Watershed Protection (EWP) Program

1. Background. Thank you for the opportunity to comment on the NRCS Emergency Watershed Protection DPEIS. Reviewers noted that the EWP Program resembles the U.S. Army Corps of Engineers (COE) Public Law (PL) 84-99 Emergency Response authority, in that the NRCS EWP Program also responds to "life and property-threatening watershed impairments caused by natural disasters". Local sponsors, such as counties and conservation districts, that request EWP assistance, must provide at least 20% funding of any EWP watershed repair practices, the same cost-share as PL 84-99 Damage Survey Reports (DSR) are also prepared to evaluate the site damage and estimate repairs. NRCS may provide up to 80% of the funding and technical assistance for EWP practices that remove disaster debris, repair damaged streambanks, dams and dikes, protect floodplain structures, and restore critical watershed uplands. Flood damaged streambanks are protected by combinations of hard armoring, the use of woody structural materials, soil bioengineering, restoration of stream dimension, pattern and profile, vegetative plantings and seeding. Streambanks may also be indirectly protected by in-stream flow modifications. Similar design considerations as well as the physical activities of creating access to damaged sites, use of heavy equipment, materials disposal, grading, shaping and revegetation of project sites are similar to many COE levee repair projects. NRCS also coordinates with Federal and State agencies, tribal governments and local communities, and is charged with endangered species protection and the preservation of cultural and historic resources, including National Register properties. There appear to be many similarities in current NRCS and COE flood repair projects. In addition, NRCS administers a voluntary floodplain easement purchase program on agricultural lands in small rural watersheds. It is noted that this aspect of the EWP Program may be considered one of the most responsive to local needs. The use of such easements, in suitable locations, would compliment other flood protection measures. (S-2, 3)

2. The DPEIS describes no Recent Activities for Washington or Montana, however, Seattle District also includes the Idaho Panhandle and the 1996 EWP work documented in Boundary, Bonner, Kootenai, Shoshone, Benewah and Latah counties. It is, therefore, possible that NRCS EWP work could affect COE water resource projects. Furthermore, it appears that the NRCS and COE have simultaneously developed many similar mission profiles and practices. The Proposed Action reflects current Seattle District COE policies in several areas, particularly improved interagency coordination, clarification of eligibility requirements, consideration of non-structural alternatives, environmentally sensitive construction practices and the selective use and management of vegetation. Reviewers noted that the Disaster Assistance Recovery Training (DART) Teams described in Alternative 2 appear to be ideal for conducting interagency coordination and training missions with the COE and FEMA, as well as State and local agencies. The appropriate State Conservationists and affected COE Districts should meet to coordinate future activities. (S-5)

3. There is some question regarding NRCS eligibility requirements for repairs to "agricultural dikes less than six feet high or nonagricultural dikes less than ten feet high, depending on individual state agreements with the USACE". The only known written agreement is an MOA, dated 11 Mar 91, between the Soil Conservation Service and the Department of the Army. This document divides responsibilities and establishes coordination procedures as well as common eligibility requirements. The practice of dividing NRCS and COE flood response activities based on levee height or watershed size may require further coordination between the NRCS, COE, and other Federal, State and local agencies to accomplish restoration work in the most beneficial and cost-efficient manner. EWP work is typically conducted in small watersheds, often in the upper reaches and usually in rural or rural outskirts of urban areas, whereas the COE is usually involved in larger, more developed watersheds. Damages which do not exceed a certain

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NMFS CA page 5	Seattle District Emergency Management Branch page 1
<p>1) The habitat condition classes used in Chapter 4 (see Section 4.2.1.2) have been updated to reflect the most current EPA guidance regarding stream classification.</p>	<p>1) No response required.</p> <p>2) Draft PEIS Proposed Action Element 6 of Section 3.2.2.1 addresses pre-disaster planning and allows states and other outside parties to raise issues of particular concern. DART teams were not adopted as part of the Preferred Alternative. However, the Preferred Alternative includes several provisions to enhance and facilitate agency coordination.</p> <p>3) Draft PEIS Proposed Action Element 6 of Section 3.2.2.1 addresses pre-disaster planning and would include allocation of duties among agencies as needed. Under the Preferred Alternative, NRCS would implement the interagency coordination and planning described in the Draft PEIS Proposed Action. However, training by DART teams would not be implemented, although technical advisory assistance would be made available from the National Office if requested.</p> <p>NRCS believes the commenter is referring to the Memorandum of Agreement (MOA) between the Soil Conservation Service (SCS) and Corps of Engineers (USACE) dated May 1986, found in Appendix J of the USACE Natural Disaster Procedures (ER 500-1-1), dated 11 March 1991. According to this MOA, the USACE “is responsible for repair of flood damage to non-Federal water projects installed for the purpose of controlling flood waters...This will normally include repairs to non-Federal flood protection projects (channels, levees, or similar works) in urbanized areas regardless of watershed size...” The SCS (now NRCS) is “responsible for repair of flood damage to non-Federal water projects that were installed 1) in small watersheds of 400 square miles or less for the purpose of flood prevention, or 2) for preventing erosion or damage caused by the products of erosion wherever located, except damages to features that are appurtenant to projects which are the responsibility of the [USACE].” In addition, the MOA stipulates that other assignments to the SCS and USACE may be made by FEMA under the provisions of P.L. 93-28B when a major disaster or emergency has been declared. For any non-Federal flood control project damaged by a natural disaster other than flood (e.g., fire, tornadoes, earthquakes, etc.), where assistance from the USACE under P.L. 39-28B is not authorized, the SCS will have primary responsibility for responding to applications for emergency assistance.</p>

minimum cost level are not usually addressed by COE PL 84-99 repair work, however. It is hoped that the EWP may be adapted to such situations. Development of a pre-coordinated plan would provide consistent guidance for Federal emergency work, in the context of large-scale, long-term, riverbasin management. Some flood events could allow opportunities for cooperation and coordination between NRCS, the COE, state, tribal and local project sponsors to address specific local issues together. (S-9)

4. The EWP's Affected Environment includes "all States and territories except for coastal areas and Federal lands, which are not managed by the U.S. Forest Service". For the most part, this involves smaller, rural watersheds and tributary streams. The 1993 Midwest Floods were an exception, and demonstrated the ability of NRCS to repair larger levees on the Mississippi, a potentially valuable resource to COE Emergency Management personnel during periods of catastrophic flooding. Since COE authorities include coastal areas as well as the continental United States and the USFS has often requested COE assistance, there appears to be an opportunity for mutual benefit to further increase and improve coordination and cooperation between NRCS, the COE and other agencies. The issues of Threatened and Endangered Species listings and Cultural Resources were addressed generically in this document, noting that ESA/CR considerations were handled on a case-by-case, site specific basis, with suitable protection measures developed for individual projects. This is an area of common interest that could be improved by increased interagency coordination and the development of consistent Federal watershed management practices. Examples of typical projects incorporating the issues of human community and cumulative impacts are displayed in Table S-3. Sharing of such long-term watershed assessments in a common GIS database could benefit other agencies, such as the COE, as well as the affected communities. (S-9, 10, 11)

5. Watershed Impacts range from existing practices, i.e. the "No Action Alternative" which have the greatest potential for adverse effects, would continue to protect all current uses of the flood plain and have the lowest likelihood of addressing watershed level effects such as water quality; to the "Prioritized Watershed Planning and Management Alternative", which is expected to reduce adverse impacts, increase beneficial effects and encourage best use of the floodplain, while having the highest potential for community disruption and providing the greatest likelihood of addressing watershed level effects. The Proposed Action emphasizes improved habitat values and increases the use of easements to increase the level of watershed management beyond that of the current program. Although the wider use of easements would tend to disrupt older rural communities, restricted use of the floodplain would also reduce future property damages. The change in definition of 'exigency' to 'urgent and compelling' would hopefully reduce the number of qualifying projects, improve planning and coordination for critical repair work and allow NRCS to better protect life and property. Improving disaster readiness is another area that could be coordinated with FEMA, COE Emergency Management, State and local Emergency management, tribes and resource agencies. Limiting repairs to twice per decade appears to be a reasonable approach to preventing repeated repairs to the same structure if easements are not purchased. The Repair of Enduring Conservation Practices in concert with funding of Alternative Solutions and disaster recovery work away from streams, combined with the aforementioned interagency coordination, would likely improve overall riverbasin management. (S 12-14)

6. Effects of EWP Alternatives. Improved disaster readiness, identification of potential problems, simplification of regulations, limiting repairs in the same area, and the increased use of easements may lead to more efficient land use practices, reduced costs, and improved habitat values, particularly by removing developed land uses and returning the easement tract to a more natural state. The protection of Federally-protected resources would then require priority funding. There should be some clarification, particularly additional funding to address ESA considerations. Social Considerations would be added to a project Defensibility Review, the requirements for eligibility being determined in part by "socially compelling reasons". Environmental benefits could be enhanced or diminished by this factor. (S 14, 15)

7. General Comparison of Alternatives; The existing EWP Plan addresses the needs of many, predominantly rural, residents for flood control. Alternative 1, No Action (existing program) continues these traditional levee repair and maintenance practices, which, combined with Floodplain easements, would result in the maintenance of existing land use practices, with consequent effects on riparian vegetation, fish and wildlife habitat. Alternative 2, the Proposed Action, addresses many issues in

contemporary flood control. The increasing use of selected vegetation and use of large organic debris, along with the purchase of additional floodplain easements would encourage a more natural riparian zone and help restore hydrologic and biological function. Alternative 3, Prioritized Watershed Management, and help restore hydrologic and biological function. Alternative 3, Prioritized Watershed Management, also helps restore hydrologic and biological function as well as increased purchase of easements. This is also the most complex and costly alternative, although long-term benefits may also be expected to increase with time. Although the Proposed Action would address current EWP Program deficiencies, timely incorporation of Prioritized Watershed Planning and Management goals into other agencies planning efforts could result in an enhanced version of the Proposed Action. The Impacts to Affected Human Communities describes a number of conditions which would be affected by current and proposed EWP practices. Short term benefits from disaster payments, restoration of previous use and benefits to public health and safety are balanced by loss of employment and income, disrupted community networks, loss of agricultural production and the potential for ongoing repair activities. The Proposed Action and Prioritized Watershed Alternatives provided for more easements, fewer repairs and a reduced need for disaster assistance. Land use would be shifted from farming and commercial use to recreation, education and other non-consumptive activities. The criteria for 90% cost share in limited resource communities may be useful in areas where COE cost-benefit ratios do not allow smaller communities to qualify for PL 84-99 assistance. Watershed planning on a macro scale was mentioned as a benefit of the Prioritized Watershed Alternative. If possible, NRCS, together with the affected community and other involved agencies, should conduct such coordinated planning as a logical continuation of current land use planning. (S 16-21)

8. Cumulative Impacts would not change under the No-Action Alternative, with minor effects on water quality and habitat values. The Proposed Action would emphasize environmentally sensitive easements, reduced erosion and sedimentation leading to improving water quality. Long term solutions would be implemented to reduce habitat loss and restore floodplain function. The proactive and integrative Alternative 3 would provide the greatest environmental benefits by concentrating resources to restore the most heavily damaged or disaster-prone watersheds. The "adequate steps" described for locally led conduct of the watershed plan is another area where benefits may result from increased interagency coordination. Mitigation of EWP Program Impacts involves use of natural design and bioengineering. Reduced armoring of streams, where practicable, would result in improved riparian habitat and mitigation for construction impacts. Continued coordination with USFWS and other Federal, state and local agencies as well as the landowning public would ensure adequate resource planning and the mitigation of adverse project impacts. Human communities impacted by EWP activities could be mitigated by adequate consideration of local priorities. This could include selection of local contractors, preservation of community structures, local meetings or obtaining local funds from other agencies. Reviewers stated that restoration programs without sufficient funding support are not likely to provide lasting community benefits. Cultural Resources Impacts are addressed through coordination with the appropriate State Historic Preservation Office. Mitigation for Cultural Resources is determined on a site-specific basis during the defensibility review. (S 22-26)

Section 2.1.1.1 Page 2-2 Under "The USACE provides..." please add, "Temporarily raising the height of levees with sandbags"; and "Strengthening flood control works with armor rock". Under "The criteria for USACE..." please add that Federally constructed projects are repaired at 100% of the Federal cost. On Page 2-5, The National Engineering Handbook and National Engineering Field Handbook, as well as some state-prepared handbooks are referenced as standards for EWP engineering practices. "Stream Corridor Restoration, Principles, Processes and Practices" is also referenced. The initial phase of a revised EWP should incorporate dissemination, interagency review and coordination of these documents as a high priority.

Section 2.3.1 Practices to Restore Hydraulic Capacity addresses a number of aspects related to the repair of flood control structures. These relationships are depicted in Fig. 2.3-3. The practices described resemble many COE projects, with the use of LWDs, Planting and Seeding, riprap, gabions, and natural materials. The use of these materials and techniques to protect streambanks has become common, however, COE reviewers noted that there is little research describing the effects of in-stream structures or vegetation. In Section 2.3.5.1, seeding and planting techniques are described, however, there is no mention of Exotic, Noxious and Toxic Weeds, an issue of significant importance in the maintenance of flood control structures

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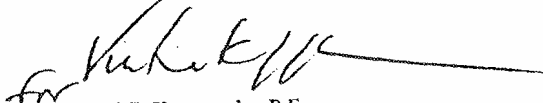
Seattle District Emergency Management Branch page 2	Seattle District Emergency Management Branch page 3
<p>1) Draft PEIS Proposed Action Element 6 of Section 3.2.2.1 addresses pre-disaster planning and would allow for coordination between EWP and the USACE. The Preferred Alternative adopts the interagency coordination and pre-disaster planning described in Element 6.</p> <p>2) Chapter 3, Section 3.2.4 describes the NRCS Preferred Alternative and what aspects of the Draft PEIS Proposed Action were adopted in defining it. Note, the Preferred Alternative adopts most of the elements mentioned. However, the term exigency would be retained and easements on small rural communities would not be a part of the EPW Program under the Preferred Alternative</p> <p>3) Benefits attributable to enhancement of T&E habitats could be included in evaluating overall project benefits in decisions on funding but would not be considered alone as justification for installing an EWP practice.</p>	<p>practices and floodplain easements portions of EWP and provide funding and technical assistance and training to the NRCS State Offices. But NRCS is limited in fully implementing the scope of Alternative 3 primarily by funding constraints. Several NRCS watershed programs currently exist under P.L. 566 and P.L. 534 that address watershed planning and management and include measures for watershed protection and flood prevention, as well as the cooperative river basin surveys and investigations. Under the new Watershed Rehabilitation Program, NRCS works with local communities and watershed project sponsors to address public health and safety concerns and potential adverse environmental impacts of aging dams. NRCS so far has undertaken 118 projects in 20 States to assess the condition of and repair of more than 10,000 upstream flood control structures built since 1948. The structural and non-structural practices implemented and the easements purchased under those programs have greatly reduced the need for future EWP measures in project watersheds. Nevertheless, EWP must remain available to deal with the aftermath of major disasters regardless of improvements under the other watershed programs.</p>
<p>Seattle District Emergency Mgmt. Branch Page 4 Response Begins Below</p>	
<p align="center">Seattle District Emergency Management Branch page 3</p>	
<p>1) NRCS recognizes that Alternative 3 would likely be the environmentally preferable alternative. However, the agency supports Alternative 4 as its Preferred Alternative because:</p> <p>a. Current law, as interpreted by USDA legal counsel, limits activities conducted under EWP primarily to disaster recovery work. Alternative 3 would add a substantial increment of preventative measures to reduce future flood damages. Legislative authority would be required to implement such a major expansion of the purpose of EWP under Alternative 3.</p> <p>b. To a large extent, NRCS has integrated the management of its watershed programs as described in Alternative 3 within the Water Resources Branch of the NHQ Financial Assistance Programs Division working closely with the NHQ Easement Programs Branch. Together they oversee the recovery</p> <p align="center"><i>(response continued on top of next column)</i></p>	<p>2) No response required.</p> <p>3) The suggested changes have been made.</p> <p>4) Public and interagency review is currently included as part of NRCS' technical development process. Stream Corridor Restoration, Principles, Processes, and Practices is an interagency document developed by multiple Federal agencies, including NRCS, EPA, FEMA, NMFS, USACE, BLM, USFWS, and USGS. New NRCS practices are made available for comment when they are published in the Federal Register. The National Engineering Field Handbook is an internal NRCS document developed by NRCS personnel, staff from the Agricultural Research Service, universities, and other professionals and reflects the most current, efficient techniques and procedures.</p> <p>5) Sections 5.2.2.1.2, 5.2.2.2.2, and 5.2.2.5.2 of Chapter 5 have been revised to reflect NRCS' policies on invasive and non-native plant species. Also see DOI page 6, comment #1 for further information.</p>

adjacent to riparian zones. Seattle District maintains the State of Washington Noxious Weed List and states that local project sponsors must comply with their local Noxious Weed Control Board's requirements.

Chapter 3 describes the Alternatives in detail. The use of "Exigency" and "Non-Exigency" is cited in USACE regulatory documents which apply to instream work under nationwide Section 404 Authority. These are currently issued without individual site permits. The COE will likely need to coordinate with NRCS if wording is changed to "urgent and compelling". NRCS also notes that the COE Regulatory staff have been quite helpful in providing Nationwide 37 permits. Page 3-4 Section 1

Improvement of Disaster-recovery readiness through interagency coordination, planning and training is a goal of many agencies. During preparation of NRCS Emergency Action Plans, it is anticipated that the State Conservationists will coordinate with the appropriate Districts of the COE to initiate joint planning and training activities. Seattle District's Point of Contact for Emergency Work is Emergency Management Branch, 206-764-3406. Page 3-9

These review comments have been prepared by Seattle District Emergency Management Branch to meet the original 15 February comment period, further comments may be received later from other COE offices.


Paul E. Komoroske, P.E.
Chief, Emergency Management Branch

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No response required.	