

ATTACHMENT 1

EWP FINAL PEIS COMMENTS AND RESPONSES

Summary of Changes to the Final PEIS

Minor changes to the Final PEIS have been made to address comments received from Federal and State agencies during the Final PEIS review period. These minor changes include editorial corrections, clarification of NRCS' responsibility during the Section 106 (National Historic Preservation Act) process, and further clarification of mitigation measures to protect cultural resources. None of these changes affects the agency's decision to implement the EWP Program Preferred Alternative.

Comments Received

Comment letters were received from the following agencies:

U.S. Environmental Protection Agency (USEPA)

Nevada State Clearinghouse:

 Nevada State Historic Preservation Office

 Nevada Division of Water Resources

 Nevada Division of State Lands

State of California Resources Agency

Maryland Department of Planning

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.



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

JAN 27 2005

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

If you have any questions regarding our comments on the Final PEIS, please call me or Cliff Rader of my staff at (202) 564-7159.

Sincerely,

Anne Norton Miller
Director
Office of Federal Activities

Mr. Victor Cole
U.S. Department of Agriculture
Natural Resources Conservation Service
Financial Assistance Programs Division
PO Box 2890
Washington, DC 20013

Dear Mr. Cole:

The Environmental Protection Agency (EPA) has reviewed the Natural Resources Conservation Service's (NRCS) Final Programmatic Environmental Impact Statement (PEIS) for the Emergency Watershed Protection Program (EWP). 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's comments on the earlier Draft PEIS supported the proposed efforts by the NRCS to improve implementation of the EWP (Alternative 2 - "EWP Program Improvement and Expansion"), recognizing that the proposed changes would minimize adverse environmental impacts and allow for more environmentally appropriate responses to watershed impairments. EPA also suggested that Alternative 3 ("Prioritized Watershed Planning and Management"), as described in the Draft PEIS, would be environmentally preferable given its focus on watershed management approaches.

We appreciate the responses to our comments in the Final PEIS, and understand that although Alternative 3 was not selected, NRCS will be working to better integrate management of its watershed programs. We do remain concerned, however, that Element 10 ("Eligible Restoration Methods") of the Preferred Alternative continues to use a criterion of "least-cost" when deciding whether to "apply the principles of natural stream dynamics and bioengineering to the design of EWP restoration." It is not clear why this criterion is included given the statements in the Final PEIS, in response to EPA's earlier comment on this issue, that NRCS has "changed its basic approach to approval of EWP work" and that the term "least-cost" has been eliminated (see "Comment Responses - 4"). We appreciate NRCS's responses on this issue and suggest that Element 10 of the Preferred Alternative be made consistent with those responses.

1

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

USEPA page 1	USEPA page 2
<p>1) We apologize for this error in the EWP Final PEIS. The term “least-cost” has been deleted from the title of Preferred Alternative Element 10 in the Final PEIS.</p>	<p>No response required.</p>

KENNY C. GUINN
Governor

STATE OF NEVADA

JOHN P. COMEAUX
Director



DEPARTMENT OF ADMINISTRATION

209 E. Musser Street, Room 200

Carson City, Nevada 89701-4298

Fax (775) 684-0260

(775) 684-0209

January 27, 2005

Victor Cole
U.S. Department of Agriculture, Natural Resources Conservation Service
Financial Assistance Programs Division
P.O. Box 2890
Washington, D. C. 20013-2890

Re: SAI NV # E2005-143
Project: NRCS Emergency Watershed Protection Program

Dear Mr. Cole:

Enclosed are the comments from the Nevada State Historic Preservation Office, the Nevada Division of Water Resources, and the Nevada Division of State Lands regarding the above referenced document. These comments constitute the State Clearinghouse review of this proposal as per Executive Order 12372.

Please address these comments or concerns in your final decision. If you have questions, please contact me at (775) 684-0209.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Stafford".

Michael J. Stafford
Nevada State Clearinghouse Coordinator/SPOC

Enclosure

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

Nevada State Clearinghouse page 1	
No response required.	

MEMO

To: Victor Cole, USDA, NRCS, Financial Assistance Programs Division *through*
Michael Stafford, Nevada State Clearinghouse (Nevada SAI # E2005-143)
From: Rebecca Lynn Palmer, Review and Compliance Officer, Nevada State Historic
Preservation Office *RLP*
Subject: Comments on USDA NRCS PEIS for the Emergency Watershed Project
Date: January 27, 2005

Michael Stafford, Nevada State Clearinghouse
Page 2
January 27, 2005

Act of 1966. Perhaps this document meant to say: "Additionally, recovering information about cultural resources present in the Area of Potential Effect will help the agency to design the undertaking to avoid adverse effects to historic properties or help the agency determine what additional mitigation may be necessary to address the potential adverse effect of the undertaking on historic properties."

The SHPO has reviewed the subject document and has the following comments:

Page 2-6, Item 2.1.1.8. "State and Tribal Historic Preservation Officers (SHPOs and THPOs): This section states that consultation with SHPOs and THPOs is conducted for sites (*I assume this means projects*) where cultural resources are at risk or where as-yet-undiscovered cultural resources are thought to exist. This office believes that consultation with the SHPO is necessary for all projects funded through this program.

1

To date, the Nevada NRCS does not have an Cultural Resources Specialist on staff nor have they made any arrangements to make one available from another state. The NRCS in Nevada does not have any person on staff with the expertise to determine if a project would have cultural resources at risk or when a project may be located in an area sensitive for cultural resources. As a result, every project must be reviewed by this office to ensure that it would be in compliance with existing regulations.

2

As an aside, the NRCS in Nevada has not completed consultation with this office concerning a state level agreement for all undertakings conducted by the federal agency.

Page 2-13, First Paragraph: This document states that the "NRCS is legally responsible for ensuring that National Register of Historic Places (NRHP) listed or eligible historic and other cultural resources (included traditional cultural properties as defined under the Native American Graves Protection and Repatriation Act (NAGPRA)) are not inadvertently harmed by projects or programs under its jurisdiction."

3

That sentence is inaccurate and should be changed to read: "NRCS is legally responsible for ensuring that National Register of Historic Places (NRHP) listed or eligible historic properties, including properties of religious or cultural significance, are not inadvertently harmed by projects or programs under its jurisdiction."

4

Page 3-76, 3.5.5 "Mitigation for Cultural Resources" third paragraph: This section states "Additionally, recovering information about any cultural resources present will mitigate adverse impacts." This is not an accurate interpretation of the existing regulations governing federal undertakings under Section 106 of the National Historic Preservation

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

Nevada State Historic Preservation Office page 1	Nevada State Historic Preservation Office page 1 (continued)
<p>1) Section 2.1.1.8, “State and Tribal Historic Preservation Officers (SHPOs and THPOs),” in the Final EWP PEIS has been modified to state that NRCS shall consult with SHPOs, THPOs, federally recognized American Indian Tribes and Native Hawaiian organizations, and other identified consulting parties regarding professionally informed findings and determinations made during the Section 106 process. These findings and determinations include the presence or absence of cultural resources and the potential of a proposed undertaking on identified or yet-to-be identified cultural resources. NRCS, as the lead Federal agency, shall enter into consultation with professional opinions already formulated in accordance with 800.2(a)(1)-(3) and the National Historic Preservation Act 112(1)(1)(A) and subpart B. It remains the responsibility of NRCS to identify “undertakings” and determine the “potential to cause effect” prior to initiating consultation.</p> <p>2) We acknowledge your concern. We will contact the Nevada NRCS office regarding this issue and forward your comment to them. If NRCS does not have staff that meet the Secretary of the Interior’s Professional Qualification Standards, this expertise will be acquired under Federal contract to carry-out the Section 106 data-gathering and assessment activities. Consultation may not be delegated to such contractors.</p> <p>3) The statements regarding cultural resources within Section 2.2.2.3, “Environmental Review and Inter-agency Coordination,” in the Final EWP PEIS has been changed to read “...The NRCS State Office, during the course of scoping and Initiation of the Section 106 Process (36 CFR Part 800.3), shall recommend appropriate consultation with SHPOs, THPOs, federally recognized Tribes (including non-resident tribes with historic interests in the project area), and others regarding the potential effects of the proposed actions on historic and cultural properties and ensure that cultural resources, including National Register of Historic Places (NRHP) listed or eligible resources are taken into account in the planning and implementation of the EWP Program projects. NRCS is legally responsible for ensuring that NRHP-listed and eligible historic properties (including cultural resources of importance to federally recognized American Indian tribes) are taken into account during the planning process and are not inadvertently affected by projects or programs under its control...”</p> <p style="text-align: center;"><i>(response continued at top of next column)</i></p>	<p>4) This change has been made to Section 3.5.5, “Treatment of Cultural Resources to Avoid, Mitigate, or Minimize Adverse Effects,” in the Final EWP PEIS.</p>
	<p style="text-align: center;">Nevada State Historic Preservation Office page 2</p> <p style="text-align: center;">No response required.</p>

NEVADA STATE CLEARINGHOUSE

Department of Administration
 Budget and Planning Division
 209 East Musser Street., Room 200
 Carson City, Nevada 89701-4298
 (775) 684-0209
 Fax (775) 684-0260

DATE: January 4, 2005

Agency
Agriculture
Conservation & Natural Resources
Conservation Districts
Emergency Management
Environmental Protection
Forestry
Health
Historic Preservation
Lands
Legislative Counsel Bureau
Natural Heritage
Water Resources
Wildlife, Director's Office
Wildlife, Elko
Wildlife, Fallon
Wildlife, Las Vegas

RECEIVED

JAN 13 2005

DEPARTMENT OF ADMINISTRATION
 OFFICE OF THE DIRECTOR
 BUDGET AND PLANNING DIVISION

Nevada SAI # E2005-143

Project: USDA – Final PEIS for the Improvement of Its Emergency Watershed Program

CLEARINGHOUSE NOTES http://www.nrcs.usda.gov/programs/Env_Assess/EWP_FINALPEIS/EWP.html

Enclosed, for your review and comment, is a copy of the above-mentioned project. Please evaluate it with respect to its effect on your plans and programs; the importance of its contribution to state and/or local areawide goals and objectives; and its accord with any applicable laws, orders or regulations with which you are familiar.

Please submit your comments no later than **January 27, 2005**. Use the space below for short comments. If significant comments are provided, please use agency letterhead and include the Nevada SAI number and comment due date for our reference. Questions? Michael Stafford, Clearinghouse Coordinator, (775) 684-0209 or mstafford@budget.state.nv.us.

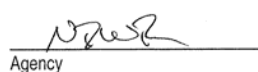
No comment on this project

Proposal supported as written

AGENCY COMMENTS:

The program is consistent with state law/policy for State Engineer administrators.


 Signature s:\shardat\clear\clear.doc


 Agency

1/16/05
 Date

NEVADA STATE CLEARINGHOUSE

Department of Administration
 Budget and Planning Division
 209 East Musser Street., Room 200
 Carson City, Nevada 89701-4298
 (775) 684-0209
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DATE: January 4, 2005

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Wildlife, Las Vegas

RECEIVED

JAN 07 2005

DEPARTMENT OF ADMINISTRATION
 OFFICE OF THE DIRECTOR
 BUDGET AND PLANNING DIVISION

Nevada SAI # E2005-143

Project: USDA – Final PEIS for the Improvement of Its Emergency Watershed Program

CLEARINGHOUSE NOTES http://www.nrcs.usda.gov/programs/Env_Assess/EWP_FINALPEIS/EWP.html

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Please submit your comments no later than **January 27, 2005**. Use the space below for short comments. If significant comments are provided, please use agency letterhead and include the Nevada SAI number and comment due date for our reference. Questions? Michael Stafford, Clearinghouse Coordinator, (775) 684-0209 or mstafford@budget.state.nv.us.

No comment on this project

Proposal supported as written

AGENCY COMMENTS:


 Signature s:\shardat\clear\clear.doc

STATE LANDS
 Agency

1/6/05
 Date

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

Nevada Division of Water Resources page 1	Nevada Division of State Lands page 1
No response required.	No response required.



ARNOLD SCHWARZENEGGER, Governor
MIKE CHRISMAN, Secretary

Mr. Cole
January 31, 2005
Page 2

January 31, 2005

Mr. Victor Cole
U.S. Department of Agriculture
Natural Resources Conservation Service
Financial Assistance Programs Division
P.O. Box 2890
Washington, D.C. 20013-2890

Dear Mr. Cole,

Thank you for the opportunity to comment on the Final Program Environmental Impact Statement (FPEIS) of the Natural Resources Conservation Service's Emergency Watershed Protection (EWP) Program. The California Resources Agency appreciates the importance of this program for addressing watershed threats posed by fires, flooding and other emergencies. We have reviewed the proposed alternatives and offer the following comments on the preferred alternative, "EWP Program Improvement and Expansion."

1) We support your efforts to:

- provide uniform and equitable cost-share arrangements program-wide;
- encourage the use of bioengineered measures and natural stream dynamic approaches, where appropriate, to enhance environmental benefits and long-term effectiveness;
- simplify floodplain easement purchases and allow more compatible uses while providing additional buffer requirement protections;
- include some types of constructed conservation practices as described;
- consider potential social and economic benefits or impacts; and
- allow the Deputy Chief to waive regulations in order to address unique emergency situations.

2) We particularly support your expansion of practices to include activities upland of streams. These can be critical to mitigating imminent threats to watershed life and property. The removal of dead and dying trees in Southern California provides an important example. In that area, drought and insects created an enormous fire hazard on slopes that are naturally unstable and therefore subject to deadly fire/flood regimes and mudslides.

1

3) While we understand your concern about ensuring that EWP "exigency" status is used for truly critical emergencies and that environmental review is not short cut. We believe that 10 days is not necessarily sufficient time for responding. This is especially true in watersheds where many jurisdictions are involved, such as Southern California. We suggest therefore that you retain the 30 day limit or provide more flexibility.

2

4) We are disappointed that you have not incorporated more pre-disaster mitigation into the preferred alternative. Your analysis finds that Alternative 3 (Prioritized Watershed Planning and Management) would be the most proactive and integrative approach to disaster recovery and damage avoidance and would provide the most environmental benefit.

Although you indicate that legislation would be required for a "substantial increment in preventative measure", it would certainly be consistent with the proactive approach now being taken with floodplain easements. Also, while you also state that other NRCS programs could be coordinated with EWP to achieve preventative measures, our review of programs in Appendix A does not bear that out. We find that the Small Watersheds and Flood Prevention Program is the only appropriate program for pre-disaster approaches, and it is not adequately funded.

The Resources Agency believes that emergency watershed threats such as the one in Southern California would be most effectively addressed by an aggressive preventative approach. Therefore, we urge you to incorporate rules that provide as much flexibility for pre-disaster emergency relief as possible.

3

5) Finally, we are concerned that the criteria for "limited resource counties" would likely exclude all California counties, even though a number of them have unemployment rates more than twice the national average. While California real estate and average per capita incomes are generally higher than the national average, they are linked. The criteria or formula should be adjusted so that it does not unfairly preclude California eligibility in areas where unemployment is high and local governments are severely strapped. This is yet again another reason why the waiver must be available to the NRCS Deputy Chief.

Again, we appreciate the importance of the EWP for California. The Resources Agency supports NRCS' efforts to improve its long-term effectiveness and accountability. We and think that the changes we've suggested will strengthen the program and increase its potential success.

Sincerely,

MIKE CHRISMAN
Secretary for Resources

Cc: Mr. Chuck Bell

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

State of California Resources Agency page 1	State of California Resources Agency page 2
<p>No response required.</p>	<p>1) Exigencies are those situations which exhibit a high potential for loss of life or significant property damage unless immediate action is taken. By definition, if the work does not need to be completed within 10 days of the site becoming accessible, the situation is not an exigency and more flexibility can be applied during restoration of the watershed. NRCS National Headquarters would continue to oversee funding of exigencies and Damage Survey Report review to ensure that only fully documented high-risk situations are funded under the exigency designation. Emphasis on this oversight requirement would be extremely important, as exigencies would be the first priority for funding under the Preferred Alternative. In combination with the programmatic disaster readiness changes and improvements, the risk of inadequate environmental review would be further reduced, as training would be geared towards preparing NRCS staff to recognize potential problems with threatened and endangered species, cultural resources, and other resources of concern. The planning and coordination conducted would establish a protocol for ensuring that environmental resources are not adversely affected, while not compromising the urgency of the repairs.</p> <p>2) Floodplain easements are not preventative, but are an alternative to structural and non-structural measures that remove people from harm's way and eliminate structures that might be damaged in the future. They are offered after a disaster has occurred, and eliminate future disaster assistance by removing the liability for the floodplain.</p> <p>3) Limited-resource communities are defined as those where average housing value is less than 75 percent of the <u>State</u> housing value average, where the average per capita income is 75 percent or less than the national per capita income and where current unemployment is at least twice the national average over the past 3 years based on annual unemployment figures (<i>National Watersheds Manual</i> (1988)). In cases where communities might experience high unemployment rates or similar socioeconomic disadvantages, yet do not meet the definition of a limited-resource area, the Final Programmatic Rule enables the NRCS State Conservationist to request a waiver to allow up to 100 percent cost-share in accordance with Section 624.11 Waivers. This enables the NRCS Deputy Chief for Programs to waive any provision of these regulations, to the extent allowed by law, when the agency makes a written determination that such a waiver is in the best interest of the Federal Government.</p>



Robert L. Ehrlich, Jr.
Governor
Michael S. Steele
Lt. Governor

Andrey E. Scott
Secretary
Florence E. Burian
Deputy Secretary

January 3, 2005

Mr. Victor Cole
Program Manager, Financial Assistance Program Division
U.S. Department of Agriculture
Room 6103 A-S
14th and Independence Avenue, S.W.
Washington, DC 20250

STATE CLEARINGHOUSE REVIEW PROCESS

State Application Identifier: MD20041229-1399
Reviewer Comments Due By: January 30, 2005
Project Description: Final Programmatic EIS: Emergency Watershed Protection Program: consider four(4) alternatives
Project Location: Maryland
Clearinghouse Contact: Bob Rosenbush

Dear Mr. Cole:

Thank you for submitting your project for intergovernmental review. Participation in the Maryland Intergovernmental Review and Coordination (MIRC) process helps ensure project consistency with plans, programs, and objectives of State agencies and local governments. MIRC enhances opportunities for approval and/or funding and minimizes delays by resolving issues before project implementation.

The following agencies and/or jurisdictions have been forwarded a copy of your project for their review: the Maryland Department(s) of the Environment, Natural Resources, Housing and Community Development, including the Maryland Historical Trust, Agriculture, Transportation; and the Maryland Department of Planning. They have been requested to contact your agency directly by **January 30, 2005** with any comments or concerns and to provide a copy of those comments to the State Clearinghouse for Intergovernmental Assistance. Please be assured that after **January 30, 2005** all MIRC requirements will have been met in accordance with Code of Maryland Regulations (COMAR 14.24.04). The project has been assigned a unique State Application Identifier that should be used on all documents and correspondence.

Note to Review Coordinators: Please visit the World Wide Web to access the review document at

<http://www.nrcs.usda.gov/programs/ewp/>

Go to the bottom of the page, and double click on the appropriate section of the EWP Final Environmental Impact Statement. A "Project Survey" form is enclosed with this letter. Please complete and return it within 14 days of the date of this letter. If you need assistance or have questions, contact the State Clearinghouse staff noted above at 410-767-4490 or through e-mail at brosenbush@mdp.state.md.us. Thank you for your cooperation with the MIRC process.

Sincerely,

Linda C. Janey, J.D., Director
Maryland State Clearinghouse for Intergovernmental Assistance

LCJ:BR
Enclosure(s)
cc: Pat Goucher – MDPL
Joane Mueller - MDE
Ray Dintaman - DNR

Beth Cole - DHCD/MHT
Sandy Redmer - MDA

Ronald Spalding - MDOT

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

Maryland Department of Planning page 1	
<p>As of the publication of the Record of Decision (ROD), NRCS has not received any comments as a result of the Maryland Intergovernmental Review and Coordination process.</p>	