

# Master Response 11

## California Condor Lead Ban

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**Table MR11-1. Comments Addressed in Master Response 11**

Comment	Commenter
I293-40	Clendenen, David A., Janet A. Hamber, Allen Mee, Vicky J. Meretsky, Anthony Prieto, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone
I426-12	Duchamp, Mark
I626-8	Hamber, Robert
I627-47	Hamber, Robert
04-125	Center for Biological Diversity (Keats, Adam)
04-126	Center for Biological Diversity (Keats, Adam)
04-126A	Center for Biological Diversity (Keats, Adam)
04-239	Center for Biological Diversity (Keats, Adam)

## 11.1 Summary of Substantive Comments

The following summarizes the substantive comments received on the Draft EIS and Draft TU MSHCP regarding the lead ammunition bans imposed by California law and by Tejon Ranchcorp (TRC). Table MR11-1 provides a list of the commenters and a reference to the individual comment, as summarized below. The parenthetical reference after each summary bullet indicates where a response to that comment is provided.

- The use of lead-free ammunition on Tejon Ranch is not mitigation because use of lead-free ammunition in the condor range is now California state law. (Response provided in Section 11.2.1, Ranchwide Lead Ammunition Ban as Mitigation.)
- The TRC ban on the use of lead ammunition cannot be enforced and lead ammunition will still be used by hunters on the ranch. Enforcement and compliance with the lead ban on Tejon Ranch have not been complete, and requests for documents related to this issue have been rejected. (Response provided in Section 11.2.2, Enforcement of Ranchwide Ban on Lead Ammunition.)
- Lead-containing gut piles or carcasses pose a serious threat to condors. (Response provided in Section 11.2.3, Threats from Lead-Containing Gut Piles or Carcasses).

## 11.2 Responses to Substantive Comments

### 11.2.1 Ranchwide Lead Ammunition Ban as Mitigation

Commenters asserted that the ranchwide ban on lead ammunition on Tejon Ranch is not mitigation because use of lead-free ammunition is now required by California law. Commenters also stated that the ranchwide ban on lead ammunition was made irrelevant by the Ridley-Tree Condor Conservation Act and subsequent regulations of the California Fish and Game Commission banning the use of lead ammunition in all habitat, and state that the ranchwide ban is simply compliance

with state law. Therefore, commenters asserted that it is not appropriate to cite the ranchwide ban on lead ammunition as a mitigation obligation of the TU MSHCP.

The lead ammunition ban at Tejon Ranch became effective in January 2008, 7 months prior to the July 2008 effective date of the state law and regulations. The ban on the use of lead ammunition in Tejon Ranch is not listed as a mitigation measure for effects associated with the Covered Activities in the TU MSHCP, but as a measure that would contribute to the conservation and recovery of the California condor (Section 4.4.3, Measures to Contribute to the Conservation and Recovery of the Condor, in the TU MSHCP). Section 5.5.1 (a) of the Implementing Agreement states, "Because lead poisoning has been documented as the principal cause of California condor mortality, the decision to ban the use of lead ammunition throughout the ranch is a significant *conservation measure* (italics added) that will substantially reduce any potential for the loss of California condors on Tejon Ranch as a result of lead poisoning." The Implementing Agreement does not indicate that the ranchwide lead ammunition ban is a mitigation obligation.

While there is now a state statute prohibiting the use of lead ammunition for hunting in condor habitat, the TRC lead-ammunition ban continues to have substantial independent value. In addition to prohibiting the use of lead ammunition for hunting purposes, the TRC ban on lead ammunition goes beyond the state law ban and also prohibits use of lead ammunition by TRC employees or third parties who are engaged in any animal damage control or nuisance abatement activities on the ranch. Unlike the state statutory ban which can be repealed, amended, or successfully challenged in court, the TRC lead-ammunition ban will remain in effect in perpetuity, surviving both the expiration (after 50 years) and any early termination of an incidental take permit (ITP) that may be issued by the Service. Furthermore, the fact that an applicant has taken steps to protect species prior to issuance of a permit does not render these measures ineligible for incorporation in a habitat conservation plan (HCP). *Loggerhead Turtle v County Council of Volusia County, Fla.*, 120 F. Supp. 2d 1005 (M.D. Fla. 2000). In addition, it covers the entirety of the 270,000-acre ranch, not just the Covered Lands.

## 11.2.2 Enforcement of Ranchwide Ban on Lead Ammunition

A commenter stated that the ranchwide ban on the use of lead ammunition cannot be enforced and that hunters on Tejon Ranch will still use lead ammunition. Another commenter cites anecdotal evidence in 2008 and statements by TRC biologist Holly Hill in May 2008 that enforcement and compliance with the lead ban on Tejon Ranch have not been complete. The commenter indicated that requests for documents related to this issue have been rejected. The commenter stated that evidence of TRC's compliance with its own mitigation measure and state law must be made public prior to approval of the TU MSHCP.

The ranchwide lead ammunition ban applies to all hunters using the ranch, including those with hunting memberships, group hunts and guided hunts. It also applies to TRC employees or third parties who are engaged in any animal damage control or nuisance abatement activities on the ranch. Section 4.4.3.3, Establishment and Enforcement of a Perpetual, Ranchwide Ban on Lead Ammunition, in the TU MSHCP describes TRC's aggressive hunter awareness and enforcement program, which operates under a "no tolerance" policy, and will continue to be implemented to ensure that the ban on lead ammunition will successfully contribute to reducing the incidence of lead poisoning of condors. The components of the program include the following:

- All hunting permittees must acknowledge and sign a notice and agreement that addresses the lead ammunition ban and the protection of the California condor. Hunting permittees are required to acknowledge that violations of the ban will result in immediate expulsion from the ranch, permanent termination of all future hunting privileges, and liability to TRC and state and Federal governments.

- All hunting permittees must also acknowledge and sign an agreement that defines hunting rules and regulations on Tejon Ranch. Among other things, these rules and regulations prohibit shooting at large birds; require that gut piles and carcasses, unless transported off the ranch or are suspected to contain lead, shall remain in place on the ranch; require the removal of all litter, trash, and microtrash; and prohibit any behavior that could be construed as a take of the condor.
- All hunting permittees must acknowledge and sign a hunting permit that reiterates the rules and penalties described above, and that states that the permit is not valid unless the notice and agreement regarding lead ammunition and protection of the condor and the hunting rules and regulations agreement have been acknowledged and signed.

The education and enforcement program has been administered at the ranch since the ranchwide lead ban took effect on January 1, 2008. The program includes educating hunters with respect to the effects of lead on condors and giving hunters an opportunity to experiment with non-lead ammunition alternatives. The lead ammunition ban and enforcement would be required as terms of the Implementing Agreement under the TU MSHCP.

Regarding the comment that enforcement of the ranchwide ban has been incomplete, there is no direct evidence that condors are exposed to lead in ammunition from Tejon Ranch. In June 2008, hunting was temporarily suspended on the ranch for 30 days following an unusually high number of lead exposures in the southern California flock. Tejon Ranch investigated hunter compliance during this period, and the Service is unaware of any confirmed incidence of the use of lead ammunition on the ranch since the January 2008 ban. Any use of lead-based ammunition on Tejon Ranch prior to January 2008 would have been permissible under TRC's hunting regulations. Despite the TRC and statewide ban on lead ammunition, however, condors in the southern California flock are still exposed to lead in their historic range. The potential for wildlife to carry lead ammunition from nonfatal gunshots is well documented. Thus, the sources of lead occasionally found in carcasses may come from peripheral areas of the ranch where poaching may occur. The commenter takes out of context statements made by former TRC biologist Holly Hill during her presentation at the conference in Idaho in May 2008 (Hill 2009). At her presentation, Ms. Hill explained that enforcement and compliance efforts were still being refined during the first few months of the ban. For example, Ms. Hill explained that from January to May 2008, TRC had been conducting random checks of hunters for lead ammunition. However, she noted that as of June 2008, the ranch would be conducting more extensive searches of each person and vehicle entering the ranch for hunting purposes. Ms. Hill also noted that, in conjunction with the Service, condor conservation efforts on the ranch with respect to the lead contamination issue were being refined, including lead isotope monitoring and sampling of hunter-killed carcasses, and efforts to identify other sources of lead that could adversely affect condors on the ranch. The deterrent effect of the lead ammunition ban program is expected to be extremely high, and, to date, no violations of this hunting ban on the ranch have been reported. TRC has confirmed its ongoing implementation of the lead ban during the TU MSHCP and EIS review and application processing period (Peterson pers. comm. 2011). The lead ammunition ban will continue to be enforced through the ranch's managed hunting program, and is also required as part of the TU MSHCP and Implementing Agreement.

### 11.2.3 Threats from Lead-Containing Gut Piles or Carcasses

Commenters stated that lead gut piles or carcasses, and accumulations of microtrash pose a serious threat to individual condors.

Commenters are correct in stating that lead poisoning, as a result of the ingestion of lead fragments in gut piles or carcasses, are a threat to condors. In response to this threat, TRC has adopted a perpetual, ranchwide ban on lead ammunition and the state of California has enacted the Ridley-Tree Condor Preservation Act (Assembly Bill 821), which bans lead ammunition for hunting in the

range of the California condor, effective July 1, 2008. Consequently, no hunters are allowed to use lead ammunition on the ranch.

This Supplemental Draft EIS and the Draft TU MSHCP include the measures listed above under Section 11.2.2, Enforcement of Ranchwide Ban on Lead Ammunition, to limit the potential for lead-contaminated carcasses and microtrash to occur in the Covered Lands.