

Comments due 12-03-08

**Lower Yolo Bypass Planning Forum
Planning Forum Meeting #5**

DRAFT MEETING SUMMARY

MEETING DATE: November 6, 2008

LOCATION: Sacramento-Yolo Mosquito and Vector Control District
8631 Bond Rd.
Elk Grove, CA

ATTENDEES:

Planning Forum Members and Co-Sponsors

Kathy Barnes-Jones, Solano County
Dave Brown, Sacramento Yolo Mosquito and Vector Control District (SYMVCD)
Joel Buettner, SYMVCD
Brad Burkholder, Department of Fish and Game (DFG)
Rose Conroy, Davis Fire Department
Gilbert Cosio, MBK Engineers, Reclamation District (RD) 536, RD 999
Dave Feliz, DFG Yolo Bypass Wildlife Area
Mike Hardesty, RD 2068/2098
Butch Hodgkins, Central Valley Flood Protection Board (CVFPB)
Robin Kulakow, Yolo Basin Foundation (Foundation)
Barbara McDonnell, Department of Water Resources (DWR)
Selby Mohr, Mound Farms
David Okita, Solano County Water Agency (SCWA)
Jason Peltier, Westlands Water District
Tom Philp, Metropolitan Water District (MWD)
Melinda Terry, North Delta Water Agency (NDWA)
Jan Vick, City of Rio Vista
Warren Westrup, Yolo County
Maria Wong, Yolo Natural Heritage Program (Yolo JPA)

Staff

Dave Ceppos, Center for Collaborative Policy (CCP)
Sam Magill, CCP

Interested Public

Ed Burns, Natural Resources Conservation Service (NRCS)
Adam Cline, Solano County Department of Agriculture
Scott Deal, DFG
Rebecca Fris, CALFED Science Program
Chad Fien, WCB
Dan Fua, CVFPB
Steve Greco, UC Davis
Mitsuko Grube, DFG
Patrick Huber, UC Davis
Elizabeth Hubert, DFG
Dean Kwasny, DFG
Laura King Moon, Bay Delta Conservation Plan (BDCP)
Dave Pratt
Jason Roeh, DFG
Tom Schene, RD 2098, Glide Tule Ranch
Andrea Turk, DWR
Robert Vincik, DFG
Carl Wilcox, DFG
Jeannette Wrynski, Yolo Resources Conservation District (RCD)
Bob Yeadon, DWR
Greg Yarris, California Waterfowl Association

KEY DECISIONS

1. The Planning Forum approved the October 20th Meeting Summary as final.
2. The Planning Forum approved the Charter and Operating Rules as final.

Introductions, Agenda Review, Meeting Objectives, and Announcements

Dave Ceppos opened the meeting and thanked SYMVCD for hosting the meeting. Mr. Ceppos provided background information on the Lower Yolo Bypass Planning Forum (Forum) and an overview of the “education phase.” The education phase is designed to create a shared understanding of a variety of issues in the Lower Yolo Bypass (Lower Bypass). In early 2009, the Forum will transition from the education phase into the design phase, where Forum members will present project and management ideas for areas within the Lower Bypass. In early summer, the Forum will transition into the planning phase wherein they will combine design options identified during the design phase into a range of management scenarios for the Lower Bypass.

Mr. Ceppos reviewed the meeting agenda and described how the meeting is focused on habitat topics; more specifically the Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) processes underway in Yolo and Solano Counties, an overview of DWR/DFG habitat goals, and a presentation on fish habitat/biology in the Lower Bypass.

Mr. Ceppos opened the discussion for announcements, and noted that Don Stevens will be invited to formally request membership as a another representative landowner on the Forum. Mr. Stevens will be considered for membership on the Forum via the formal Charter rules.

Maria Wong announced that the Yolo County Board of Supervisors recently reviewed a land use memo regarding habitat restoration and creation plans throughout the County. A number of environmental projects appear to be moving forward in the County without an California Environmental Quality Act (CEQA) review. A stakeholder group will be assembled to discuss different proposals for the County, including a possible environmental project moratorium. The proposal will be developed for the Board within three or four months. Warren Westrup added that no specific proposal was brought before the board at their last meeting. Robin Kulakow said that she reminded the Board to continue its support of the Planning Forum.

Mr. Ceppos then commented that a mercury workshop will be held on November 12th to discuss the US Geological Survey’s (USGS) study of methylmercury production in the Yolo Bypass. The meeting starts at 9am at the DFG Yolo Bypass Wildlife Area (Wildlife Area) headquarters.

The Planning Forum approved the October 20th Meeting Summary (**see Key Decision #1**) and the Charter (**see Key Decision #2**).

Presentation: Yolo and Solano County HCP/NCCP Programs

Chris Lee, SCWA, and Maria Wong delivered presentations on the Solano HCP and Yolo HCP/NCCP processes. Both presentations are available online at www.yolobypass.net under "Meeting #5." Mr. Lee opened the meeting by providing an overview of the HCP process as part of the Federal Endangered Species Act (ESA). He explained that HCPs are generally undertaken to create mutual, binding assurances between private entities and the Federal species trustee agencies regarding the management of habitats for ESA listed species. Additionally, the HCP process encourages a variety of local jurisdictions to come together and develop habitat protection for listed species. It also helps avoid a patchwork of disconnected conservation projects that do little to help overall species recovery. After the introduction to the HCP process, Mr. Lee discussed the specifics of the Solano HCP.

Discussion:

- Dave Feliz asked if commercial mitigation banking agreements with the County (under the HCP) are performance based. Mr. Lee responded that commercial mitigation banks go through a very different process with the state and federal government than do applicants under an HCP. In order for an commercial mitigation bank to be utilized by a third party applicant under the HCP, the mitigation bank must be certified first by the HCP. Part of this certification process would include allowing Solano County Water Agency Staff onto the mitigation bank land to conduct monitoring above and beyond what is typically required for a state or federally permitted commercial mitigation bank. There would be a formal agreement between the HCP and the mitigation bank spelling out the HCP certification conditions. Mr. Lee responded that the Solano HCP must approve every commercial mitigation project, and allow County staff to come onto the property for monitoring purposes.
- Melinda Terry asked if land used for mitigation is publicly owned. Mr. Lee responded that SCWA holds fee-title on the land, and the State or some other approved entity, such as a land trust holds conservation easements. If land is dedicated as part of mitigation, it must include not only a management plan and a conservation easement, but also an endowment that would provide for the management and monitoring of the land in perpetuity and the State usually holds conservation easements. In the mitigation agreement of an HCP, funding for ongoing maintenance activities (OMAs) must be provided to protect the property in perpetuity.
- Joel Buettner asked if vector control is part of the Solano HCP. Mr. Lee affirmed that it is.
- Steve Greco asked if there was any overlap between the Yolo and Solano HCP/NCCPs. Mr. Lee responded that the Solano HCP covers RD 2068 and RD 2098, portions of which are in Yolo County. The HCP is being closely coordinated with Ms. Wong and the Yolo Natural Heritage Program (see below).
- Mr. Greco asked how the Solano HCP addresses other large scale planning efforts. Mr. Lee responded that there is coordination between the various plans in Northern California and that the Northern California Conservation Planning Partners meets on a regular basis to discuss plan development. He added that cross-boundary issues should be looked at by the State or the federal government to increase coordination efforts. The various HCP partners will address this issue at their Annual HCP workshop on November 19th. Mr.

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~~Lee responded that the HCP partners will host a workshop November 19th with other regional HCP processes.~~ Additional workshop information and a registration form are available online at <http://www.scwa2.com/Documents/hcp/2008Workshop.pdf>.

- Mr. Ceppos asked Mr. Lee to clarify his previous statements regarding the Federal trustee agencies having difficulty covering anything except species formally listed under the ESA. ~~Mr. Lee responded that the wildlife agencies have been taken to court on this issue many times, and have usually lost. The most recent case was EPIC v. California Department of Forestry and Fire Protection, in which the state allowed incidental take coverage of unlisted species under a 2081 permit and “No Surprises” assurances under a Timber Harvest Plan in Northern California. The California Supreme Court said that both actions were not allowed under the current law. The US Fish and Wildlife Service has also had issues concerning covering unlisted species, and staff has recently pushed for HCPs to not cover unlisted species. Mr. Lee responded that this was true; there doesn’t appear to be enough funding for these agencies to have staff available to address multiple species issues.~~

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After discussion of the Solano HCP, Ms. Wong delivered a presentation on the Yolo Natural Heritage Program (Yolo HCP/NCCP), and provided background on the NCCP Program under the California Endangered Species Act (CESA). Her presentation is available online at www.yolobypass.net under “Meeting #5.” The NCCP program is the state equivalent of the Federal HCP program. NCCPs require local jurisdictions to fund species recovery, but also allows them to “share the burden” of the cost with other jurisdictions and the State. Unlike the Solano HCP, the Yolo HCP/NCCP is both an HCP *and* an NCCP.

Discussion:

- Barbara McDonnell asked if the amount of land used for rice cultivation in Yolo County has held steady over the years. Ms. Wong responded that it has, and added that approximately 8% of Yolo County’s land is used for rice.
- Ms. Terry asked if the Yolo HCP/NCCP encourages the planting of crop types that benefit wildlife values. Ms. Wong responded that Yolo County is considering providing incentives to farmers such as growing crops with high habitat values or delaying mowing to benefit ground nesting species.
- Mr. Feliz commented that while the Lower Bypass may not be an important nesting area for Swainson’s Hawk, it *is* an important foraging area.
- Mr. Buettner asked if vector control was taken into account in the Yolo HCP/NCCP. Ms. Wong responded that the HCP/NCCP has not gotten to that level of specificity, but will include vector control.
- Ms. Terry asked if the Solano HCP and Yolo HCP/NCCPs cover aquatic and terrestrial species, and what happens if an action to benefit one species ends up harming another species. Ms. Wong responded that the Yolo HCP/NCCP doesn’t cover aquatic species. In determining which species an HCP/NCCP will cover, you have to determine which species you will need an incidental take permit for. In Solano, SCWA is the responsible party for the HCP, and concerned primarily with aquatic species. In Yolo County, the Yolo Natural Heritage Program Joint Powers Authority (JPA) members don’t really have any fisheries issues that require incidental take authorization. Coordination with the Bay-

Delta Conservation Plan (BDCP) will be important to make sure that any aquatic species that *are* present in Yolo County are still protected.

- Ms. Terry asked which activities the Solano HCP and Yolo HCP/NCCP focus on. Mr. Lee responded that the Solano HCP focuses on operations and maintenance activities and development issues. Ms. Wong responded that the Yolo HCP/NCCP covers development permits, operations and maintenance activities, agriculture, and mining operations.
- Tom Philp asked what the timetable is for the Yolo HCP/NCCP. Ms. Wong responded that the JPA hopes to complete the draft HCP/NCCP document by summer 2009.
- Mr. Philp asked how State and Federal regulatory agencies have been engaged in both efforts. Ms. Wong and Mr. Lee remarked that while coordination with State and Federal agencies is necessary, staff turnover rates in the agencies creates difficulties in the approval and implementation processes.
- Ms. Terry commented that by creating good burrowing owl habitat, you also create increased hunting opportunities for Swainson's Hawk, potentially putting one at-risk species in danger from another.
- Ms. Terry commented that HCPs include a 50 year planning period, and asked if the developable acreages for this timeline are okay given likely pressures from growth and sea level rise. Mr. Lee responded that a 50 year planning period is likely outdated: 20 or 30 years is ~~much more appropriate~~ more appropriate given that local General Plans run about 20-25 years. However, each plan is very different and based entirely on participant needs. Ms. Wong added that there is a legal mandate to discuss climate change as part of the HCP/NCCP process and the related Environmental Impact Report/Statement (EIR/S) processes as part of the National Environmental Protection Act and the California Environmental Quality Act. HCP/NCCPs must have the capability to achieve what they say they are going to do.
- Mr. Ceppos closed the conversation, and added that this discussion is very relevant to the Forum's project area. Forum members need to determine where mutual benefits from crop types, habitat types, species distribution, etc. can be developed.

Presentation: DFG/DWR Habitat Targets

Brad Burkholder discussed the importance of the CALFED Record of Decision (ROD) and the programs resulting from its implementation. The Ecosystem Restoration Program (ERP), is one of nine core CALFED programs and drives DFG's CALFED implementation responsibilities in the Delta, including the Lower Bypass. Despite the changes in CALFED as an organization, the ERP is still being implemented and remains an important part of DFG's responsibilities. His presentation is available online at www.yolobypass.net under "Meeting #5."

DFG is working in partnership with DWR and other state and federal agencies on CALFED implementation. As part of the Delta Regional Ecosystem Restoration Implementation Plan (DRERIP) within CALFED, 80 species were identified for protection and rehabilitation. Due to funding and programmatic restraints, DFG must prioritize some species to make DRERIP more manageable. Though the current focus is on aquatic species like Delta smelt, *all* species addressed in the ERP and DRERIP will be covered eventually. The goals of ERP and DRERIP

are the same today that they were when the ROD was signed: creating a sustainable, diverse mosaic of species and habitats in the Delta.

Mr. Burkholder presented a number of historical maps, surveys, and aerial photos of the Lower Bypass. He stated that while restoring the actual *layout* of the historical Delta may not be possible, the goal of restoring the historic *diversity* of the Delta can be achieved.

Discussion:

- Mr. Feliz asked if there is general agreement in state government that the all CALFED programs should feed into the ERP. Mr. Burkholder responded that the ERP Plan Volumes 1 and 2 try to incorporate a number of different actions. Rather than giving ERP primacy over the other CALFED programs, the intent was to create a process where to communication and coordination happens between all of the programs.
- Mr. Ceppos asked if it is correct that regardless of the planning process in question (e.g. the BDCP, Delta Vision, the Forum), the CALFED ERP objectives are still the guiding responsibilities for all Delta restoration actions. Mr. Burkholder confirmed that is correct.
- Jason Peltier remarked that the Westlands analysis shows that the DFG ERP proposal for longfin smelt could cost up to one million acre feet (maf) of water per year. This may not be reconcilable with the water contractors' responsibilities.
- Carl Wilcox commented that the reason that the agencies and the potentially regulated entities (PREs) are involved in the BDCP process is to meld the regulatory and ecosystem restoration processes into a single program. CALFED is a non-regulatory program.
- Ms. Terry asked what the "NDIP" mentioned in the presentation refers to. Mr. Burkholder responded that NDIP stands for North Delta Improvement Program, a DWR program looking at how to join flood control and ecosystem restoration in the North Delta.
- Gilbert Cosio remarked that the current ecosystem restoration strategy focuses only on aquatic species, and noted that without levees to protect them, many species wouldn't be in the Delta in the first place. One example of this is the sandhill crane population. Mr. Burkholder responded that the conservation strategy developed under ERP was created to show where broad opportunities exist. Now the implementation phase is underway, this strategy must be matched up against physical constraints such as existing infrastructure or sensitive species habitat.

Ms. McDonnell noted that DWR, like DFG, has legislative mandates regarding the Delta. Flood management and water supply are the main focus of DWR, but it is starting to get more information on environmental water needs. DWR has the responsibility for the operations and maintenance of the State Water Project (SWP), and while it is not a fish and wildlife trustee like DFG, it does have the responsibility to mitigate for the environmental effects of the SWP, including pelagic organism decline (POD).

DWR is a grantee for CALFED programs, and has various contracts to do ERP work. In the Lower Bypass, this includes restoration efforts on Liberty and Prospect Islands. An ongoing study of Liberty Island is underway; work on Prospect Island was delayed for a variety of reasons. These and other projects in the Lower Bypass are mitigation for the operation of the SWP. As such, DWR is a *regulated* agency, while DFG is a *regulating* agency.

Presentation: Aquatic Habitat in the Lower Bypass

Ted Sommer, DWR, delivered a presentation on aquatic habitat and conditions in the Delta for smelt, splittail, and salmonids. The key message he asked to convey is that habitat alone is not enough for the restoration of sensitive fish species: the stressors to the system must be corrected as well. In the case of Delta smelt, one of the biggest challenges it faces is the lack of other smelt to breed with. The presentation is available online at www.yolobypass.net under “Meeting #5.”

Of the species mentioned, splittail is probably the most floodplain dependent, especially around the Lower Bypass. Splittail are found pretty much everywhere in the Yolo Bypass when it is flooded. Young salmon appear to benefit greatly from short stays in the Bypass when it is flooded due to the large amount of food available in the floodplain conditions. Smelt also benefit from food flushed through the system during flood events, and appear to spawn in several areas in the Lower Bypass. Additionally, they appear to like turbid water. The Delta as a whole has gradually gotten clearer due to the lack of sediment transported downstream. The Bypass provide turbid water in flooded conditions, likely benefitting smelt.

Discussion:

- Mr. Ceppos asked if geomorphology (i.e., slough, channel, or open water) appears to affect splittail distribution. Mr. Sommer responded that they appear to go pretty much anywhere that food is present.
- Ms. Terry asked how long salmon need to be in the Yolo Bypass to benefit from being there. Mr. Sommer responded that there isn't a “magic threshold,” but even 30 day residence times greatly increase their growth rates before they move to the ocean.
- Tom Schene asked if the Lisbon gauge was used for the “flow pulse” data. Mr. Sommer responded that it was, but that there is some uncertainty for very low flows. On the ground observations show that even modest flows greatly increase available habitat.
- Don Stevens remarked that short, periodic inundation of the Bypass will lead to more fish in the Lower Bypass. When flood flows subside, those fish will move into the Delta and be met with low-flow conditions throughout the entire Delta estuary. Mr. Sommer reiterated that habitat alone, in the Bypass or anywhere else, is not enough. Other stressors must also be dealt with, including low flow conditions throughout the Delta.
- Butch Hodgkins asked if the number of salmon benefitting from a stay in the Bypass directly correlates to the length of time that water spills over the Fremont Weir. Mr. Sommer confirmed that theoretically, the longer it spills, the more salmon are able to get in, and the greater the benefit to the fishery the Bypass becomes.
- Mike Hardesty asked if historical studies exist of smelt distribution before Liberty Island was flooded. Mr. Sommer was not aware of any such study, but that smelt *likely* spent more time in the Delta (as opposed to its periphery) historically than they do now. Mr. Ceppos suggested that this could be an area for future analysis, and noted that the Forum does have funding available for this type of research.
- Jeanette Wrysinski asked if the introduction of additional food for fish in the Lower Bypass would mean increasing levels of dissolved organic carbon, a major concern for water diverters. Mr. Sommer responded that the base of the food web in the Delta is suspended particulate carbon, not dissolved organic carbon.

- Mr. Hardesty asked if the potential for higher water levels and more intense, sporadic flood events could scour out a lot of the sediment and food that makes the Lower Bypass a good habitat for fish. Mr. Sommer responded that splittail and salmon may actually do better with more intense inundation, but that smelt might not.
- Mr. Peltier asked if longfin smelt use the Lower Bypass. Mr. Sommer responded that in 1/3-1/2 of the years, fisheries scientists find evidence of longfin spawning.

As a closing to the meeting, Mr. Ceppos asked if Forum members have developed any takeaways from the presentations. The following responses were recorded:

- David Okita commented that he had not thought that open water habitat was beneficial to smelt. Conditions similar to Liberty Island could be recreated elsewhere by breaching Sacramento River Flood Control Project (FCP) levees if someone was willing to pay the cost of moving them. Mr. Ceppos added that on Egbert tract, you could have these results by addressing the restricted height levees, rather than the FCP levees.
- Mr. Cosio remarked that looking at the LiDAR data, RD 999, 2068, and 536 are at the right elevations for smelt habitat. Yolo Ranch, however, may be too high to work with.
- Ms. Kulakow noted that some of the surrounding islands are deeply subsided, and may be inappropriate for shallow flooded habitat. Mr. Sommer remarked that there is some evidence that deep channels surrounded by shallow shoals are good habitat. Mr. Ceppos added that the goals of ERP are a diversity of habitats. This is not inconsistent with what the research is showing.
- Mr. Wilcox said that the Lower Bypass is unique in the Delta because it provides sediment input, emergent intertidal habitat, floodplain, uplands, open water, shallow water, and in-channel habitat all in the same place. The BREACH studies on Liberty Island will be very helpful to determine what we want to design projects to. Reestablishing the physical processes, in conjunction with habitat restoration, will be essential for the long term success of fish species recovery.
- Ms. Wong asked how confident the scientific community is that within five years, projects can be constructed and get the desired results. Mr. Sommer responded that he is very confident for splittail and salmon projects, but not smelt.
- Ms. Wong noted that BDCP and Delta Vision don't mention modifying the Sacramento River channel to provide additional habitat, and suggested that it could be a natural compliment to restoration activities in the Lower Bypass. Mr. Wilcox said that part of the problem with this idea is the potentially huge cost of setting back all of the FCP levees on the Old River.

Mr. Ceppos noted that existing conservation easements can be very restrictive, but that there appear to be some land parcels under existing easements that could be used for fish studies and "passive" management for habitat. He then asked if easements could be created that would allow these types of projects and whether existing easements might have restrictions adverse to fisheries habitat management. Dean Kwasny responded that active conservation easement programs has been in place in the Lower Bypass for 20 years. Most of these parcel specific easements have management practices geared toward waterfowl habitat. Determining how this can be merged with fish habitat would be important for any revisions to existing easements. NRCS suggests that it is possible, but that there may be some

limitations if you need major infrastructure changes. Mr. Feliz noted that the Wildlife Area has about 700 acres that DFG will build tidal marsh on next summer. This could serve as a pilot project for the type of management suggested by Mr.