

**YOLO BYPASS MANAGEMENT STRATEGY
STAKEHOLDERS WORKING GROUP MEETING NO. 12**

***DRAFT*
MEETING MINUTES**

MEETING DATE: December 15, 2000

LOCATION: California Department of Fish and Game
Yolo Wildlife Area Headquarters
45211 County Road 32B (Chiles Road)
Davis, CA 95616

IN ATTENDANCE: Margit Aramburu, Delta Protection Commission
Christy Barton, Yolo County Flood Control and Water Conservation
District (YCFD)
Bob Dorian, H-Pond Ranch
Mike Egan, Yolo Flyway
Dave Feliz, California Department of Fish and Game (DFG)
Chris Fulster, Jr., Glide In Ranch
Mike Hardesty, Reclamation District 2068
Tom Harvey, U. S. Fish and Wildlife Service (USFWS)
Phil Hogan, Natural Resources Conservation Service (NRCS)
Campbell Ingram, CALFED Ecosystem Restoration Program
Stephen Jaouen, NRCS
Greg Kassis, Glide In Ranch
Dennis Kilkenny, Dawson's Duck Club
Robin Kulakow, Yolo Basin Foundation
Lee Laurence, U.S. Bureau of Reclamation
Bob Leonard, Yolo Basin Farms
Julie MacDonald, Landowner
Duncan McCormack, Yolo Ranch
Duncan McCormack III, Yolo Ranch
Selby Mohr, Mound Farms
Jack Palmer, H-Pond Ranch
Steve Patek, City of West Sacramento
Greg Schmid, Los Rios Farms
Ted Sommer, California Department of Water Resources (DWR)
Ed Towne, Bull Sprig Outing
James Waller, Senator Outing
Dave Ceppos, Jones & Stokes
Jennifer Stock, Jones & Stokes

NEXT MEETING: Note: The meeting scheduled for January 18, 2000, has been **POSTPONED** due to schedule conflicts with the guest speakers. The new meeting date and time is February 2, 2001 from 10:30 a.m. to 1:00 p.m. at the Yolo Wildlife Area Headquarters. Our guest speakers will be representatives from the U.S. Army Corps of Engineers (Corps) and the Sacramento Area Flood Control Agency (SAFCA) who will discuss ongoing and proposed projects that could affect the Yolo Bypass (e.g., the comprehensive study; Folsom Dam reoperation; Lower American River levee improvements). A meeting agenda will be sent out soon.

ACTION ITEMS

1. Jones & Stokes will integrate the input from the Working Group into the draft Management Strategy document.
2. Jones & Stokes will deliver to the Working Group the Reclamation Board regulations that were adopted in 1996.

SUMMARY OF MEETING

Introduction

Mr. Ceppos began the meeting by welcoming the group. He asked if there were any changes or additions to the November 16, 2000 meeting minutes; there were none. The November meeting minutes were then adopted as final.

Attendees of the meeting introduced themselves. Ms. Kulakow then told the Working Group about a recent award she accepted on behalf of the Working Group.

Governor's Award

Ms. Kulakow explained that the Working Group was awarded the 2000 Governor's Award for Environmental and Economic Leadership in Environmental Restoration and Rehabilitation. She said that this shows that the Working Group is gaining recognition from high up in the state government and that, because of this, the group will more likely be respected as the pertinent voice for the Bypass. She said several prominent organizations such as Nissan Motor Company and

several counties were also recognized with awards, and this shows that the Working Group's stature is increasing and improving.

Mr. Ceppos explained that this award was established ten years ago by Governor Deukmejian and that it has significant clout. It is a testament to the Working Group's efforts over the past year.

Yolo Hydraulic Technical Advisory Committee

Mr. Ceppos said that the Technical Advisory Committee (TAC) was formed to answer questions the Working Group has had over the past year, such as: What is the actual, existing flood capacity of the Bypass, and what will happen in the Bypass if upstream levee rehabilitation occurs in the Sacramento River Flood Control Project (FCP)? The TAC is also an effort to bring together the California State Reclamation Board (Reclamation Board) and the U.S. Army Corps of Engineers (Corps) in a more coordinated and proactive manner.

Mr. Ceppos explained that there has been little coordination between the Reclamation Board and the Corps to come up with a clear, comprehensive protocol for modeling within the Bypass. There are different types of existing models that may or may not be appropriate to use depending upon the location of a proposed project in the Bypass and by what is being learned from the model.

The TAC met earlier in the morning before the Working Group to discuss these questions and issues. Mr. Ceppos stated that there is uncertainty between the Corps and Reclamation Board as to with whom specific responsibilities lie. There is no mechanism in place to determine the cumulative impacts and the positive or negative effects of changes in the Bypass. The idea is to put a system into place that allows for the equitable assessment of all potential land uses in the Bypass. A concern is that landowners will enter land use (habitat) programs and change land uses, then the Reclamation Board and the Corps will determine that no more land can go into these programs because of unforeseen impacts to flood conveyance and capacity, and future landowners will not be able to enter these programs. The proposed Bypass modeling system would help create a system that will allow for the fairest treatment of landowners and land use changes with respect to location within the Bypass. From the TAC meeting, it is clear that there are many more questions to answer before this goal is obtained.

Ms. Aramburu stated that she understands the Bypass is included in the Corps' and State's comprehensive study, and that there will be a minimalist picture of how the Bypass fits in with the rest of that very large (Sacramento and San Joaquin River Valleys) study area. She asked if it wouldn't be better to spend more money now, rather than later, to get a more comprehensive understanding of the Bypass.

Mr. Ceppos answered that this is what the TAC is trying to accomplish now. The Comprehensive Study looks at the Bypass in cross-sections 1,000 feet apart. One of the issues the TAC is pursuing is to get the digital topography that was used to create those cross-sections so that more specific data can be available for more specific modeling than the existing cross-sections.

Ms. MacDonald said that there used to be a number of ways to evaluate flood control, and it was the Corps that set up standard studies.

Mr. Ceppos added that the Comprehensive Study was initiated in response to the Governors' Flood Emergency Action Team (FEAT) report that was created after the 1997 floods. It was the state that determined there was a need to assess the entire FCP. He reminded the Working Group that the Corps's current mission is to reduce flood damage while restoring ecosystems and that is the stated goal of the Comprehensive Study.

Mr. Fulster asked if the work of the TAC will ultimately dictate what landowners will be able to do on their own land.

Mr. Ceppos responded that all Bypass landowners are already constrained on what they can do on their land because of the State's easements. The Bypass is a flood control facility. One of the reasons the Working Group was established was so landowners would have more choice in what they will do with their land. For example, there is a program that compensates farmers who convert their land from agriculture to seasonal wetlands to benefit avian species. A farmer decides he or she would like to convert his or her land to a duck club because it is a good business decision and other farmers decide to do the same. Then the agencies realize that a lot of land has been converted to seasonal wetlands in the Bypass. The agencies then prohibit any other landowners from converting land, therefore ending any chances of future, interested landowners from benefitting from this specific program.

Mr. Fulster disagreed with Mr. Ceppos' saying that the agencies will dictate what landowners can do on their land, regardless. He stated that the Southern Pacific Railroad trestles and Port of Sacramento Ship Channel were put in with a disregard to landowners.

Mr. Leonard stated that he has worked for the government a long time. He sees that this group could be waking up the government which can create problems in the future. The agencies could get tunnel vision and what Mr. Ceppos said about the agencies "realizing" what is happening in the Bypass is true. The fear is that waking up the agencies can defeat the whole purpose of the Working Group.

Mr. Egan said that when the original Bypass was designed, the entire area was covered in tule reeds. In Chapter 2 of the draft Management Strategy (Strategy), it says that the original Bypass design was 500,000 cubic feet per second (cfs). This design was completed and built before the ship channel. He asked if the current design of the Bypass, and the amount of water that now comes down the Bypass has been addressed.

Mr. Ceppos referred Mr. Egan to Chapter 3, stating that his concern is one of the issues that have already been identified as needing to be addressed. General discussion ensued about what is the existing flow capacity of the Bypass.

Mr. Egan continued saying that, historically, the Bypass was land that no one cared about. In the 1930s, it was easy for surrounding communities to divert water into the Bypass, and it was

mostly tules. He wondered if, by reducing the number of tules and marshland, there has been a reduction in the ability of the Bypass to slow down and exhaust flood waters.

Mr. Hardesty responded that massive amounts of tules, or any vegetation impedes flood flow. Theoretically, the reduction of tules and marshland could have increased the capacity of the Bypass. When the Bypass was constructed, it was intended to have a certain capacity, and no one knows if they got it right or not. It does not work as well as it was intended, especially in the southern portion. If one looks at the easements, there are no time or flow constraints. So, there is no accounting for upstream development, increased flows and duration, etc., that could continually affect landowners in a manner different from when the easements were written.

Ms. MacDonald said that the 1997 flood had flows through the Bypass exceeding 500,000 cfs, and this would have been larger if the levees upstream had not broken. HEC models are beneficial for modeling a discrete site, but they do not portray what will happen upstream with regard to changes downstream. Also, the Reclamation Board used to have only four pages of regulations regarding land use changes in floodways and Bypasses, and four years ago they rewrote them. There are now more than 100 pages that were approved without public review or input.

Mr. Ceppos addressed Ms. MacDonald regarding the HEC modeling and said that the existing RMA-2 two-dimensional model for the Bypass does show what would happen upstream with regard to downstream changes.

Mr. Egan said that he has looked at his easement and agrees that there are no time or flow constraints. But, there is nothing in his easement that says what he can or cannot do on his land.

Mr. Ceppos responded that different people have different easements, which can potentially limit that person to what they can do on their land. The TAC committee is proposing to get the modeling process standardized so that all Bypass landowners are treated as fairly as possible.

Mr. Egan stated that it would feel better if the Working Group had received the Governor's Award for resolving some of these issues. It has been all information in and no resolved issues resulting from the process thus far.

Mr. Fulster returned to the topic of the Reclamation Board regulations. When the Reclamation Board rewrote the regulations they had no landowners at the table. Now, the people that wrote those regulations are no longer working there.

Mr. Leonard said that the landowners have no idea of what is written in these regulations.

Mr. Ceppos made this an action item, to deliver these regulations to the Working Group. One of the reasons the Working Group was established was to have stakeholders involved in things such as this. With regard to the Governor's award, he said it has historically been given to entities that are in a start-up mode that are perceived as having a good likelihood of success, as a way of helping them along.

Mr. Ceppos reminded the group that there is a difference between capacity and flood risk. Capacity can stay the same, while risk can increase. Depending on location within the Bypass and the scale of a flood event, a landowner may or may not experience inundation. For example, a 10-year flood event may only inundate certain parts of the Bypass, while other areas experience no inundation at all. However, with a 100-year flood event everyone in the Bypass will be flooded; this event will result in the maximum height flood waters are ever expected to reach. A 100-year flood means that in any given year there is a 1 in 100, or 1%, chance of a flood of a specific size. There was not a lot of flood data when the Bypass was built. Therefore, since more data has been gathered since the 1950's, what was thought to be a 100-year flood prior to then has changed. There are also global climate trends that can act to skew data. So, with more data and a better understanding of data there is a more accurate understanding of what a 100-year flood event actually is. As a result, the historical design of the Bypass does not necessarily accommodate a 100-year flood event.

Mr. Egan asked who is there to update this information and make sure they get it right.

Mr. Ceppos answered that this is another goal of the TAC, to refine these questions, define problems, and to send these problems to the flood management decision makers and say "fix them." He also pointed out that this topic has been addressed in Chapter 3 of the Strategy.

Mr. Fulster asked why the Port of Sacramento could not dredge the ship channel.

Mr. Hardesty responded that Mr. Tom Scheeler from the port, who presented to the Working Group at the August 17, 2000 meeting, had said that it was too expensive. The port currently dredges the channel to keep it passable for ships. Mr. Ceppos stated that despite Mr. Scheeler's comments, this issue is still discussed in Chapter 3 of the Strategy.

Ms. MacDonald stated that the reason she is at the meeting is that it took her and her husband 18 years to buy the land that they own, and they do not want the government telling them what they can or cannot do. She wants there to be some way of making sure that, whatever happens, they will be kept whole. What strikes her about the document is that the text reads that stakeholders need to be compensated when it is really the landowners and operators who do. She further raised the issue of safe harbor agreements, stating that safe harbors has never been challenged in court, and there is presently no safe harbors program in California.

Ms. MacDonald continued that there need to be legally enforceable agreements for landowners and operators, when dealing with safe harbor agreements, that will be instruments for keeping the landowners and operators whole against the federal and state governments. Mr. Ceppos pointed out that this issue is addressed in Chapter 3 of the Strategy, but that his staff will enhance the existing text.

Mr. Egan and Mr. Leonard asked the CALFED representative, Mr. Campbell Ingram, to speak about CALFED's intentions for the Bypass.

Mr. Ingram replied that CALFED has no ability to purchase land. He is new to the project and was at the meeting to learn more about the Working Group. Because of this, he was unable to answer in-depth questions.

Ms. Aramburu stated that flood control agencies have the power to take land as under eminent domain, but they have said that they are only going to buy land from willing sellers. There are willing sellers and then there are “*willing sellers.*” Mr. Ceppos pointed out that this topic is addressed in Chapter 3 of the Strategy.

Mr. Ceppos told the Working Group that the group’s second phase proposal was formally granted by CALFED the day before the meeting. Everything was funded except the hydraulic modeling portion of the proposal. This grant will allow the Working Group’s socioeconomic and land impact questions to begin to be answered. The grant money (\$210,000), which should be available in March, will support the continuation of the Working Group meetings, a farm land appraisal subconsultant, and bringing more information and answers to the group.

Management Strategy, Revision 3 Overview

Mr. Ceppos said that there have been many important points made, so far, during this meeting. One concern already raised is that the document discusses the hydraulic connection between Cache Creek and the Bypass. There were some people that felt that information related to Cache Creek should not be included in this document, and Mr. Ceppos said if that was the general consensus of the Working Group, then those sections will be removed from the document.

Ms. Barton replied that the connection between Cache Creek and the Bypass needs to be addressed to explain that continuity of flows do not exist, even at a flood stage. However, ideas by CALFED regarding Cache Creek and any connection to the Bypass are not appropriate for the document.

Mr. Fulster said that he is worried that the addition of a gate or fish ladder on the Fremont Weir will eventually lead to an increase in flows entering the Bypass.

Mr. Ceppos responded that text will be added to the document stating that any modifications to the Fremont Weir will not pose any flood impacts or be used as a flood control structure.

Mr. Leonard wondered how a fish ladder can be put in and not have it affect flows, since water will be coming into the Bypass.

Mr. Sommer answered that fish ladders have two purposes: to deliver water downstream and to let fish pass a vertical barrier.

Mr. Fulster thinks that the main purpose is for fish passage not water delivery. His concern is that more water entering the Bypass will increase the number of splittail, making the Bypass a fishery.

A Working Group member commented that splittail are off the endangered species list.

Mr. Sommer corrected them saying it is not yet off the list, but they are in the process of taking it off.

Ms. MacDonald said that it would be helpful to have someone from the USFWS Endangered Species office come to speak to the Working Group. She also asked that if species and habitats are introduced more in the Bypass, and if there is a lack of water in the future, will someone else have to make up for this lack of water in order to support the affected species.

Ms. Barton added that a concern of YCFD is that if there is a nursery in the Bypass for affected fish species, regulators will look to Cache Creek to make up for the lack of water in critical years.

Ms. Aramburu asked if agencies approach landowners, do the landowners have the ability to “condition” the terms of the agreement—for example, that flows can only occur between this date to that date, what the compensation rates depend on, etc.

Mr. Hardesty said that if special status species are relocated to areas where they were not found before that the water users are stuck with long-term impacts of this introduced species. There is no way to tie things together; someone puts it there, and the stakeholders get stuck with the problem.

Ms. MacDonald added that if a special status species does arrive that the law says that species has to be allowed to be there and to live. But, landowners still need to be whole once economic burdens arise from the species being there.

Ms. Aramburu said that stakeholders may want to check out the San Joaquin Habitat Conservation Plan, which has dealt with this issue.

Mr. Harvey said that he has been hearing a lot about safe harbor agreements, and he wishes that this issue could be better resolved by his agency (USFWS). A Biological Opinion (BO) is a good way to address the issues of a proposed refuge and levee maintenance. He cited the USFWS Stone Lakes National Wildlife Refuge as a good example where no economic hardships have been experienced by adjacent landowners as a result of the refuge.

Mr. Ceppos explained that the federal Endangered Species Act (ESA) compliance process requires that the lead agency prepare a Biological Assessment (BA) for a particular project, which explains how things will be managed. BAs are not intended to be written in a vacuum; they are supposed to be negotiated while being developed. The regulating agency (e.g., USFWS or National Marine Fisheries Service) issues a BO stating their opinion on the project. Mr. Ceppos explained that in the Sutter Bypass, the west side water users have only a few weirs and pumps while the east

side has over 50 pumps. The USFWS and NMFS have said that eventually everyone will need to apply fish screens to their diversions. However, they have expressed a willingness to only screen the major diversions first and to then monitor the system over time to see if the Butte Creek fish populations are increasing. If they do, there is a chance that future water users will not have to screen because the populations will have stabilized from all the other restoration/fish passage efforts done in the watershed. If pumps are required, the Butte Creek water users are demanding that they receive financial help to build and maintain such screens. The solution seems to be a good way of trying to fix the problems, monitoring what occurs, and adapting approaches over time.

Ms. MacDonald inquired what is keeping the agencies at the table. She wondered if they are required to go through this process and if they have the power to force changes upon the landowners.

Mr. Ceppos replied that Lower Butte Creek has more than 130 stakeholders, and every pump out there is technically a take problem for listed fish species. The agencies decided it is more beneficial to work with the stakeholders than to force things upon them. As a result, 13 new weirs and fish ladders are being installed to improve the system, and this is keeping everyone whole. Over the past 2–3 years several hundreds of thousands of dollars have been spent on this process. What is keeping regulators at the table is the knowledge that a better way of dealing with large numbers of stakeholders needed to be created that was less litigious and expensive and more publically acceptable. He further stated that, at this point, the agencies will look very bad for spending a lot of money on a failed public outreach effort and so that too helps the process along.

Mr. Egan said that after being at the table for over a year, he has not heard much about the intent of the agencies that have control in the Bypass. His thought is that if the federal government was not involved there would not be these problems. He questioned what the Working Group is here for and what is the intent and position of the Working Groups “opponents” on the Bypass.

Mr. Fulster commented that Mr. Egan had a point and asked if there is a fishery in the Bypass will stakeholders, here, have to screen their pumps in the future, similar to what has happened in the Sutter Bypass.

Mr. Mohr stated that the best defense is a good offense. There needs to be an attachment at the end of the document that each stakeholder writes that says that this is how and why I have participated in the Working Group effort. That is the important part, that readers of the document know that the Yolo Bypass stakeholders are organized and resolved to not be taken advantage of.

Mr. Egan asked if the Working Group was established because of the proposed North Delta Wildlife Refuge (refuge).

Mr. Ceppos answered no; the group was envisioned well before the refuge was ever proposed. It was just the way the sequence of events played out. Also, this group does not act as rule over any individual member of the group.

Mr. Kilkenny said that the No Man’s Land, East Davis Fire Protection District wants to make sure the document addresses that there is to be no loss of revenue and the safety needs of fire protection and emergency services. With increasing community activities, any net loss of revenue

will impede the means of providing these services. Mr. Ceppos pointed out that this is addressed in Chapter 3 of the Strategy.

Mr. Harvey addressed Mr. Egan's earlier refuge comment. The USFWS wants to preserve these places for the stakeholders. The stakeholders are in the driver's seat; they are not trying to force the refuge on the stakeholders.

Mr. Leonard asked if there have been any discussions between the USFWS and the Glide Ranch trust.

Mr. Harvey answered no.

Mr. Dorian asked if there will be enough water in dry years, and will this conflict with the management of created habitats and the protection of endangered species.

Mr. Ceppos responded that Chapter 3 in the document discusses that any habitat-based land use changes are not to be at the expense of agricultural and duck club land uses.

Mr. McCormack III wondered how the project team can be confident to know that this document will pass down through new generations of stakeholders and agencies. If there is a state of emergency, this document could be put aside as conditions change within the Bypass.

Mr. Ceppos said that people have to be realistic about things such as eminent domain and states of emergency. These things happen in rare occurrences but that Mr. McCormick is correct and that such conditions could occur. He pointed out that such situations could occur whether the Strategy exists or not and that the way to keep this document alive is by keeping the Working Group going.

Ms. Barton asked how the Working Group can establish local provisions for safe harbors agreements.

Mr. Ceppos responded that issues like this are often not solved or challenged until a collective group unites to say, for example, that no one will sell their land until protection from liability conditions change.

Mr. Mohr suggested that the title be reworded to incorporate and reflect that the document is from the Working Group.

Ms. MacDonald said that there should be a section that speaks to the issue of the ESA and safe harbor issues, in the situation of the refuge, and legislative exceptions.

Mr. Ceppos agreed that this is an interesting idea.

Mr. Ceppos concluded the Working Group meeting by saying the next meeting will be held on January 18, 2001 from 10:30 a.m. to 1:00 p.m.

NOTE: The next meeting has been postponed until February 2, 2001, from 10:30 a.m. to 1:00 p.m.