

Ecosystem Restoration Subcommittee Meeting
Thursday, January 15, 2004
650 Capitol Mall, 5th Floor, Bay-Delta Room
Sacramento, CA
Revised Final Meeting Summary

Subcommittee members (or their alternates) and agency liaisons present:

Gary Bobker (TBI)	Ryan Broddrick (DU)
Diana Jacobs (CDFG)	Bernice Sullivan (Friant WUA)
Serge Birk (CVPWA)	Dave Harlow (USFWS)
Lisa Holm (CCWD)	Steve Evans (FOTR)
Patrick Akers (CDFA)	Mike Aceituno (NOAA Fisheries)
Todd Manley (NCWA)	Allan Oto (USBR)
Nick DiCroce (CalTrout)	Walt Hoye (MWD)
Lloyd Fryer (KCWA)	

Introductions and Subcommittee Status

Gary Bobker called the meeting to order and began with introductions. The summary of the previous meeting was approved.

Integration Matrix

Todd Manley led the presentation about the integration matrix. Todd explained that the ad hoc committee hoped to produce something that could be used by BDPAC to guide cross-program integration. The first handout lists broad ERP goals identified in the Draft Stage 1 Implementation Plan, which the ad hoc committee cross-referenced with the ROD commitments and other program elements goals. The second handout provides the rationale for the inter-relations between the program elements' goals. Lisa Holm added that the ad hoc committee wants feedback about the matrix. Serge Birk thanked Dave Zezulak of CDFG for his help in providing an overview of the ERP for the ad hoc group.

Gary Bobker suggested modifying the rationale table to include potential conflicts as well as potential synergies, and that scientific uncertainty, policy issues, and funding ought to be included as potential conflicts. Gary saw two potential uses for the matrix: as a template to understand what and where the issues are and as a means to help focus on prioritizing issues.

Discussion ensued regarding the appropriateness of including scientific and technical uncertainties or funding to the matrix. At the suggestion that the matrix could be used to show where ERP objectives are internally in conflict, Diana Jacobs reminded the subcommittee that the BDA did not like the Drinking Water Quality policy framework, upon which the ERP matrix was being modeled.

Serge said that an approach the ad hoc committee discussed was to pick one program/subcommittee and see how that integrated with ERP. For example, he suggested looking at the Water Supply Program's goals and objects or the Drinking Water Quality Program. Todd agreed that some programs/subcommittees seem more likely to mesh with ERP than others, and that the matrix ought to help in identifying which subcommittees the Ecosystem Restoration Subcommittee ought to be working with more closely and communicating with better.

Gary stated that he thought singling out a few subcommittees with whom to communicate was a de facto prioritization and that he was not comfortable elevating the matrix to a BDPAC meeting until all subcommittees have been contacted. Serge said at this time the ad hoc committee is looking for endorsement of the process, not the product.

Gary suggested that the subcommittee and public review the matrix and provide feedback to the ad hoc committee. The matrix will be sent out over the subcommittee reflector and individuals can send their comments to the ad hoc committee via the reflector. Gary asked the ad hoc committee document and bring the feedback back to the next subcommittee meeting. Feedback is due to the ad hoc committee no later than Friday, January 30.

San Joaquin River Dissolved Oxygen/Total Maximum Daily Loads Studies

At the last subcommittee meeting, Lowell Ploss of the San Joaquin River Group Authority requested time to present an update to the subcommittee about the Stockton Deep Water Ship Channel dissolved oxygen (DO) and Total Maximum Daily Loads (TMDL) studies. Mark Gowdy, Sacramento Valley Regional Water Quality Control Board, Barbara Marcotte, BDA ERP, and Lowell Ploss gave the presentation to the subcommittee.

Mark began the presentation with background information about the SDWSC, including the fact that it is on the Clean Water Act 303d list. In 1999 a steering committee was formed to study the DO problem and develop an implementation framework to solve the problem as an amendment to the basin plan. After years of study, the CEQA process began on the implementation plan with scoping sessions in December 2003, and Mark anticipates that the State Water Resources Control Board will adopt the plan by mid-2004.

Barbara explained the role ERP has played in funding DO projects and studies. Although the implementation planning was not funded entirely by ERP, several of the actions and suggested projects have received ERP funding. As of December 2003, total ERP funding for DO was \$11.6 million, approximately \$4 million in Prop. 204 funding and the remainder from Prop. 13.

ERP's current focus is maintaining stakeholder participation. After submitting the implementation plan, Lowell Ploss resigned as chair of the steering committee, and with that there has been a shift from local involvement and leadership to more reliance on ERP staff. Consequently, ERP is focusing on maintaining the DO technical work group. Barbara told the subcommittee that there is no implementing agency to operate an aeration system, etc. or oversee long-term implementation efforts, but the Delta improvements process is continuing and DO needs to be part of that discussion. She completed her presentation by listing some of the challenges facing the efforts to solve DO, such as related TMDL efforts, identifying a local implementing agency, forming a science panel, and funding and contracting uncertainties.

Lowell gave the stakeholder view of the DO discussions. He explained that the steering committee included more than 50 representatives from various stakeholder groups ranging from agricultural water uses to water districts. Part of the uniqueness of the SDWSC's DO problem is that no single entity can be identified as being responsible for it: upstream users contribute, farming contributes, and the ship channel itself contributes. As discussions continue, it may be that the local lead agency for an aeration demonstration project may be handled through a joint powers authority; however, it may be integrated with some other south Delta improvements in which case a lead agency would not be needed.

Dan Castleberry said that this presentation was timely because there are a lot of efforts coming together regarding Delta improvements, such as the Integrated Water Operations Framework and Forum (IWOFF). Under IWOFF agencies implementing Delta improvements are looking at all water quality issues that need to be addressed and are developing a plan to do so. An IWOFF status report is expected on January 20, 2004. Perry Herrgesell said that he thought it was crucial to have the subcommittee working collaboratively with IWOFF and that everyone be talking with each other because no one agency can solve the problem alone and it is not just a local issue.

Questions came up regarding ERP funding and how DO projects that ERP has funded also benefits other BDA programs and how is ERP advancing those programs' goals and objectives along with its own. Ryan Broddrick asked if the regional board was using the same quality assurance/quality control analysis for DO as they do for conditional agricultural waivers; Mark replied that it was complex task, that communication was taking place to share information. Ryan suggested that the regional board needed to have consistency in its data collection or they ran the risk of losing the utility of the information and how they spend public funds. Another question came up regarding the applicability of the DO modeling to other efforts; Mark said that BDA was coordinating that and others are invited to use the models they have developed. Other factors affecting the water quality of the SDWC include nonpoint sources and reduced flow.

Battle Creek Update

Rebecca Fris of the ERP began the Battle Creek update by stating that Battle Creek began as an ERP directed action in 1998-99. Subsequent proposals to complete the restoration project in Battle Creek are undergoing a lengthy review process, the latest of which would be the subject of this update.

Mary Marshall is the new USBR project manager for the Battle Creek Salmon and Steelhead Restoration Project, replacing Carl Werder, who retired. She briefly explained that the project had two purposes: to restore anadromous fish habitat and to minimize loss of hydropower production. To meet these purposes, a 1999 Memorandum of Understanding (MOU) was signed between USBR, USFWS, PG&E, CDFG, and NOAA Fisheries that had three elements: (1) project management, (2) adaptive management, and (3) FERC license amendment. Mary highlighted key items that were accomplished, and what key items are ongoing, such as finalizing the EIS/EIR and developing a revised adaptive management plan based on the Technical Panel's review. She then quickly outlined the schedule to meet key items, such as beginning formal Section 7 consultation in February after the Action Specific Implementation Plan (ASIP) is delivered to USFWS, NOAA Fisheries and CDFG. Handouts listing the information she presented were available at the meeting.

Rebecca briefed the subcommittee about the project review process. The project review process is iterative, and the Project Management Team will provide their initial response to the Technical Panel's review and recommendations by January 26, 2004. There is a separate science panel review regarding the Coleman National Fish Hatchery and the report is set to be completed the week of January 26, 2004, and the PMT will review that as well. After the response to the Technical Panel report is final, including a revised adaptive management plan, the Technical Panel will make its recommendation to the ERP Selection Panel, who will review the Battle Creek proposal along with all ERP projects being considered for funding; the Selection Panel meets in April to develop an initial recommendation and again in May to finalize a recommendation after considering public input. Rebecca anticipates giving the BDA an informational presentation about Battle Creek in April to coincide with the initial recommendations. A final Selection Panel recommendation in May will meet the deadline for the BDA to consider approving additional funding for the project at its June 2004 meeting.

Serge Birk (CVPWA) expressed his continuing concern and questions about how public review comments are addressed and incorporated into the process and subsequent decisions. Rebecca stated that public review comments are collected and handed to the Selection Panel, who are charged to consider the comments in making their recommendations. Dan stated that all public comments are also posted on the website, so everyone interested can read the comments.

In response to Gary's question to Serge asking if he were concerned that dissenting opinions are not being adequately presented to decision makers, Serge said yes, he was concerned that the Selection Panel needed to develop a sense of the stakeholder buy-in to the project, but that the stakeholder buy-in is qualified. He gave the example that the project needs to be clear that it is restoring habitat for wild native fish, not for hatchery fish. Serge later added that he was concerned that the project's purpose is not being adequately stated, citing a Science Board statement that they were unclear about what to expect from the project.

Dan said that he believed all the right information is reviewed by the correct people, and that the 30-day public review period of the Selection Panel's initial recommendation provides a safeguard to ensure that various viewpoints are considered in the decision making process. In closing this part of the discussion, Gary invited Serge and anyone else to email the subcommittee reflector with their suggestions of what information they thought the Selection Panel ought to consider in making its draft recommendation.

Chip Stalica (PG&E) gave a presentation to the subcommittee about the results of a cost estimate review of the Battle Creek Restoration EIS/EIR alternatives. Chip is PG&E's manager for the Battle Creek Hydroelectric Project and liaison to the Battle Creek restoration project. Chip explained that this cost review was in response to a request by then-Resources Secretary Mary Nichols and that the group decided to include some additional alternatives in their analysis.

In addition to Chip, the group conducting the cost review included Steve Wald, director of the California Hydropower Reform Coalition (CHRC); Nancy Ryan, an economist with Environmental Defense; Jeff Payne, an engineer with Natural Heritage Institute; Dennis Gathard, an engineer representing CHRC; Kreg McCollum, an economist representing Metropolitan Water District of Southern California; Kim Nguyen, an economist with USBR; and Sally Lubben, an economist with PG&E.

Chip said that the economists drove the choices and sensitivity analysis in the process, which the group felt allowed for an unrestrained and unrestricted forum and process. The group used FERC's current cost economic method because the group felt it provided adequate information about the relative costs of the various restoration alternatives being considered. Chip noted that economics are summarized from a societal perspective, did not include calculations of environmental benefits, and that there are still a lot of uncertainties with foregone power costs.

Before outlining the additional alternatives considered in this cost review, Chip reminded the subcommittee of the MOU alternative, which is to decommission five dams, install screens and ladders on three dams, and prevent mixing of

North and South Fork Battle Creek waters. The three additional alternatives included:

- Alternative A—Decommission the entire Battle Creek Hydro Project.
- Alternative B—the MOU Alternative minus the screens and ladders but with decommissioning all diversion dams downstream of natural barriers.
- Alternative C—the MOU Alternative minus the screens and ladders, plus decommissioning all diversion dams and powerhouses downstream of natural barriers.
- Because of focused interested, the group also reassessed an alternative that is in the EIS/EIR—the MOU Alternative substituting Eagle Canyon screen and ladder for decommissioning Eagle Canyon Dam (6-dam removal).

In comparing the MOU Alternative with the other alternatives, the group found that the MOU Alternative and Alternative B were essentially equal in cost (expected costs are \$113 and \$111, respectively) and that expected cost of alternatives A and C is significantly higher than the MOU Alternative.

Randy Livingston (PG&E) said that participation in this cost review well represented a vision of what CALFED is all about: the process was very transparent and the group looked at the review from all perspectives. He said that the group focused on presenting perspectives, not positions, and was looking for better and possibly cheaper alternatives, given the cost increases. He emphasized that this review only looked at the economics of the alternatives, not at other factors such as habitats, benefits, schedule differences, or differences in project types. While there essentially is not a cheaper alternative to the MOU Alternative, from the cost perspective there is one very similar—Alternative B.

Randy discussed what he saw as the two tangible differences between the MOU Alternative and Alternative B. First, the MOU Alternative is capital intensive and would result in about a 30 percent reduction in energy production; Alternative B has lower capital costs but would result in about a 50 percent energy reduction. Second, the MOU Alternative represents a substantial gain in habitat, while the relative gains in habitat under Alternative B still need to be analyzed; from the PG&E perspective, Alternative B offers smaller habitat benefits for the costs. Randy needed the subcommittee to understand that timing differences between the MOU Alternative and Alternative B posed a potential loss of a year or more on habitat restoration, and that PG&E was still keenly interested in living up to its habitat restoration commitment.

Steve Wald (CHRC) told the subcommittee about his observations of the process. First, he spoke of the incredible work and commitment by PG&E and the agencies that is reflected in the Battle Creek project and, from his perspective, the Battle Creek project must succeed because it was important for winter-run salmon and the public. He defined success of the project as finding and implementing the best project for the public dollar and lowest risk to fish. He

spoke of the cost review process as a positive experience, responsive to public review, fair and balanced, collegial and transparent; he said that the whole team was open-minded and solution-oriented.

Steve said the findings of the analysis surprised everyone, and that the choice appeared to be: screens and ladders or incremental power. Given the outcome, he said the question is now, "Where do we go from here?" He said that what got us here was an open process and that he did not think the process was over, but that from here, everyone would continue their commitment to open-minded analysis as they firm up their choices: MOU Alternative or Alternative B? The next step is to consider the legal, procedural, and ecological questions.

Serge asked three questions: how does this analysis fit within the NEPA/CEQA process; how does the expected cost associated with the alternatives relate to the \$70 million in public funds; and does PG&E contribute more funds? Chip responded that the \$113 includes the \$70 million and that the \$111 million (for Alternative B) represents reduced construction costs but an increase in foregone power. Walt Hoyer (MWD) stated that he did not see that the costs to CALFED were necessarily equivalent just because the totals were similar. Randy added that other intangibles, such as schedules and benefits, have yet to be analyzed; as an example he said that under the MOU Alternative the public's contribution to offset costs of foregone energy is fixed, while under Alternative B the cost could range from \$0 to \$63 million.

Brent Walthall (KCWA) stated that he had a lead role in negotiating the MOU when he worked for the Bureau of Reclamation, and observed that the price difference was not enough for PG&E to renegotiate. He asked what would be the motivation for PG&E to renegotiate the MOU. Randy replied he did not know. Brent stated that PG&E will likely engage in the conversation, but would be interested in getting a better deal. He expressed concern that in renegotiating the MOU, CALFED risked incurring higher costs for little or no additional benefit.

The need for continued risk assessment and whether the cost differences were significant enough to warrant renegotiating the MOU followed. Steve Evans (FOTR) pointed out that habitat restoration ought not to be based on weighted usable area for fish, but on restoring ecosystems. He also said that while environmental interests were present and commented on the MOU, they were not negotiators, and in hindsight, he thought that was a mistake. He said among the key issues raised in negotiations included PG&E's liability if the restoration project did not exist—and that cost ought to be factored in somehow. He saw the problem of the MOU as locking the agencies and PG&E into a pre-determined solution and alternative and not really allowing them to look at other alternatives that could be cost-competitive and provide for more restoration. He said that Alternative B addresses a key issue in the EIS/EIR regarding the efficacy of fish screens. He saw that Alternative B had a great advantage over the MOU

Alternative because it removes that uncertainty—without diversion dams and fish screens there is 100 percent fish passage.

From the ecological perspective, Steve continued, Alternative C is more attractive—it is true restoration and is obviously quite a bit more expensive. He expressed his difficulty in accepting that anything other than the MOU Alternative could stall the project and thought that the MOU could be amended without being renegotiated and that the environmental review process could be adjusted without adding time. He said that this brings up a central decision that goes to the core of the ERP restoration program—what level of restoration are we going to achieve?

Discussion continued regarding the feasibility of engaging in additional analysis, the impact on the current EIS/EIR process, and the concern that support and momentum for the project may be lost if the additional analysis results in a one to five year delay in the NEPA/CEQA process. Mary Scoonover (Resources Law Group), representing philanthropic groups providing funding to the project, voiced two concerns. First, regardless of the selected alternative, there are a lot of costs for which there is no funding and the longer this process continues, the less likely the resources will be available. Second, with the chance of losing existing funding, she wondered if the economic and other issues could be put on a fast track, and she thought the June BDA meeting was a reasonable timeframe.

Brent restated his conclusion that because the costs are essentially the same for the MOU and Alternative B projects, there is little or no room to negotiate. Any renegotiation to switch to Alternative B would only be beneficial to PG&E if they can gain the advantage of a reduction in cost, and similarly CALFED would only benefit from a switch to Alternative B if it received a reduction in costs. Because the cost for the two projects is the same, the only way one party can gain a reduction in cost is if the other party agrees to an increase in costs. Because both CALFED and PG&E are bankrupt at this point, it is not possible for either party to accept increased costs. As a result there is no room for negotiation on a new alternative.

Gary summarized the concerns expressed during the discussion and asked “Where do we go from here?” He asked for a commitment from the parties to put on the fast track an investigation of the issues raised and to come up with an approach that would allow for moving forward on those implementation elements that were common to all alternatives while not foreclosing on options. Randy responded that he saw three things that needed to be done: (1) a first cut look at biological benefits; (2) explore the schedule changes if Alternative B is considered; and (3) get the conditions associated with Alternative B regarding long-term power to keep the commitment equivalent to the MOU Alternative on CALFED’s part.

Gary said that he did not think it was acceptable to discard the alternative or to discard the MOU, but given that there needs to be a fast track reexamination of the alternatives he was looking for a commitment to achieve that. Randy said that he would take the action item to the agencies and report back to the subcommittee next month.

Milestones Assessment

Darrin Thome (USFWS) gave a brief presentation about the status of the milestones assessment. The milestones assessment is not a NEPA document, but is taking place in anticipation of the re-consultation regarding the programmatic biological opinion set to begin on March 18, 2004. The milestones assessment is to ensure that ERP, MSCS, and the Water Quality Program are being implemented consistent with the programmatic FESA, CESA, and NCCPA compliance. This assessment does not reassess the entire CALFED program.

The task is divided into two parts. The first is an administrative component in which staff reviews information in the files. The second is a field review to confirm what really happened and to review what other components can be implemented. The review is taking place on a regional basis.

Darrin said that the milestones assessment evaluation is scheduled to be completed and available for public review by March 19, 2004, and that the deadline for comments is April 15, 2004.

Ecosystem Restoration Program Status Report

Chief's Report

Because of time limitations, Dan Castleberry said that the items under program status on the agenda had been tabled, but would be discussed at the next subcommittee meeting. Dan did point out that there were two handouts that focused on the ERP's Proposal Solicitation Process. The first was the ERP Science Board's memo regarding proposed changes to the process. The other was the ERP's response to the ERPSB memo. The ERP response identified a modified plan to proceed with solicitations and ERPSB is comfortable with the modified plan. Dan promised a more complete presentation at the next subcommittee meeting. Both the memo and the response are posted on the ERP Science Board website.

Public Comments

Patrick Akers, from the Working Landscapes Subcommittee, explained that the WLS advocates adding a socio-economist onto the BDA Independent Science Board and has written a memo to the BDA addressing that issue. WLS is inviting

other subcommittees to join in on the request. Patrick handed out a copy of the letter and memo and asked that this item be on the subcommittee's February's agenda.

Gary suggested that an update on the Independent Science Board be included on the subcommittee's February agenda and that WLS' request be part of that discussion.

Next Meetings

The next meeting for the Ecosystem Restoration Subcommittee is 9 a.m. to 1 p.m. on Thursday, February 19, 2004, from 9 a.m. to 1 p.m. Agenda items include updates on the Integration Matrix, Battle Creek, the Independent Science Board, the PSP process and upcoming program plans. The subcommittee also tentatively scheduled a meeting for Thursday, March 18 or March 25, 2004, from 9 am. to 1 p .m.