

SAN FRANCISCO BAY AREA WETLANDS RESTORATION PROGRAM EXECUTIVE COUNCIL

MEETING SUMMARY JUNE 10, 2003

Executive Council members present:

Co-chair Alexis Strauss (U.S. Environmental Protection Agency)
Co-chair Mike Sweeney (California Resources Agency)
Loretta Barsamian (San Francisco Regional Water Quality Control Board)
Miles Croom (NOAA Fisheries)
Helen Flach (Natural Resources Conservation Service)
Robert Floerke (California Department of Fish and Game)
Beth Jines (California Environmental Protection Agency)
Eugene Leong (Association of Bay Area Governments)
Lt. Colonel Michael McCormick (U.S. Army Corps of Engineers)
David McKinnie (NOAA Ocean Service)
Sam Schuchat (State Coastal Conservancy)
Walter Swain (U.S. Geological Survey)
Paul Thayer (California State Lands Commission)
Will Travis (San Francisco Bay Conservation and Development Commission)

Staff and Others:

Brian Baird (California Resources Agency)
Marcia Brockbank (San Francisco Estuary Project)
John Brosnan (Wetlands Restoration Program)
Mike Connor (San Francisco Estuary Institute)
Kathy Dadey (U.S. Environmental Protection Agency)
Steve Frasier (Bahia Homeowners' Association)
Heather Gustafson (Bay Planning Coalition)
Tott Heffelfinger (Sierra Club)
Mike Hoover (U.S. Fish and Wildlife Service)
Nadine Hitchcock (State Coastal Conservancy)
Beth Huning (San Francisco Bay Joint Venture)
Amy Hutzell (State Coastal Conservancy)
Marge Kolar (U.S. Fish and Wildlife Service)
Ellen Johnck (Bay Planning Coalition)
Shelby Lathrop (Shaw Environmental)
Marshall Levy (Bahia Homeowners' Association)
David Lewis (Save The Bay)
David Lipsetz (Association of Bay Area Governments - Bay Trail)
Steve McAdam (San Francisco Bay Conservation and Development Commission)
Mike Monroe (U.S. Environmental Protection Agency)
Chris Potter (California Resources Agency)
Barbara Salzman (Marin Audubon Society)
Karen Schwinn (U.S. Environmental Protection Agency)
Stuart Siegel (Wetlands and Water Resources)

Kristen Strunc (City of San Jose)
Neal Van Keuren (City of San Jose)
Bruce Wolfe (San Francisco Bay Regional Water Quality Control Board)
John Zentner (Zentner and Zentner)

Summary Highlights

- The Restoration Program hosted 15 meetings and provided 9 presentations since November; the group has established and is fostering collaboration with the San Francisco Bay Joint Venture and the South Bay Salt Ponds planning process. (More details, Item #3, Page 2)
 - After several rounds of comments and responses, staff presented the final Charter of Working Principles to the Executive Council for endorsement; the Council endorsed the Charter by consensus. (More details, Item #4, Page 3)
 - In an effort to address concerns about the Design Review Group's (DRG) review of mitigation projects, the Council approved a plan where the DRG will only review a mitigation-based project when that project is a publicly sponsored project and a reviewing, permitting agency staff requests its review. This approach drew several public comments. (More details, Item #5, Page 5)
 - Many achievements are being made in the building of the South Bay Salt Ponds Interim Stewardship and Long-Term Planning processes. (More details, Item #6, Page 7)
 - The Coastal Conservancy has recently released major EIR/EISs for the Napa River Salt Marsh Restoration and Invasive Spartina Project (More details, Item #7, Page 8)
 - The Program Coordinator will now provide monthly summaries of WRP goings-on and will be working with the Coordinating Committee to host a meeting of local environmental NGOs in the coming months (More details, Item #9, Page 9)
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Agenda Item #1: Coffee and Greeting

Agenda Item #2: Introductions and Review of Agenda Items

Mike Sweeney and Alexis Strauss co-chaired the meeting. Mike began by initiating a roundtable of introductions.

Agenda Item #3: Previous Executive Council Meeting Summary and Coordinator's Report

Mike Sweeney asked John to present the agenda item. John Brosnan stated some names of groups and documents have been changed since the last meeting; the Management Group is now the Coordinating Committee, the Monitoring Program is the Monitoring Group, the Science Advisory Groups are the Science Groups, and the Working Agreement is now the Charter of Working Principles. John said the two primary issues addressed since the last Executive Council meeting were the revision of the Charter of Working Principles and the defining of the Monitoring Group and its public interface. Insofar as the Working Principles, John said the changes to the document would be covered in Agenda Item #4, but he assured the Council members that all of their comments and input had been incorporated into the final version of the document. As for the defining of the Monitoring Group, John said there had been

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a turnover in the chairpersonship of the group and it was serving as a forum of the sharing of information on wetlands monitoring around the Bay. John said the Public Involvement section of the Working Principles document addresses the interface with the Monitoring Group and all Program groups.

John stated during the period November 4, 2002 – June 10, 2003 the San Francisco Bay Area Wetlands Restoration Program conducted fifteen gatherings among the Coordinating Committee, the Design Review Group, and the Wetlands Monitoring Group. In terms of the public outreach, John made nine presentations to staff of environmental firms, public agencies, non-profit organizations, and one national conference audience (Restore America's Estuaries "Saving Our Coastal Heritage" conference in Baltimore). The Coordinating Committee spent a great deal of time addressing issues with the Working Agreement/Working Principles, defining the niches of the Restoration Program working groups as they relate to the San Francisco Bay Joint Venture and South Bay Salt Ponds restoration process, and initially handling concerns with the Design Review Group, both internal and policy-related subjects. The Design Review Group (DRG), once in November 2002 and again in March 2003, released a Request for Qualifications (RFQ) for paid Design Review Team Members in order to expand the ranks of the group's expertise; the group has added six new, non-agency staff members since November 2002 in addition to pro bono participants. The DRG has taken up technical review of the Breuner Marsh Mitigation Bank, the Crissy Field Monitoring Plan and Protocols, the Lake Merritt Marsh Restoration, the Coyote Hills Wetlands Enhancement and Drainage Improvements Project, and the Bahia Lagoon Dredging and State Lands/Twin House Ranch Project. Participants on the Wetlands Monitoring Group have structured the group to function as a forum for the sharing of information on wetlands monitoring. Group participants are presently involved in the development of a Wetlands Rapid Assessment Process (WRAP), the California Rapid Assessment Method (CRAM), and a wetlands project tracking system, available online (at WWW.WETLANDTRACKER.ORG). John participated in three meetings of the Joint Venture's Public Outreach Committee and is building a key role with regulatory agency coordination for those involved in the South Bay Salt Ponds restoration, coordinating the Trustee and Regulatory Agency group meetings. The WRP's Executive Council is expected to serve as the Executive Council identified in the interim management structure for that project. Finally, John has been preparing for a critical role in the founding of the Public Outreach Team and Speaker's Bureau for the planning and restoration process.

Agenda Item #4: WRP Charter of Working Principles

Mike Sweeney asked John to present the agenda item. John restated the primary directives from the November meeting, which included addressing all Federal Advisory Committee Act (FACA) concerns and establishing collaboration with the San Francisco Bay Joint Venture. At the November meeting, Alexis Strauss asked the Council for volunteers to assist in an ad hoc committee to assist in the rewrite of the document and Loretta Barsamian and Will Travis volunteered; four members of the Coordinating Committee also assisted in the rewrite. This subcommittee met on January 9, 2003, and discussed each comment submitted on the document received since August 13, 2002. Prominent suggestions at this meeting included asking the Council to adopt or endorse - instead of sign - the document and changing the name from the Working Agreement to Working Principles. Following this round of review, the Revised Draft Working Principles was re-circulated among WRP participants and additional comments were

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submitted from the San Francisco Bay Joint Venture Management Board and the State Coastal Conservancy. All comments were either incorporated into the Working Principles or otherwise responded to; John established a summary of all of these comments and their responses that can be made available for review.

Since that meeting, John worked through the Coordinating Committee to address all FACA-related concerns with the Working Principles document. Comments were collected from the Department of the Interior's Solicitor Office, Counsel from the U.S. Army Corps of Engineers, Counsel from the U.S. Environmental Protection Agency, and Counsel from the California Department of Fish and Game. The central issue was that the Coordinating Committee would not be allowed to make recommendations to the Executive Council on any decision-making matter so long as there were non-governmental entities participating as voting members on the Committee. As for the Science Groups, non-governmental staff participants may take part in the groups as long as they are either under contract to the Program (as is the case with the Design Review Group) or participating on "workshops" for particular subjects (as takes place within the Monitoring Group). The Committee explored the option of designating the non-governmental entities as non-voting ex-officio members; however, further consultation with U.S. EPA counsel revealed the voting/nonvoting distinction is not a sufficient enough factor in FACA cases to avoid successful legal challenge. In an effort to preserve its ability to make recommendations to the Executive Council, proposed the following changes to the Working Principles: SFEI and the Joint Venture will be removed from the Coordinating Committee as official members (although these organizations may be invited to participate in meetings on a case-by-case basis); SFEI and the Joint Venture will continue to be listed elsewhere in the document where they do not serve in an advisory capacity; the Coordinating Committee again has the ability to make recommendations to the Council; and, statements that non-agency members can participate on the Design Review Group and Monitoring Group if "under contract" to the WRP or as participants in workshops (e.g., being absolutely clear non-agency Design Review Team members who are paid participants and selected via an RFQ should be called "under contract" to the WRP).

Alexis Strauss stated the Working Principles document has been substantially revised and that the Council was expected to endorse the document at the conclusion of the discussion. Alexis called on Loretta Barsamian and Will Travis and asked them to share their experiences with the rewrite of the Working Principles document. Loretta felt all concerns had been adequately addressed. Will felt all substantive issues and legal concerns had been addressed; he felt a problem with restoration is the incomplete knowledge of each agency's program and the WRP provided a good forum for alleviating that as well as an overall bold approach to restoration. He stated the document was a charter and, thus, no one was obligated to attend meetings. David McKinnie asked about putting the WRP through a FACA-approval process and John said such an experience would be time consuming and very trying, and the certainty of success is unknown. Beth Huning stated the Joint Venture would be supportive of the Council's decision and Mike Connor said he was happy to see the group form and was supportive of the necessary changes. **Tott Heffelfinger pointed out Attachment B seemed to only apply to the Executive Council and should be amended to apply to all WRP participants. David Lewis requested the WRP provide more proactive notification of meetings than listing on the website only, such as notices by email and postcard. He added his desire to see this notification applied to all meetings, particularly when any decisions were being made at meetings.** Alexis stated these concerns could be addressed through commitment and appendices could be added to the

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Working Principles; she advocated moving forward and sought consensus from the Council on endorsement of the document.

Executive Council Action:

The Executive Council -- with fourteen members present -- endorsed the Charter of Working Principles by consensus.

Agenda Item #5: Addressing Design Review Group (DRG) policy concerns

Mike Sweeney asked John to present the agenda item. John stated there is a consensus the DRG provides a unique service that is not available anywhere else around the Bay. However, there remains a sentiment against the Group as relates to its historic approach to review of compensatory mitigation projects. Several individuals have expressed qualms with the Group's review of mitigation projects based on the assumption review of these projects provides political credibility to the project's proponent in his or her quest for a permit. There is a demand among DRG participants and members of the public to have Executive Council-level input on how the Group should approach review of compensatory mitigation projects. The concern is that if the Group continues to review mitigation projects as it has since last fall, there will continue a groundswell of opposition generated primarily from the local environmental NGO community. Such opposition could serve to undermine the credibility of the WRP and hamper its viability in the long term. However, the withholding of assistance to mitigation projects could lead to several projects being implemented without the benefit of such third-party peer review. John then referred the Council to a letter from David Lewis to Resources Secretary Mary Nichols in which he requested a moratorium on DRG project review; Secretary Nichols responded and stated, instead, the group would hold release of any project feedback until after the Council had discussed the issue.

In preparing its recommendation for the Executive Council, the Coordinating Committee discussed but eliminated the options of: allowing the DRG to review a mitigation-based project only after some preliminary level of review (e.g., preliminary ecological criteria setting for the compensatory project) by regulatory agency staff of that project; allowing the DRG to review a mitigation-based project only after the project for which the mitigation project has been created is permitted; allowing the DRG to review, as one, both the compensatory mitigation project as well as the associated project that created the need for the mitigation project; and, disallowing the DRG from reviewing mitigation-based projects, altogether. The group determined, through a non-unanimous majority vote, the Design Review Group should be able to review mitigation projects. The Committee recommended the Council allow the Design Review Group to review compensatory mitigation project designs, only when a permitting agency requests such review and when the project to be reviewed has a public agency sponsor (i.e., the project is a public project); this directive would be adopted for a period of 12 months, with a subsequent review of the effectiveness of the approach. John then asked the Council for questions.

Will Travis suggested refining the recommendation by adding an interim reporting period to test this out with reports back to the Council on progress. Loretta wanted to clarify that

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regulatory staff were not participating on [project specific] Design Review Teams, and John explained they do not. Alexis then asked for public comment. Ellen Johnck stated the Bay Planning Coalition (BPC) felt the DRG is working toward a common goal of increased coordination and collaboration on wetlands restoration success. She said the BPC would like to see the minimum amount of restrictions placed on DRG review; she expressed support for Travis' suggestion and added the BPC would support the compromise. Stuart Siegel asked why the compromise was slanted towards public projects; John said the Committee felt there were several public works mitigation projects in the region and it addressed the concern of using public money to provide assistance to private project sponsors. Mike Monroe added the Committee is trying to grow the group and respond to concerns at the same time; this approach will likely help to get the group functioning efficiently. Mike stated the need to provide review to all projects, but that this compromise would allow more time to figure out how to do that most effectively. Steve Frasier felt the DRG was a great group to view in action. He expressed his disappointment with the group's review of the Bahia/Twin House project since the Bahia team was paid to attend, the dialogue was completely technical and yet they received no Letter of Review. He asked for the project to be grandfathered in and allow the letter to be released. He felt public money going only to public projects belies the purpose of good government; he said he'd not heard a compelling reason to restrict DRG review of mitigation to public projects. He said some of the criticisms of the DRG process belong in the agency realm. David Lipsetz stated local governments need such a service as the DRG where state and federal agency staff are providing input on projects, however, when applicants bring such voluminous information to local governments with it can be overwhelming, leaving local governments with a limited ability to respond. He encouraged the DRG to even out the balance so as not to undermine the abilities of local governments to do their jobs. Barbara Salzman felt the Committee's compromise was a good one; she added the concerns about misuse of the Letter of Review are legitimate and stressed the need to better insure against misuse needs to be addressed. Barbara felt there was little in the way of completely preventing such misuse. She felt there was some internal functioning [in the DRG] to be worked out but stressed her belief it is essential the group know as many details about the project before them, particularly a full reporting of the nature of a project. Tott Heffelfinger expressed the need for full public participation in these meetings; Alexis pointed out the email notifications of all meetings should satisfy this. Mike Monroe recognized the value of public participation in the meetings, but noted the DRG needs to maintain its present atmosphere where technical staff are comfortable talking about technical issues. Travis expressed the need to show that projects reviewed the DRG might not get permitted and that projects reviewed by the DRG are of a higher quality and more successful, although such feats will take time to prove. He added it is naïve to think project proponents will not misuse a Letter if it has favorable things to say about a project.

Marshall Levy stated his project's [Bahia/Twin House] team first went to local governments and that agencies had input into the process, too. He felt what the DRG did well was to focus solely on the technical aspects of projects; he felt that restoration is restoration and perhaps a redesign of the Letter of Review might be the best approach to addressing some concerns. Paul Thayer asked how the proposed compromise would help and questioned whether it was out of sync. Mike Sweeney echoed the question and wondered if waiting for a permitting agency to request review was too much time to wait. Loretta expressed the hope that enough agency staff could be made aware of such an option. Travis noted that at BCDC, 99% of projects go before their Design Review Board in advance of their appearance before the BCDC Commissioners for

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a permit. Colonel Mike McCormick stated the sooner a project is reviewed, the better. David Lewis acknowledged the DRG is a new institution that is trying to build a track record; accordingly, he felt the safest approach is to not review mitigation projects, but said the compromise was a good second-best mode. He felt it was important to address mitigation review as failing to do so blurs mitigation decisions and creates confusion. David referred to BCDC's Design Review Board and noted that group has extensive public notification as well as the dedicated support of an agency. In contrast, the DRG - as an interagency process - currently needs responsibility and credibility and, therefore, the compromise is an appropriate step. John Zentner felt review of all projects, regardless of public or private sponsorship, was key. He noted the costly nature of restoration projects and how the DRG helps reduce project costs; he added there is not a tremendous success record of restoration in the Bay Area and highlighted the DRG's potential to change that. John felt many concerns were being expressed against the review of mitigation projects based on assumptions and "what-if"s and stated the DRG should be able to review mitigation projects of all types, yet under stringent guidelines.

David McKinnie suggested a constant review of the compromise's progress. Will Travis clarified his early suggested revision by stating review should occur within 12 months. Alexis stated her discomfort with only reviewing public mitigation projects, yet felt it was more important to move forward. Mike Monroe stated the review would also appear in the WRP's annual report; Mike proposed June 10, 2003 as the start date for that report. Colonel McCormick stated government is supposed to provide opportunities and felt this compromise's exclusion of privately sponsored mitigation projects stifled some opportunities; John Brosnan clarified that project proponents who are not of the public sector could still bring projects to the DRG so long as mitigation was not a component of those projects. Loretta stated private project proponents are free to attend DRG meetings and glean information from them; she added the need for the DRG to succinctly state all of the questions that are to be answered in review before a review begins. **Council members expressed an interest in reviewing a sample Letter of Review and asked John to provide an electronic copy of one.** At that time, the Council co-chairs sought consensus on the modified recommendation.

Executive Council Action:

The Executive Council -- with fourteen members present -- endorsed the modified Coordinating Committee recommendation by consensus. The modified recommendation is the DRG will only review a mitigation-based project when that project is a publicly sponsored project and a reviewing, permitting agency staff requests its review. This approach to review for this category of projects will be continually reviewed and reports will be made to the Executive Council on its progress; a summary of the benefits and drawbacks of this approach will be presented in the Wetlands Restoration Program's premiere Annual Report in June 2004 and any recommended changes to the policy will be enumerated therewith. This directive to the Design Review Group will remain in effect until such time the Executive Council acts otherwise.

Agenda Item #6: South Bay Salt Ponds Interim Stewardship and Long-Term Planning

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Marge Kolar presented an update on the Interim Stewardship planning for the South Bay Salt Ponds restoration. Marge stated the Department of Fish and Game and U.S. Fish and Wildlife Service, tasked with the interim stewardship, will manage the ponds to cease the production of salt. This requires circulating water through the system and breaking what was one large system into several smaller units. There are some island ponds that will be restored; these ponds will have no new intake/discharge structures. The plan includes 58 new structures or breaches overall throughout the system, and these will require approximately 3 acres of fill (mostly temporary) in order to install them. The Draft EIR/EIS on the Interim Stewardship is due in July and the final in November and December. Construction is scheduled to begin next April. Project planning projected impacts all the way to mean higher-high water, thus providing the most conservative estimate of wetlands impact within the environmental documentation.

Nadine Hitchcock provided an update on the long-term planning for the ponds' restoration. The Coastal Conservancy, the Department of Fish and Game and U.S. Fish and Wildlife Service comprise the project management team. The directors of the three agencies have signed a Memorandum of Understanding (MOU), which outlines how the three will work together on this project. The team is currently working with the Center for Collaborative Policy to determine the best public outreach and communication strategy. Initial public outreach efforts included three public workshops held in the south bay; these meetings had a combined attendance of over 100 people. Clyde Morris from U.S. FWS is currently providing targeted public outreach to local governments with overviews of the project. The management team is undertaking a stakeholder assessment and the input from that process will help to define the overall public involvement strategy. So far, there have been two regulatory agency meetings held; these meetings have taken place with the intention of gathering feedback on how to proceed, expected permits, the CEQA/NEPA process and the development of an MOU among the participating regulatory agencies. The national Science Panel meets for the first time on July 10 and 11 and that group will draft a letter with their intentions and expectations with the process. (The data gaps workshop information will feed into that meeting, as well.) The project management team is still determining the best peer review approach for work and designs in the project. Miles Croom asked if this Executive Council would function as the Executive Council under the proposed long-term management structure; Nadine stated this has been discussed and added there is a need to figure out how to structure that. Amy Hutzel stated there has been an MOU drafted for use among the trustee agencies and the regulatory agencies. She added the next meeting is scheduled for June 24 to collect feedback on the document. She hoped the document would be signed by July/August of this year, but noted some agencies may require a more lengthy review before being able to sign. Amy stated the role of the U.S. Army Corps of Engineers in terms of their role as a funding agent of the project or a planning agent is yet to be determined.

Agenda Item #7: State Coastal Conservancy Environmental Impact Documents

Nadine Hitchcock stated the Conservancy has recently released the draft Napa River Salt Marsh Restoration Project Draft EIR/EIS and the public meeting was held last month; the document has received favorable feedback thus far and the comment period closes on June 16. The initial phases of the project place an emphasis on tidal marsh restoration. The projected cost of the project is just over \$100 million. The Conservancy also recently released the San Francisco

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Estuary Invasive Spartina Project: Spartina Control Program Draft Programmatic EIS/EIR. The public comment period for the document is now closed and there were 15 comments received. The next step in that process is to establish a Science Panel, which will serve as a forum to address the uncertainties about treatment methods; this will be a group of international stakeholders. Nadine recognized there are concerns about the threat of the invasive plant and treatment methods described in the environmental document, yet noted the large body of scientific evidence that supports moving forward with a regional eradication effort. She noted a new method of treatment that uses a helicopter, which is meant to minimize disturbance to clapper rail habitat. Nadine also mentioned a water quality plan is being developed for the project. She added that there are piecemeal eradication efforts going on around the bay, but no coordinated regional effort such as this. Brian Baird asked if there was planned signage to accompany eradication; Nadine stated it had not been done before and recognized the need to disseminate information. Barbara Salzman recommended placing ads in local newspapers and ensuring broad outreach beyond that.

Agenda Item #8: Open Public Comment

Mike Sweeney asked for public comment; none were given.

Agenda Item #9: Closing Business

John stated some members of the public have expressed concern over a perceived disconnect between the day-to-day activities of the WRP and the members of the Executive Council. John proposed providing Monthly Summaries on WRP activities, to be submitted via email, and asked for any Council feedback on how those should be structured. Walter Swain asked to see an overview of on-going projects with updates on those projects. Miles Croom asked to see DRG meeting summaries, as well. Colonel McCormick requested the summaries be no longer than one page.

John stated he'd mentioned the concept of the WRP hosting or co-hosting a facilitated meeting with the local environmental NGOs as the invitees. The idea was well received by the Coordinating Committee, but initial direction was the meeting would have to have a relevant focus that would prove useful for all attendees. At the May Coordinating Committee meeting, the idea was expressed to have such a meeting invite the NGOs to learn how day-to-day permitting takes place within the regulatory agencies that participate on the WRP. Such an event could be highly educational, build good faith with the NGO community and also serve to alleviate misconceptions about the function of the DRG as it relates to project permitting. John asked the Council if they had any feedback on this idea. Mike Sweeney stated the WRP is a good tool for coordination among the permitting agencies and felt such a charrette would fit well into the WRP's mission.

Mike Sweeney asked for any closing comments. Loretta Barsamian thanked John for the meeting and the materials and expressed her satisfaction with the WRP's progress. Beth Huning thanked the WRP for taking care to avoid overlap and clearing up redundancies with the San Francisco Bay Joint Venture.

The meeting was adjourned.