

Chapter 5. Conclusions

INTRODUCTION

In preparing this document, the Working Group has attempted to provide CALFED representatives and other similar parties with a realistic view of past and present Bypass conditions. Each chapter has been intended to further the base of technical, social, and economic knowledge about the Bypass.

The Bypass provides important economic opportunities for landowners and their employees, along with tax revenue opportunities for Yolo and Solano Counties. Most importantly, the Bypass provides critical flood management functions for the Sacramento Valley. Lastly, the Bypass already provides extensive habitats for many wildlife species. In that context and as previously stated in the preface of this document, the Bypass can be a place where landowners are fairly compensated for land use and flood conveyance changes. It can be a place where landowners need not be threatened by the presence of additional wildlife habitat and special-status species. It can be a place where realistic goals and objectives can be achieved, resulting in benefits for all parties involved.

After many months of meetings and the development of this document, the important conclusion by the Working Group is that they are willing to consider taking actions that would allow for additional fish and wildlife enhancement to occur. To do so, however, will require a consistent, sincere commitment on the part of numerous state and federal decision makers to work with the local community of stakeholders to solve problems and resolve many issues with mutually beneficial results (Chapters 3 and 4).

The Bypass provides an excellent opportunity for comprehensive, mutually beneficial development of land use alternatives. Through the development of the Working Group, local interests and CALFED are now able to show that when government and private land owners work together, habitats can be enhanced in an appropriate and locally informed way. With the completion of this document, stakeholders of the Bypass have taken the first (of many) steps in identifying a balanced framework to achieve the ideas described above. The Working Group now looks to CALFED to cooperate with local interests by acknowledging and addressing the issues raised herein and, in doing so, setting the stage to make these shared ideas a reality.

To the Working Group's knowledge, many of the ideas set forth in the ERPP have not been tested for practicality and feasibility. Physical, economic, and ecological uncertainties abound in the ideas and goals described in the ERPP. The Bypass provides the geographic conditions and the Working Group provides the local stakeholder partners needed to minimize these uncertainties in a collaborative, open manner. In that light, the Working Group recommends implementation of the

following comprehensive set of related actions. These suggestions have been developed from the information provided in Chapters 3 and 4 and in the context of three overriding Bypass-specific needs:

- # resolve issues related to ESA and CESA,
- # preserve flood control functions, and
- # maintain economic viability and the preservation of existing wildlife values.

Specifically, the following actions have been developed as a means of taking the myriad concerns described by the Working Group and turning those concerns into tangible, positive tools.

- # identify and coordinate comprehensive funding programs and partnerships,
- # identify and adjust policies prohibitive to habitat enhancement,
- # provide coordinated habitat design support,
- # coordinate and communicate water and sediment quality analyses,
- # develop project-specific monitoring programs,
- # support the TAC,
- # support the development of statutorily authorized, Bypass-specific safe harbor policy, and
- # analyze the feasibility of Bypass-specific “environmental water”, including water rights, reliability, and transport.

These actions should be treated as a focused, programmatic effort specific to the Bypass. To the extent possible, they should be initiated simultaneously. The Working Group is committed to working with and advising CALFED in such a comprehensive effort. The Working Group is confident that in pursuing and completing these proposed actions together and cooperatively, CALFED and the Working Group can minimize uncertainties and achieve Bypass ideas previously described. In doing so, mutually beneficial successes can be achieved in the Bypass, and lessons learned can be “exported” to other locations in the CALFED program area. The following section provides descriptions of these proposed Bypass-specific actions.

RECOMMENDED BYPASS-SPECIFIC ACTIONS

Identify and Coordinate Comprehensive Funding Programs and Partnerships

Landowners and flood management agencies do not have the time or mission to identify and pursue funding opportunities for mutually beneficial habitat enhancement. As described in Chapters 3 and 4, the unique flood conditions of the Bypass create economic challenges associated with habitat enhancement that are not necessarily encountered in other parts of the CALFED program area. Conversely, many challenges are common to most habitat enhancement projects.

Numerous federal, state, and nongovernmental funding sources exist and could be leveraged in a programmatic manner to achieve broad-scale environmental benefits in the Bypass. However, most of these funding sources presently do not work in concert with each other, nor can they presently be pursued in a coordinated manner. The Working Group envisions a “funding clearinghouse”—a collection of numerous funding sources, coordinated under one roof that is consistently updated and managed by a single point of contact or committee. Such a process could be analogous to recent regional efforts to streamline permitting processes. The goal of this funding effort is to create “one stop shopping”, where project proponents and landowners can go to propose and complete funding requests. Potentially, a committee of funding-entity representatives could meet on a quarterly basis and decide what project or collection of projects could be coordinated to maximize funding and land management goals in the Bypass. The Working Group knows that such a coordinated effort could provide many benefits, such as:

- # project ideas could be “brokered” to the most appropriate single or multiple funding sources;
- # multilandowner projects that provide extensive benefits could leverage those benefits into more comprehensive funding packages;
- # projects that are not originally integrated could be identified for integration, thus increasing funding opportunities and the likelihood of multibenefit success;
- # pursuit of existing, non-CALFED funding sources could achieve multiple benefits without taxing CALFED operating budgets, thus allowing the use of CALFED funds elsewhere; and
- # mutually beneficial projects could be pursued in a cost- and time-efficient manner resulting from the expedited proposal, review, and approval times.

Identify and Adjust Policies Prohibitive to Habitat Enhancement

As described in Chapters 3 and 4, several local, state, and federal policies unintentionally prohibit or minimize the likelihood of habitat enhancement in the Bypass (e.g., tailwater ponds in a flood bypass). As with the previous action, landowners and flood management agencies do not have the time or mission to identify and analyze these policies. The Working Group proposes that CALFED provide appropriate funding support to allow the Working Group to identify and analyze such policies. The Working Group would further make appropriate recommendations on how to either adjust the interpretation of specific policies or amend the actual policy language. CALFED and the Working Group would then work together to lobby for changes in policy language or ensure consistent policy interpretation, assuming that such changes do not conflict with necessary responsibilities of resource management trustees, such as flood control. CALFED would then provide the findings of the Working Group to the stakeholders throughout the entire CALFED program area to ensure assessment by other local entities and consistency with state and federal responsibilities.

Provide Coordinated Habitat Design Support

Numerous local, state, federal, nongovernmental, and consultant organizations have the staff and expertise to assist landowners in habitat enhancement design. Additionally, these organizations have knowledge of existing habitat enhancement projects and examples of successes and failures. The Working Group anticipates that in the future, more specific discussions will take place among specialists and stakeholders regarding appropriate types and locations of habitat enhancement in the Bypass.

The Working Group proposes that a technical advisory subcommittee be created as a part of the Working Group. This subcommittee would include specialists and stakeholders to develop and coordinate appropriate habitat enhancement ideas. These ideas would have to accommodate the assurances described in Chapter 3.

The Working Group proposes that CALFED provide available funding to appropriate governmental, nongovernmental, and consultant organizations to support the creation of this technical advisory subcommittee. It is the observation of the Working Group that organizations such as CWA, DU, DFG, and NRCS and USFWS refuge staff do communicate periodically; however, there is less integration with local stakeholders and CALFED staff than there should be. This subcommittee would support the Working Group and CALFED by encouraging communication that protects landowner rights, maintains flood conveyance, and achieves appropriate ecological benefits.

Coordinate and Communicate Water and Sediment Quality Analyses

As described numerous times in this document, stakeholders and specialists have concerns about the potential for contaminants to concentrate in habitat enhancement areas. Landowners and other responsible parties are understandably concerned that, potentially, biologically available mercury, concentrated agricultural amendments, and urban stormwater runoff could result in harm to wildlife and associated liability of a landowner. The Working Group believes that it is economically and ecologically prudent to move slowly and deliberately in the assessment of these conditions before investing large amounts of time and money into projects that could create ecological problems, rather than solutions.

The Working Group is willing to assist in the coordination of pilot habitat enhancement sites that could be used to assess the potential risk of such contamination. Such sites would likely be on private land and appropriate compensation and waiver of liabilities would need to be provided to the affected landowner(s). The Working Group proposes that CALFED develop and/or fund a team of technical specialists that would focus contaminant-oriented research specifically on pilot sites in the Bypass. This technical team would report to CALFED and the Working Group. The Working Group is aware that numerous research efforts are currently being conducted by state and federal agencies and academic institutions. However, as is often the case, this information is not being shared with local stakeholders. Additionally, it is unclear whether these studies are actually focused on the unique conditions in the Bypass. The Working Group believes that through a concentrated research effort, invaluable data will be available to:

- # minimize existing technical uncertainties regarding contaminant presence and potential toxicity;
- # encourage communication between existing researchers;
- # determine potential ecological risks posed to species in the Bypass; and
- # assist decision-making when pursuing future aquatic, wetland, and riparian habitat projects throughout the CALFED program area.

Develop Project-Specific Monitoring Programs

Similar to the previous action, numerous issues have been raised in this document regarding potential economic and physical constraints related to habitat enhancement in the Bypass. These constraints include:

- # increases and persistence of non-native/invasive vegetation species;
- # introduction, increases, and persistence of agricultural insect pests;

- # increases and persistence of agriculturally destructive mammal species (e.g., mice, beaver);
- # impacts to hunting rates and associated economic impacts to privately managed wetlands;
- # increased mortality of waterfowl (hens and ducklings) by mammalian and avian predators;
- # mortality of special-status fish species in shallow flooded habitats from increased avian predators;
- # mortality of special-status fish species in shallow flooded habitats from loss of hydrologic connectivity;
- # suitability of hedgerow vegetation in perennially flooded conditions;
- # sediment deposition, erosion, and flood-borne debris impacts associated with increase habitat coverage; and
- # introduction, relocation, or enhancement of special-status species.

The Working Group proposes project-specific monitoring efforts be initiated by CALFED, focused on pilot sites throughout the Bypass to assess these and related issues. As with the previous action, the Working Group believes that it is economically and ecologically prudent to assess these conditions at a pilot scale before investing in larger land use changes. The Working Group is willing to provide a forum for the coordination of pilot habitat enhancement sites that could be used to assess these conditions. As previously stated, such sites would likely be on private land and appropriate compensation, waiver of liabilities, and confidentiality agreements would need to be provided to the affected landowners. Such a focused program should provide invaluable information to the entire CALFED program about the feasibility and practicality of proposed habitat enhancement ideas. Additionally, it will inform other potential funding entities as to the likelihood of success of similar ideas.

Support the Yolo Bypass Hydraulic Issues Technical Advisory Committee

As discussed in Chapter 1, the TAC has been formed to assess hydraulic impacts in the Bypass posed by floodflows, low flows, and physical impediments to these flows. As future projects resulting in land use changes (both within and upstream of the Bypass) are proposed, a greater level of analytical sensitivity will be required to assess potential flood conveyance and capacity impacts to the Bypass. The primary function of the Bypass is flood water conveyance, and the integrity of the Bypass to perform this function must be maintained.

Presently, there is no comprehensive set of hydraulic assessment tools readily available to landowners, project proponents, or agencies. Therefore, there is no means of tracking up-to-date, cumulative hydraulic conditions in the Bypass, such as parcel-specific land use changes. The tools that are available are not economical to use and therefore pose a constraint to anyone wishing to assess potential impacts. The Working Group believes that the work already conducted by and proposed to be conducted by the TAC represent critically important data to support the CALFED program. Therefore, the Working Group proposes that CALFED provide funding for the TAC to continue the collection and analysis of hydraulic data and the communication of findings to the Working Group and general public.

Support Bypass-Specific Safe Harbor Policy Development

The ERP has recently (December 2000) provided funding for Phase II of the Working Group's efforts. Specifically, this funding includes support for extensive policy-level discussions on safe harbor and similar types of agreements. As discussed numerous times in this document, the provision of liability protection to landowners willing to develop additional habitat on their property is a primary concern. The issue of landowner liability related to the presence of protected species represents what is probably the most critical constraint to future habitat enhancement in the Bypass from the landowners' perspective. Federal and state agency representatives with a mandate to protect special-status species have been unable to reach manageable and equitable solutions on safe harbor agreements (or other similar arrangements) that protect landowners who provide habitat. This lack of solutions occurs partly because there is a paucity of statutory, regulatory, and legal precedent for government agencies to rely on when attempting to achieve some kind of safe harbor agreement. Yet, short of land condemnation, without willing landowners, the goals of all entities advocating habitat enhancements will never be met in the CALFED program area.

Bypass landowners are generally not opposed to improving and supporting species sustainability. These landowners are, however, generally concerned that such support will come at the expense of property rights, personal privacy, and economic viability as it relates to land management practices. The Working Group believes that CALFED can play an important intermediary role by helping all affected parties identify mutually acceptable methods, statutory protections, and legal constructs to increase species populations while protecting the lifestyles and livelihoods of landowners. The Working Group believes the Bypass offers an excellent opportunity to be a showcase for constructive resolution of this difficult issue. By virtue of the recent ERP funding decision (described above), the Working Group assumes that CALFED supports the same opinion and is committed to achieve proactive and collaborative solutions. Therefore, the Working Group is willing to work to find a solution that meets the goals for special-status species while protecting landowners from unconstructive regulatory obstacles.

Analyze the Feasibility and Implications of Bypass-Specific Environmental Water

Many of the habitat opportunities discussed in Chapter 4 will require the application of water on properties for specific environmental purposes. Numerous questions have been raised regarding legal rights and availability relative to this environmental water. Specifically, stakeholders are concerned about issues such as:

- # How would a drought condition affect environmental water transport and deliveries for lands in the Bypass?
- # Would landowners be responsible for application of environmental water to habitat projects during such drought conditions?
- # Would environmental water used in a fixed-term conservation easement be subject to prescriptive rights if the landowner chooses to revert the land use back to agricultural conditions?

As with the safe harbor issue, these water rights issues are a primary concern of landowner stakeholders. The Working Group does not have the funding or technical expertise to assess the complex legal issues associated with water rights. Nonetheless, in order to develop and implement a comprehensive habitat enhancement program in the Bypass, it will be necessary to determine the source and abundance of environmental water. Such an assessment could help determine “real world” water availability or deficits regarding environmental uses and could inform critical future decision-making about the feasibility and practicality of habitat enhancement. It is the opinion of the Working Group that before any money is spent implementing habitat enhancement in the Bypass, it is critically important to ensure that public and private water supplies are adequately protected.

THE FUTURE OF THE WORKING GROUP

The Working Group has an essential role to play in providing the forum for communication between the many Bypass stakeholders. The Working Group is the appropriate forum through which habitat-related projects, flood control actions, and technical studies can be discussed and potentially supported. It is important to note that the Working Group not only provides this forum for landowners but also for the agencies with active roles in the Bypass. It provides these organizations the opportunity to reach the people most directly affected by their policies and actions.

Long-term funding for the organization and facilitation of the Working Group is necessary. The Foundation has played an important role in planting the seeds and nurturing the initial Working Group process. The Foundation is willing to continue its role as the keeper of Working Group information and as the financially responsible agent for the management of consultant services and the legal distribution of grant funding. However, the Foundation is confident that the Working Group is ready to evolve into a largely independent entity, separate from the Foundation. This

evolution will require the development in the near future of governance documents, such as mission statements and decision-making processes. These efforts will likely require continued facilitation and organization by a neutral entity. In taking these steps, the Working Group will be better equipped to serve the needs of all stakeholders with an interest in the Bypass.

The Foundation appreciates the opportunity to serve the Bypass community. The development of the Management Strategy has been a worthwhile and rewarding challenge. The Foundation looks forward to continuing its role in encouraging education and communication regarding the Bypass.

CONCLUSION

The Working Group appreciates the opportunity to organize Bypass landowners, associated flood management and natural resource agencies, and other interested parties into a forum for discussion and advice. The Working Group appreciates the funding provided by CALFED to create this opportunity. The Working Group has accomplished much in the past 18 months. The efforts of the Foundation have resulted in a formerly disparate group of stakeholders working together to discuss issues, become informed on a variety of complex topics, share similar and different viewpoints, and develop a locally driven concept for the future of the Bypass. In winter 2000, the Foundation, the Working Group, and the Management Strategy project as a whole were rewarded with the prestigious 2000 California Governor's Award for Environmental and Economic Leadership. This award is given to groups and efforts that are deemed by the Governor of California as having the greatest likelihood of achieving long-lasting success and improvements in a given environmental area.

Additionally, as a show of support and appreciation for the opportunities afforded via the Working Group process, several Working Group members prepared and signed a letter of commendation to the Foundation in June 2001 (Appendix F). Several other Working Group members expressed similar anecdotal comments to the Foundation and other members of the project team. However, because of distribution logistics, they were unable to also sign the aforementioned support letter.

In closing, the Working Group is ready to work with CALFED in resolving challenging issues. It is committed to ensuring that the Bypass of the future is a balance of land uses, respecting the needs and goals of many stakeholders, at the expense of none.