STATE OF CALIFORNIA
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AGENCY

GRAY DAVIS, Governor
MARY D. NICHOLS, Secretary

January 7, 2003

To: Landowners, watershed groups, restoration practitioners, and other interested members of the public

From: Mary D. Nichols, Secretary for Resources

Subject: Barriers to Restoration report

I am pleased to announce the release of a report on the Task Force to Remove Barriers to Restoration. This multi-stakeholder group, at my invitation, examined impediments to environmental restoration for landowners and others, and developed ten recommendations for removing them.

The Agency has been working on these recommendations and others related to restoration over the past year. As a result of recent legislation and bond acts we will now be considering additional recommendations and related restoration opportunities. The Agency will address nine of the Task Force's recommendations through the following current activities:

- We are considering a categorical exemption under CEQA for small restoration projects.

- We are developing a Strategic Watershed Plan with the California Environmental Protection Agency. This effort will explore options for:

    - Permit assistance centers
    - Regional pilots for coordinated technical review and permitting of restoration projects
    - Watershed-based permit coordination programs, using funds such as Proposition 40 appropriated under Assembly Bill 2534 (Pavley)
    - Developing a watershed planning guide.

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Colorado River Board of California • Energy Resources, Conservation & Development Commission • San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy
Baldwin Hills Conservancy • State Coastal Conservancy • State Lands Commission • State Reclamation Board • Native American Heritage Commission

- We will work through the California State Association of Counties to provide information on the model county ordinance proposed by the Task Force.

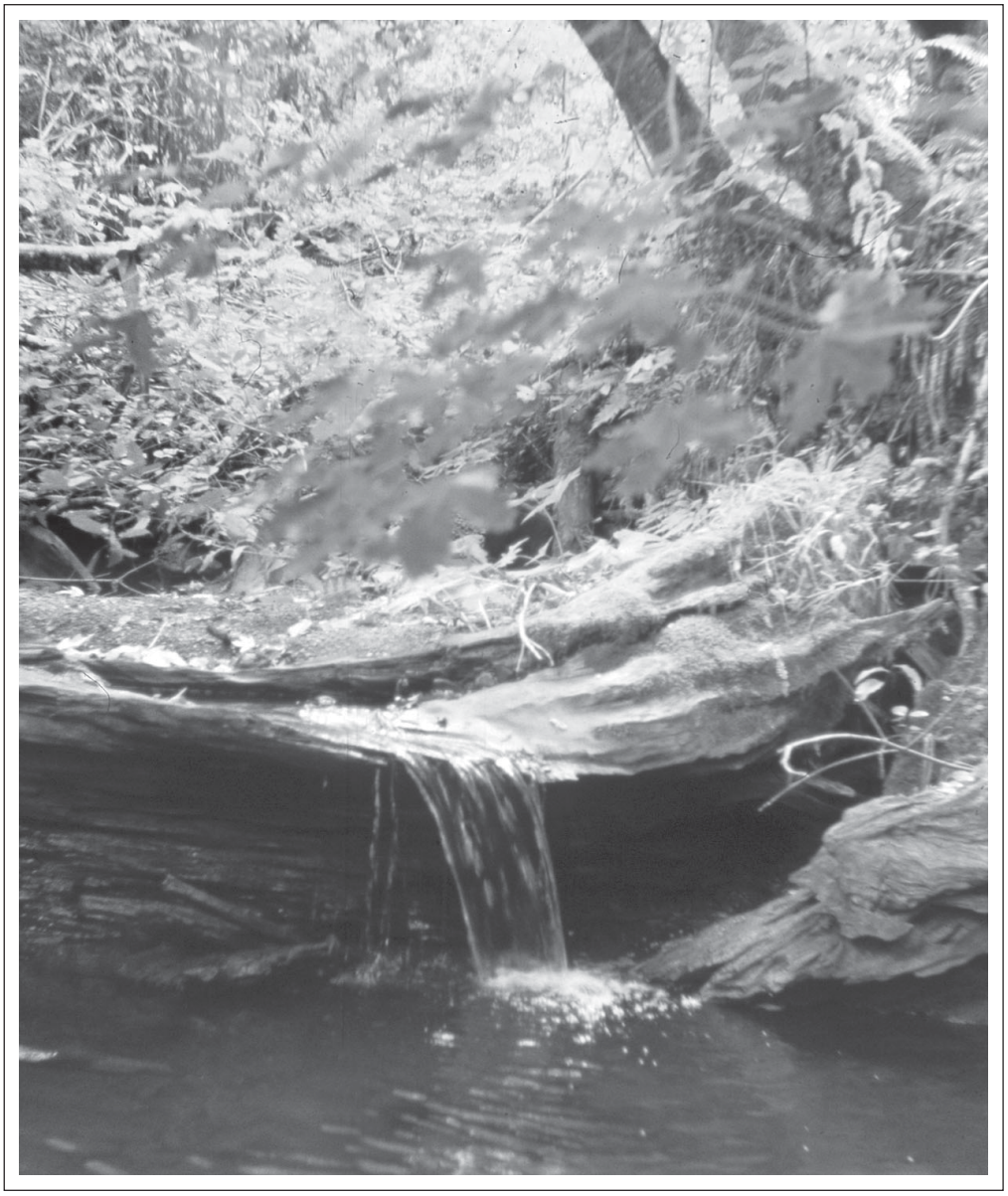
- We are working with our departments to administratively explore options for advance or expedited grant and contract payments for restoration projects as appropriate.

- We are considering ways to help restoration grant applicants take advantage of all existing options for funding environmental review and permitting fees, including the Strategic Watershed Plan and the interagency MOU for Integrated Watershed Management Programs required by AB 2534.

- Finally, the Agency is working on Safe Harbor issues primarily through the Working Landscapes Group of CalFed in cooperation with the California Department of Food and Agriculture.

Since many of the Task Force's recommendations are critical to the implementation of larger habitat or watershed planning efforts, I believe that incorporating them into some of the watershed initiatives described above will benefit a wide diversity of habitats and resources. My thanks again to this Task Force and others in their efforts to continue the important work of conserving and restoring our natural heritage so that we can leave a bountiful legacy for future generations.

This report is available online at the Resources Agency website (http://resources.ca.gov/) under "Reports & Publications".



Removing Barriers to Restoration

Report of the Task Force to the Secretary for Resources *2002*

Removing Barriers to Restoration

Message from the Secretary for Resources **3**

Executive Summary **4**

Acknowledgements: Task Force Members **8**

Why Do We Need To Remove Barriers To Restoration **9**

Introduction 9

Barriers to Restoration on Private Lands 11

Complex Regulatory Review 11

Personal Liability for Restoration Projects 12

Funding Bottlenecks 13

Endangered Species and Safe Harbor Agreements 14

Task Force Approach **15**

What is a Restoration Project? 15

Which Projects are Big and Which are Small? 15

Task Force Discussion, Recommendations, and Next Steps **17**

1. Create a categorical exemption under CEQA for Small Scale Restoration Projects 17
2. Create a Permit Assistance Center to Aid Landowners Doing Voluntary Conservation 20
3. Develop a Pilot Technical Review Team for Large Scale Restoration Projects 22
4. Assist the Expansion of Watershed Based Permit Coordination Programs 25
5. Develop a State Recommended Watershed Planning Guide 28
6. Implement a Pilot Project to Develop a Program EIR in Conjunction with a Watershed Plan 30
7. County Ordinance to Indemnify Landowners Performing Conservation Work 31
8. Enable Advance and/or Expedited Payments for Government Funding of Restoration Projects 34
9. Develop Mechanisms to Pay Environmental Review and Permit Fees for Restoration Projects 36
10. Support Safe Harbor Program 37

Cover photo courtesy of California Department of Fish and Game

Message from the Secretary for Resources

Private landowners, watershed groups and other local stakeholders have a critical role to play in achieving California's conservation goals, and I believe that the State needs to take additional steps to support voluntary, proactive efforts to restore and enhance our watershed lands, habitats, and natural resources. To that end, I convened the Task Force to Remove Barriers to Restoration to provide guidance to the Resources Agency and other state agencies to work more effectively with California's landowners to restore our natural resources.

Over the past three years, the Resources Agency has focused significant efforts on developing a broad range of initiatives to encourage activities that support voluntary restoration and stewardship throughout the state. Over the course of our work, I have listened closely to the frustration of landowners, restorationists and others about legal, administrative, and monetary impediments to their efforts to "do the right thing" on private lands and "working landscapes".

In order to generate some creative solutions to these concerns, I invited representatives from landowner groups, State agencies, and the professional restoration community to examine barriers to restoration, identify options for fixing them, and recommend specific actions to move the best ideas forward.

The task force met four times. This report provides a summary of their work and conclusions, including specific recommendations for the Resources Agency. I am pleased to say that the Agency has already begun to implement several of these recommendations, and would like to continue our work with Task Force members and other stakeholders.

My thanks to the members of the Task Force for helping the Resources Agency develop a more effective program for supporting local efforts to restore our precious natural resources.

Mary Nichols, Secretary for Resources

Executive Summary

California is home to a tremendous diversity of natural environments, resources, and habitats. Millions of people depend on these resources for their health, livelihoods, and quality of life. Unfortunately, the pressures associated with population growth and development, coupled with impacts from past land use activities or so-called "legacy" problems, continue to threaten and degrade many of our resource values. While the government can regulate actions to prevent or mitigate impacts for many new land uses and can set aside some land to avoid others, we must also support proactive restoration and stewardship activities by private and non-profit sectors to improve current resource conditions.

Unfortunately, people willing to do this voluntary work face a number of institutional barriers or hurdles that can make it difficult to get restoration projects on the ground. In order to encourage voluntary conservation and support ongoing programs to aid restoration on private lands, California's Secretary for Resources, Mary Nichols, convened the State Task Force on Removing Barriers to Restoration. Made up of representatives from local, state and federal agencies, nonprofit environmental organizations, restoration professionals, and private landowners, the Task Force was charged with developing recommendations to the Secretary for specific actions the Resources Agency can take to reduce or remove these barriers to restoration.

Secretary Nichols asked the Task Force to examine four of the most common barriers— the regulatory review process, public funding bottlenecks, personal liability issues, and endangered species/private property issues. The Task Force discussed these barriers from both the landowners' and the regulators' points of view, reviewed existing efforts to resolve them, and brainstormed other possible solutions to create incentives and motivate people to do this important conservation work, or perhaps more importantly, to remove the disincentives and barriers for those who already have the desire. The Task Force recommends ten different actions that could reduce these barriers and encourage restoration activities.

The Task Force identified a long and challenging list of specific problems and potential solutions, many of which spanned two or more of the four barriers. These were culled into a shorter list of problems that were most pressing and seemed to offer the best chance for workable solutions in the relatively near future. The Task Force recommendations encompass small scale projects, large scale projects, government funded and privately funded projects, and restoration projects done by individuals and by nongovernmental organizations (NGOs). These recommended actions would create substantial incentives for private landowners to continue their stewardship and restore the natural resources on their property. The barriers and recommendations are summarized below.

Regulatory Review Process

The regulatory review process is one of the most frequently mentioned barriers to private, voluntary conservation. Environmental laws that safeguard the environmental and physical health of our communities are administered by many different local, state and federal agencies. Their regulatory review processes are complex, costly, and time consuming, even for restoration projects that the agencies themselves recommend and support. Fees can easily range in the thousands of dollars and the timeline for review frequently stretches well over a year, even for relatively simple projects. All restoration projects, whether major or minor, are required to follow this complex process. From the landowner's perspective, the system has become so onerous and cumbersome that more and more often they are simply choosing not to move forward with these important restoration projects. Recommendations # 1 through 6 were developed to reduce the regulatory hurdle while ensuring appropriate environmental safeguards remain in place.

Personal Liability for Restoration Projects

Private landowners and nonprofits organizations have real concerns about liability risks related to restoration projects. Though the potential for damage to persons and property may be small, and the potential for meritless or even frivolous lawsuits may also be small, these risks are enough to make some agencies require indemnification as a condition of issuing a permit or providing funding. Indemnification focuses all risk on the landowner, and is unfair because restoration

projects have significant benefits to society at large. Many, if not most, landowners do not have the necessary insurance or resources to cover these risks and will cease work on a project rather than assume the liability risk. The Task Force recommendation for a CEQA categorical exemption helps reduce some of the risk. Recommendation #7 was developed to further aid landowners seeking do conservation projects on their lands.

Funding Bottlenecks

There is a tremendous amount of public funding being made available through more than 40 state and federal funding programs to assist private landowners and communities in assessing, designing, implementing, and monitoring restoration and environmental enhancement projects. Unfortunately, even when projects are approved for funding, there are frequently significant delays getting the actual funds. This contributes to significant hardship for landowners, NGOs, local governments and the businesses contracted to do the on-the-ground work. Recommendations # 8 and 9 were developed to address these issues.

Endangered Species and Safe Harbor Agreements

Many private landowners willing and interested in doing voluntary conservation work are concerned about how the presence of state and federally listed endangered species affect their property rights. Rumors, misinformation and high profile news stories about endangered species and their effect on private landowners exacerbate this complex issue. As a result, many landowners choose to avoid activities that will restore habitat that may attract these species. The last recommendation (# 10) addresses this concern.

Task Force Recommendations

1. *Create a Categorical Exemption Under CEQA for Small Scale Restoration Projects*

Creating an exemption from CEQA review for small scale restoration projects would reduce concerns about liability and litigation for both public agencies and private parties, significantly reduce the cost and timeline of environmental review, and encourage the implementation of many small habitat restoration projects which are common to most local watershed and nonpoint source pollution reduction plans.

2. *Create a Permit Assistance Center to Aid Landowners Doing Voluntary Conservation Projects*

The Permit Assistance Center would be run by a nonprofit or non-regulatory agency and would provide advice and assistance on what permits are necessary for restoration projects, who to contact at permitting agencies, ways to make permitting easier by making projects more environmentally sensitive, potential funding and technical support contacts, and advice on how to complete the permit applications.

3. *Develop a Regional Pilot Technical Review Team for Large Scale Restoration Projects*

Many large restoration projects can take several years to design and permit. The pilot Technical Review Team would assemble representatives from the agencies with jurisdiction, scientists, and restoration practitioners on a regular basis to review a region's large restoration projects. Working together, they would discuss and recommend design modifications through one collaborative process that would significantly reduce the project's timeline and number of design changes, and facilitate obtaining necessary permits. In addition, large scale restoration projects would benefit from increased technical scrutiny from the region's top scientists.

4. *Assist the Expansion of Watershed Based Permit Coordination Programs*

An innovative permit coordination program, developed by Sustainable Conservation and the Natural Resources Conservation Service (NRCS), creates one-

stop regulatory shopping for landowners doing simple erosion control and environmental enhancement projects which reduces the time, cost and complexity of the regulatory review process. The Resources Agency should support the expansion of this program into other areas of the state by bringing together its departments and other state agencies to develop policies, programs, and programmatic agreements to support the local development of these programs.

5. Develop a State Recommended Watershed Planning Guide

There are considerable resources being committed to fund and develop watershed plans that will guide restoration activities throughout the state. A State recommended Watershed Planning Guide, consolidating the best elements of existing guides, should be developed and made available to the public, providing comprehensive and flexible guidance to local groups and their funders on how to develop a good, solid plan for their unique watershed.

6. Implement a Pilot Project to Develop a Program EIR in Conjunction with a Watershed Plan

Watershed plans typically include resource assessment, identification and prioritization of protection or restoration needs, and proposed actions to meet these needs. This process and the resulting plan can be quite similar to the Environmental Impact Reports required under the California Environmental Quality Act (CEQA) for certain projects. There seems to be an opportunity to develop a demonstration project that would marry these two processes, leveraging resources and funding and ultimately resulting in a simpler process for implementation of the individual restoration projects identified in the plan. This opportunity should be further evaluated through a pilot project.

7. County Ordinance to Indemnify Landowners Performing Conservation Work

The County, as permitting agency for local ordinances and the usual lead agency for CEQA, and to some degree State agencies carry a significant exposure to legal action resulting from issuing permits and project disputes. Often, Counties and State regulatory agencies in California minimize this risk by transferring it to the project applicant, usually through an indemnification agreement. However, restoration projects usually result in significant public benefit and their associated liability risks are frequently rather small. The Task Force therefore has drafted a model ordinance Counties may use to exempts restoration projects from the indemnification requirements that might otherwise apply.

8. Enable Advance or Expedited Payments for Government Funding of Restoration Projects

Public agencies seem to have several options that would allow them to advance all or a portion of a grant or contract for restoration projects. The Task Force recommends that the Resources Agency investigate and advise its departments on how to make this option available to their grantees and support these departments in developing the policy and regulation necessary to accomplish this.

9. Develop Mechanisms to Pay Environmental Review and Permit Fees for Restoration Projects

The environmental review and permitting process can cost hundreds, and frequently thousands, of dollars, even for restoration projects that are designed and supported by the permitting agencies. With many projects, especially smaller, erosion control projects, the cost of the permitting could exceed the cost of doing the work. The Resources Agency and its Departments have opportunities to encourage restoration activities by changing and establishing grant programs to pay these fees.

10. Support Safe Harbor Program

Though the federal agencies are the lead agency on Safe Harbor agreements under the Federal Endangered Species Act (ESA), the California Department of Fish and Game (DFG) must frequently review and sign-off on the agreements. The Resources Agency and DFG should coordinate with the federal agencies to develop policy to support private landowners in promoting and developing these agreements.

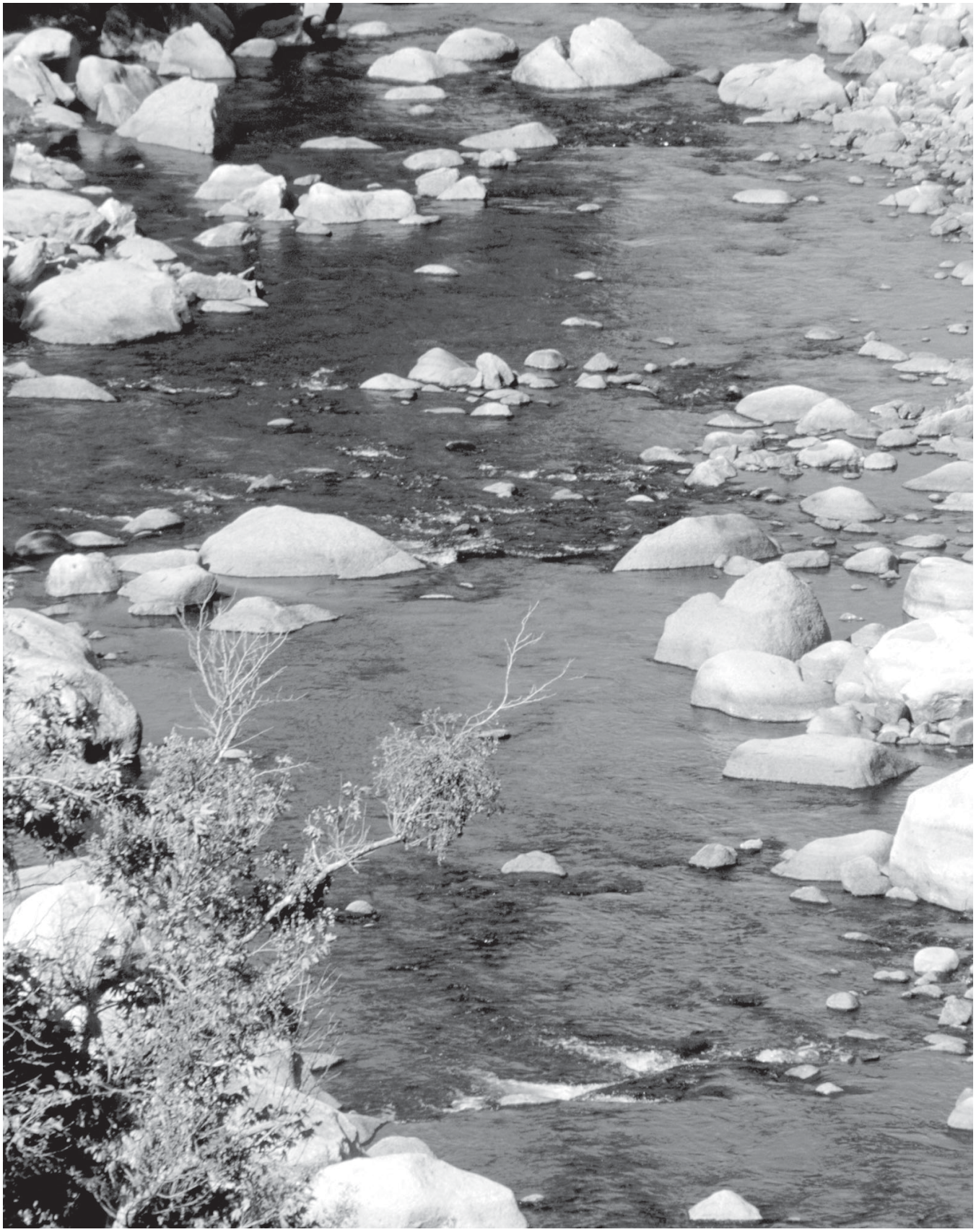


Photo: Department of Water Resources

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The Resources Agency thanks the following participants for sharing their time, expertise and ideas.

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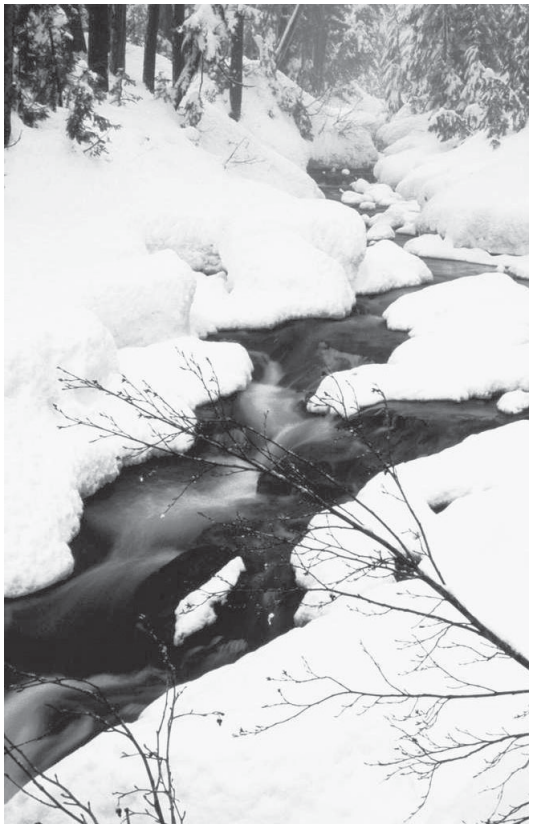
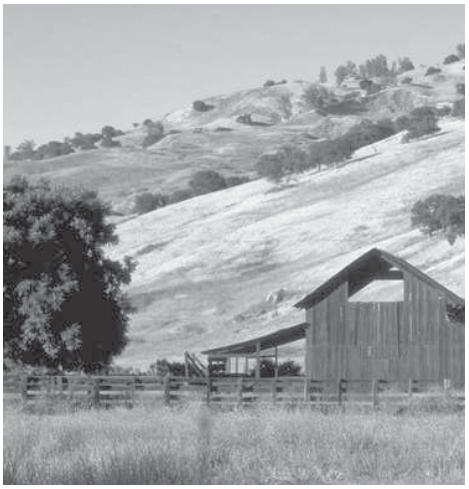
* Ms. Sproul's participation was in response to the request of the Resources Secretary and for the purpose of providing information. Her participation does not represent legal advice from the Attorney General in his separate role as counsel to the Resources Agency or to any of the state agencies whose representatives participated in the Task Force; nor does the Attorney General's Office necessarily advocate any of the options identified or the recommendations discussed by the Task Force.





Photos: Department of Water Resources

Why Do We Need to Remove Barriers to Restoration?

Introduction

Californians are fortunate to live in a state that is home to a tremendous diversity of natural environments, resources, and habitats. Millions of people depend on these resources for their health, livelihoods, and quality of life. Unfortunately, the pressures associated with population growth and development, coupled with impacts from past land use activities or so-called "legacy" problems, continue to threaten and degrade many of our resource values. While the government can regulate actions to prevent or mitigate impacts for many new land uses and can set aside some land to avoid others, we must also support proactive restoration and stewardship activities by private and non-profit sectors to improve current resource conditions.

Pollution is mobile. "Non point sources" of pollution are dramatically and negatively affecting our environmental and personal health. Runoff from private property and agricultural lands is the biggest source of pollution in the rivers, lakes and estuaries of the United States. Eroded soil chokes wetland and riparian areas, reducing their capacity to support native plants and animals, to act as biological filters, and to prevent flooding. The fertilizers and pesticides associated with this sediment contaminate our drinking waters and recreational areas. Urban runoff contains trash, pathogens and toxic materials. Together, they threaten the health and well being of our natural and human communities.

Our recent recognition of the importance of nonpoint source pollution has resulted in a strong focus by public agencies, community groups and health care professionals on how to reduce nonpoint source pollution, especially from private lands. Farmers, ranchers and rural landowners are stewards of the vast majority of land in California: land rich in fish and wildlife habitat, biodiversity, and natural resources; land adjacent to protected resources; land deep in history with a tradition of supporting individual and community livelihoods. We are realizing that the land use and management practices on these lands can have a dramatic affect on surrounding natural resources. Public agencies are focusing enormous resources on promoting voluntary conservation and restoration activities on these private lands in an aggressive effort to improve environmental health on a local and regional basis.

Erosion along creek bank. *Department of Water Resources*

Government has enacted significant laws to protect people and the environment from air and water pollution, watershed impacts, and habitat degradation produced as a result of industry, manufacturing, agriculture and the trappings of our modern lifestyles. These have resulted in the development of regulations that govern land use, prescriptions or

"best management practices" (BMPs), and programs to set aside lands of high biological values and diversity to prevent intensive uses. While these measures can significantly reduce the level of impacts from new activities and can in some circumstances provide damaged lands a chance to heal themselves, our natural resources continue to degrade as species decline, habitat is destroyed or habitat quality reduced, pollution is detected in more lakes and rivers, and beaches are closed for swimming and fishing. We are learning that simply setting aside the land or limiting "point sources" of pollution does not guarantee protection of our sensitive resources. We are also learning that we can accelerate the "healing" process through rehabilitation and restoration efforts.

Fortunately, farmers, ranchers and other landowners are also increasingly interested in implementing these conservation practices on their lands and in their operations. Because their land is fundamentally economic in value, these farmers respond positively to the idea of increasing that value through improved resource management. They recognize that reducing soil erosion and improving water quality can have an economic benefit to their operation, as well as the social and environmental benefit that results from this work. Similarly, there are many non-farming rural landowners who take the stewardship of their lands very seriously and are committed to active and ongoing conservation.

When a landowner considers doing a conservation project, however, there are a variety of issues involved: cost, time, risk. The diagram below illustrates how landowners can view these factors as incentives or disincentives, and how they may either encourage or hinder the landowner's ability and interest in getting this important work on the ground.

When incentives are in place, they encourage greater voluntary conservation on private lands. Public agencies and nonprofit organizations can provide technical information and expertise to help landowners properly design projects and to ensure that the projects will work properly. Cost-sharing programs, such as the U.S.D.A.'s Environmental Quality Incentives Program (EQIP) and DFG's Fisheries Restoration Grants Program, provide important economic incentives. Peer pressure to use better technical practices that increase production or to participate in community-based watershed planning is also a factor that motivates landowners. Environmental and public health regulations are critical as well – most people are law abiding and do the best they can to comply with regulations.

Incentives and Disincentives to Voluntary Conservation

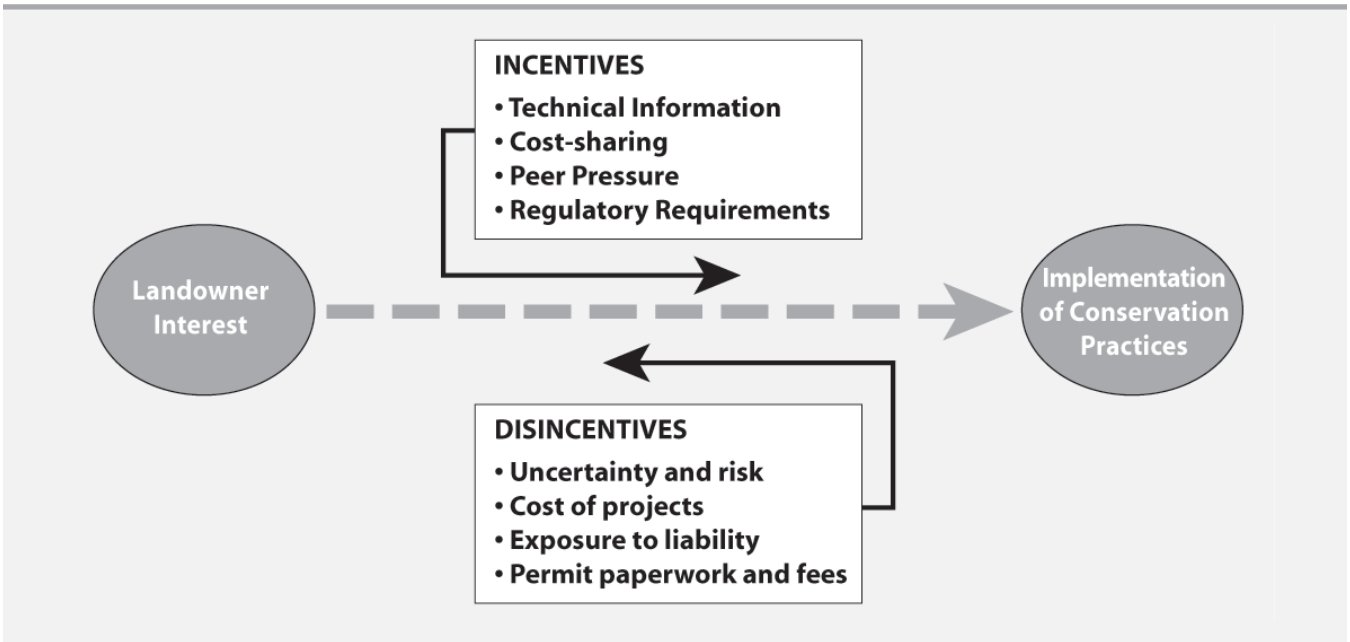


Diagram courtesy of Sustainable Conservation and the Natural Resources Conservation Service

Revegetation of wetland area. *Department of Fish and Game*

On the other hand, there is a group of opposing forces that discourage voluntary action. If landowners are uncertain whether the project will perform as described or if the risk of failure is too high or unknown, they become much less interested. Often the cost of the project, in both time (how long it takes to do the project) and dollars (how much the project costs), is beyond the means of interested landowners. Conservation projects may also expose the project proponent to personal liability – through potential of project failure, claims for damages, and simply the threat of litigation by people who don't like the project. And despite a landowner's desire to follow the law, the regulatory review process for restoration projects is very costly, complex and time consuming – many landowners will simply refuse to do a project if permits are required.

What public agencies, funding bodies, and community groups are finding is that sometimes disincentives far outweigh the incentives, forming insurmountable barriers for willing landowners. Even when all the incentives are in place, the presence of any one of the disincentives can kill a project. Sometimes these barriers are not obvious. For example, a project may be awarded public grant monies – but the time between receiving the award letter and receiving the actual funds may be too great. Many landowners do not have the resources to "front" the cost of the project and many grant programs operate on a reimbursement basis. In other cases, the money may be available, but the project may fall through because it took well over a year to get the necessary permits and the site conditions or landowner's situation may have dramatically changed in the ensuing winter, forcing major design revisions.

If we want to encourage increased voluntary conservation and restoration work on private lands, we must address these disincentives, the barriers to action. The Task Force to Remove Barriers to Restoration has been charged with presenting recommendations to California's Secretary for Resources for specific actions she and the Resources Agency can take to remove these barriers to restoration. The Task Force has grouped the barriers into four primary categories that are described in the next section. Though there may be some current activities taking place to address these issues, more work needs to be done in order to create incentives and motivate people to do this important conservation work, or perhaps more importantly, to remove the disincentives and barriers for those who already have the desire.

Barriers to Restoration on Private Lands

Sustainable Conservation and agency staff related four categories of obstacles to voluntary conservation action that are consistently cited by farmers, ranchers, rural landowners and those restoration professionals and non-governmental organizations (NGOs) which work with them – the complex regulatory review process, personal liability for restoration work, funding bottlenecks, and safe harbor for endangered species. Any one of the obstacles can create a significant cost or delay for a restoration project. When combined, these barriers can be impenetrable for landowners, completely discouraging their stewardship efforts.

Complex Regulatory Review

There have been a number of important laws enacted to safeguard the environmental and physical health of our communities. Most of these laws were enacted in response to development and industrial expansion pressure that threatened permanent damage or loss to our critical natural resources. This same regulatory review process, unfortunately, can act as a disincentive to beneficial projects intended to repair or restore the environment. Most landowners will continue with current land use practices if the time and financial costs of seeking governmental approval exceed the perceived benefits of engaging in the conservation activity.

For example, a streambank on private property may be eroding at an unnatural and accelerated rate, degrading water quality and destroying important habitat for a number of species. If the landowner wished to implement even a simple project, for example willow crib walls and the planting of native grasses and trees to address this erosion, they may need permits from six or more local, state, and federal agencies (see table below). They must apply independently to these agencies, each of which has its own distinct process. Permit fees can easily cost several thousand dollars, sometimes more than the cost of the project. The process to secure these permits can easily take over a year to complete. And the conditions that these

Representative Sampling of Regulatory Agencies and Statutes

Regulatory Mandate	Agency Involved
Clean Water Act - Sections 404 and 303(d)	Environmental Protection Agency Army Corps of Engineers
Federal Endangered Species Act *Marine Mammal Protection Act*	United States Fish and Wildlife Service National Marine Fisheries Service
National Historic Preservation Act	State Historic Preservation Office
National Environmental Policy Act	Federal Agencies
Clean Water Act - Section 401 and 303(d) *Porter Cologne Act*	State Water Resources Control Board Regional Water Quality Control Boards
California Coastal Act *Coastal Zone Management Act*	California Coastal Commission
Fish and Game Code Section 1601 and 1603 *California Endangered Species Act*	Department of Fish and Game
California Environmental Quality Act	State and local agencies
Erosion and Grading Ordinances *Development Standards* *Local Coastal Plan*	County Government

Example of creek bank stabilization project. *Department of Water Resources*

agencies may impose on the project don't necessarily complement each other. Because the regulatory agencies are often seriously understaffed, a landowner must expend considerable time and energy to keep their permit applications moving through these processes – time and energy they frequently do not have. All this for a project whose primary focus is environmental enhancement! Alternatively and unfortunately, the landowner can choose to do nothing, which usually isn't illegal and frequently means the continued degradation of water quality and destruction of habitat and resources. This may not be the best alternative, but it is frequently the only viable alternative from a private landowners perspective.

The regulatory review process is one of the most frequently mentioned barriers when the issue of private, voluntary conservation comes up. There have been a number of attempts to coordinate or streamline the regulatory review process for restoration and environmental enhancement activities. They range from successful, though limited, projects such as the Joint Aquatic Resources Permit Application and Sustainable Conservation's Partners in Restoration program, to legislation enacted but not used, to failed attempts to develop a memorandum of understanding (MOU). There is a huge opportunity here for regulatory agencies to get together to provide mechanisms to streamline the review process while ensuring the integrity of their mandates.

Personal Liability for Restoration Projects

Private landowners, nonprofits supporting their work, and contractors doing the actual construction have a varying degree of concern about liability exposure related to environmental enhancement activities. The landowner is usually liable for damages related to the implementation of a project on their property. In addition, as the project proponent, property owner, and usually the holder of permits, landowners incur additional risk from litigation from disgruntled neighbors or project opponents. Even if the threatened action is frivolous and not based on a reasonable claim, the landowner must spend their own resources defending themselves. Those landowners who do not have the necessary insurance or resources for this will cease work on a project rather than assume the liability risk.

Landowners performing or paying for environmental enhancement projects generally work cooperatively with resource agencies in designing and implementing the project. This provides some assurance to both the landowner and the community that the project is

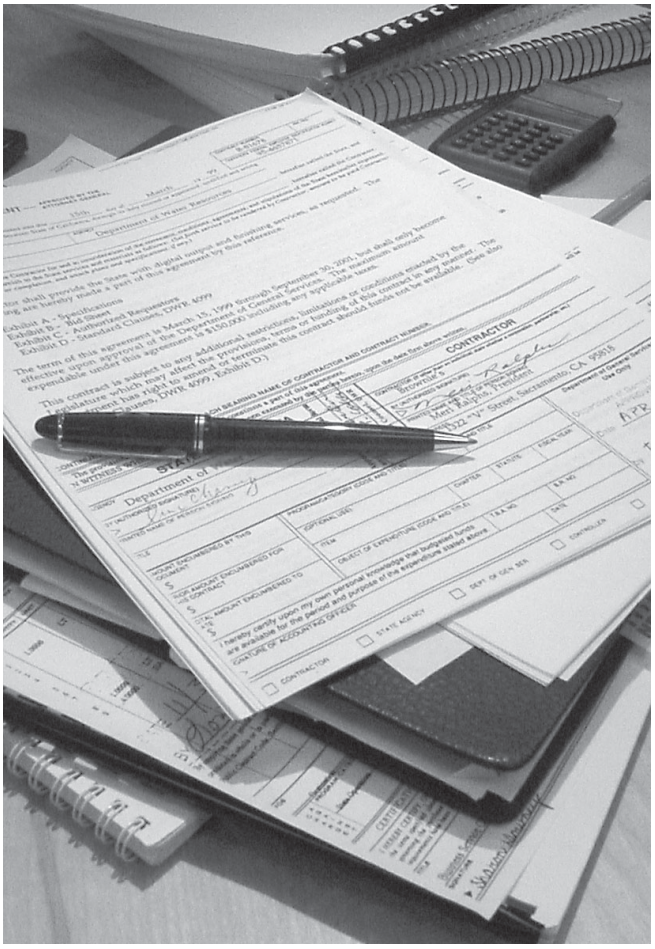
based on sound science and properly addresses environmental concerns. However, environmental restoration is not an exact science. There may be unintended impacts that could result in damage to neighboring property or require additional "maintenance" to address. Many landowners feel that it is unfair and unreasonable to place the responsibility and liability for damages solely on them since the projects result in important environmental benefits to the community and public.

An additional liability concern revolves around the practice of many regulatory agencies to require landowners constructing restoration projects to indemnify them against any litigation arising from that agency's permitting process. Again, many landowners are unable to take this risk themselves, and think that it is unfair to be placed in the line of fire for trying to do the "right thing." An argument can be made that if public agencies design, fund and permit this restoration work based on its public benefits, they should afford at least some protection to the landowner for installing it.

In an effort to address this issue, some Resource Conservation Districts (RCDs) have partnered with private landowners to assume project liability. In other cases, regulatory agencies have become signatories to Memoranda of Understanding, creating a group project that has the effect of spreading the liability and reducing risk for individuals. What is missing at this time is a consistent, comprehensive approach to protecting restoration projects from risks of this nature.

Funding Bottlenecks

Large amounts of public funding are currently available through more than forty state and federal funding programs to assist private landowners and communities in assessing, designing, implementing, and monitoring restoration and environmental enhancement projects. This "good news" is creating difficulties in the application and delivery processes for these funds and is engendering a good deal of confusion and frustration on the part of the applicant. The problem includes lengthy or difficult applications, a start to finish timeframe of over two years, delayed payment of up to 120 days after invoices have been submitted, and withholding of up to 10% of the invoice amount until project completion.



Though one might not think that landowners would look such a "gift horse" as public funding in the mouth, the fact is many are not able to provide the up front capital to cover the project costs until the funds finally arrive. In addition, these delays result in increased project costs as subcontractors increase their bids if they are required to wait extended lengths of time to be paid for work performed. The real problem, though, is the environmental damage that can occur when restoration projects are not able to move forward in a timely manner.

The Watershed Work Group of the California Biodiversity Council has reviewed this issue in depth and produced Best Funding Practices for Watershed Management. This paper looks at many of the funding issues and makes specific recommendations for improving and streamlining the process to expedite funding and maximize its effectiveness. The result is a list of nine Best Funding Practices for Watershed Management.

Endangered Species and Safe Harbor Agreements

Private landowners willing and interested in doing voluntary conservation work are concerned about the Endangered Species Act (ESA). Rumors, misinformation and high profile news stories about endangered species and their effects on private landowners exacerbate this complex issue and impact private land stewardship. Many landowners fear that if they do restoration projects or manage their lands in an environmentally friendly manner, endangered species will move onto their land and the prohibitions of the ESA will result in increased restrictions or regulations. Some landowners hesitate to implement projects that improve habitat and attract species. Other landowners actively manage their property to prevent endangered species from occupying it in the first place.

One solution to this problem is the "Safe Harbor Agreement," provided for under the ESA. Safe Harbor agreements enlist the voluntary cooperation of private landowners in improving endangered species habitat. In exchange, landowners are given assurances against any added legal liability under the ESA. The United States Fish and Wildlife Service (FWS) issues the safe harbor agreement to a landowner or an entity such as a Resource Conservation District (RCD). It assures that if they undertake certain actions such as planting a stand of trees, restoring grassland, or establishing a riparian area, they will not incur any new restrictions on the use of the land if endangered species are attracted to that new habitat. The quality and suitability of the habitat are documented at an individual "baseline" level. Participating landowners retain the right to undo these voluntary improvements should they wish to make some other use of their land in the future. If the landowner wishes to convert the land to below documented baseline, s/he must reapply under the appropriate provisions of the ESA (e.g. Habitat Conservation Plans). The term of the safe harbor agreement must be in place for a long enough period to provide habitat for the species. The agreements do not allow any "harm" to endangered species currently present at the site.

The FWS released its final Safe Harbor Regulations in 1999. Safe Harbor has been implemented in five states – North and South Carolina, Virginia, Hawaii, and Texas - and now covers over a million acres. Environmental Defense, a nonprofit organization, has helped implement a number of these agreements in the U.S. They have recently created a Safe Harbor Program in California which has resulted in the State's first Safe Harbor Agreement, with several more in development. One of the tasks associated with the work has been to coordinate regulatory review by State and federal wildlife agencies.

Spotted Owl. *Gerald and Buff Corsi, California Academy of Sciences*

Task Force Approach

The Task Force held four meetings between November 2000 and April 2001 to discuss these barriers and actions that could be taken to remove them in order to facilitate voluntary conservation while ensuring the protection of the sensitive natural resources and compliance with existing regulations. As a result of these meetings, the Task Force drafted nine recommendations to the Secretary for Resources that would address the problem areas of regulatory review processes, personal liability, funding bottlenecks, and safe harbor. These recommendations range from fairly discrete actions that could be accomplished in a relatively short period of time to the creation of new processes that will take significant, multi-agency resources over a longer period of time. The Task Force believes that these recommendations, enacted collectively or individually, will demonstrate California's willingness and desire to help private citizens to continue being responsible stewards of our incredible natural resources.

Meadowfoam. *Alfred Brosseau, Saint Mary's College*

What is a Restoration Project?

The Task Force is clear that the kind of projects we are hoping to promote are restoration projects – those projects that have "good" results for the environment. People did have different ideas of what "restoration" means and therefore exactly which projects we were focusing on. We discussed the differences between environmental enhancement and restoration – enhancement being less then a full return to self-sustaining ecological functioning. The Task Force considered the Society for Ecological Restoration's definition. The current definition, developed in 1996, is *"the process of assisting the recovery and management of ecological integrity. Ecological integrity includes a critical range of variability in biodiversity, ecological processes and structures, regional and historical context, and sustainable cultural practices"*.

People noted that the definition would need to be simple enough to explain to the layperson, and yet specific enough for use by policy and science professionals. The Task Force agreed to adopt the following definition because it used simple language to incorporate an overarching principal and did not exclude many of the projects the Task Force representatives would like to see move forward:

Ecological Restoration is the process of renewing and maintaining ecosystem health.

Which Projects are Big and Which are Small?

As the Task Force reviewed the four barriers and discussed various issues and potential solutions, we frequently used the words and concepts of "big" and "small" to define classes of projects the different recommendations might address. Early on we realized that these concepts were very subjective, and so we attempted to define what these terms meant.

There was recognition that regulations and regulatory agencies had different definitions for projects or potential impacts (e.g., type of project, size of project, minimal effects, "significant" adverse impacts) which put projects into different review paths. Others pointed out that watershed or regional plans could also be considered *big* projects because they include many *smaller*, albeit beneficial, projects. From a landowner's perspective, however, current regulatory review processes treat *all* projects as if they are *big* projects.

Some Task Force members argued that big and small exist on a shifting continuum, and are best defined in terms of the potential consequences of an error in judgment. The Task Force did not come to consensus on these terms, and agreed to table the big/small definition discussion, understanding that we would probably come back to these or at least the underlying concepts and concerns as we developed the recommendations.

Task Force Discussion, Recommendations, and Next Steps

Easing the Regulatory Review Process for Restoration Activities

1. Create a Categorical Exemption Under CEQA for Small Scale Restoration Projects

Problem Addressed: CEQA was created to ensure that decisions makers and the public are provided with the necessary information regarding a project's environmental impacts and project alternatives to guide their decision making process. If a restoration project requires permits from local or state agencies, it is subject to review under this Act. CEQA sets forth a well defined review process that can take 180 days or more to complete. If a project proponent or CEQA lead agency fails to follow this process properly, citizens and interested parties have opportunities to challenge the project in order to require the CEQA process to be followed properly.

The cost of complying with CEQA can be significant. Because restoration activities are not distinguished from development activities under CEQA and because they frequently occur in proximity to important natural and cultural resources, even fairly small projects may be subject to the CEQA process. Of those projects, even ones that receive a Negative Declaration stating that there are no significant adverse environmental impacts can have fees in excess of $1,200. Project delays associated with the CEQA process can further increase costs. Finally, where county agencies are reluctant to act as the CEQA lead agency for fear of assuming costs for defending challenges to the CEQA environmental documents or process, they may require the project proponent to pay those costs as well.

For most development projects, these fees are a cost of doing business and can be recouped. This is not the case for most small restoration projects, where the total cost of permit fees, CEQA documentation, and time spent looking for an agency to take the CEQA lead can exceed the cost of the actual project itself. As a result, many landowners are discouraged from doing the restoration work or have to settle for doing less than optimal.

Proposed Solution: If small scale restoration projects were exempt from full scale CEQA review, project costs could be significantly reduced. Exemptions for this class of projects could potentially be accomplished through three mechanisms. "*Statutory exemptions*" are identified by the Legislature under Public Resources Code Section 21080 (b). These can only be enacted by the legislature, which requires a lengthy process without certain outcomes. The "*certified regulatory program*" option (PRC Section 21090.5) applies to regulatory permitting processes subject to CEQA for which a single agency has authority. This could be done for one or more of the permits typically required for restoration projects, e.g. DFG Streambed Alteration Agreements, but it wouldn't cover all small project circumstances (e.g. county ordinances) or remove other approval requirements. It also requires a lengthy certification process. "*Categorical exemptions*" are for classes of projects that the Secretary for Resources finds generally do not have significant effects on the environment. With a categorical exemption, a project has no CEQA public review and only a 35-day statute of limitations if a notice of exemption is filed with the State Clearinghouse or the county clerk. Most CEQA review fees are waived for categorically exempt projects and the litigation risk could be reduced.

A categorical exemption only works if there is no *reasonable* possibility of a significant adverse effect on the environment, meaning adverse physical change or disturbance. While small scale restoration projects may involve short term disturbance, their impacts are inherently "self mitigated" to a level below the thresh-

old of significance because the project is designed precisely to make a transition to improved watershed or habitat condition for conservation purposes.

In order to adopt a Categorical Exemption, the Secretary for Resources must prepare a regulation and must find that such projects will not result in adverse impact to natural and cultural resources. Such a finding may be partly based on limitations or conditions included in the exemption itself (PRC Section 21084).

Examples of potential "small scale" or low impact projects envisioned by the Task Force for categorical exemption include:

- Stream and river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation,
- Wetland restoration, the primary purpose of which is to improve conditions for waterfowl,
- Revegetation of disturbed areas with native plant species,
- Stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish habitat;
- Culvert replacement, the main purpose of which is to improve habitat or reduce sedimentation, conducted in accordance with DFG's California Salmonid Habitat Restoration Manual and the National Marine Fisheries Service's Final Draft Guidelines for Salmonid Passage at Stream Crossings (3/22/2000).

The Task Force recommends testing these types of proposed projects against the language of potential exemptions to ensure they are compatible.

Existing or Similar efforts: There are a number of existing categorical and statutory exemptions for different classes of projects, or even specific projects. However, there is no existing exemption that encompasses the many kinds of small scale projects that are intended to restore natural resources on private lands.

Some of these focus on public lands or specific land use, for example, activities on "designated wildlife

Chinook Salmon. *Department of Water Resources*

management areas" which result in " improvement of habitat for fish and wildlife resource." Others focus on "acquisition of Lands for Wildlife Conservation Purposes," or "actions by regulatory agencies for protection of the environment," but exclude "construction activities." Others focus on "minor alterations to land," but do not specifically focus on restorative activities.

The proposed addition of a CEQA categorical exemption for small restoration projects would provide a distinct exemption for restoration activities on private lands and would encourage private landowners and land managers to participate in voluntary conservation activities.

Options Considered: The Task Force focused on the categorical exemption because it could be handled largely within the Resources Agency and seems to have a much clearer chance for success than the other classes of exemptions. The Task Force considered two primary alternatives for a categorical exemption for small scale restoration projects:

- Amending an existing categorical exemption to include small scale restoration activities
- Creating a new categorical exemption modeled on existing exemptions.

Initially the Task Force leaned towards recommending amendment of categorical exemption class 4, which allows for minor land use activities on private lands, to include a wide range of minor restoration activities that might be used by a wide cross section of landowners and restoration professionals. After further discussion, the Task Force decided to pursue a distinct category for small restoration projects.

The Task Force spent considerable time discussing the details of the proposed exemption, especially the definition of restoration, proposed footprint, and cumulative effects. One of the concerns expressed is to make sure that projects do not "sneak by" that aren't truly focused on environmental enhancement. It was suggested that only projects designed "solely" for restoration would be allowed. However, we did not want to preclude "good" projects that may serve more than one purpose.

The size, or scale, of allowable projects was discussed in depth. Some felt that five acres is too large and could reasonably be expected to have significant environmental impacts. Others argued this would exclude projects that may need to cover a large area to be effective, such as upslope or streambank revegetation. It was agreed that additional research on the numbers and types of restoration projects in different size classes might be helpful in establishing appropriate size classes. Similarly, there was substantial discussion regarding the proposed limit of one project per half mile radius per year to deal with potential cumulative effects. Some felt that multiple small projects that are beneficial to the environment may be both desirable and called for in many watershed plans. Others pointed out that existing language in CEQA (15300.2) excludes projects with cumulative effects from this exemption.

The Task Force also discussed including standards based on existing permitting requirements established by state or federal regulatory agencies. This strategy is used with the categorical exemption for "historical resource restoration/rehabilitation," which refers to standards established by the Secretary of the Interior. The U.S. Army Corps of Engineers has established standards to avoid significant adverse impact in the Nationwide Permits that could serve in a similar fashion for a restoration projects. However, these standards only apply to projects within the Corps' jurisdiction, primarily riparian areas and wetlands, and don't include upland habitat areas.

After substantial discussion, the Task Force drafted specific yet simple language that participants thought would provide straightforward guidance for the applicants and lead agencies to determine eligibility, and a good starting place for the Resources Agency. It incorporated rough rules of thumb to preclude projects obviously outside of the spirit of the categorical exemptions, recognizing however that adding too many conditions at this early stage could defeat our purpose to facilitate restoration. The Task Force recognizes that the proposed language, definitions, and associated issues will be fully vetted and probably modified during the ensuing amendment and review processes which will likely take more than a year to complete.

Next Steps: The Task Force recommends that:

1) The Secretary for Resources initiate the process to amend CEQA as soon as possible by working with the State Water Resources Control Board and others agencies to finalize language for adding a Categorical Exemption 15333 – Small Projects for Restoration of Natural Habitat, using the following:

15333. Small Projects for Restoration of Natural Habitat

Class 33 consists of projects not to exceed five acres in size for the restoration or stabilization of natural habitat for fish, plants, or wildlife provided that:

(a) There would be no adverse effect on threatened or endangered species unless the impact is covered by a habitat conservation plan or an incidental take permit,

(b) There would be no movement of hazardous materials, and

(c) No similar projects have been located within a one half-mile radius of the project during the same year.

2) The Secretary for Resources organize one or more workshops with restoration practitioners and regulatory agency permitting staff to "ground truth" the utility and effectiveness of this exemption.

2. Create a Permit Assistance Center to Aid Landowners Doing Voluntary Conservation

Problem Addressed: Landowners considering restoring their property do not currently have access to reliable, up-to-date information on the permit process associated with restoration activities. Although developers and some landowners hire environmental consultants to guide them through the permit process, many farmers and rural landowners are reluctant or unable to front these fees. While permitting advice is available directly from the regulatory agencies, landowners are disinclined to speak about their projects to representatives of the government due to a perceived threat of enforcement actions. The "do-it-yourself" approach to permitting is frustrating for landowners because of the complexity of multiple forms, because of the lack of communication between agencies, and because written guides explaining the permit process are usually outdated by the time they are printed. Together, these factors can result in landowners losing interest in restoring their lands or performing the work without notifying agencies, thus putting themselves at risk of enforcement.

Proposed Solution: A permit assistance center or phone "help line" specifically for restoration projects could provide landowners with permitting advice and recommendations on technical resources tailored to the needs of their property. Landowners would speak directly with someone who was experienced with the many facets of permitting restoration projects, and who was also familiar with the limitations faced by landowners. Permit assistance staff would:

- Listen to the landowner describe the type of work he/she is interested in doing
- Describe the types of permits that are usually associated with those activities and estimate fees and timelines for permit processing
- Provide landowners with current forms and direct agency contacts and addresses
- Be available to answer landowners' questions as they are filling out the form
- Advise landowners on what they can do to expedite the permit process
- Provide information about related local efforts such as watershed plans or CRMPs
- Advise landowners on types of studies or determinations that may need to be done on their property prior to construction (e.g. a wetland determination)
- Advise landowners on ways the project may be modified to alleviate the regulatory burden (e.g.. if the project can be modified to fit under a nationwide permit).

Existing or Similar Efforts: Several groups have taken steps to address the problem. In developing the structure of the restoration related permit advice center, the following may prove to be useful tools or models:

- Written guides to regulatory compliance (e.g. the California Association of Resource Conservation District's (CARCD) Guide to Working in Streams or CVPIA's Handbook of Regulatory Compliance for the Anadromous Fish Restoration Program.

- The State of California's Office of Permit Assistance which focuses on business permits; it has never handled a call on regulatory compliance for habitat restoration.
- Cal EPA's Environmental Service Center which also assists businesses in meeting regulatory requirements. Staff do not walk callers through permit process.
- Joint Aquatic Resources Permit Application, which is in place in the San Francisco Bay area.
- Consolidated permit information on websites produced by the states of California (**www.calgold.gov**) and Idaho (**www.oneplan.org**)
- The State of Iowa Waste Reduction Center (**www.iwrc.org**) which assists small businesses in complying with federal and state environmental regulations. Unlike the California counterparts, the Iowa program incorporates on-site reviews and one-on-one assistance for permit applications. The Iowa program offers examples of how a governmental agency addressed questions of liability, route of delivery, and confidentiality.

Options Considered: In order to provide more incentives for landowners to seek assistance on their projects, the permit assistance center could also inform landowners of possible funding sources or technical resources available for their type of work. Independent of the delivery route chosen, the following criteria appear to be required for a successful project:

- Technical assistance should be available to landowners/interested parties free of charge.
- The body or entity delivering assistance should not be obviously affiliated with a regulatory agency.
- Assistance centers should be locally based or geographically centered.
- The landowner/interested party should be able receive information or advice confidentially, without the need to give the exact location of their property. However, the landowner will get more helpful advice if the assistance center knows enough details about the project and the site.
- Regulatory agency staff must have assurance that the permit assistance center is neutral so that they can share information with confidence that it will be accurately passed on to the landowner.
- Permit assistance center staff must be highly trained and experienced in order to effectively assist callers.
- Assistance must be timely.

Alternatives: Permitting assistance could be made available to landowners through several delivery routes, which fall into the following general categories:

a) Under the auspices of a government agency or existing government permit assistance centers (such as CalEPA, the Resources Agency or the Department of Conservation).

b) Under the auspices of semi-governmental organizations with existing outreach to landowners, such as the CARCD, or California State Association of Counties (CSAC), or a nonprofit group (such as the Cattleman's Association, Farm Bureau, or For Sake of Salmon), or by a nonprofit created specifically to serve this function to provide the service.

c) In association with U.C. Cooperative Extension.

The Task Force believes that alternatives 2 or 3 offer the best opportunities for success. Though alternative 1 offers an existing program or infrastructure to build on, the fear and distrust of government by many landowners would make this alternative less effective. Many farmers will not call CalEPA about a project that would potentially impact natural resources for fear of enforcement actions.

In order to decide which of the alternatives offers the best chance for success, the Resources Agency will first need to develop a feasibility and implementation plan. This plan would consider which delivery route would be best, where it would be housed, develop both a start-up budget and an annual budget, develop initial outreach plans and identify partners.

Next Steps: The Task Force recommends that:

1) The Resources Agency help identify and secure long term funding for the permit assistance center.

2) The Resources Agency engage or request proposals from nonprofit organizations and consultants to develop a feasibility and implementation plan for creating the permit assistance center.

3) The Resources agency develop a competitive grant program to establish permit assistance centers in regions throughout the state using the criteria outlined above.

3. Develop a Pilot Technical Review Team for Large Scale Restoration Projects

Problem Addressed: The permit and regulatory process for large restoration projects can be especially complex and seemingly redundant. Each permitting agency has its own requirements and formats for project proposals, and embarks on its own review and evaluation processes independently of other agencies. Some agencies delay their review or approval pending receipt of permits from other agencies. These requirements and the sequencing of permits is not necessarily clear to either the project proponent or to the agencies, and can result in lengthy and expensive delays in project approval. Furthermore, project proponents may encounter contradictory design or mitigation advice from different agencies, requiring additional rounds of review with agency staff to reconcile their concerns. This is particularly onerous to landowners, nonprofit groups, RCDs and some local government project proponents and is also inefficient for agency review staff.

Proposed Solution: A regularly convened forum or framework for project proponents, public agencies with regulatory jurisdiction, and restoration experts to discuss the relative merits of a proposed restoration project and to coordinate field reviews could improve design and expedite review of large restoration projects. This forum could take the form of a Technical Review Team (TRT) that would:

- Determine eligibility and suitability of a proposal for inclusion in the expedited process, based on size, purpose, and potential benefits and impacts.
- Evaluate the technical merits of a proposal, relative potential benefits to the resource, and whether it addresses restoration needs identified in existing watershed plans or enhances other local conservation efforts.
- Provide a forum for regulatory agency staff with jurisdiction over the project area to discuss and coordinate their regulatory review processes.
- Help identify a lead agency, if needed, to coordinate needed environmental analysis.
- Provide for coordinated field reviews as needed.
- Recommend changes to specifications for improved project performance.
- Evaluate final project design in terms of whether it has addressed the protection needs and recommended modifications or mitigations articulated in the TRT process.
- Provide for documentation of TRT discussions, recommendations, and responses which can be incorporated into CEQA/NEPA documentation and other permitting processes.

The Task Force believes this recommendation would best suit large restoration projects that would normally require several years to develop, permit, and implement under current procedures, such as flood plain restoration, sequenced implementation of fish passage projects, or complex habitat restoration projects. It could benefit these larger restoration projects by expediting complex design decisions and by minimizing cumulative review times because agencies can discuss and reconcile impacts, mitigations and recommendations at one time. Because the Technical Review Team approach does not necessarily result in a "streamlined" permitting process and requires in-depth input through a group process, it may actually lengthen the review and implementation of smaller scale projects. As envisioned, the TRT process would effectively winnow projects that are not suitable for this approach.

Existing or Similar Efforts: There are several examples of bringing scientific or technical experts together to discuss restoration projects or programs:

- CALFED, a cooperative effort among State and federal agencies to restore ecological health and improve water management of the Bay-Delta system, has an Ecosystem Restoration Program and a Science Program that include standing boards, panels focused on specific topics, and public workshops that independently address scientific issues related to management decisions and adaptive management strategies. One example of an ongoing effort is the creation of the Adaptive Management Forum to review the design of specific large scale channel restoration projects in the Tuolumne River, Merced River, and Clear Creek, and to recommend ways to incorporate adaptive management. CALFED also uses technical and public review teams to discuss the merits and recommend approval of individual projects requesting funding from CALFED ecosystem restoration and watershed grant programs.
- The Southern California Wetlands Recovery Project is a public agency partnership working to acquire, restore, and enhance coastal wetlands and watersheds between Point Conception and Mexico. It employs a Managers Group of all responsible agencies and public task forces to discuss potential projects with project applicants in public meetings. It also uses a science panel of academics to review program objectives, priorities, and project criteria.
- DFG's Coastal Salmon Restoration Grants Program uses technical teams of DFG, National Marine Fisheries Service (NMFS), and Department of Conservation' Geologic Survey (DOC/CGS) staff to review projects. They also use a separate public advisory team review. They do not, however, work in team fashion with a proponent to design projects
- Regional Water Quality Control Boards (RWQCBs) use technical review teams to review projects submitted for water quality grants, however these teams consist primarily if not solely of RWQCB staff.

The above examples focus on publicly funded projects. The proposed TRT differs from these efforts by providing a forum for reviewing and improving both privately funded project proposals and those funded through public agencies as well.

Options Considered: The Task Force pursued the idea of a pilot demonstration of a TRT. It could include an area at the county scale or perhaps a large region based on existing agency boundaries, for example the RWQCB regions. A regional emphasis ensures familiarity and local expertise on environmental and design considerations by TRT members for specific projects.

The Task Force identified the following requirements for implementing a Technical Review Team (TRT) and conditions that would optimize participation and contribute to its success.

- All affected agencies must provide staff and resources to participate on the panel. It is important that both biologists and administrative/permitting staff participate.
- Responsible agencies must have the appropriate technical staff present to evaluate and help design on-the-ground measures that will meet the resource protection needs of all participating agencies.
- The meetings must be open and accessible to the public.
- The TRT should, preferably, be chaired by an entity present in the region of the projects and the team members should work within the region, which will ensure local knowledge and expertise.
- A non-regulatory entity would be preferable as chair from landowners' perspectives.
- Resources for staffing and coordination by the lead entity would be required.

The Task Force believes the specific parameters of the TRT are best developed by those implementing the pilot project. It recommends the creation of a formal structure or framework, perhaps through a multi-party MOU, that defines the objectives of the TRT and the roles for both the group and the individual participants. This MOU could also lay the groundwork for future agreements which could include permit coordination, JARPA type permit applications, and other means that encourage large scale restoration on private lands. Since regulatory agencies would retain their regulatory authorities, the TRT could not function as an alternative regulatory review process per se. Nevertheless, the Task Force recommends that the TRT attempt to feed into the existing regulatory review structure in such a manner as to leverage resources through coordinating and expediting the projects recommended by the TRT.

The Task Force considered several alternative leads for developing a pilot TRT:

a) The Department of Fish and Game, which administers coastal fisheries grant programs and is involved in conservation planning statewide. DFG has

statewide regulatory authority for endangered species enforcement and a large regulatory workload for developing stream-crossing agreements.

b) The Coastal Conservancy, which administers restoration programs and grant processes for restoration but has no regulatory authorities, but only operates in coastal habitats.

c) RCDs, quasi-government entities distributed statewide which are governed by boards of local landowners. They have no regulatory responsibilities and they also manage many restoration and grant projects of their own.

The Task Force preferred the third option.

The Task Force also recognized that there are a variety of entities interested in, and actively pursuing, large-scale restoration projects of the types we believe would benefit from the TRT, including projects funded through public programs such as CalFed or DFG; projects through private nonprofits such as The Nature Conservancy or Ducks Unlimited; and projects on private property funded by individuals. Because there is no central location for collecting information on pending or proposed projects, we were unable to estimate the number and concentration of eligible "large scale" projects. It is our hope that groups representing regions of the state with a concentration of these types of restoration projects will step forward to develop a pilot TRT that will demonstrate the need and efficacy of this approach.

Next Steps: The Task Force recommends that:

1) The CARCD work with RCDs to identify interest and potential candidates for leading a pilot demonstration of the TRT approach.

2) The Resources Agency entertain proposals by other groups, public and private, which are interested in developing a pilot TRT project.

3) The Resources Agency contact Department heads and other public agencies to request their participation in the development of the TRT project.

4) The TRT pilot be encouraged for the North Coast and Central Coast regions.

4. Assist the Expansion of Watershed Based Permit Coordination Programs

Problem Addressed: Private landowners, along with their community and public agencies, are increasingly interested in protecting and restoring watershed conditions and functions on their property. Over the past few years there has been a significant increase in public programs to aid private landowners in assessing watershed protection and restoration needs and in designing and implementing activities that are appropriate for conditions in a given geographic area.

Unfortunately, local, state and federal regulatory review processes are so complex, time consuming and costly for the majority of landowners seeking to do this work that it deters them from acting. Many simply don't even know where to start. A simple streambank protection project, designed with technical assistance from state and federal agencies, can face a review time of well over a year by six to ten agencies and permit fees of more than $1,500. Despite their desire to do this important work, most rural landowners will continue with current land use practices if the time and financial costs of seeking governmental approvals exceed the perceived benefits of engaging in conservation activities.

Proposed Solution: There is considerable interest and effort, both locally and nationally, to develop a more coordinated and streamlined approach to environmental regulatory permitting – both within the regulatory agencies and between these agencies and the applicants. However, regulatory permitting is so complex, and resource conditions so variable within California, that it is difficult to find review processes and technical mechanisms that satisfy all agencies and statutory requirements while reducing and simplifying the process for the public.

Sustainable Conservation, a nonprofit environmental organization, in partnership with the NRCS and local RCDs, has designed and implemented a unique and innovative permit coordination program to facilitate the implementation of projects to improve water quality, enhance wildlife habitat and preserve agricultural resources and private lands for an area, such as a watershed, with similar resource conditions. This program creates one-stop regulatory shopping for farmers and ranchers interested in implementing voluntary conservation projects to control erosion,

Photo courtesy of Department of Fish and Game

sedimentation and enhance the natural resource values on their lands. As long as the farmer follows the designs and conditions of this plan, the project is covered under the program's permits and they do not need to seek permits from each of the individual agencies – one stop regulatory shopping! Local, state and federal regulators have partnered on this project, placing special conditions on the timing, location, and methods of installation of the conservation projects to avoid or mitigate negative impacts on water quality, sensitive species and important habitat.

The Elkhorn Slough watershed project has resulted in 26 projects over three years that have provided tremendous natural resource benefits: 33,000 tons of sediment prevented from entering the watersheds streams and slough and more than a mile and a half of streambank enhanced or restored. The NRCS and RCD are able to more effectively perform their missions; the regulatory agencies are able to leverage their resources and include important environmentally friendly design specifications in projects; and the landowners are able to install conservation projects more efficiently. Truly a win-win program.

The success of the Elkhorn Slough project has enabled Sustainable Conservation to begin similar projects in the Salinas River, Morro Bay, Coastal Marin, and Navarro River watersheds. In addition, they have completed a survey that has identified nearly 30 more areas with great potential for this program. They are receiving requests from NRCS offices, local RCDs, watershed groups and regulators from around the state to start similar programs in their area. In addition, their success has emboldened a number of RCDs to consider how they could independently implement similar programs. As a result, Sustainable Conservation is also investigating how it could effectively train these organizations to implement permit coordination programs statewide.

Existing or Similar Efforts: There have recently been quite a few efforts and approaches trying to do just this. These models fall into several basic categories: multi-agency permit coordination and streamlining; single agency permit streamlining; interagency coordination; interagency consultation; and regional conservation planning. The multi-agency and single agency permit coordination and streamlining models desire to simplify the permitting process for applicants – either individuals or groups. The interagency coordination and consultation models focus on internal agency streamlining, usually aiming to reduce redundancy and speed up the review process. The regional conservation planning models are not really permit streamlining - rather they are large scale plans and planning processes that usually designate specific areas within the region for conservation while designating other areas for development.

Examples of some of these efforts are:

California Watershed Restoration Act. In 1996, the Watershed Restoration Act was signed by the governor, amending Section 1603 of the California Fish and Game Code to authorize the Napa Resource Conserva-

tion District to develop a watershed management plan for approval by DFG that included a list of pre-approved practices and BMPs focusing on bioengineered approaches. Interested landowners in the watershed could participate in the plan by filling out a form agreement and submitting it to DFG, listing the measures and practices they wished to install and in what riparian area. This would function as the equivalent of a Streambed Alteration Agreement. The legislation focused only on DFG's process and was not a comprehensive interagency coordination effort. Because of changes to DFG regulation, the Act was not fully utilized.

Joint Aquatic Resources Permit Application (JARPA). San Francisco Estuary Program has initiated a program based on Washington State's successful initiative. This program combines the many individual agency permit applications into one streamlined, unified application for Clean Water Act 404 and 401 permits, shore master permit, and other state and local permits. This single application is reviewed and forwarded from agency to agency during the permitting process. The JARPA program covers the entire San Francisco Bay Area and is not watershed specific. Though it does not coordinate the actual regulatory review process, it certainly makes it easier for the applicant. This JARPA application is not limited to restoration projects.

Coastal Watersheds MOU. The concept was to create a programmatic MOU between NMFS, NRCS, EPA and DFG that would identify the NRCS as the lead agency for watershed restoration and enhancement projects in coastal watershed throughout California. NMFS and DFG would essentially categorize, condition and pre-approve specific conservation practices from the NRCS Field Office Technical Guide that the NRCS could use to design conservation projects with farmers and landowners. Provided the project was done as specified in the MOU, and that the NRCS provided the before, during and after monitoring project monitoring, these projects would not require additional review by NMFS and DFG relative to steelhead trout and Coho salmon concerns. This MOU was never signed due to its inability to address Endangered Species issues in a manner agreeable to both agricultural interests and the regulators across the wide range of resource conditions within California.

Options Considered: Though these efforts and a number of other attempts at regulatory coordination have achieved a varying degree of success, the permit coordination strategy in the Elkhorn Slough Watershed is the only known example that involves all the local, state and federal agencies in a manner that reduces the time, cost and complexity of doing small-scale environmental projects. Because the permit coordination program has been successfully implemented in a pilot program, the Task Force identified the following areas by which the Resources Agency, CalEPA, and their Departments could support the expansion of watershed-based permit coordination throughout California:

- Organizing meetings of regional managers and directors to develop policy and strategy they could develop that would direct and support their local staff in developing strong permit coordination efforts at the local level.
- Developing statewide MOUs or MOAs between the NGOs, the NRCS and RCD partners and individual regulatory agencies creating policy support for local implementation of permit coordination programs.
- Developing regulation, CEQA categorical exemptions for example, that would make it easier to obtain the programmatic permits that are the foundation of the permit coordination program.
- Meeting with federal agencies to coordinate activities that would support permit coordination such as DFG and NMFS developing a 4(d) program or agreeing on a permit policy covering culvert replacement.
- Developing or supporting state legislation to enable or fund adoption of permit coordination programs – either within existing government agencies or through grant programs to support RCDs and local NGO efforts.

Next Steps: The Task Force recommends that watershed entities interested in this approach seek grant assistance for training and start-up costs through existing, eligible grant programs. The Resources Agency can support permit coordination efforts in the following way:

1) Organize a presentation of the program to a meeting of board and departmental directors and CalEPA staff to promote the success of the program and discuss how the program helps the agencies achieve their resource protection goals.
2) Contact the SWRCB to organize a similar meeting for its staff and regional boards.
3) Ask agency departments to develop MOUs providing policy and guidance to local agency staff to

participate in local permit coordination development and to provide examples of programmatic agreements that can be adopted for local resource conditions and solutions.

4) Investigate developing funding mechanisms to support NGO and local RCD staff positions to implement the program at the local level.

5) Organize a meeting of local, state and federal agencies to investigate and develop a coordinated plan to support permit coordination programs and identify specific priority areas in which to commit resources to move forward.

5. Develop a State Recommended Watershed Planning Guide

Problem Addressed: Public and private organizations are devoting significant resources to fund and support locally developed and implemented watershed plans that guide the protection and restoration important natural resources. Though there are a number of good handbooks or guides available to the public, there is no single, recognized protocol or format to guide local groups in their planning efforts or to provide certainty to funding agencies that proposed plans will be appropriate. Personnel from resource agencies and restoration practitioners seem to have a general consensus about the necessary components and general process, but this information needs to be made more readily available to the public.

Proposed Solution: Agencies with permitting and granting authorities and restoration professionals should agree on the basic components of a good watershed plan and develop guidance for creating such plans to local watershed groups, RCDs, and restoration funders. This will provide a more consistent and comprehensive context for proponents and funders to communicate about watershed protection needs and priorities, restoration opportunities, and project schedules and funding. Plans developed using this guidance will make informal agency "buy-in" easier, and thus help ensure them that their grant funds are being used wisely. This, in turn, will facilitate inter-agency cooperation for permitting projects included in the plan. This is essentially an informal, non-regulatory approach, as compared to recommendation #6 below which a formalized regulatory approach.

The Task Force has identified a number of existing handbooks that provide quality guidance. These guides need to be consolidated and made readily available to better assist local watershed groups that are applying for to multiple funding sources supporting watershed planning efforts.

Existing or Similar Efforts: There are several good watershed planning guides currently available that could be reviewed and consolidated into broad guidance to assist the public in watershed planning statewide.

- The California Coastal Conservancy, an important funder and partner in developing watershed plans throughout California, has recently published a Watershed Planning Guide. This guide outlines the process, products and milestones found in quality watershed plans.
- The State Water Resources Control Board's Proposition 13 Grant Program, another important funder for watershed planning, includes specific guidance for watershed planning activities.
- The Sierra Nevada Alliance publishes an example of a local watershed planning guide.
- The NRCS, under Public Law 566, uses a planning guidance document with a land treatment point of view.
- The Coordinated Resource Management and Planning Handbook, available through the CARCD, provides watershed planning guidance from a local perspective.

Options Considered: The Task Force began the discussion by considering the creation of standards for watershed planning that regulatory agencies or the State would agree constitute a preferred or certified plan or process. Ultimately, the group did not want to suggest adding another layer of regulation and complexity to the watershed planning and restoration process and moved on to discuss concepts incorporating a broader guidance for the public.

The Task Force recognized that different watersheds have unique natural and cultural resources - different

landscapes, different land uses, and unique problems that need to be addressed. It would be difficult to develop a single certified plan or watershed planning template that would fit all watersheds while providing the necessary flexibility. It is important to note that there is a difference between watershed assessment and watershed planning. Assessment can provide important data to aid the planning process – identifying important resources to be protected and specific problem areas in a watershed. The California Department of Forestry and Fire Protection is currently working with U.C. Davis on developing a statewide watershed assessment manual.

One strategy to provide important guidance that could be modified for local conditions is to create a modular approach to watershed planning, identifying and consolidating the different components of quality watershed plans and incorporating the best elements into a "checklist." This approach would provide watershed groups with guidance in structuring a thoughtful process that would consider and include the most important elements of planning for their individual watersheds. This guidance could include information on the importance of hydrology, geomorphology, and public participation, elements that are too often left out of plans. And, it could provide examples and direction to elements that are consistently found in good watershed plans. Including this checklist in the funding or grant making process would provide the applicant with an opportunity to explain why particular elements are present or absent, and would provide funders with an evaluation tool.

The Task Force agreed that it is important to provide a central location or clearinghouse for this information and guidance in order to provide the best public access and to avoid duplication. It will also be important to develop outreach and publicity to ensure the public is aware of the information and can easily acquire it.

Next Steps: The Task Force recognizes the need for broad watershed planning guidance that is comprehensive, flexible and widely available to the public. The Task Force recommends:

1) The Resources Agency identify funding to hire a consultant to do a comprehensive review of existing watershed planning guides and consolidate the information into a single, modular handbook as described above.

2) The Resources Agency help establish a central clearinghouse or repository of watershed planning guides and materials that could be made available to the public.

3) The Resources Agency work with the CALFED Watershed Work Group, Coastal Conservancy, and CARCD to make this guide and these resources available to watershed groups throughout the State.

4) The SWRCB be directly involved in this process, given their watershed granting authority under Proposition 13 and through Section 319 of the Clean Water Act.

6. Implement a Pilot Project to Develop a Program EIR in Conjunction with a Watershed Plan

Problem Addressed: Many granting agencies encourage the development of watershed plans to ensure that public restoration funds are targeted to the highest priority needs and that resulting projects are based on sound science. Once a watershed plan is completed, it will make it easier to justify specific projects and grant proposals. Given the complexity and time requirements of the planning process, however, additional incentives may be needed, such as a mechanism to expedite permitting for projects that are included in the plan.

Proposed Solution: CEQA and the CEQA Guidelines encourage the use of "tiering" to streamline the environmental review process through special types of Environmental Impact Reports (EIR). A Program EIR covers actions that are closely related geographically, are logical parts of a chain of related projects, and have similar environmental effects that can be mitigated in similar ways. Quite similar are Master EIRs. In cases where the watershed planning process has identified specific classes of projects or specific sites for projects, it may be possible and advantageous to develop a Program or Master EIR at the same time.

The community, stakeholders and regulatory agencies are already at the table discussing and planning for

many of the elements typically found in these EIRs, i.e. resource problems; solutions and alternatives; the classes of projects needed; the mitigation, monitoring and quality control aspects; and the potential impacts to environmental and cultural resources in the area. Essentially, the overall environmental impact of the entire watershed plan would be assessed up front, and then implementation of the plan's individual activities, already identified within the Program or Master EIR, would be able to move forward more quickly.

Existing or Similar Efforts: Examples of these EIRs being used to support watershed planning or restoration efforts were not readily available. Most examples of these EIRs are found in the construction and development industry. Several Program Timber Harvest Plans also employ this approach, including one to cover community fuel reduction projects and their benefits in preventing catastrophic fire and attendant watershed impacts.

The Task Force also considered the use of "certified regulatory programs" under CEQA. These, however, apply to regulatory permitting processes for which a single agency has authority. Since watershed planning is typically not a regulatory action and is not usually carried out by a single agency, the Task Force determined that it did not apply.

Options Considered: The Task Force identified the conditions that would indicate the opportunity to use a Program or Master EIR:

- A comprehensive watershed planning effort that includes significant watershed assessment and watershed analysis.
- The identification and inclusion of specific restoration projects or classes of projects within the proposed plan.
- The development and inclusion of monitoring activities to determine the effectiveness of the plan and included activities over time.
- Significant participation of regulatory agencies in the watershed planning process.
- Adequate funding to develop both the plan and the EIR.

The Task Force considered organizations, agencies, or watersheds, which might be interested and capable of demonstrating the value of using these EIRs for the purposes of restoration. No strong preferred alternative was identified at this time.

Next Steps: The Task Force recommends that:

1) The Resource Agency entertain proposals from RCDs, watershed groups, other agencies or NGOs to develop a demonstration project to use these EIRs in conjunction with the development of a watershed plan.
2) The Resources Agency identify potential funding sources to support development of the EIR and associated watershed plan.

Reduce Personal Liability

7. County Ordinance to Indemnify Landowners Performing Conservation Work

Problem Addressed: In order to reduce liability for costs associated with defending their permitting actions, many state and local agencies require that permittees indemnify the issuing agency for any legal action related to the issuance of the permit. While concern about liability to the county from various types of development projects is understandable, it makes less sense for restoration projects that are designed solely to improve environmental conditions.

In many cases the agency requiring the indemnification may be involved in the actual design and permitting of the project. It is therefore in the County's interest to encourage – or at least not discourage – restoration activities by private landowners.

Proponents of development projects who stand to gain significant economic gain from their activities, are generally covered by their own insurance policies and

include costs associated with CEQA activities in their business plans. Individuals or NGOs performing voluntary environmental enhancement projects, on the other hand, can neither afford liability insurance with high levels of coverage, nor do they have the resources to defend against legal action resulting from disputes over CEQA compliance or the regulatory process. As a result, the mere threat of legal action, no matter how specious the claim or unlikely its ultimate success, can cause a landowner to decide not to pursue a highly beneficial project that would have supported and protected environmental and community health and values. The Task Force felt that personal liability for restoration projects is increasingly a significant disincentive to private conservation on private property.

Proposed Solution: Public agencies arguably have the resources and capacity to protect both themselves and the public from legal action resulting from the agency's actions. It is understandable and desirable to pass this risk on to business and individuals deriving significant economic benefit from the activity. In the case of restoration activities, however, where landowners frequently allow restoration activities to move forward on their private property for the ultimate benefit of their community, it is reasonable to recommend that the public and agency protect the landowner from the unlikely event of legal action. Exempting landowners performing voluntary conservation from this typical indemnification requirement and/or indemnifying the landowners themselves from action will remove this issue as a barrier to action.

Existing or Similar Efforts: Indemnification requirements and policies vary greatly from county to county. Their effectiveness and the degree to which they are in place seem to depend largely on the land use, relative affluence of the county, and whether or not the county had incurred costs for defending their permitting decisions. In 1999, Mono County did an informal survey of California counties to understand their use of indemnification agreements. At that time, only eight California counties did not use any indemnification agreements when issuing discretionary permits. It appears that the primary reason and emphasis for these agreements involves development projects. Five of the counties surveyed reported their savings resulting from these agreements, ranging from $100,000 to $10,000,000. In follow-up conversation with several counties that did not use indemnification agreements, Sustainable Conservation learned that they have not incurred any costs from defending restoration projects. In similar conversations with other counties that did use the agreements, however, it was reported that they had incurred significant costs defending their actions on controversial restoration projects.

Options Considered: The Task Force considered what the critical elements would be for both the landowner and public agency. The issue can be tackled from either end: exempting classes of projects from the indemnification requirements or indemnifying landowners' restoration activities from certain types of actions. The following options were considered:

- The Resources Agency or State legislators could sponsor legislation that would protect landowners from legal action resulting from restoration projects that received the permits from State agencies.
- State agencies could consider removing indemnification requirements for restoration activities they permit.
- The Resources Agency could encourage counties to develop ordinances to exempt restoration projects from indemnification processes where counties are the CEQA lead. The Task Force drafted a model ordinance template that could be used for this purpose.
- Investigate creating a pooled insurance group to provide coverage to landowners for restoration projects.

Next Steps: The Task Force recommends that:

1) Counties should consider using the model ordinance to waive indemnification requirements for restoration projects.
2) The Resources Agency make presentation to groups such as the California State Association of Counties (CSAC) on the Task Force and its recommendations.
3) Resources Agency work with the CSAC and similar groups to distribute the following draft ordinance to its members and encourage them to implement the model.

DRAFT ORDINANCE

ORDINANCE NO. 01-

AN ORDINANCE AMENDING TITLE _____ OF THE

COUNTY CODE [EXEMPTIONS FOR WATERSHED RESTORATION PROJECTS]

THE BOARD OF SUPERVISORS OF THE COUNTY OF _____
ORDAINS AS FOLLOWS:

Section 1. Legislative Declaration.

The Board of Supervisors finds and determines that exemptions from certain county code requirements are warranted for watershed restoration projects by private landowners when such projects are endorsed by resource conservation districts, or county-recognized watershed protection organizations, as being consistent with local watershed plans for management and restoration.

The exemptions are available only if the project is otherwise regulated by a state or federal permit.

The purpose of the exemptions is to encourage landowners to undertake restoration by reducing cost and financial risk. The exemptions are a reward for advance planning that conforms to watershed protection plans that are approved by local stakeholders and that are recognized by public agencies at the state and local level.

The benefit from watershed restoration is significant, in terms of soil and water conservation and habitat improvement, and such benefit far outweighs the value of the fees and indemnification waived by the county.

Section 2. Amendment of Title _____ of the County Code.

Title _____ of the County Code is amended by addition of the following chapter.[or article]

"Chapter _____. Exemptions for Watershed Restoration.
[or Article]
Section _____. Exemption from Fees and Indemnification of County

Notwithstanding any provision to the contrary in this Code, a private landowner project that is solely for watershed restoration shall be exempted from county fees, and any requirement to indemnify the county, if the project is otherwise regulated under a state or federal permit, and is endorsed by a resource conservation district or county-recognized watershed protection organization. The endorsement must indicate project consistency with local watershed plans for management and restoration.

Section 3. Publication, Codification, and Effective Date.

[Remainder intentionally left blank]

Alleviate Funding Bottlenecks

8. Enable Advance and/or Expedited Payments for Government Funding of Restoration Projects

Problem addressed: As described in the introduction of this report, reimbursements from state agency restoration grant programs for approved restoration project activities can take up to 120 days. This financial burden can be particularly onerous to landowners, NGO's, and local businesses that contract for the restoration construction, and can cause many contract and scheduling problems for local governments. Public agencies frequently have different requirements for "grants" and "contracts," both of which can fund conservation efforts on private lands. In either case, most private landowners and NGOs do not have the necessary financial resources to pay salaries, overhead and contractors on "funded" restoration projects while waiting for reimbursements for these costs. Similarly, employees and many local contractors cannot wait 120 days to be paid, since their bills become due in 30 days. As a result, these entities either build the cost of "fronting" the money into their contracts, resulting in higher restoration costs, or they refuse to do the work, which results in increased costs and construction delays. This problem is particularly hard on small rural towns where local businesses both need the work to survive and have smaller reserves to carry them as they wait for payment.

Proposed Solution: In order to encourage continued and additional participation in restoration programs which enhance public benefits on private lands, state agencies should take full advantage of existing authorities to provide advance payments to restoration program grantees and should explore additional mechanisms, such as escrow accounts, to expedite payments where needed. The possibility and the potential scope of advance and expedited payments may depend upon:

- State Department of General Services statutory or regulatory authorities
- Enabling statutes and regulations for individual State departments and/or grant programs
- Who the grant recipient is, i.e. a public agency, non-profit, or landowner
- Whether the grant is classified as a "contract" or a "grant"
- The discretion of individual Department Directors.

This solution will likely require the development of new policies, procedures, and regulations by individual departments. While this might increase the department's initial workload, it could reduce the amount of billings and thus the overall time the Accounting Department spends handling invoices and payments. This approach could, however, result in additional workloads associated with pursuing reimbursements from grantees who fail to fulfill the grant or contract agreement. These factors will need to be evaluated.

Existing or Similar Efforts: Advance Payment: Some public agencies, such as the State Water Resources Control Board, and constituent Departments of the Resources Agency already can provide a percentage of grant funds from specified Proposition 12 and 13 programs up front upon request by grantee. In the case of Proposition 12 (Park Bond) grant programs, the Department of Parks and Recreation may advance up to 10% of a grant initially and up to 80% once construction has begun. The Tahoe Conservancy may initially advance 40% of a grant award and up to 90% of the full grant amount once construction has begun. In the case of Proposition 13 (2000 Water Bond) grant programs, the State Water Resources Control Board may advance up to 25% of the grant in the Watershed Protection, Nonpoint Source Pollution Control, and Coastal Nonpoint Source Control Programs.

Granting agencies typically develop regulations or policies that cover these issues. It appears possible that DFG could also exercise flexibility with respect to grants under its Fishery Restoration Grants Program if it deemed it beneficial to the program. This would benefit public agencies, non-profit entities and Indian tribes that are considered eligible by DFG for "grants" under Fish and Game Code section 1501.5. DFG interprets 1501.5 to require contracts for private entities or landowners.

Contracts are often treated as having more constraints on advance payments, particularly for private landowners. However, there are several precedents for advancing payments under contracts, including legislation chaptered in fall 2000.

- Fish and Game Code 2762.2 provided statutory authority for advance payments of contracts paid through Fish Restoration Account appropriations for FY 1991 through FY 1993. This applied to projects developed by the department in accordance with the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act and "projects designed to restore and maintain fishery resources and their habitat that have been damaged by past water diversions and projects and other development activities."
- The Tahoe Conservancy has established policy for allowing advance payments on contracts for services, including NGO's and private landowners.
- Recent legislation (Government code 11019) provided statutory authority for a number of state agencies, including the Resources Agency and its constituent departments, to advance up to 25% payments on contracts under $400,000 with community based private nonprofit agencies.

In addition to the advance payment options described above, there are several other options for providing funds up front. The SWRCB has several programs for delivering funds for restoration or water quality protection activities to landowners. The revolving fund loan program provides low interest loans to address nonpoint source pollution problems and for estuary enhancement. Linked Deposit Programs place funds with a commercial bank with which the landowner then deals directly to negotiate the loan. These programs, however, involve lending funds, which the landowner or NGO must repay, rather than grants or contracts. Public agencies can also create Joint Powers agreements, but these are limited to contracts between agencies.

Expedited Payments: There seem to be many fewer examples of public agencies finding methods to expedite the payments of grants already awarded. The CARCD reports that NMFS has established an escrow account in conjunction with a restoration grant awarded to their organization. CARCD requests reimbursements over the telephone. The financial institution verifies the request in approximately a week and electronically deposits the funds into CARCD's account. CARCD submits a report to NMFS every six months describing and accounting for the transactions.

The California Coastal Conservancy reports that their contracting process is usually 60 days from invoice to check. This is because this agency pays the contractors and grantees directly, rather than going through the State general services process as most of the other granting agencies.

Options Considered: The Task Force discussed the following options:

- Ask departments to fully exercise existing authorities for advancing grant and contract payments for restoration projects, and develop regulations, procedures and policies as needed.
- Develop legislation if needed to allow advance payments at the discretion of department directors to improve the effectiveness of restoration programs.
- Depending on results of above, consider the use of escrow accounts, revolving funds, or CDs for providing additional payment flexibility to assist landowners, private entities, or others receiving contracts under grant programs.
- Depending on results of above, consider the use of Joint Powers agreements between departments and local agencies.

While there seems to be a number of examples of advanced payment that the agency representatives are interested in, they seemed less hopeful for finding solutions that could expedite payment. The nature of public funding of projects on private lands has created the current systems of checks and balances to provide accountability. The Task Force agrees that this issue of slow reimbursement is very serious for landowners, NGOs and their contractors and is a significant barrier to restoration on private lands, but it could not come to resolution or agreement on a concrete recommendation to make that would address the issue.

Next Steps: The Task Force recommends that:

1) Each state Department with granting authority analyze its program in light of information provided in this report and determine whether they can use advanced payment options to fund restoration projects that achieve landowner and Department restoration goals.

9. Develop Grants to Pay Environmental Review and Permit Fees for Restoration Projects

Problem Addressed: Most project proponents, in the course of implementing restoration projects, will be required to obtain permits from one or more regulatory agencies. For restoration projects, these fees range from hundreds to several thousand dollars. These fees can be significant, particularly for smaller restoration projects, and serve as a disincentive to restoration activities, especially to landowners. At the very least, the money spent for fees is money that is not spent on doing more on-the-ground work. Given that these projects are typically supported by, and often designed with the help of, the regulatory agencies that are collecting the fees for benefits to the overall community, it seems appropriate that the landowner be exempted or reimbursed, in whole or in part, for these fees.

Proposed solution: Reducing or eliminating the financial burden for permitting beneficial restoration projects would remove a disincentive and is desirable from a public policy perspective. This could be done by waiving fees, covering fees from grant funds, or by providing additional funds from a separate source.

Existing or Similar Efforts: Over the past several years, it appears that avenues or options available to staff of regulatory agencies to waive fees for restoration projects have been curtailed — sometimes as a result of changes in regulation or policy, in other cases due to budget constraints at the agencies. Currently, the primary way in which restoration projects can avoid fees associated with permits and regulatory review seems to be through exemptions to permits or ordinances. The State Water Resources Control Board, for example, allows grant applicants to include the cost of CEQA review in their funding proposals. Obviously, this covers primarily small scale projects and does not apply comprehensively across regulations or agencies. CALFED's Watershed Restoration Program also allows grant applicants to include all relevant permits in the cost of the grant.

Options Considered:

- Individual agencies waive fees. This might require legislation. It may also impact those programs that are funded primarily through fees such as DFG's 1600 program and the associated CEQA review. It is unclear, however, what percentage of the overall fees are derived from restoration projects.
- Restoration grant programs provide alternative or additional funds to cover permits and environmental review costs. This might require a change in policy or regulations. It would not cover landowners outside these programs, i.e. those using their own resources.
- Creation of a new funding source or grant program to cover permit fees for restoration projects for those that cannot be covered through an existing grant program. This would require working through the state legislative or budget processes.

Next Steps: The Task Force recommends the following actions:

1) Each Department with a restoration grant program should evaluate whether their programs can cover permit fees. If so, the Department Directors should consider including permit fees as an eligible cost in their RFP or contracts.
2) If not, Department Directors should assess the amount of fees that cannot be covered by the above and examine their options for covering these costs.
3) Depending on outstanding fee coverage needs from the above two items, the Resources Agency should pursue legislation to create funding for permit fees for restoration projects.

Recommendation to Support Safe Harbor Programs

10. Support Safe Harbor Program

Problem Addressed: Many private landowners, willing and interested in doing voluntary conservation work, are concerned about how the presence of state and federally listed endangered species will affect their property rights. Rumors, misinformation and high profile news stories about endangered species and their effect on private landowners exacerbate this complex issue. The result has a big impact on private land stewardship. Many landowners fear that if they do restoration projects or manage their lands in an environmentally friendly manner, these species will be attracted to their property, resulting in increased restrictions or regulations. This is even more of a concern for farmers, ranchers and others involved with working landscapes.

Proposed Solution: The U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) have developed a rule to allow for the development of "Safe Harbor" programs under the federal Endangered Species Act (ESA). A Safe Harbor is an agreement between a landowner and the USFWS or NMFS that provides certainty and guarantees to landowners that they will not be subject to enforcement actions if endangered species attracted to their land as a result of restoration projects and land management practices are accidentally "taken" or harmed in some way. In order to benefit from these programs, the landowner must actively manage the land in an agreed upon way that will promote the recovery of these species. The landowner must document the conditions of their land and the presence (or absence) of the species before the agreement goes into affect, and achieve a net benefit in order for incidental take to occur.

The California Endangered Species Act (CESA) has no "safe harbor" provisions, however, DFG has a similar program intended to encourage habitat enhancements by ranchers and farmers. It allows incidental take of a candidate, threatened or endangered non-fish species by routine and ongoing agricultural activities if the landowner is operating under an approved voluntary local program. This state program doesn't penalize landowners for withdrawing from the program if listed species have begun to use those improved habitats.

Red-legged Frog. *William Flaxington*

The state can also cooperate with federal agencies on projects that might impact species listed under both the state and federal acts. A project proponent may request that DFG review a federal incidental take permit to determine if it is consistent with the state's requirements. If it is, the DFG may make a consistency determination which eliminates the need for a state take permit. DFG has identified multiple mechanisms (Fish and Game Code Sections 2081, 2080.1, 2086 and 2087) for authorizing take of state listed species covered by federal Safe Harbor Agreements and recommends mechanisms based on the nature of the proposed Safe Harbor Agreement. Determination of the appropriateness of a given mechanism will depend on the specifics of the proposed federal Safe Harbor Agreement.

The state's voluntary local program has not yet been utilized by any landowners, and they remain skeptical. DFG has recently revised its program in cooperation with the California Farm Bureau to improve its usefulness. It is unlikely that private landowners will utilize the program to any extent unless the USFWS and NMFS institute active programs to develop Safe Harbor agreements in California. Only obtaining take for state listed species leaves landowners at risk for violations of the federal ESA.

Existing or Similar Efforts: The nonprofit environmental organization, Environmental Defense, has worked in conjunction with private landowners, other conservation organizations and the US Fish and Wildlife Service to develop a number of Safe Harbor programs nationally. For the past several years, they have been involved in developing similar programs in California. They have recently implemented California's first Safe Harbor agreement on a ranch in Kern County and have several more programs in development. DFG has been involved in these programs.

Options Considered: The task force recognized that the US Fish and Wildlife Service and the National Marine Fisheries Service are the federal agencies that oversee the ESA and have the capacity to use the Safe Harbor program. DFG has existing guidelines for cooperating with these federal agencies on Safe Harbor programs. Environmental Defense is currently promoting a program in California to develop Safe Harbor demonstration projects in partnership with the above mentioned agencies. Actions that California agencies could take to promote the successful implementation of these projects include:

- Developing policy, guidelines and training for their field staff regarding the importance and value of non-perpetuity conservation programs such as the Safe Harbor program.
- Working with NMFS to develop a pilot Safe Harbor agreement for salmonid species.

Next Steps: Because of the limited role and control that State agencies have relative to the federal Safe Harbor program, the Task Force believes education of state regulatory agency staff to encourage their participation with Environmental Defense and the federal agencies would be an appropriate course of action. The Task Force recommends that the Resources Agency:

1) Arrange a meeting with management of DFG, NMFS, USFWS and Environmental Defense or other NGO or independent entity to discuss their plans, or assessment of what is needed, for developing Safe Harbor agreements in California.
2) Following this meeting, the federal agencies in cooperation with DFG should develop policies and practices to support Safe Harbor programs that promote the restoration of California's unique natural resources.