



97-324 HCP

Natural Resources  
Defense Council

OCT 20 1997

71 Stevenson Street  
San Francisco, CA 94105  
415 777-0220  
Fax 415 495-5996

October 16, 1997

Sharon Gross  
CALFED Bay-Delta Program  
1416 Ninth St., #1155  
Sacramento, CA 95814

**RE: Proposed CALFED Habitat Conservation Plan (HCP) or Natural  
Communities Conservation Plan (NCCP)**

Dear Ms. Gross:

I write on behalf of the more than 350,000 members of the Natural Resources Defense Council (NRDC), 66,000 of whom live in California, to urge CALFED to proceed with extreme caution when deciding whether or not it is appropriate to prepare a HCP in order to implement a long term solution to Bay-Delta water problems. Our comments are designed to summarize what NRDC has learned as a result of our experience with ecosystem-wide habitat planning gained principally from our participation in southern California's NCCP program. There are a number of lessons learned from that experience that indicate that a HCP at the scale necessary to adequately address Bay-Delta concerns is very problematic. In addition to the comments contained in this letter, NRDC endorses, and is a signatory to those submitted on behalf of the Environmental Water Caucus.

While NRDC endorses the goals of ecosystem management and habitat conservation planning, when we examined the Southern California NCCP in a report, *Leap of Faith*, released earlier this year (and incorporated in these scoping comment by reference), we found it wanting in several important respects: in clear standards, in adequate funding, and, above all, in the fulfillment of its scientific promise. In its pilot application, the NCCP has too often been marred by inadequate science, poor funding, and undefined or underenforced regulatory standards. NRDC believes there are lessons to be learned from both the successes and failures of the Southern California NCCP that can be used to inform decisions regarding any Bay-Delta HCP. Based on our experience with the NCCP, we are concerned on several fronts about a Bay-Delta HCP at this time.

**The geographic scale of a single Bay-Delta wide HCP would be unmanageable.** Collectively, the five subregional plans comprising the Coastal Sage Scrub NCCP program encompass hundreds of thousands of acres and dozens of rare and endangered species. A CALFED HCP would dwarf its southern counterpart and necessarily involve dramatically more activities and species. Any plan for a Bay-Delta HCP

100% Recycled Paper

40 West 20th Street  
New York, New York 10011  
212 727-2700  
Fax 212 727-1773

1200 New York Ave., N.W., Suite 400  
Washington, DC 20005  
202 289-6868  
Fax 202 289-1060

6310 San Vicente Blvd., Suite 250  
Los Angeles, CA 90048  
213 934-6900  
Fax 213 934-1210

Visit us at:  
<http://www.nrdc.org>

should involve subregional or zone units, perhaps based on the fourteen zones identified in the Ecosystem Restoration Program Plan (ERPP).

For logistical reasons, in Southern California the coastal belt of scrubland was divided into several focus areas, defined by geography, wildlife ecology, and human land-use patterns. Intact, contiguous blocks of scrub, such as on the Otay Mesa east of San Diego, were to be managed as single units, irrespective of municipal boundaries and variable public-private ownership. Initially, scientific advisors recommended grouping the focus areas into thirteen different administrative units, or "subregions," straddling five counties, but what emerged in practice were four major planning units, two each in two counties. This experience points out the difficulty of designing planning areas based on biological factors. Given the extremely complex set of governance structures in the CALFED planning area, it is inevitable that political and other factors not related to ecosystem function will confound the plan design.

**The State NCCP Act is insufficient to support a CALFED HCP.** The Natural Community Conservation Planning Act of 1991 is a rather slender frame on which to hang an ambitious conservation program. The Act provides little more than general authority: plans developed under the program may "provide for the regional or areawide protection and perpetuation of natural wildlife diversity, while allowing compatible and appropriate development and growth." The legislation is virtually silent as to matters of content, standards, and procedure. Responsibility for developing the NCCP is effectively delegated to the Department of Fish and Game

The NCCP cannot guarantee the survival of species. Given the limits of science and the unpredictability of ecological processes, habitat planning contains, by its nature, an irreducible element of risk: even the best-laid conservation plan can be undone by fire or drought or other natural events. But there are many degrees of risk, and in this regard it must be said that the Southern California example risks species in needless, unacceptable ways.

For example, large-scale infrastructural development — including major roads — were permitted to go forward without being incorporated in the design of the reserves. In other words, the infrastructure drove the reserve design, rather than having the ecosystem needs factor into the infrastructure decision making process. Also, reserve boundaries themselves were not financially secured. Where the lines are ultimately drawn depends on the future availability of funding; and with the price of land acquisition alone easily running some localities into the tens of millions, and planners relying hopefully on municipal bond issues and federal appropriations to make up the shortfall, the proposed boundaries are then regarded with skepticism. Development, by contrast, is assured.

**The USFWS "No Surprises" policy provides little recourse if commitments are not met.** Under the U.S. Fish and Wildlife Service's two-year-old "No Surprises" policy, little can be done if the HCP programs fail to meet ecological expectations. Once a plan is signed, no additional fees or land may be exacted from participating property owners, no matter what the

circumstances. The only new steps the Service can impose are on-site management duties; if other measures are necessary, the government will be left holding the bag.

### **Preliminary Recommendations**

In many respects, HCPs and the NCCP program mark an important advance in conservation planning. They can reach across jurisdictional boundaries, recognize the interdependency of species and habitat, and plan proactively, before most of the species on their target lists become "endangered." Moreover, as a collaborative effort, they can bring together a broad range of disparate interests, and include the public in processes from which it would otherwise have been excluded. But in Southern California, the NCCP's flaws are also evident. The program lacks clear standards and reliable sources of funding; perhaps most importantly, it fails to provide for independent scientific input adequate to the complexity of the undertaking.

There are many reasons to applaud the program, both in terms of the reserves developed to date and the promise that it holds for the future:

- It represents in many respects a more enlightened approach to habitat management: planning across jurisdictional boundaries, conserving interdependent habitats and species on a broad geographic scale; and protecting wildlife in advance of endangerment and extinction. Both the U.S. Department of the Interior and the California Resources Agency should be commended for the energy and commitment that they have devoted to putting these ideas into practice.
- It is a collaborative process, involving the public to a considerable degree in decisions that would otherwise have been settled between landowners and government officials.
- It recognizes the essential importance of the Endangered Species Act (ESA) in wildlife conservation.
- It brings local jurisdictions, landowners, and conservationists to the table, a development that in embattled Southern California should not be taken for granted. Landowners in San Diego and Orange counties who enrolled their properties in the program voluntarily accepted its restrictions on interim take.

But there are ways in which the program can and should be improved if it is to be repeated anywhere else, especially in the Bay-Delta. If the program is to be a "national model," if the scientific promise of HCP/NCCP planning is to be fulfilled, and, most fundamentally, if the recovery goals of the ESA are to be achieved, we believe that the following recommendations must be incorporated into any Bay-Delta ecosystem program:

#### **Preserve the federal Endangered Species Act.**

A HCP or NCCP, standing alone, provides no protection for ecosystems or species; it merely authorizes a collaborative, voluntary process to provide some protection through agreements

among regulatory agencies, landowners, and local governments. To bring developers to the table, a strong incentive is indispensable.

**Require independent scientific consultation and review.**

Given the program's extraordinary complexity and its susceptibility to political and economic pressure, its science must be beyond reproach. Establish in manageable planning units independent scientific advisory groups to translate the broad tenets of reserve design into locally-relevant principles, assess the needs of covered species, and formulate flexible strategies for long-term management. Plans should be submitted to the scientific community for appropriate peer review.

**Guarantee adequate public participation throughout the planning process.**

Establish working groups with adequate public representation, hold meetings that are regularly announced and open to the public and require that policies adopted by the working groups receive full consideration by program authorities.

**Set clear, specific standards for program design.**

The regulatory standards prescribed by the ESA should be the fundamental test against which the sufficiency of plans are judged. Plans should be evaluated on their contributions to species *recovery*, as the Endangered Species Act requires, not merely on species survival.

**Scale back the blanket assurances made to landowners.**

Under current arrangements in the Southern California NCCP, once a plan is adopted, no additional fees or land may be exacted of participants — not even in the case of "extraordinary," unforeseen circumstances. Under the Service's extension of its "No Surprises" policy, the same guarantees apply to wildlife that the plan has *not* specifically addressed. In giving such broad assurances, the Service may foreclose essential future options, taking on itself the potentially unfeasible expense of species relocation, habitat acquisition, and other emergency measures, should plans go awry. The Service should scale back its assurances to HCP/NCCP participants. They should take proper account of scientific uncertainty and changing circumstances. Furthermore, no assurances should be made under any plan before adequately specific species information is available and reliable funding mechanisms have been identified or are in place.

**Create a secure source of funding for land acquisition and management.**

In addition to state and federal funding mechanisms currently available for Bay-Delta ecosystem restoration, in the long term the program should consider creating a loan fund for regional land acquisition or appropriating untapped dollars from the Land and Water Conservation Fund. In addition, explore other financing options, such as conservation banking, which has already been tried with some success; or dedicating a portion of the local property tax (corresponding to the marginal increase in the value of adjacent real estate) to the program implementation.

**Ensure that the interim permitting process is properly supervised during plan preparation.**

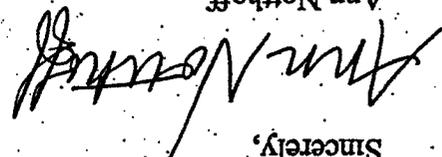
In tracking species take and habitat loss during the interim planning period, the U.S. Fish and

Wildlife Service should cease making a distinction between take approved under special rules promulgated for HCP purposes and take approved through the ESA's normal channels, the consultation process of section 7 and the permitting process of section 10.

In addition to these planning considerations, NRDC believes that there are significant process and timing issues that make require careful consideration as to whether proceeding with a HCP for the Bay-Delta makes sense at this time. Ideally, if there is to be a HCP, it should be incorporated into a single, comprehensive document with the ERPP and issued as the ecosystem/habitat component of the draft Environmental Impact Statement/Report when it is issued for public review next year. Only by integrating these documents, presumably as the plan and its anticipated implementing tool, will CALFED present the public with a full vision for the natural resources of the Bay-Delta that is sufficiently cohesive to permit informed review.

Thank you for your careful consideration of our views.

Sincerely,



Ann Notthoff  
Senior Planner

Enclosure