

Delta Plan Interagency Implementation Committee

Agency Review of EcoRestore Project Tracking Matrix – Final Report

Introduction

One of the main outcomes of the Delta Plan Interagency Implementation Committee (DPIIC)¹ meeting on Nov 14, 2016, was a commitment to review the EcoRestore Project Tracking Matrix and identify the specific management actions that each agency can take to accelerate project implementation and meet the timelines laid out by the Brown Administration. This review is a joint effort of the California Natural Resources Agency (Resources) and the Delta Stewardship Council (Council).

Each DPIIC agency was asked to assist with this effort by: 1) reviewing the EcoRestore Project Tracking Matrix; 2) providing responses to a short survey; and 3) participating in a small group workshop or meetings in late February or early March to discuss the survey results. Survey questions included:

- What are the barriers to project implementation for your agency? (e.g., staff time limitations, funding)
- What are the actions your agency can take to accelerate project implementation?
- What actions can other agencies take to accelerate project implementation?
- What has worked well in the past (examples of specific management actions, etc.)?
- Is it feasible to meet the proposed timelines (for individual projects, or as a whole)?

The Project Tracking Matrix provided an overview of 13 projects and the estimated permitting timelines associated with each project. Of note, the California Department of Water Resources (DWR) is either the project proponent, or a partnering proponent, for all of the projects except one that is being led by the California Department of Fish and Wildlife (DFW). While the permits required for each project vary, there are 13 different permits administered by 11 agencies for EcoRestore projects as a whole. The agencies that are responsible for permitting EcoRestore Projects that are also DPIIC members include the U.S. Department of Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), DFW, State Water Resources Control Board (Water Board), Central Valley Flood Protection Board (Flood Board), Council, and U.S. Army Corps of Engineers (USACE). Permitting agencies that are not DPIIC members include the State Lands Commission, State Historic Preservation Office (SHPO), and the San Francisco Bay Conservation and Development Commission (BCDC).

All of the DPIIC agencies responded to the survey². Because of the high response rate, the Council and Resources did not need to schedule a small group workshop, and instead provided a summary of the effort during one-on-one agency meetings held prior to the DPIIC meeting on April 17, 2017. This report summarizes the key findings from the agency responses.

¹ DPIIC Members include: California Department of Fish and Wildlife, California Department of Food and Agriculture, California Department of Water Resources, California Environmental Protection Agency, California Natural Resources Agency, Central Valley Flood Protection Board, Delta Protection Commission, Delta Stewardship Council, Sacramento-San Joaquin Delta Conservancy, State Water Resources Control Board, National Marine Fisheries Service, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, U.S. Department of the Interior, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the U.S. Geological Survey

² Except Department of the Interior, which is currently a vacant seat.

Delta Plan Interagency Implementation Committee

Agency Review of EcoRestore Project Tracking Matrix – Final Report

Executive Summary

There were several key recommendations that can be drawn from the survey results, as follows:

Meeting the EcoRestore permitting schedule is feasible.

In general, the majority of permitting agencies responded that they are able to meet the proposed EcoRestore permitting schedule as presented, especially if progress is made on specific “actions for accelerations.”

Inadequate staff time, incomplete or changing submittals, and other complications due to overlapping agency jurisdictions are challenges for projects.

A key barrier that most survey responses identified was staffing overload at permitting agencies. Other challenges include complications in the project design phases due to overlapping jurisdictions, and conflicting regulatory and mitigation requirements.

Agencies are currently working on ways to reduce the barriers to project implementation.

There were several examples of successful management actions that have already been taken that have improved timelines and assisted with getting projects in the ground, including prioritized EcoRestore permitting, funding of positions at regulatory agencies, and early and regular engagement by project managers. Also, while lack of long-term funding for operations, management, and monitoring of non-Biological Opinion (BiOp) EcoRestore projects was identified as a barrier, the majority of EcoRestore projects have long-term funding from State and federal water contractors, and funding for non-BiOp projects has mostly been secured.

There are additional actions that can be taken to accelerate project implementation.

Agencies identified “actions for acceleration” including: fund additional staff, engage early and often with regulatory agencies (consider regulator roundtable or standardized design level for corresponding consultation), identify agency point of contact, identify programmatic mitigation opportunities, standardize key species mitigation requirements, develop Delta conservation strategies for listed terrestrial species, use established methods to estimate functional improvements for “self-mitigating” projects (like the California Rapid Assessment Method (CRAM³)), establish centralized permit processing or permitting assistance, and fund scientific analysis of project restoration benefits.

³ California Rapid Assessment Method (CRAM). San Francisco Estuary Institute. <http://www.cramwetlands.org/>

Delta Plan Interagency Implementation Committee

Agency Review of EcoRestore Project Tracking Matrix – Final Report

Major Findings

Meeting the EcoRestore permitting schedule is feasible.

In general, the majority of permitting agencies responded that they are able to meet the proposed EcoRestore permitting schedule as presented, especially if progress is made on specific “actions for acceleration.” USFWS believes that it is not feasible for the full extent of the current 2008/2009 Biological Opinion actions. While most projects could be underway by the deadlines; the timelines will be subject to regulations for Section 7 consultations. In addition, the Flood Board believes the proposed timelines are feasible for the short term, but as future planning and implementation continues, staff workload will increase and delay ongoing Flood Board projects and priorities. The following agency responses provide additional details:

- DWR believes that for current proposed projects, timelines will be challenging to meet but could be accomplished through enacting some of the acceleration actions identified.
- USFWS believes that it is not feasible for the full extent of the current 2008/2009 BiOp actions. Most projects could be underway by the deadlines; the timelines will be subject to regulations for Section 7 consultations.
- The Water Board believes there are no permitting barriers for them in achieving proposed timeline.
- The Flood Board believes the proposed timelines are feasible for the short term, but as future planning and implementation continues, staff workload will increase and delay ongoing Flood Board projects and priorities.
- NMFS states that if the State continues to prioritize EcoRestore, the proposed timelines are feasible.
- DFW believes it is possible, given the current level of commitment, to achieve the proposed timeline as a whole.
- Council believes it is feasible for the vast majority of EcoRestore projects to be shovel-ready by 2018.
- USACE believes that it does seem reasonable.

Inadequate staff time, incomplete or changing submittals, and other complications due to overlapping agency jurisdictions are challenges for projects.

A key barrier that most survey responses identified was limited staffing resources at permitting agencies. In addition to EcoRestore, regulatory agencies have oversight duties and priorities including efforts like WaterFix and a growing number of flood control projects. In general, permitting agencies do not have enough staff to meet their workload and permitting responsibilities – for example the USACE has a hiring freeze in place that has likely contributed to a permit backlog. As another example, DFW has significant staffing limitations in the Delta for non-BiOp projects, (i.e. Dutch Slough and McCormack-Williamson). A closely related staffing challenge is difficulty in identification of the appropriate point of contact within each agency.

There are also delays associated with incomplete or changing project descriptions. For example, some project submissions demonstrate unfamiliarity with listed species other than delta smelt. As another example, detailed adaptive management plans that meet the Delta Plan’s standards under Delta Plan policy GP1 have been relatively rare, but are being done for new EcoRestore projects and take time to develop.

Delta Plan Interagency Implementation Committee

Agency Review of EcoRestore Project Tracking Matrix – Final Report

Other challenges include complications in the project design phases due to overlapping jurisdictions and at times conflicting regulatory and mitigation requirements. For example, in some circumstances, Clean Water Act (CWA) requirements can be in conflict with other regulatory requirements (e.g. wetland fill vs. sloping habitat). As another example, some fish restoration projects often result in impacts to listed terrestrial species (e.g. Giant Garter Snake). There are also challenges in project design associated with land acquisition, non-standard bid-build risks, and risks in management and development on lands that are not owned by project proponents.

[Agencies are currently working on ways to reduce the barriers to project implementation.](#)

There were several examples of successful management actions that have occurred that have shorted permitting timelines and resulted in improved project delivery, including prioritizing EcoRestore permitting, funding of positions at regulatory agencies, and early and regular engagement by project managers. A lack of long-term funding for operations, management, and monitoring of non-BiOp EcoRestore projects (like McCormack, Southport Setback Levee, and Grizzly Slough) was identified as a barrier. However, the majority of EcoRestore projects have long-term funding from State and federal water contractors, and funding for non-BiOp projects has mostly been secured.

Prioritizing permitting for EcoRestore projects at regulatory agencies has helped; having a Resources liaison advocate for EcoRestore projects at State and federal agencies has increased the visibility and urgency across agencies. As another example, the Water Board clearly articulated the high priority accorded to Delta Plan implementation and EcoRestore projects. The Water Board has directed that all EcoRestore permit applications be reviewed, before or promptly upon submission, by designated senior staff within the Division of Water Quality, as well as direct each application to a review unit with adequate staff and resources to act on the application in a timely basis. In addition, the Water Board has committed to allocate appropriate resources to facilitate meeting project schedules. Another example of a successful management action has been the funding of positions at regulatory agencies. For example, DWR funded positions at DFW, and USACE. As another example, the Delta Conservation Framework, currently under development by DFW, has the potential to provide a platform for broader collaborative conservation planning and permitting in the Delta.

For EcoRestore projects that have worked well, USFWS noted that early engagement was critical for success and helped ensure that surveys, modeling, or other efforts were on-track and prepared in-time. In addition, USFWS noted that as projects get closer to issuing a BiOp, weekly check-in meetings are helpful in answering Section 7 questions. The Flood Board noted that bi-weekly calls increased the speed at which both the Wallace Weir and Knights Landing Outfall Gates permits were approved. The Council observed that provision of feedback on projects through written comments and/or verbal early consultation has helped identify potential issues with the Delta Plan or in-Delta issues.

[There are additional actions that can be taken to accelerate project implementation.](#)

A key need identified by most survey respondents to accelerate EcoRestore project implementation is the funding for additional staff within the regulatory agencies which would be dedicated to EcoRestore projects. For example, State funding of staff at USACE has really helped in the planning and permitting of EcoRestore projects and provides vital interagency coordination in permitting (Section 404 and Section

Delta Plan Interagency Implementation Committee

Agency Review of EcoRestore Project Tracking Matrix – Final Report

408). Section 214 of the Water Resources Development Act (WRDA)⁴ allows USACE to accept funds from non-federal public entities to give priority to the evaluation of their permit applications. The Flood Board continues to defer work on incoming encroachment permits and highlights the critical need for additional staff to support project planning, permitting and implementation. For example, the USACE 408 permit and Flood Board permits rely heavily on the actions taken by the USFWS, NMFS, and SHPO; additional staff at those agencies would help expedite the permitting. USFWS has recently added dedicated EcoRestore staff to provide technical assistance in the early planning stages. In addition, DWR has noted that it currently funds positions in the regulatory agencies.

A critical action that would likely increase permit efficiencies is *early* and *continual* collaboration with regulatory agencies. Project proponents should seek regulatory staff input at early stages of their projects to identify and resolve potential challenges. Pre-submission discussion of the project and of applicable permit requirements is the best way to surface potential obstacles and solutions. Below are agency specific recommendations:

- Council staff can provide early consultation to project proponents on development or refinement of adaptive management plans or in preparation of a certification of consistency.
- Flood Board staff are willing to discuss both initial design plans (30 percent design) and environmental compliance documentation at a very early stage with project proponents. Flood Board could also schedule pre-application meetings with Resources and DWR staff for upcoming projects. In addition, Flood Board is interested in attending the regular Yolo Bypass Core BiOp Planning Team meetings and participate in bi-weekly calls for other active project permits (like the Fremont Weir Adult Fish Passage Project).
- NMFS is part of a national Endangered Species Act (ESA) Letter of Concurrence (LOC) pilot project that aims to reduce the number of LOCs by allowing for an abbreviated template response to informal ESA consultation requests. NMFS believes that this process could be used for EcoRestore projects.
- The Water Board fosters informal discussions among project sponsors, planners, proponents, regulators and funders throughout the permitting process—but particularly in the pre-submission phase for any permit from the Water Boards.
- USACE should be included when federal agencies conduct ESA Section 7 and 106 consultations; this will accelerate permit review. In addition, USACE has sought to streamline the permit processes through nationwide permits and regional general permits;⁵ therefore, NMFS and USFWS could examine programmatic permits that are not likely to adversely affect concurrence for restoration projects. NMFS also noted that an EcoRestore programmatic permit could expedite the permitting process for applicants and has been a useful tool used by the NOAA Restoration Center and Fisheries Restoration Grant Program.
- USEPA National Environmental Policy Act (NEPA) and CWA offices want to work with federal agencies as early as possible in the NEPA and CWA permitting processes to develop alternatives and robust impact analyses that accurately estimate project impacts and benefits (such as CRAM).

⁴ Section 214 of the Water Resources Development Act (WRDA) of 2000, as amended (33 U.S.C. 2352) and Title 23 of the U.S. Code, Section 139(j) provide the authority to accept and expend funds from certain entities to expedite the review of permit applications. U.S. Army Corps of Engineers. <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/>

⁵ About nationwide and regional general permits. U.S. Army Corps of Engineers. <http://www.nwp.usace.army.mil/Missions/Regulatory/Nationwide.aspx>

Delta Plan Interagency Implementation Committee

Agency Review of EcoRestore Project Tracking Matrix – Final Report

- USFWS is offering technical advice on all pre- and post- project needs (preconstruction activities, construction activities, monitoring, adaptive management, long-term maintenance, and/or special studies) to ensure project proponents understand Biological Assessment (BA) requirements under ESA Section 7. In addition, USFWS encourages DWR, USBR, and USACE to submit a Project Description (PD) covering all their activities in one BA.

Importantly, agencies should identify the appropriate points of contact to facilitate collaboration and strive for consistency where there is overlapping jurisdiction. For example, the Water Board has designated Phil Crader⁶ as an initial point of contact for EcoRestore projects for the Water Boards.

A range of suggestions to meet mitigation requirements was put forward by survey respondents, including a reduction of mitigation requirements, use of programmatic mitigation and permitting opportunities (i.e. ESA, CESA, 404, 408, 401), and use of standardized mitigation requirements for key species (like the Giant Garter Snake). Having a broader conservation strategy for an assemblage of listed terrestrial species in the Delta could facilitate permitting of restoration projects and provide a basis for suitable conservation or mitigation measures to offset the effect. Furthermore, methods (like CRAM) for estimating functional improvements that result from restoration projects should be identified – providing this type of technical documentation on net environmental benefits will help determine if the projects are “self-mitigating”. There are mitigation guidelines on 40 CFR 230 Subpart J⁷ that outline important elements for a compensatory mitigation plan, especially for obtaining a CWA 404 permit.

To address long-term funding needs, as well as monitoring, a helpful case study in how to leverage funds with multiple partners is provided by the San Francisco Bay Water Quality Improvement Fund (SFBWQIF)⁸. The SFBWQIF is a USEPA competitive grant program that has invested over \$44 million in 61 projects through 36 grant awards and works with 70 partners that contributed an additional \$153 million. EcoRestore partners and DPIIC agencies could review the methods the SFBWQIF projects used to acquire the ESA and the CWA permits. The developing EcoRestore Adaptive Management Program will provide a coordinated monitoring program for EcoRestore and Delta Conservation Framework restoration projects and will build on efforts by the California Monitoring Council and the California Wetland Monitoring Workgroup⁹. Useful resources include the Tenets of a State Wetlands Monitoring Program¹⁰ and the Elements of Wetland and Riparian Area Monitoring Plan (WRAMP)¹¹.

CDFA has also offered to facilitate conversations with the agricultural communities regarding land conservation and ecosystem services in agriculture. CDFA has several incentive programs¹² that are focused on water and greenhouse gas conservation that could provide examples of what has worked well. The Delta Protection Commission suggested project proponents could be proactive in utilizing the

⁶ SWRCB EcoRestore Point of Contact: Phillip Crader. (phillip.crader@waterboards.ca.gov) and (916) 341-5500

⁷ 40 CFR 230 Subpart J - Potential Impacts on Special Aquatic Sites. Specifically, 230.94(c)(1-14). Code of Federal Regulations. <https://www.law.cornell.edu/cfr/text/40/part-230/subpart-J>

⁸ San Francisco Bay Water Quality Improvement Fund (SFBWQIF). U.S. Environmental Protection Agency. <https://www.epa.gov/sfbay-delta/sf-bay-water-quality-improvement-fund>

⁹ California Wetland Monitoring Workgroup (CWMW).

http://www.mywaterquality.ca.gov/monitoring_council/wetland_workgroup/index.html

¹⁰ California Wetland Monitoring Workgroup. Tenets of a State Wetland and Riparian Monitoring Program (WRAMP). http://www.mywaterquality.ca.gov/monitoring_council/wetland_workgroup/docs/2010/tenetsprogram.pdf

¹¹ Elements of Wetland and Riparian Area Monitoring Plan (WRAMP). California Water Quality Monitoring Council.

http://www.mywaterquality.ca.gov/monitoring_council/wetland_workgroup/wramp/index.html

¹² California Department of Food and Agriculture. Office of Environmental Farming & Innovation. <https://www.cdfa.ca.gov/oefi/>

Delta Plan Interagency Implementation Committee

Agency Review of EcoRestore Project Tracking Matrix – Final Report

DWR Agricultural Lands Stewardship Workgroup’s “Good Neighbor Checklist”¹³, which helps ensure that project managers comprehensively consider and examine the impacts of their project on neighbors, and vice versa.

Scientific analysis on existing projects of restoration benefits should be funded in order to understand and identify optimal project design elements for future restoration projects.

Next Steps:

Continued progress on implementation of the EcoRestore projects will require a sustained level of collaborative effort by the lead agencies/project proponents and permitting agencies.

Several key actions can be taken in the short- and long-term to support project implementation. For example, funding additional dedicated staff positions in permitting agencies, the lead agencies/project proponents can ensure that there is sufficient capacity to process permit applications in a timely way. Where that is not possible, individual permitting agencies can assist by identifying lead staff to help coordinate and provide more efficiency in review. In addition, project proponents and regulatory agency staff should meet regularly either through informal discussions and/or early and continual consultation to identify areas of agreement or resolve conflicts.

Many of the agency responses addressed long-term needs of EcoRestore projects, and future restoration projects.

There were some suggestions that would increase the efficiency of review for the next generation of restoration projects in the Delta, including developing programmatic permits, or regional general permits. Several actions were identified that would need legislative approval including the establishment of “design-build authority” for proponent agencies, use of non-competitive bids for habitat restoration projects, and establishing long-term funding for management and monitoring of non-BiOp projects (bonds, general fund, grants, endowments, etc.) that do not have secure funding from State and federal water contractors. Several actions were identified that could improve land acquisition, including identification of processes to gain legal access to land for habitat restoration projects on lands not owned by other State or local agencies (e.g., easements, etc.), or use of land valuation or appraisal techniques by the California Department of General Services.

¹³ Good Neighbor Checklist. California Department of Water Resources. Agricultural Lands Stewardship Workgroup. <https://agriculturalandstewardship.water.ca.gov/web/guest/good-neighbor-checklist>