

UPPER SANTA ANA RIVER WASH LAND MANAGEMENT AND HABITAT
CONSERVATION PLAN TASK FORCE

MINUTES
March 1, 2016

PRESENT

Governing Committee

Jon Harrison, Chair
Karin Cleary-Rose
Christine Goeyvarts
Christine Jones
Eliseo Ochoa
David E. Raley
Jody Scott
John Timmer

Technical Committee

Brandon Anderson
Jeff Beehler
Daniel B. Cozad
Emily Elliott
Geary Hund
David Lovell
Jose Martinez
Cheryl Nabahe
Ernie Wong

OTHERS IN ATTENDANCE

Jane Hunt
Steve Loe
Angie Quiroga
Charles Roberts
Mike Romich

REPRESENTING

City of Redlands
USFWS
Robertson's Ready Mix
CEMEX
East Valley Water District
SBVWCD (District)
City of Highland
City of Highland

BLM
SBVWCD (District)
SBVWCD (District)
City of Redlands
US Fish & Wildlife Service (FWS)
SBC Flood Control District
East Valley Water District
BLM
City of Highland

REPRESENTING

SLCW
Biologist-Independent Stakeholder
SBV Water Conservation District
Highland Community News
ICF

1. **CALL MEETING TO ORDER**

The Upper Santa Ana River Wash Land Management and Habitat Conservation Plan Task Force meeting was called to order by Chairman Jon Harrison at 2:03 p.m. in the offices of the San Bernardino Valley Water Conservation District, 1630 West Redlands Boulevard, Suite A, Redlands, California.

2. **SELF-INTRODUCTIONS**

Those present introduced themselves.

3. ADOPTION OF MEETING MINUTES (10/13/2015)

It was moved by Jody Scott and seconded by Christine Jones to adopt the meeting minutes of October 13, 2015. The motion carried unanimously.

4. PUBLIC COMMENT

Chairman Harrison asked if there were any items that anyone wished to address that were not on the agenda. Hearing none, the meeting preceded with the published agenda items.

5. WASH PLAN HCP: UPDATE

Daniel Cozad specified a slide show will be presented to highlight decisions that need to be made. Jeff Beehler acknowledged the Wash Plan countdown clock has turned to zero but stated since November, real progress has been made. Today we are celebrating a big milestone: comments have been received back on the draft HCP from FWS, senior management at FWS, the FWS solicitor and their attorney, as well as California Department of Fish and Wildlife (CDFW). In total, two hundred and fifty (250) comments were addressed. The HCP document is now back to the solicitor for final concurrence and on its way to the region. Mr. Beehler reviewed the steps taken to get to this point in the process. He stated FWS should be able to write a defensible analysis due to our efforts. The Implementation Agreement (IA) has just a few issues left that need to be resolved. A 501(c)3 non-profit has been created to handle the endowment. The EIR/EIS screen check document has been completed. There have been some substantial changes to the EIR/EIS and HCP that will need to be incorporated into final documents. A bill has been introduced in the House and a companion will be introduced in the Senate as well. While this environmental document review and administrative process is taking place, the land transfer can be done in parallel. We will publish a notice in the Federal Register (Register) for the HCP. A 90-day comment period is required since the land use designation will be changed. We will address the comments and then a biological opinion and an incidental take permit will follow. The HCP, IA, and the EIR/EIS make up the full package that will be published in the Register. CDFW will formally comment when we submit the entire package during the public review period. Since CDFW and FWS have different standards regarding mitigating impacts to endangered species, we are addressing two sets of laws in the same HCP document. We are getting closer to meeting both after making changes based on both agencies comments. Upon receipt of the federal take permit, a consistency determination is needed from CDFW verifying the federal documents are consistent with CESA requirements. Otherwise, additional requirements may be necessary to receive a 2081 incidental take permit. Mr. Beehler described significant changes. The COI issuance process has become more streamlined as long as you adhere to the HCP. The District has agreed to do a feasibility study on notching the Greenspot Road levee and restoring some flows to the south. If it feasible, the District will do the work if not, we will put a similar amount of effort into restoration activities in

area equivalent to the estimated cost. The land transfer between Robertson's and Flood Control District was supposed to go to WSPA not the Wash Plan. After speaking with the US Army Corps of Engineers, the District will likely take on the management of the land as "additionally managed".

Karin Cleary-Rose explained the Federal process. If a covered activity has a federal nexus outside of this HCP permit (i.e. a required Federal permit or funding), the Federal action agency that you are working with has the obligation to consult with FWS. FWS will have already done a jeopardy analysis for each covered activity in the HCP. So when your project is presented, FWS can refer back to this analysis which will expedite the process. Mr. Beehler noted that the land dedicated for Flood Control mitigation for specific projects in the Wash Plan and future projects will no longer show up under future projects on the maps. This has not changed anyone's ratios but the map will look slightly different. A specific phasing plan draft of conservation was shown. The actual details of the plan will be worked on with FWS. Spineflower areas will be addressed first. FWS requested the IA/MOU include a 3-1 mitigation requirement if a participating agency does not comply with the HCP. After discussing this requirement with the solicitor and the CA DFW, there were concerns of enforceability and the need for a higher cost (10-1) for Spineflower. Ms. Cleary-Rose and District staff requested endorsement from the Task Force to include a mitigation requirement/penalty for non-compliance. It needs to be too costly for members not to comply as part of normal construction costs. This requirement will also help protect all participating agencies from losing the Federal take permit due to one agency's non-compliance. FWS wants to also be able to address the agency doing the wrong-doing instead of just being able to go to the District. Discussion ensued. Task force members agreed to a penalty for non-compliance and Ms. Cleary-Rose is to discuss the requirement further with the solicitor.

Mr. Beehler continued the presentation with the changes that have taken place compared to the original Wash Plan. A supplemental EIR/EIS was added. There are now two project alternatives instead of one in the EIS. The impact analysis is more detailed. There is specific management and phasing. A monitoring baseline was added and Spineflower monitoring was extended. Lastly, there is a new BLM agreement to initiate the land transfer. New data will be collected to determine the baseline condition for the covered species, so staggered monitoring can be done in the future to control the overall cost. More monitoring will be front end loaded in the early years of the HCP when it is less costly. The Spineflower baseline data set that is being suggested by FWS is 8 years compared to 3 years for all other species. Spineflower seeds are highly adaptive to certain rainfall conditions so in order to tell if the Spineflower is doing better or worse, you have to look at in over a longer period of time. A new agreement had to be initiated with BLM because the parcels set aside for mining and habitat conservation are different than those proposed in the original Plan B HCP. Mr. Beehler further discussed the modifications to the Wash Plan. Ms. Cleary-Rose indicated that since BLM land is included in mitigation, a Durability Agreement between CDFW and BLM will be signed to prevent misinterpretation of the HCP in the future. Geary Hund added this agreement also provides the permissions for the District to do management on BLM land so it takes care of two components. Mr. Beehler stated all conservation values will be locked down, and

unable to be changed, on the lands to be preserved and managed within the HCP. Discussion ensued.

Mr. Cozad provided the schedule and budget update. Initial contributions to the Wash Plan for HCP document development have been depleted. A “Cost to Complete” breakdown was provided totaling \$465,000 (issuance costs) including a small contingency. The District will ask their Board to incur \$35,000 (not included in the breakdown) of the \$100,000 land transfer costs. The District will take the risk if the total estimate is not enough. He stated this is our best guess to get us to the finish line. Mr. Cozad proposed and asked for agreement from the Task Force to request the District advance the funds and the Task Force members will reimburse the District upon payment of their endowments. He explained the monitoring costs of approximately \$100,000 are not included in this breakdown due to changes in land credits for Flood Control and Robertson’s. The additional funds to be paid by these entities will cover the monitoring costs. Christine Goeyvarts questioned the change in Robertson’s land contributions. Ms. Cleary-Rose replied they will have a separate meeting to clarify. The land will need to be identified and put in the MOU. Mr. Cozad provided a “Bottom Line Result” slide which gives the total cost for each entity for species and land impact costs and issuance costs. He reminded members if your endowment is paid early, the District will earn interest on your money. If not, the interest the endowment fund would have earned on your money must be paid in addition to your endowment portion. Members requested and were provided a copy of the presentation by email. Discussion ensued. Jody Scott commended the progress that has been made on the Wash Plan. John Timmer stated he was not comfortable presenting these costs to his Board until they are final. Mr. Cozad indicated the next time these costs are presented will be in the final version of the MOU which will be taken, as the Task Force’s recommendation, to your Boards for approval. The MOU should be ready within the next month or two. Mr. Cozad summarized the suggested changes and requested the Task Force make a decision on what was discussed today.

It was moved by John Timmer and seconded by Christine Goeyvarts to: endorse the negotiated modified plan and changes made in response to solicitor comments, request the District to advance funds for work, and amend the MOU to require payment of advanced funds at COI application on endowment terms. The motion carried unanimously.

Mr. Beehler stated he wanted to clarify the Implementation Agreement. The District will hold the permit, issue the COI, do all of your required reporting and monitoring, the habitat and land management, and the endowment fund investment management. The proponent will apply for the COI, obtain their own CEQA compliance when the District is not the lead agency, and address any “waters” issues. The EIR/EIS will contain most of the information needed but the proponent must do the determination to obtain any project specific permits. The avoidance and minimization measures that each proponent has agreed to will be taken care of by that proponent, not the District. He suggested everyone look again at their avoidance and minimization measures. They are not as onerous as

others he has seen and focus was placed on ones that made a difference and occurred in areas where they are relevant. These are basic, good housekeeping anyway. Ms. Cleary-Rose agreed these are best practices and nothing was invented solely for this HCP. If you have a problem with your measures, you should say so now. Mr. Beehler concluded that the proponent will have to pay mitigation costs.

Mr. Cozad reminded members there were three things the Task Force needed that were discussed previously: 1) Someone who can hold a conservation easement. It can't be the District because we own some of the land; 2) Someone to manage the investments. The District can manage investments but state law limits what we can invest in. Since we are limited, it would hinder our ability to earn the 4% necessary to do the conservation we promised FWS, and; 3) A Wash Plan manager and land owner. Mr. Cozad discussed the policy principles that were potential options to satisfy these three roles and how the decisions that were made with the District's Board were decided upon. The Board endorsed forming the San Bernardino Valley Conservation Trust (Trust), a non-profit 501(c)3 to hold the conservation easements, dedications, deed restrictions, and monitor the efficacy of the work to be done. Solely set up to support the Wash Plan, it would also allow the Trust to hold the endowment and invest with the goal of earning a 4% or better return on it. The initial Board will consist of two District Board Members and one IERCD Board Member. The initial meeting is scheduled for March 10th to form the Trust. The next version of the MOU will have the Trust rolled into the process. Ms. Scott inquired as to how often financial reporting will be available. Mr. Cozad replied the MOU requires an annual audit but if a quarterly report is wanted, that can be arranged as well. After an RFP, PFM Asset Management (PFM) was chosen to be the investment advisor of the endowment. Mr. Cozad discussed three portfolios using capital market assumptions that were proposed by PFM to obtain the 6.5% rate of return needed to maintain the Wash Plan in perpetuity: 4% spending rate plus 2.5% inflation rate. We think we have found a scenario to generate the 6-6.5% return on a long term average basis to fund \$400,000/year plus the cost of inflation to do the management and maintenance of the Wash Plan. If successful, then you would want to put in the cost of your COI sooner than later. The District's Finance and Administrative Committee is recommending the 70/30 portfolio (70% invested in stocks and 30% in bonds) to the Board. The portfolio ratios can be adjusted at any time if beneficial. The Statement of Investment Policy will have the strategy in it and any changes will be brought in front of the Board prior to adjustments. We are starting out a little more aggressive but as we are able to meet our expected outlays, we will temper that aggressiveness. An asset manager will be overlooking the portfolio on an ongoing basis. Mr. Beehler added that PFM is bound by the Prudent Investor Rule which requires them to manage the trust with risk and return objectives reasonably suited to the trust. Mr. Cozad requested the Task Force endorse the Board Fulfillment of Policy Principles forming the San Bernardino Valley Conservation Trust to do what was discussed and provide comments on the Investment Policy Statement that he will be handing out. Discussion ensued.

6. WASH PLAN Land Transfer Legislative Update

Mr. Beehler gave the legislative update. The House Bill (H.R. 4024) was introduced in the Fall. He thanked the agencies who provided letters of support to Congressmen Cook

and Aguilar. He met with Senator Feinstein's staff a couple of times. Her staff is recommending Feinstein to introduce a companion bill in the Senate. That bill will have exactly the same wording. It will go through the Senate the same time as the House. This will allow the land transfer to occur much faster on the Federal time scale. The bill should be introduced at least at the staff level within a week or two.

7. SCHEDULE NEXT MEETING AND ADJOURN

Mr. Cozad provided a list of next steps. An updated HCP document will be worked on by ICF and Staff to implement all of the changes discussed and to complete the final version that will go to the Federal Register. RBF will be doing the same with the EIR/EIS. Once these are completed, the public notice and 90 day comment period will begin.

Administrative actions for the land transfer will take place between BLM and Staff. Staff and RBF will respond to comments. In turn, FWS will complete their biological opinion and issue the take permit. Task Force members are then able to apply for their COI. The stretch goal is to have this accomplished by June 30, 2016. A better assessment of a completion date will be discussed at the next meeting. A Doodle Poll will be sent out to decide the next best meeting date.

Meeting adjourned at 4:15 P.M.