

TO: Walt Wadlow

FROM: Keith Whitman

SUBJECT: Why Two HCPs are Needed

DATE: September 14, 2006

The District is working on two habitat conservation plans; one related to the FAHCE effort and a more general one called the Santa Clara Valley HCP/NCCP. At a recent meeting of the Santa Clara Valley HCP/NCCP Liaison Group, an official from the FWS suggested that they should be completely combined. Unfortunately, that isn't a simple request. This memo will describe the reasons why we are working on the two HCPs and how we are trying to combine and coordinate them as much as possible. The basic reasons come down to geography, finance, history, species to be covered, coverage for dam maintenance, and the desire to get the FAHCE Settlement heard by the State Board as soon as possible.

HISTORY

In 2001, the original local partners (VTA, County of Santa Clara, City of San Jose, and the District) had written letters of commitment to prepare an HCP/NCCP for Santa Clara County. By 2003, when the Draft Settlement Agreement for the FAHCE Settlement was finalized, little else had been accomplished on the so-called countywide project and the local partners were having a great deal of difficulty getting an MOU or planning agreement written.

The FAHCE program required a clear path to the State Board to resolve our water rights challenge so all the necessary requirements were identified in the process of writing the *draft Settlement Agreement*. Three important requirements were (1) the environmental evaluations under CEQA and NEPA, (2) compliance with the Endangered Species Act which required a Habitat Conservation Plan (HCP) on FAHCE activities, and (3) financial arrangements for implementing the settlement. It was decided to write a single environmental document to evaluate both the FAHCE Settlement itself and the FAHCE HCP.

The State Board will not hold hearings on an issue without an environmental evaluation (CEQA) of the subject. So the path to resolve the complaint includes preparing an HCP, having an environmental evaluation of the HCP, having an environmental evaluation of the *draft Settlement Agreement*, petitioning the State Board for a hearing, going through the hearing process, and having the State Board issue a decision. On May 27, 2003, the *draft FAHCE Settlement* was initialed by all the participating parties. The HCP and EIS/EIR are currently being drafted.

HCPs in the same geographic area are required by law to coordinate with each other so that their conservation goals do not conflict. Consequently the *draft Settlement Agreement* for FAHCE includes language about coordinating with the future county HCP, but at the time it was written there was little confidence about when the county-wide HCP would be developed or in what form. The planning agreement for the Santa Clara Valley HCP/NCCP recognizes FAHCE as a related project that will probably be completed before the HCP/NCCP is completed.

By October 20, 2005, the local partners for the Santa Clara Valley HCP/NCCP had defined the process and components of their HCP/NCCP and were ready to sign their Planning Agreement as required by the California Natural Communities Conservation Act. In the HCP/NCCP process signing the planning

agreement is analogous to firing the starting gun at the beginning of a horse race. You are just at the beginning.

Reducing the size of the planning area was one of the compromises reached to finalize the Planning Agreement for the Santa Clara Valley HCP/NCCP. The study area was limited to about half the county to focus the investigation in the areas where development risks were greatest and to limit the funding required. This area was basically the Coyote Watershed upstream of the tidal area and all of the Pajaro drainage in Santa Clara County. During the consultant selection process, each firm interviewed suggested increasing the study area to meet the biological objectives better. So after the consultant was selected, the local partners decided to expand the study area as suggested. It now includes over 60 percent of the county. Much of the Guadalupe Watershed is now included, but not upstream of Vasona Reservoir. In comparison, the FAHCE program covers watersheds with steelhead streams that flow to San Francisco Bay: Stevens Creek, Guadalupe River, and Coyote Creek. The Stevens Creek watershed is only included in the FAHCE planning area.

SPECIES AND ASSOCIATED LEAD AGENCIES

Under the Endangered Species Act, the lead agency for an HCP depends on the species it covers. NOAA Fisheries is responsible for HCPs for species that spend a significant part of their life cycle in the ocean while U.S. Fish and Wildlife Service is responsible for HCPs for all other species. Since the recovery of the Bay Checkerspot Butterfly and other rare plant species associated with serpentine soils was the driver for the Santa Clara Valley HCP/NCCP, the U.S. Fish and Wildlife Service is the lead for that effort. The federal lead for FAHCE HCP is NOAA Fisheries because the driver for that process was protection of steelhead trout and Chinook salmon.

FINANCIAL RESPONSIBILITY

In the FAHCE *draft Settlement Agreement*, clear financial responsibilities were established for funding of the HCP. Essentially the District is responsible for funding the implementation of the FAHCE Settlement and all the mitigation efforts required by it. We expect to work with partners to carry out projects of mutual benefit. The Stevens Creek Restoration Project that the City of Cupertino is doing in partnership with us is a good example of shared funding.

In the Santa Clara Valley HCP/NCCP effort, the only financial arrangements that have been worked out to date have been how to pay for the consulting services needed to *develop* the plan, not for implementation. The implementation costs have yet to be defined as well as a way to fund them. A consultant to develop some methodologies has been selected, so that process is starting. Working with six agencies can be complicated, so working out the financial arrangements may be time consuming.

SCHEDULE

An HCP covering the activities of the FAHCE Settlement and an environmental document evaluating the HCP need to be completed before the State Board will resolve our complaint. Based on the current schedule which assumes a separate HCP for FAHCE, we expect to be able to petition the State Board sometime in late 2007 or early 2008. Being able to meet that schedule depends on working out a number of details with NOAA Fisheries and FWS, but that is our best estimate. If we combine the HCP coverage for FAHCE into the Santa Clara Valley HCP/NCCP process, we will not be able to petition the

State Board until early 2009, at the earliest. The schedule for the Santa Clara Valley HCP/NCCP assumes that the financial arrangements for implementing the HCP/NCCP will go smoothly.

COORDINATION EFFORTS

By law, HCPs in the same area need to be coordinated so that they do not conflict with one another. It is hoped that the FAHCE HCP which comes first in time and primarily deals with aquatic issues will serve as the framework for the streams section of the Santa Clara Valley HCP/NCCP. At the District, the same staff is working on both projects to insure coordination. Arrangements are being made to have the consultants from both projects work together to share information. There have been some difficulties with the coordination effort, however, because the HCP is not a public document until it has received adequate review from the regulatory agencies. We are still in the process of getting that review. Some information can be shared, but sharing of the actual drafts of the documents has to wait until certain negotiations have been completed.

To summarize, the District is pursuing two separate HCP efforts to bring us into compliance with both the federal and state Endangered Species Acts. Because of the differences in geography, species covered and corresponding lead Federal agencies, financial arrangements, and schedule, two processes allow us to meet District goals better. For more information or to ask questions, please contact Pat Showalter at pshowalter@valleywater.org or extension 2939.

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Concur:

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cc: J. Micko, P. Showalter, File

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