

**Montrose Settlements Restoration Program Trustee Council
Summary
October 19 & 20, 2004 Trustee Council Meeting
Menlo Park, California**

The following primary and alternate Trustee Council members were present:

Patty Velez	CDFG	Bill Conner	NOAA (day 1)
Jim Haas	USFWS	Jen Boyce	NOAA
Suzanne Goode	CDPR		
Kate Faulkner	NPS		
Jonathan Clark	CSLC		

Also attending:

Greg Baker	MSRP Staff	Katherine Pease	NOAA OGC
Dave Witting	MSRP Staff	Kathy Verrue-Slater	CDFG (day 1-by phone)
Annie Little	MSRP Staff	Rob Ricker	NOAA (day 1)
Milena Viljoen	MSRP Staff	Chuck McKinley	DOI (day 1)
Scott Sobiech	USFWS	Steve Kellogg	URS contractor (day 1)

DAY 1: October 19, 2004

Status of the Settlement Accounts

Greg Baker provided an update on the audit of the settlement accounts being performed by Cotton & Company. NOAA hasn't received and reviewed the full report yet, but the contractor provided a table containing the balances they determined were in the accounts as of July 2004; the total dollars in the Court Registry Accounts and the DOI NRDAR, minus the outstanding \$22,500,000 in past damage assessment costs still owed to NOAA, comes to between \$39 - \$40 million. NOAA should shortly receive the full report and Bill Conner recommended that Katherine Pease review it to make sure Cotton correctly interpreted the multiple settlements and the provisions/ disbursements/ etc.

As of the month of July 2004 the interest rate being paid on the Court Registry accounts is 1.75%.

Restoration Plan – Trustee Council Review Draft

We discussed the initial draft of the Restoration Plan EIS/EIR that council members and attorneys were provided on October 8, 2004. This review draft was circulated to gain the Council's input on the development of a complete agency review draft in November.

A timeline on the RP development was presented and discussed, with the goal of issuing the public draft in the Spring of 2005. The MSRP staff plans to revise the TC review draft and distribute the new version as the formal agency review draft before Thanksgiving 2004, i.e. about four weeks after the TC meeting. Comments on the agency review draft would then be due back in early January, and staff would incorporate comments through February 2005. The RP public draft would be prepared and sent up within each agency's approval chain in March, and would be targeted for public release in April 2005.

A checklist of other coordination/ requirements was discussed. The following requirements were identified:

- ESA – FWS will coordinate during the agency review draft or potentially during public review
- EFH – NOAA will coordinate during agency review draft
- MMPA – typically a formal consultation is not done until a specific action is going forward that could potentially impact marine mammals.
- Information Quality Act – NOAA would put it through; question as to whether other federal agencies may rely on NOAA's check.

- DOI review of the document: Jim Haas indicated that approval resides in the FWS CNO level, it doesn't need to go to DOI level.
- We identified that we should plan to place notices in the Federal Register and State Clearinghouse in addition to public advertisements and posting on our web site.

Bill Conner advised that before we put out the public draft, we identify some essential local stakeholders and provide them briefings.

Note: for the purpose of summarizing this meeting, the detailed section by section comments on the draft RP that were provided at the meeting are not included here. Staff took notes and will work on incorporating the comments presented at the meeting, as well as comments submitted subsequently that are received timely enough to allow for the publication of the next draft, the agency review draft, in mid – November.

Some broader issues about the RP were discussed:

We should consider how we present the financial aspects of the program, for instance:

- identify current balances and interest on the settlement funds;
- identify our estimated annual “operating” costs including activities such as general outreach;
- consider estimating and dividing some of the expense of maintaining dedicated staff among the actual projects being implemented rather than showing it all as “administrative” cost;
- identify project cost estimates where we have them, but do not indicate that this RP is proposing to cover 100% of those costs; rather, identify a budget for each overall restoration category and then the strategic intent to pursue matching funds either to reduce our costs on a specific project or increase the amount of an action that we achieve.

We also discussed the question of strategic planning, i.e. how we balance the goal of minimizing “operating” costs to maximize funding that ultimately goes toward “on the ground” restoration, and the need to ensure wise use of restoration funds, pursue partnership opportunities, and build on the outcomes of ongoing studies, etc., which may require longer term effort and higher operating cost.

Greg Baker asked if reviewers could submit comments by the end of the following week, October 29th. Council members requested electronic copies of the document, and staff indicated they will furnish them either through posting to an FTP site or by mailing CDs. Several reviewers did not think they could complete their reviews by October 29th. Greg Baker indicated that staff would do their best to incorporate comments, but still work toward completing an agency review draft in November.

Fish Contamination Study Status

The Council was briefed on the current status of fish contamination work. QA/QC problems have led to NOAA and EPA not accepting the data generated by the laboratory subcontractor, Battelle. The data are late, and reanalysis will require several additional months, with consequences on a number of MSRP and EPA efforts.

The chronology and causes of the problems were described, and a recommendation was put forward to continue working with Battelle to validate revised fish tissue extraction methods and re-analyze the fish. However, should MSRP and EPA staff and our prime contractor IEC and QAO Ecochem determine that Battelle is unlikely to provide acceptable data we would end the association with Battelle and find a different laboratory. Our target is getting reanalysis accomplished in 2005 early enough to get health advisories revised that same year.

DAY 2: October 20, 2004

2003 Budget Reconciliation

We reviewed the status of submittals of each agency's cost documentation for their 2003 expenditures. Those agencies whose submittals were not yet complete (FWS, NPS, CSLC, CDPR) are to submit remaining documentation as soon as possible, and Council reps thought that could be done within two weeks. The Council agreed to have NOAA provide the cost packages to Cotton and Company for thorough review and certification.

The Council signed TCR 04-4 which authorized NOAA to incur up to \$6,500 in expenses, and include those expenses as part of its overall 2004 costs when submitted in 2005, to have Cotton perform the reviews.

Greg Baker will provide Cotton & Company those cost documentation packages that are ready for review (CDFG, NOAA). Other packages will be transmitted to Cotton once they are received (remainder of USFWS, NPS packages; CSLC, CDPR). USFWS and Greg indicated they would check into the DOI line item for \$11,500 in the 2003 budget intended to cover Chuck McKinley's costs in that year. Suzanne Goode indicated that the CDPR package will likely be limited to travel expense claims. It is important that all packages be submitted as soon as possible so that they may be certified and subsequently reviewed by the cost documentation subcommittee prior to the end of the calendar year.

Using a summary of the NOAA 2003 report as an example, we discussed how to address overages in individual budget areas, e.g. NOAA's expenses in the Trustee Council category in 2003 exceeded the budgeted amount by about 15%, although the overall NOAA expenditures were significantly below the 2003 budget. We discussed but did not choose to impose a specific percentage cap that would limit how far over budget we would allow for a certain budget category. Instead we will review each instance where a budget was exceeded on a case by case basis to determine whether it represents reasonable cost.

Pre-2003 Reconciliation

Greg Baker reviewed the status of not yet reconciled expenditures from 2001 – 2003. Based on reviewing the TC meeting minutes and resolutions from this period, there appears to be about \$3 million in funding authorized of which only about \$700,000 has been closed out. An Excel spreadsheet detailing these actions was assembled in the summer and transmitted to Trustees in September. Some authorizations were for advance funding, some were for incurring cost and seeking reimbursement. Not all were based on formal resolutions; in some cases the Trustees authorized an agency to incur costs but didn't sign a formal resolution. It is also possible that agencies had expenses that would meet the definition of "reasonable restoration costs" as defined in our policy, but that these haven't been claimed yet.

All agreed to a deadline of February 28, 2005 for submitting cost documentation for these authorized expenditures prior to 2003. Greg Baker will resend the Excel table, and also break the items down by agency.

2005 Budget

The Council reviewed the draft budget sheet by sheet. We discussed the need for a consistent interpretation of when Trustees charge to the Trustee Council budget category versus other categories such as Restoration Planning. We concluded that Council members should continue to assume that the Trustee Council budget category is appropriate for a range of work they do as Council representatives and that includes their capacity reviewing the restoration plan. However, if Council representatives are spending time actually writing parts of the plan, or coordinating broader review, they may place hours in that category. Similarly if they are actively working on a specific study (e.g. NCI bald eagle work) they may have hours in that category.

There was discussion about the current budget structure lacking a more detailed itemization of labor, and that it could appear that a disproportionate amount of labor is “administrative”. One solution would be to have staff track their hours separately for individual technical tasks either now, or when we get to restoration implementation have them charge time to specific restoration projects and include those costs as part of the overall cost of that action. We concluded that we would not go so far as to establish formal accounting tracking codes for use within our agencies’ financial management systems, but instead would continue to manage MSRP staff time as one code but have staff maintain a record of their time on separate spreadsheets to allow us to later assemble estimated distributions of labor cost among the different projects we manage.

We discussed how to handle the reconciliation of 2003 costs in distributing advanced funding for 2005. It appears that for all agencies, we will be able to reduce the 2005 advanced funding distribution by the amount of credit they have from their 2003 funding.

We discussed the need for quarterly estimated expenditure reporting and reaffirmed that we should submit such summary estimated reports by the end of the second month following each quarter, i.e. a report on the expenses from the last quarter of 2004 should be submitted by end of February 2005 to Greg Baker. These do not need to be documented; they can simply be tables or spreadsheets.

The Trustees agreed that the due date for submittal of full cost documentation packages by each Trustee agency for their calendar year 2004 expenditures should be July 31, 2005.

The Council agreed that the 2005 budget was close to complete, and after re-checking entries and changes, we would circulate the final budget later in the calendar year. The resolution on distributing funds would await reconciliation of 2003 cost packages so we could determine the net funds to be distributed in 2005.

Updates on Data Gap Studies, Other Activities

Annie Little distributed and discussed the Catalina 2004 peregrine survey report. The Council decided not to fund additional peregrine investigations in 2005, at least until after completion of the Restoration Plan.

Annie also updated the Council on Bald eagle investigations; no changes were proposed.

Dave Witting described 2nd round fish contaminant study plans, and recent developments with the Port of Los Angeles reef project. The Council agreed that there was potential value in viewing and using the Port’s project as a pilot that provides an opportunity to study aspects of reef development. However, the Council also recommended close coordination with EPA and other stakeholders.

Milena Viljoen described recent developments in outreach and education materials and the web site.

Other Business

Katherine Pease recommended that we replace past MOUs with a completely new Trustee Council MOU; she’ll work with the other attorneys to draft one that provides for permanent staff, more flexible voting provisions, and that clearly spells out requirements for resolutions.

Katherine also discussed efforts to improve the administrative record for the case, streamlining the list of documents to be publicly posted and possibly developing a secure web site that would allow the Trustee Council to access other important documents electronically.

January 25th and 26th were set aside for our next Trustee Council meeting, although it will likely only require one day; likely location is Long Beach.