

Montrose Settlements Restoration Program Trustee Council
Summary
January 25, 2005 Trustee Council Meeting
Long Beach, California

The following primary and alternate Montrose Trustee Council ("Council") members were present:

Jen Boyce	NOAA	Suzanne Goode	CDPR
Patty Velez	CDFG	Jonathan Clark	CSLC
Kate Faulkner	NPS	Jennifer Lucchesi	CSLC
Scott Sobiech	USFWS		

Also attending:

Greg Baker	MSRP Staff	Katherine Pease	NOAA OGC
Dave Witting	MSRP Staff	Kathy Verrue-Slater	CDFG
Annie Little	MSRP Staff	Lisa Wolfe	CDFG
Milena Viljoen	MSRP Staff		

New Appointments to the Trustee Council

Jennifer Boyce replaces Bill Conner as NOAA's primary Council representative; Rob Ricker replaces Jen as the NOAA alternate.

Scott Sobiech replaces Andy Yuen as the USFWS alternate, with Jim Haas remaining the USFWS primary Council representative.

Jennifer Lucchesi attended as the CSLC's new alternate representative to the Council. CSLC will provide an appointment letter within the next several weeks.

Financial Report

Cotton & Company has completed their work under a contract to NOAA to audit and reconcile the settlement accounts. A copy of the final report was previously distributed to the Council via e-mail. We discussed having Cotton obtain and provide statements on the balances in the accounts on a regular schedule. Greg Baker will ask for a cost proposal for doing so on a quarterly, semi-annual, and annual basis. The cost proposal will be circulated to the Council with a recommendation and if the recommendation is to contract with Cotton for this service a resolution will be circulated for signature. NOAA indicated that it could likely absorb the cost within its 2005 budget and not ask for advance funds in the new resolution.

Jonathan reiterated the option of transferring funds currently in court registry accounts into the CSLC-administered fund, which does not charge an administrative overhead; the Council did not resolve to take action at this time.

Katherine updated the Council on NOAA's recovery of past damage assessment costs for the case. Upon resolution of ongoing NOAA internal discussions about where recovered Montrose damage assessment costs will be directed, NOAA may propose an alternative payout plan for its past costs to the Council.

Regarding budgets and expenditures, we discussed the degrees to which expenditures by trustee agencies may exceed what was budgeted within a category as long as the overall level of spending across all categories stays within the overall budget. No specific limitation was agreed upon; at this point it is up to the cost subcommittee to review and recommend to the Council how to treat each such situation when documentation is submitted.

We agreed that best practices dictate that we should sign formal resolutions whenever we make funding decisions regardless of the amount of funding involved. Also, resolutions signed in the course of a given

year should tie the new funding decisions to the annual budget so that each year a single set of cost documentation may be provided to reconcile all funding received for that year, to the extent possible.

Status of 2003 cost documentation – Cotton has completed reviews of packages from NOAA, CDFG, and CSLC; pending are packages submitted by NPS and FWS, which have received from Cotton a list of additional needs. CDPR has not submitted a cost package for 2003. Greg will obtain copies of the packages that are completed and provide them to the cost subcommittee reviewers, and will circulate the remaining ones once they are completed.

Status of 2002 cost documentation – There is a February 28 deadline for submitting these packages. Greg will pursue having Cotton review these packages also and follow a procedure identical to that being followed for the 2003 cost documentation. Once we approve the 2002 and 2003 cost documentation, we will be caught up and will only have disbursements and costs subsequent to 2003 pending. Jonathan stated that CSLC will not be pursuing reimbursement of any costs incurred in CY 2002.

2005 budget resolution amendment – Subsequent to the signing of TCR 04-5 approving the disbursement of advance funding for our 2005 budget, some changes were made that reduced the amount of advance funding needed by FWS. Since funds have not yet been disbursed from the DOI NRDAR, the MSRP staff proposed that we amend the resolution to bring it in line with the updated budget figures. Amended resolution 04-5 will be circulated for signature by the Council. After considering credits remaining from prior advance funding, the net disbursement authorized to forward fund the 2005 program is \$1,287,094.

Restoration Plan – Agency Review Draft

Comments had been received thus far from CDFG, NOAA, SLC, and FWS. Greg Baker summarized the steps and timeframe to get the public draft RP/EIS/EIR through approval at NOAA and a Notice of Availability into the Federal Register. We discussed parallel procedures for obtaining state clearance to release the public draft RP/EIS/EIR and ensure it meets CEQA requirements, to clarify necessary lead time and circulation of copies for sign off. This led to a discussion of whether there needs to be a single “lead” state agency for CEQA purposes. For the purposes of NEPA, NOAA will be identified as the federal “lead” agency. Kathy Verrue-Slater and Lisa Wolfe will pursue the CEQA questions for the State and clarify whether CDFG headquarters will need to review the final draft.

Federal Information Quality Act (IQA) requirements – NOAA has procedures for obtaining approval, Katherine passed out a handout describing IQA and NOAA procedures for complying. FWS will followup to determine if DOI agencies may adopt a NOAA determination.

The Council requested that once the staff has incorporated comments from the agency review draft, the “Track changes” versions of revised sections of the document be sent to all representatives. MSRP staff indicated some files were too large and best put up on the FTP site; Dave will follow up with simplified instructions for all TC reps to access and download files from the FTP site. The Council requested that Greg send out copies of all comments submitted for the agency review draft to all Council reps.

After public review is complete, we agreed we need to sign a final Record of Decision. FWS will follow-up on whether a separate ROD would be needed, or whether they could adopt a NOAA ROD. Lisa will clarify parallel procedures for final sign-off by State.

Greg Baker indicated that staff would do their best to incorporate comments received after this date, but that the team was working toward an objective of completing their revisions by late February.

A draft schedule of public workshops on the draft RP was distributed, and Council representatives were invited to participate in one or more of the workshops as their schedules allow.

Fish Contamination Study Status

Dave Witting and Greg Baker reported that Battelle laboratory had successfully validated their new extraction and analysis procedures, and the plan is to have them re-analyze all previously analyzed samples. Provided they perform acceptably on these, they will also analyze remaining samples in the contract. NOAA will also initiate a new contract task order to cover "Round 2" sample analyses designed to fill remaining data gaps. This would allow NOAA to more cleanly close out the task order under which Battelle is currently doing work and would facilitate concurrent work by a second laboratory (such as Woods Hole Group). Greg is working with EPA to amend the IAG to add EPA funds to cover the additional work.

Greg brought up the ongoing efforts to resolve cost issues with IEC and Battelle. Battelle has requested consideration for new pricing on the subset of samples not yet analyzed, given that it is our position that the cost of their reanalysis of previously analyzed samples is their responsibility. Greg indicated that to a large extent, how we handle these cost issues is determined by the NOAA contracting officer and his reading of the requirements of the specific contract and overall NOAA procurement requirements. Also, a review of recent price history for comparable analytical work (e.g. our bald eagle study analyses with Woods Hole Group) indicates that if we were to obtain competitive bids today for this work, the costs would likely be higher. The Council asked that Greg continue to work with the prime contractor, IEC, to ensure the Trustees obtain the best value, and asked that Greg inform the Council when a specific proposal is offered.

Additional Planning Proposals

We discussed two proposals for additional work commitments. One is a proposal to investigate in greater depth potential measures to avoid or minimize risks to island foxes for the San Miguel seabird restoration project. A second is a request that, assuming it is already likely that the MSRP would monitor the Port of LA's Point Fermin artificial reef project to gather information for future MSRP reefs, we a specific commitment to monitor the reef as a way to assist the Port in obtaining necessary permitting.

Since we are so close to releasing the public draft RP, the Council preferred not to enter into any new commitments at this point, but rather recommended that such proposals be incorporated into the plan that will circulate for public review and comment.

Next meeting: June 7, 2005, Long Beach.