

DEPARTMENT OF FISH AND GAME

WILDLIFE CONSERVATION BOARD1416 NINTH STREET
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State of California
The Resources Agency
Department of Fish and Game
WILDLIFE CONSERVATION BOARD

Minutes, Meeting of March 5, 1990

Pursuant to the call of the Chairman Robert A. Bryant, the Wildlife Conservation Board met in Room 447 of the State Capitol, Sacramento, California, on March 5, 1990. The meeting was called to order at 10:05 a.m. by Chairman Bryant.

1. Roll Call

<u>Present:</u>	Robert A. Bryant, President	Chairman
	Fish and Game Commission	
	Pete Bontadelli, Director	Member
	Department of Fish and Game	
	Stan Stancell, Assistant Director	Member
	Department of Finance	
	Edna Maita	
	Vice Assemblyman Costa	Joint Interim Committee
	Rick Battson	
	Vice Assemblyman Isenberg	Joint Interim Committee
	Sandy Silberstein	
	Vice Senator Presley	Joint Interim Committee
<u>Absent:</u>	Assemblyman Norman Waters	Joint Interim Committee
	Senator Barry Keene	Joint Interim Committee
	Senator David Roberti	Joint Interim Committee
<u>Staff Present:</u>	W. John Schmidt	Executive Director
	Alvin G. Rutsch	Assist. Executive Director
	Jim Sarro	Chief Land Agent
	Sandy Daniel	Executive Secretary
	Janice Beeding	Office Technician
<u>Others Present:</u>	George Nokes	Dept. of Fish and Game
	John Squires	Dept. of Water Resources
	Joe Rosato	Sacramento Bee
	Gene Toffoli	Dept. of Fish and Game
	Larry Frank	Sienna Corporation
	Warren Ball	Landowner
	Jim McKelvey	Attorney
	Jennifer Jennings	Planning & Conservation League

Others Present - Continued:

Bill Morrison	State Lands Commission
John McKown	State Lands Commission
Charles Warren	State Lands Commission
Blake Stevenson	State Lands Commission
Jan Stevens	Attorney General
Donn Furman	San Joaquin River Parkway and Conservation Trust
Linda Adams	Assembly Water, Parks & Wildlife Committee

CALIFORNIA WILDLIFE, COASTAL AND PARK LAND
CONSERVATION FUND OF 1988 (PROP. 70)

2. San Joaquin River Riparian Habitat, Expansion #1, \$1,532,000.00
Fresno County

Mr. Schmidt reported that at the request of the Board at its meeting of February 15, 1990, this meeting was called for the purpose of further consideration of Item 7 of the February 15th agenda. For convenience and information, the full text of Item 7 of the February 15th agenda is attached.

Mr. Schmidt noted that the proposal today was to present to the Board the proposed acquisition of 163.4 acres, together with the acceptance of the quit claim of any interest the property owner may have in a 28.5 acre parcel, for a total of 191.9 acres.

After much discussion at the February 15th meeting, the Board instructed its staff to meet with staff of the State Lands Commission, the Department of Fish and Game and other interested parties to attempt to resolve certain concerns and return to the Board with a proposed acquisition agreement which included the following:

- 1) Elimination from the proposed acquisition area of 10 acres which are claimed by the State Lands Commission to be encumbered by the State's public trust easement. Accordingly, the purchase price was to be reduced by the approved fair market value of the 10 acres, a total of \$100,000.00.

Mr. Jim Sarro reported this was relatively simple to work out with the help of State Lands. That portion of land claimed to be public trust has been eliminated from the acquisition which is a reduction of approximately 10 acres. The remaining property would be acquired as originally proposed with a reduction in value of \$100,000.00.

- 2) Addition of language to insure, for purposes of any potential future application of the Subdivision Map Act, that the remaining lands of the grantors (e.g. the proposed Ball Ranch development) shall not be considered to be separated from the river. In other words, to the extent those remaining lands are deemed riparian for Subdivision Map Act purposes prior to the proposed State purchase, they shall also be deemed riparian for Subdivision Map Act purposes after the proposed acquisition.

Mr. Sarro reported that State Lands Commission had provided proposed language but had not had the opportunity to finalize it but also felt quite confident that it can be accomplished. The intent of the language is to leave this property status quo, that is, if it is subject to Subdivision Map Act requirements today, it will be subject to Subdivision Map Act requirements after the State acquisition of the property.

- 3) Satisfactory language and/or procedures must be developed to assure that the Board's acquisition of this property was not perceived by the County of Fresno or any other entities or individuals as indicating support for approval of the Ball Ranch development project. It should be made clear to all concerned that the proposed acquisition stands on its own merits and is appropriate regardless of whether the Ball Ranch Project is approved or disapproved by the County of Fresno.

Mr. Sarro stated this was the more difficult issue to resolve. The language in the agreement which conditions the acquisition on the development was removed. The result would be an agreement between the existing current landowners and the State of California and an agreement between the holders of the option (Sienna Corporation) and the State of California. Both agreements run parallel to each other and both agreements would be signed on behalf of the Board and on behalf of the respective parties. The agreement with the Sienna Corporation would be that if Sienna does exercise its option, within the option period running till August 23, 1990, Sienna would then sell the property to the State of California as proposed. In the event Sienna Corporation does not exercise their option, then the Ball family agreement would come into play and the Ball family would sell the property to the State of California. Either way, the Board would be acting to acquire this property and regardless of what action the County takes in its development plan review and no matter how long it takes them to do it, the Board would be acquiring the property.

Mr. Schmidt noted that a letter of support had been received from the Defenders of Wildlife. He also noted that the San Joaquin River Committee who opposed at the last meeting were unable to be present today but called indicating their position was basically neutral because of the green areas and golf course and then commented it could be referred to as "lukewarm support".

Staff then recommended that the Board approve this acquisition of 191.9 acres as modified; allocate \$1,532,000.00 from the California Wildlife, Coastal and Park Land Conservation Fund of 1988, as designated for the San Joaquin River, [Section 5907 (c)(5)]; and authorize staff and the Department of Fish and Game to proceed substantially as planned.

Mr. Bryant asked if there were any questions or concerns from the audience.

Mr. Blake Stevenson, State Lands Commission (SLC), thanked the staff for the several meetings which were helpful in solving these issues. Mr. Stevenson added that they are still working on the Subdivision Map Act language but have made commitments regarding what it is and have a general understanding of the goal and have agreed with Mr. Sarro that appropriate language can be developed to full satisfaction. He also noted that they join with staff regarding separation of this activity from the general CEQA process that is occurring in Fresno County right now. Copies of SLC's comments regarding the Draft EIR were distributed to the Board Members and are attached to the official minutes. Mr. Stevenson added that the only area of disagreement was the structure of the transaction. SLC's preference was for the purchase to occur on a 45 or 60 day escrow basis. Basically, if this transaction is justified and should go forward, that the Sienna Corporation and/or the Ball family convey the property to the State at the present time. SLC feels this is the simplest way of dealing with the problem rather than trying to structure a dual contract. At the same time, SLC did not object to the purchase occurring on the basis which the staff had recommended.

Mr. Bontadelli appreciated the concern and the desire to have the simplest separation, but given the dual contract method staff had proposed, he asked Mr. Stevenson if he felt that would satisfy the separation issue. Mr. Stevenson stated they would much prefer the 45 day approach, but are not posing objection to the purchase based upon the dual contract agreements.

Mr. Battson reconfirmed that Mr. Stevenson agreed that the way Mr. Sarro outlined the agreement would not put any pressure on the County to develop this property.

Mr. Schmidt proposed that a letter be sent to Fresno County from the Board indicating the intentions to acquire this property in any event and explain the transaction so they would not feel any pressure.

Mr. Stancell asked for staff's reaction to the more direct approach. Mr. Bontadelli responded that the actual owner is the Ball family who has an existing option which they are obligated in their minds to honor; therefore, they want to let that option run its full course. The dual contracts were structured which allows the Ball family to honor their pre-existing agreement. Mr. Sarro stated that if the Sienna Corporation would exercise their option today, escrow could close in 45 days; that possibility does exist.

Wildlife Conservation Board

Mr. Donn Furman, Executive Director of the San Joaquin River Parkway and Conservation Trust, stated they were primarily concerned with de-linking this proposal from action by Fresno County and questioned the date of August 23, 1990, which is the parallel date for the agreements. Mr. Schmidt responded that the date of August 23, 1990, is the date the option expires between the Sienna Corporation and the Ball family and there will be provisions in the new agreement that will prohibit the extension of the option on that portion of the land. Mr. Furman stated they are not opposed to proceeding with the acquisition but did have some concerns about how narrow some parts of the acquisition are along the river and about the golf holes that are being placed in the center of the wildlife habitat. He then thanked staff for its hard work and believed the Ball Ranch is certainly worthy of acquisition.

Mr. Bryant asked if there were any questions or concerns, and since there was no further discussion, the following action was taken.

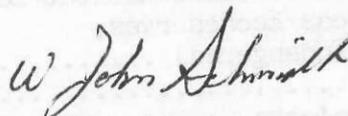
IT WAS MOVED BY MR. BONTADELLI THAT THE WILDLIFE CONSERVATION BOARD APPROVE THE ACQUISITION OF THE SAN JOAQUIN RIVER RIPARIAN HABITAT, EXPANSION #1, FRESNO COUNTY, AS PROPOSED, INCLUDING A LETTER TO FRESNO COUNTY EXPLAINING THIS TRANSACTION; ALLOCATE \$1,532,000.00 FROM THE CALIFORNIA WILDLIFE, COASTAL AND PARK LAND CONSERVATION FUND OF 1988, AS DESIGNATED FOR THE SAN JOAQUIN RIVER [SECTION 5907 (c)(5)]; AND AUTHORIZE STAFF AND THE DEPARTMENT OF FISH AND GAME TO PROCEED SUBSTANTIALLY AS PLANNED.

MOTION CARRIED.

Mr. Schmidt thanked everyone involved for their support in helping to put this together, especially Mr. Sarro from staff.

There being no further business to consider, the meeting was adjourned at 10:20 a.m. by Chairman Bryant.

Respectfully submitted,



W. John Schmidt
Executive Director

Attachments

PROGRAM STATEMENT

At the close of the meeting on March 5, 1990, the amount allocated to projects since the Wildlife Conservation Board's inception in 1947 totaled \$238,480,910.41. This total includes funds reimbursed by the Federal Government under the Accelerated Public Works Program completed in 1966, the Land and Water Conservation Fund Program, the Anadromous Fish Act Program, the Pittman-Robertson Program, and the Estuarine Sanctuary Program.

The statement includes projects completed under the 1964 State Beach, Park, Recreational and Historical Facilities Bond Act, the 1970 Recreation and Fish and Wildlife Enhancement Bond Fund, the Bagley Conservation Fund, the State Beach, Park, Recreational and Historical Facilities Bond Act of 1974, the General Fund, the Energy Resources Fund, the Environmental License Plate Fund, the State, Urban and Coastal Park Bond Act of 1976, the 1984 Parklands Bond Act, the 1984 Fish and Wildlife Habitat Enhancement Bond Act, the California Wildlife Coastal and Park Land Conservation Act of 1988 and the Wildlife Restoration Fund.

a. Fish Hatchery and Stocking Projects	\$16,037,012.70
b. Fish Habitat Development	11,176,414.44
1. Reservoir Construction or Improvement .	\$3,065,821.39
2. Stream Clearance and Improvement	5,406,331.66
3. Stream Flow Maintenance Dams	498,492.86
4. Marine Habitat	646,619.07
5. Fish Screens, Ladders and Weir Projects	1,559,149.46
c. Fishing Access Projects	32,835,987.49
1. Coastal and Bay	\$3,120,720.76
2. River and Aqueduct Access	6,971,920.77
3. Lake and Reservoir Access	6,033,326.03
4. Piers	16,710,019.93
d. Game Farm Projects	146,894.49
e. Wildlife Habitat Acq., Development & Improvement Projects ..	170,948,233.80
1. Wildlife Areas (General)	\$129,352,515.25
2. Miscellaneous Wildlife Habitat Dev. ...	3,308,962.19
3. Wildlife Areas/EcoReserves, (Rare & Endangered)	38,286,756.36
f. Hunting Access	533,743.57
g. Miscellaneous Projects	6,008,012.87
h. Special Project Allocations	311,995.42
i. Miscellaneous Public Access Projects	<u>482,615.63</u>
 Total Allocated to Projects	 \$238,480,910.41

7. San Joaquin River Riparian Habitat, Expansion #1,
Fresno County \$1,632,000.00

This proposal is for the acquisition of 201.9+ acres of river frontage and riparian habitat along the San Joaquin River, about two miles south of the town of Friant and two miles north of the city limits of Fresno. The property is part of a 600+ acre ownership which is bounded on the west by the river and on the east by Friant Road. Millerton Lake State Recreation Area is about four miles north of the property by way of Friant Road. Lost Lake Recreation Area, a project partially funded by WCB and operated by the County of Fresno, is about one and one-half miles upstream.

The flow of the San Joaquin River in this vicinity is controlled by releases from Friant Dam, just a few miles upstream. A mature, mixed riparian forest system runs the length of the property's river frontage, about one and one-third miles in all, primarily consisting of sycamores, cottonwoods, willows and oaks. Many years of sand and gravel extraction, now terminated, have left numerous ponds, most of which have become overgrown with riparian vegetation. The property is currently used for cattle grazing and paid fishing access and portions are leased out for operation as a worm farm and for gravel extraction.

The portion of the property which is recommended by the Department of Fish and Game (DFG) for purchase is the riparian corridor along the river, a block of riparian forests on the southwest side of the ownership and a 39+ acre pond and surrounding riparian vegetation on the southeast side of the property. The river front and southwest block of riparian habitat is characterized by abundant food, cover and nesting sites for a wide variety of wildlife. Endangered bald eagles winter on the property and it is also used by numerous species of special concern in California, including the golden eagle, Cooper's hawk, northern harrier, sharp-shinned hawk and prairie falcon.

With well-documented losses of riparian habitat throughout California, the San Joaquin River, from Friant Dam downstream to Highway 99 was among the areas designed for selective WCB acquisitions in the California Wildlife, Coastal and Park Land Conservation Act of 1988 (Proposition 70), and the subject property was noted to be the top priority identified by the DFG. The pond area, 39+ acres, fronts along Friant Road and has potential to be a well-utilized public warmwater fishery.

There is minimum public consumptive or non-consumptive use of this property at the present time. The proposed management plan for the property would be to protect and, possibly, enhance the riparian habitat and to provide angling access at the pond area. Fishing access would also be available along reaches of the river, to the extent compatible with sound riparian habitat management. Opportunities would also exist for educational experiences and other non-consumptive uses such as sightseeing, birding, photography, hiking and picnicking. Nature trails, if properly routed, could be readily incorporated into the San Joaquin River Parkway, which is currently being proposed for this area.

Currently, 592 acres of the ranch are proposed for development which would include an 18-hole golf course and 795 residential units. Under the proposed acquisition plan, the residential development around the south-westerly riparian forest would be eliminated. Two golf holes would remain in that location, but would be situated on uplands that are essentially lacking in any riparian habitat values. Access would be provided (as would be required if the development were to go forward) at the north end of the project at Friant Road, including a parking area and foot trails to the state-acquired property. No payment would be made for this access road in this transaction.

The State Lands Commission has indicated it would claim fee ownership to 28.5 acres lying in the low water channel of the river plus public trust rights over 51.4 acres along the river, a portion of which would not be acquired in this transaction. These claims were considered in a separate, specific market analysis by the appraiser, who concluded that the market for properties in this area with similar State claims reflect no reduction in per acre valuation. The Department of General Services has reviewed the appraisal and separate analysis and has approved both. In any event, the landowners have agreed to quitclaim and donate any interest they may have in the 28.5 acres of river bed to the State as part of this transaction.

Fair market value of the property is \$10,000 per acre in the riparian areas and \$7,000 per acre in the pond area, for a total of \$1,901,400. Deducting the 28.5 acres of river bed valuation, the owner has agreed to sell the property to the State for \$1,616,400. Related closing costs are estimated to be \$15,600. The sale to the State would be contingent upon approval of an amendment to the County's General Plan to allow for development of a planned residential community within the remainder of the landowners' 391.5+ acres. Any mitigation required as part of the proposed development would be separate from this transaction and would necessarily occur on lands lying outside of the acquisition area. Furthermore, any development which might be planned within the remainder on lands claimed to be subject to the public trust would necessarily be the subject of discussion between the landowners and the State Lands Commission.

Management of these lands, once acquired, would be by the DFG as noted above. The acquisition is exempt from CEQA under class 13 of Categorical Exemptions as an acquisition of land for wildlife conservation purposes. Funding is available, as indicated, through the California Wildlife, Coastal and Park Land Conservation Act of 1988.

Staff recommends that the Board approve this acquisition as proposed; allocate \$1,632,000.00 from the California Wildlife, Coastal and Park Land Conservation Fund of 1988, [Section 5907 (c)(5)], and authorize staff and the Department of Fish and Game to proceed substantially as planned.

STATE LANDS COMMISSION

JOE T. McCARTHY, *Lieutenant Governor*
RAY DAVIS, *Controller*
JESSE R. HUFF, *Director of Finance*

EXECUTIVE OFFICE
1807 - 13th Street
Sacramento, CA 95814
CHARLES WARREN
Executive Officer

February 16, 1990

Mr. Richard Gilbert
Public Works and Development
Services Department
County of Fresno
220 Tulare Street, 6th Floor
Fresno, CA 93705

Dear Mr. Gilbert:

Staff of the State Lands Commission (SLC) has reviewed the Draft Environmental Impact Report (DEIR) for the proposed Ball Ranch Specific Plan, SCH. # 89031310. The proposed project appears to involve sovereign land under the jurisdiction of the SLC. We wish to provide the following comments on the jurisdiction of the SLC, the project, and the DEIR which we believe to be inadequate and not in conformance with the provisions of the California Environmental Quality Act (CEQA) and the State EIR Guidelines (Guidelines).

STATE LANDS COMMISSION JURISDICTION

We would like to reiterate and expand upon several issues we have commented upon previously with regard to the SLC's jurisdiction. As provided in Section 6301 of the Public Resources Code, the SLC has exclusive jurisdiction over the navigable waterways of the State. The San Joaquin River at the site of the proposed project is such a waterway. The project impacts area under the jurisdiction of the SLC in several ways:

1. Neither the high nor the low water boundaries of the San Joaquin River (River) along or through the subject property have been set by a Boundary Line Agreement or a court judgment. In essence, the State owns, in fee, the area of the River to the low water boundary and private parties own the area between low and high water, in fee, but subject to a public trust easement. Since

the 1987 DEIR (SCH #85111809) for an earlier configuration of the Ball Ranch proposal, we have done additional survey work and have defined the extent of sovereign ownership within the area of the River impacted by the Ball Ranch development. We are presently negotiating with the owners of the Ranch to see if we can consummate a Boundary Line Agreement (BLA).

2. As an adjunct action to a BLA, the SLC must determine the appropriate uses of any sovereign land included within and affected by the project. These uses must be consistent with the needs of the public trust which include commerce, navigation, fisheries, recreation, and land kept in open space for environmental purposes, among others. The project calls for some of the property subject to sovereign title rights to be used as a golf course. A public trust study by the SLC may be needed to decide if the property is best suited for uses other than a golf course, including leaving the area as it is or allowing only passive public recreational.
3. The SLC is also concerned with the possible effects of water diversion from the San Joaquin River for the project or the golf course. Water quality issues are also embodied in anticipated runoff to the River which would come from street drains and drainage from the golf course where use of pesticides, herbicides, or fertilizers is anticipated.

The DEIR on pages 2-21 and 2-23 should be altered to more accurately reflect the jurisdiction of the SLC over this project. Also, Exhibit 8-2, page 8-16 in the draft EIR delineates areas which are designated as "Land Claimed by the State of California" (To Existing Water Level). It appears that these areas are meant to show the present reach of the San Joaquin River at either a low or medium flow. This designation has little or nothing to do with the ordinary high or low water marks of the San Joaquin which are the limits of sovereign title held by the State of California. These areas need to be renamed to avoid any misconception that they depict government title rights in the area. A suggestion might be to label them "Present San Joaquin River at Low or Medium Flows."

PUBLIC ACCESS

An important concern which is separate from, yet related to, State sovereign ownership issues is that of public access to navigable waterways of the state. The Subdivision Map Act requires that every new subdivision of land fronting on a public waterway or stream provide public access both to and along that waterway or stream (See Government Code Section 66478.1-.14.) As discussed in Kern River Public Access Committee v. City of Bakersfield (1985) 170 Cal. App. 3d 1205, the only limit upon the public's right to such access is that which relates to public safety. Although the San Joaquin River at this site is a navigable waterway subject to state sovereign title rights, ownership is not required for the pertinent sections of the Subdivision Map Act to apply. The fact that the River at the Ball Ranch is not specifically listed as a "navigable" river in the Harbors and Navigation Code does nothing to lift the requirement that access to and along the River be incorporated into the project. For example, no part of the Kern River is specifically listed in Harbors and Navigation Code Sections 101-106, yet the court in Kern River Public Access held the access provisions of the Subdivision Map Act applicable. Under both that case and Section 100 of the Harbors and Navigation Code, a waterway is navigable if it is enjoyed by recreational boaters. That alone invokes the access requirement of the Subdivision Map Act.

In public statements, the proponents of the Ball Ranch have argued that the access provisions of the Subdivision Map Act do not apply to this development. It was not unanticipated, therefore, that the project as shown and discussed in the DEIR does not make an attempt to meet the requirements of the Act. The only public access included in the project is a single, fenced-in trail along the northern boundary of the project, which terminates at the River. Small boat launching is described as one of the public recreation opportunities being provided by the project, yet only a small parking lot is planned for near Friant Road, almost one-half mile from the river. Access for canoeing, one of the more popular uses of the river, is made difficult, if not impossible, by this design.

For a project of this size, we believe that more than one vertical accessway from Friant Road to the River is required. Also, given the distance to the River and the difficulty in carrying boats, vehicular access closer to the River should be considered. Finally, access along the length of the River through the subdivision needs to be built into the design of the project. The Subdivision Map Act requires that accessways must appear on any tentative subdivision maps for the project and must be accompanied by a dedication to a government entity.

COMMENTS ON THE ENVIRONMENTAL ANALYSIS

As we have previously stated, it is our opinion that the DEIR is inadequate when compared to the requirements of the CEQA and Guidelines. We find the environmental analysis deficient in several important aspects:

1. There is inadequate disclosure and analysis of the environmental baseline and potential impacts of the project on the environment;
2. There are insufficient mitigation measures described and/or discussed as to their effectiveness in avoiding, reducing or eliminating the anticipated significant impacts;
3. The discussions and analysis of cumulative impacts and project alternatives are superficial and without substance.

As we believe biological resources to be a major issue within the Ball Ranch property, we provide the following discussion of the DEIR sections relating to such resources as illustrative of the above stated inadequacies.

COMMENTS ON BIOLOGICAL RESOURCES**1. Environmental Baseline**

Significant progress has been made since the previous draft EIR (SCH. #85111809) in determining the resources present at the project site, particularly sensitive animal species. However, we note that major inadequacies remain with regard to wetlands, sensitive plant species and discussions of wildlife habitat values. We discuss each of these resources in turn.

Wetlands: The document should clarify the habitat types which are being denoted as "wetlands". In certain places, e.g. on page T-11 Appendix T, it is implied that the term is used under the specific and limited definition found in regulations relating to Section 404 of the Federal Clean Water Act. However, an examination of the aerial photo and the maps of habitat types, Exhibit 3-7 on page 3-32 and Exhibit 3-8a on page 3-66, shows that submerged, or purely aquatic habitats have been included as wetlands. This is not consistent with the Corps of Engineers practices. The DEIR should

provide a description of the species composition and vegetation structure for these areas, aside from the pond open surface water, which are being included as "wetlands". The pond open water areas are important habitats and should be treated separately from any marsh or other emergent vegetation wetland areas in terms of quantification and description of habitat units.

Appendix T, "Ball Ranch Mitigation Program," references certain transect studies specifically done for what is referred to as wetlands, apparently focussing on the ponds and watercourses, and sampling marsh, riparian, and rooted aquatic vegetation types. The results of these studies, which apparently form the basis for much of the mitigation planning, are not presented for review, nor are any of the figures and maps cited in the text found in the document. Full disclosure of this baseline information is essential for its review by resource agencies and the public. Anything less is not in compliance with CEQA.

Sensitive Plants: According to page 5-16 of the Biological Assessment, page G-65 of Appendix G, the rare plant surveys were carried out in April. However, on page 5-21, G-73, it is stated that the blooming period for the species in question is May and June. Furthermore, the method for searching for the sensitive plants was a "meandering" reconnaissance. A "random meander" does not necessarily result in a statistically random sample which could be considered representative of site conditions. Furthermore, surveys for the sensitive species should have covered all of the potential sites they would be expected to find suitable conditions for survival, not a sampling of such sites. Therefore, we find the statement on page 5-21 that "there is a remote possibility that these species may have been overlooked" to be an understatement of a significant problem with the baseline environmental work. Lastly, and more importantly, page 3-39 of the DEIR states that the surveys "provided no evidence that these species occur on the project site". To the contrary, the surveys provided no evidence that they were absent. Currently, it is not possible to conclude that there is no potential for adverse impacts to the species from the project.

Habitat Values: By referring to the information currently found in the environmental documents, including the photographs, it is possible to derive a reasonable picture of the vegetation cover types, apart from the above major problems with wetland description as described above, on the project site. What is lacking in the presentation is an ecosystem approach which adequately describes the functional relationships between the different vegetation or aquatic types and the wildlife species and populations that are supported by them.

Appendix G presents numerous maps of the presumed areas of "habitat utilization" for targeted species. These maps were apparently prepared after a small number of field days. While the methodology may have been adequate for establishing the location of current nest sites or the presence or absence of common species, it is not appropriate to rely solely upon one field season of limited sample days to estimate the whole extent of habitat utilization area for a particular species or group of species. For example, what is the justification for the area of cottonwood forest to the south of the canal, "Pond 12", not being included as Red-shouldered Hawk summer habitat on Figure 5.1.4-A, Appendix G? The wintering map, Figure 5.2.12-B, does show this as habitat area and it meets the requirements that are known for the species. Furthermore, what is the justification for not including all areas of similar vegetation which meet the recognized basic structural requirements as foraging or potential nesting territory? For example, why are all of the grassland areas not included in the habitat maps for the Black-shouldered Kite or the American Kestrel when clearly this is one of the preferred foraging cover types?

The purpose of the field studies was, properly, to take a limited sample or snapshot of the biological resources to be used as part of the baseline description. Just as important, knowledge of species requirements, which were extensively documented in Appendix G, and knowledge of the region, which was not analyzed, should also be used in describing the environmental setting for the purposes of impact analysis.

The DEIR text does not discuss the diversity and abundance of wildlife on this site as a whole. Only in an appended table to the Biological Assessment, Appendix G, is it presented that there are over 100 different animal species supported by the mosaic of habitats on the Ball Ranch. The superficial descriptions of habitat values to wildlife on pages 3-40 to 3-45 only arbitrarily note a few of the many species for each of three terrestrial and one aquatic habitat type.

In addition, almost nothing is said about the high diversity and abundance of species on the property due to the large amount of ecotonal habitats, commonly known as the "edge effect". A reference to the value of ecotones that does appear in the DEIR is contradictory. Page 3-38 states that "Ecotonal areas such as those represented by the Riparian Savannah stands provide both woodland/forest and grassland species with a limited resource base. Therefore, such communities may exhibit high species diversity

without providing high quality habitat to the species present." The implication of this statement is contradicted by the evidence on page 3-58 which says " Red-shouldered hawks [one of the species of raptors observed nesting on the site] typically forage in closed woodland or the ecotone between woodland and more open habitats".

2. Analysis of Potential Impacts

The DEIR makes an incomplete attempt at quantifying impacts to biological resources, but then seems to disregard even the limited data which was developed. For example, Table 3-4 shows the amount of different cover types which would be directly lost due to the construction of the project. These figures show that 57% of the Great Valley Cottonwood Riparian Forest, 80% of the Great Valley Mixed Riparian Forest and 67% of the Great Valley Oak Riparian Forest would be destroyed. The text characterizes such losses as "some" (line 3, page 3-63) "modest" (line 22, page 3-63), and "minimal" (line 22, page 3-72; line 17, page 3-73; lines 2-3, page 3-77).

The table of losses to vegetation associations in the draft EIR main volume, Table 3-4, differs significantly from the table of impacts to vegetation shown in Table One, page T-15 of Appendix T. The text below Table One states " Loss figures for vegetation associations are estimates at this point based on the most recent development maps and Quad vegetation maps. More detailed analyses of plant association borders should be completed to further define these losses." We agree. Additionally, the draft EIR should present, for public review, whatever is the most recent, and preferably the final project design so that the environmental impact analysis can be done on what is actually being proposed.

Other than Table 3-4, the DEIR makes no attempt to quantify impacts to biological resources and makes a great effort to downplay the significance of impacts due to direct losses of habitats. Very little is said about indirect impacts which may be as significant as direct habitat loss. Examples of such indirect impacts are disturbance by humans, machines, or pets, or fragmentation of habitats. The document itself recognizes that many further analyses are needed to adequately describe impacts, as it calls repeatedly for a "HEP" (Habitat Evaluation Procedure) or other analysis to be performed in the future (Mitigation Measures 25, 27, 30, etc.). The place for such analysis is the DEIR so that all interested agencies and parties may review it. It is clearly counter to the requirements of the CEQA to defer such studies to a later time and to a process outside the legal EIR procedures. (See *Sundstrom v. County of Mendocino*, Cal. App. 3d 29b, 307).

With regard to the "HEP", we note that this is a procedure developed and used by the US Fish and Wildlife Service, and is not commonly used in projects without a federal agency involvement, yet this document is an EIR prepared under CEQA. With the jurisdiction of the CORPS under Section 404 of the Clean Water Act, why was not a joint EIR/EIS prepared for the whole of the project? How will the provisions of the National Environmental Policy Act (NEPA) be met? It is true that with a CORPS permit the US Fish and Wildlife Service is to be consulted under provisions of the Fish and Wildlife Coordination Act. How will this be handled?

3. Mitigation Measures

The DEIR, for the most part, supplies only a few concrete mitigation measures, and calls upon various mitigation plans to be developed and their effectiveness judged outside the EIR process, for example; see measures 24, 25, and 26, pages 3-80 and 3-81. As with the analysis of impacts, the description of actual mitigation measures which are necessary to lessen impacts to a level of insignificance must be described in the DEIR, and cannot be deferred to a later time or be left to the regulatory program of another agency.

The County, as Lead Agency, must describe and evaluate mitigation measures for all significant impacts. It is not sufficient to depend upon the later action of another agency. This principle is illustrated in Citizens for Quality Growth v City of Mount Shasta, (198 Cal. App.3d 433), in which the City had declined to consider a possible means of mitigating wetland losses on the basis that the Corps of Engineers would take care of the problem. The court held that:

"City asserts it is under no obligation to consider this mitigation measure because the Army Corps of Engineers will protect the wetlands to the fullest possible extent by refusing to issue a permit for any needlessly harmful development project. City cannot so avoid responsibility... Each public agency is required to comply with CEQA and meet its responsibilities, including evaluating mitigation measures and project alternatives (See Guidelines, Section 15020)..."

The EIR states a number of times that impacts to federally listed threatened or endangered species would be handled through a "Section 7" consultation process. As we have stated, Section 7 only applies when there is a federal agency to initiate the consultation. This is not possible for a state or local agency or private applicant alone; therefore, it is puzzling why this appears in the EIR.

4. Cumulative Impacts

The cumulative impact analysis is wholly inadequate, and does not even recognize a basic biological principle that wildlife populations do not simply migrate to "alternative habitats". When habitat is removed, the carrying capacity for the region is diminished, causing a decrease in wildlife abundance and ultimately losses in species diversity. As noted above, it is not adequate under CEQA to rely upon the process of other agencies, such as the US Fish and Wildlife Service to provide for mitigation. Furthermore, "Section 7" or "Section 10" would only address federal endangered species, and not other significant fish, wildlife, and vegetation resources.

COMMENTS ON WATER RESOURCE ISSUES

We are also very concerned about the effects on the river of any changes to water amounts or quality which could be attributed to the proposed project. With regard to water supply, the DEIR indicates that the assumed demand for water and concomitant need for waste water disposal were calculated based on a use of 250 gallons per day (gpd) per single family residence. How was this figure derived? Other studies indicate that this assumption may be substantially underrated. The attached figures, taken from Department of Water Resources Bulletins 166-2 and 166-3, urban water use on a per capita basis support this conclusion. Furthermore, it can be assumed that there will be a significant difference in water usage over a year. Was this accounted for in assessing the capabilities for the water supply and waste water disposal systems?

The proposed project assumes that there would be a requirement to divert 400 acre-feet each year for golf course irrigation. Will there be seasonal differences in rates of diversion? Where will the diversion in-take be located? What will be the effects of such a diversion on the river, its wildlife, and riparian vegetation?

The DEIR states that San Joaquin water quality would be protected from polluted run-off by a series of detention basins. Where will these basins be located? Are any of the existing ponds or wetlands or any of the mitigation ponds or wetlands proposed to be used as receiving areas for run-off? Will any of the basins or drainageways be located within the flood plain? If so, how will periodic "flushes" of potentially toxic sediments be prevented from reaching the river and adding to the pollutant load of the system?

COMMENTS ON AESTHETICS

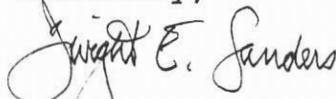
The project is judged not to cause any significant visual impact (see page 3-97, paragraph 4), partly on the basis that the site is already degraded or deteriorated. This is belied by photographs 18 and 19 which could be viewed as showing a landscape with a high degree of aesthetic appeal in its current state. The EIR should present a reasoned analysis for whatever method was used to establish criteria for determining whether an impact to aesthetics is significant or not. In addition, given the increasing use of the river by recreational boaters, the EIR should evaluate any changes to the views seen by this sector of the public.

COMMENTS ON ALTERNATIVES ANALYSIS

The analysis of alternatives is nothing more than conclusory statements, unsupported by any information in the EIR. Also, there are no site plan maps for the alternatives. This section needs to be completely redone, providing more information on the assumed configurations of the alternatives, and must provide evidence showing why a certain level of impact was decided upon for the various issue areas. The present document is inadequate in the extreme.

In summary, it is our position that the DEIR is substantially flawed. There is so much additional information which needs to be disclosed that a new draft document is clearly necessary. To attempt to incorporate so much new analyses in a final EIR at this point would violate the spirit and the letter of CEQA. If you have any questions or if we may be of further assistance, please do not hesitate to call me at (916) 322-7827.

Sincerely,



DWIGHT E. SANDERS, Chief
Division of Research
and Planning

Attachment

cc. Charles Warren, Executive Officer
James F. Trout, Assistant Executive Officer
Robert C. Hight, Chief Counsel
Lance Kiley, Chief, Division of Land Management
and Conservation
Ken Williams, Office of the Attorney General

FIGURE 3-17

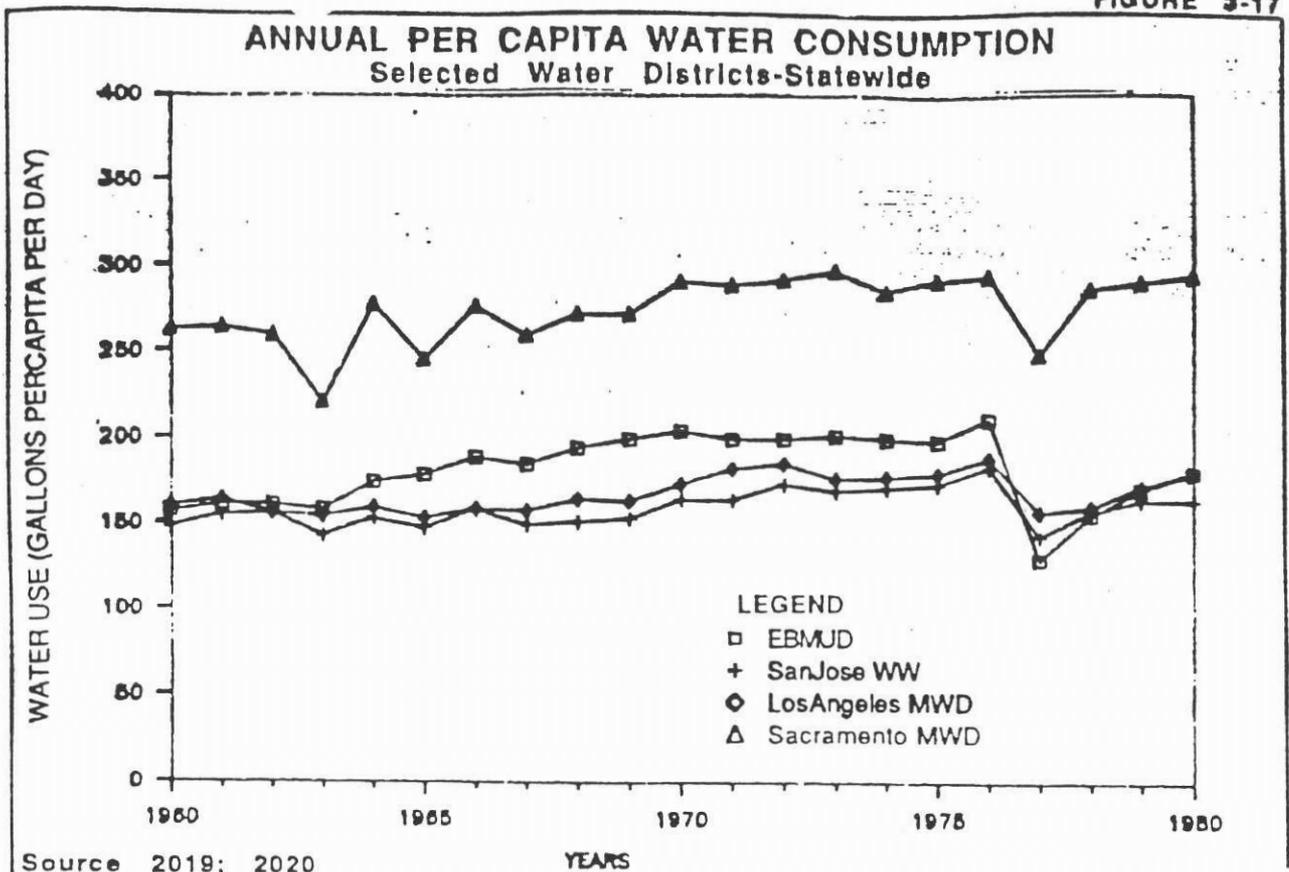


FIGURE 3-16

