

**Questions and Answers from Courtland Landowner Meeting – November 5, 2008**

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*The following is a summary of comments made, questions asked, and answers given at the Courtland Landowner Meeting, hosted by the Department of Water Resources on November 5, 2008.*

**Q: I'm a farmer in the Clarksburg area. We've had a number of these meetings, but what do you think is the upside for us for allowing your folks to come onto our property? And by that I mean the long-term future. What do you think is the upside on our behalf?**

**A:** My sense is the Delta is going to change. It's going to change dramatically over the next 50 to 100 years, and doing this work will, I believe, in the long-term help us plan for how the Delta can change in a way that I hope is best for you, as well as best for all of the other people who have interests in the Delta. I don't want to say that everybody's going to get everything they want, but it seems to me that the best decisions are going to be made based on facts, and if we don't actually gather the data and have the facts, we'll end up doing more of the same, which I think is not helpful for the Delta.

**Q: I can see absolutely no upside of putting a peripheral canal above my property, taking fresher water around towards Tracy, when what I get is actually dirtier water coming down for my irrigation and more potential threat for brackish water to come up sometime in the future, especially as the population grows and the more water can be diverted. You know, I hear about how the Delta is supposed to benefit from this water going around and it just doesn't make any sense to me at all. Why would we want saltier water coming up here, what's the benefit in that?**

**A:** If all that were going to happen was to build a canal and take water around the Delta and ignore your interests, I think you're right, that would not be the most beneficial thing for anyone living and working in the Delta unless you make a profit by selling your land. But, if in fact, what comes out is a plan that actually restores habitat and makes the Delta into a place that is more livable and more sustainable, including the restoration activities, including the other stuff that we talked about in terms of flood protection, if all of that comes together as a package, I think that has a potential to be much better than the alternative. We're allowed to disagree.

**Q: My parents own small holdings in two places in the north part of the Delta. Last August they got a letter. A few weeks ago they got two letters. There was nothing in these letters that explained to them why they got the letters. How do we know why we're being asked to come back to a meeting when nothing came of the first one for us?**

**A:** The first round of studies were intended for around these 1,000-foot corridors, which would have been up in here if you do have one of the properties there. These areas were the highest priority for us to do our field studies.

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**Comment:** You might want to put the surveying video that you show everybody on your website so that everybody can see and know what's going on. Maybe there will be fewer questions.

**Q:** We have seen some trucks in our area, some pickup trucks that say Department of Water Resources. They have generators and they have antennas on them. What's going on there, right on the river? They were there for a couple of days and then they were gone.

**A:** I know that there are a number of activities going on in the Delta beyond what this Bay Delta Conservation planning effort is, with FloodSAFE. I at this point could not answer without specifics.

**Q:** Could you describe to me in detail what happens if damage occurs on our property? What's the process?

**A:** The temporary entry permit will explain that we will go out and do a survey of the property. Afterwards, if you call and there's damage, one of the land agents from DWR will come out and work with you on that process in terms of making you whole. The intent is to make you whole for damages that were caused.

**Q:** Good evening. I'm going to frame my question, it's going to take me a little while to get to it, but we'll start with the August 19<sup>th</sup> meeting where we did this same process previously. I asked if your temporary entry permits could be, one, very focused with regards to time and area, I asked if they could be anonymous, and asked if the information developed could be used strictly and only on the BDCP process.

Since then, on October 10<sup>th</sup> you had a conference call and you informed those that were on the conference call that you were going to send out 120 TEPs. There were several of us on that conference call that were from Farm Bureau and the Delta Caucus, which is the five county farm bureaus in the Delta, and we asked you to hold off and we were willing to meet and talk about some of the items that could be on the temporary entry permit, not to slow the process down, but to make it better for the people that you were sending them to and more acceptable to the agricultural community. You declined that offer.

On October 15<sup>th</sup> the Delta Caucus sent you a letter and made the same offer to sit and meet with you. We framed some of the complaints or some of the problems we have with this process, and we asked you to revise permits to allow for the following: The permits should be varied depending upon the property, not one size fits all. Permits should be specific in nature to tasks, information held in the strictest confidence, and the landowners should be provided any information that's

generated.

The importance to the landowners in anonymity and holding the information and using it only in the BDCP process is paramount. If you, in your biological surveys, find endangered plants, species, birds, those kinds of things, if you share that information, it brings very difficult situations for the farmers.

I've seen an entry permit that's six pages long, lasts for three years, allows you 60 days, allows you to do anything on the parcel anywhere on the parcel. It's not very limited, in my estimation. So I'm going to ask you again why you can't make them more specific, why you can't make them anonymous as far as the parcels being surveyed and the landowners being surveyed, and why you can't restrict the information to this process and this process alone?

**A:** Most of the points you raised are already a part of the process. We work with landowners one-on-one to address specific needs. Some of these studies are species specific, which by state or federal law, in order to look for them properly, you have to do them over multiple years. They are weather dependent, so it is very hard for us to say on this date we will come with one person for a day or a week. There are approximately 59 species that we have to look at and each one has a different protocol. And then there are plants that also have different requirements, so it's very hard to pin down and say at this time we can get on your property.

What we want to do is work with you and say, "You have operations, you have things going on on your property. How can we be out of your way and still conduct our studies?"

Now, on the point of confidentiality, our intent is to be confidential with that information. We are not going to be disclosing parcel numbers or ownership information.

And as to how the data is going to be used, the engineering data is going to be used in general planning studies that will help inform our decision-making, and the data collected for those reports probably won't be used or available until decisions are made, which I think are going to be a year from now. But we do not intend to give that information out to the general public.

There is one critical exception and that comes back on some of these biological surveys where, in order for the state or federal to let you be qualified to look for whatever the bug or bunny or critter is, you have to have a permit from them, and part of the condition of the permit is that we report what our findings are to the California Natural Diversity Database.

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Now, these databases are maintained by the resource agencies charged with protecting those species, so it is in their interest not to make that information available other than in limited amounts for scientific study. So if I, as a general public, wanted to see what is on my property, I cannot get that information; but if I were a scientist studying some kind of bird, I could get broad general information. So, it's intended to protect that information and keep it confidential, but we cannot legally limit it to just BDCP.

**Q: Why have you not taken the farm bureaus up on the opportunity to sit down and discuss these entry permits and discuss some of the terms and conditions that might be in them? I suggest you do that, and do it soon because I would assume that one-on-one meetings are far more time consuming than sitting down with five or six people and perhaps take care of a lot of conditions that could be taken care of in one meeting rather than twenty or thirty meetings.**

**A:** That would help, but at the end of the day we still need to talk individually with landowners to understand their needs so that we can tailor these permits and get the permissions that, again, avoid impacts to landowners and allow us to collect the data.

**Q: I'm a trustee for Reclamation District A-13. Your proposed plan goes right through the center of our district, which creates quite a bit of problems for us even as a district to exist in the future. One of the issues that we're going to be dealing with is FEMA's Digital Flood Insurance Rate Map (DFIRM) system. If we spend a lot of money going through a DFIRM and getting it re-approved, who's going to compensate us for that? I already talked to FEMA about it and they just don't care.**

**Also, we received the temporary entry permit packet. I represent all the people in the district, so this has to go to our legal counsel. I mentioned to your land agent that I want you to pay for our legal costs since we are a public entity. The request went to your staff who came back and said, "No way." I don't know where it stands, but it's kind of a mess.**

**Finally, this is to the landowners in the district, not so much for the reclamation district, but we represent all of them. If you do go through a process and you do an environmental or an archeology study and you find species on there that are endangered, that we are operating around every day, it goes to Fish and Wildlife Service. You may not be able to farm anymore. You can see the horror stories that have gone on in the past with some of the lizards and the frogs and some of the plants, so this is where we run into some real problems of you making entry for an environmental study in these farming areas.**

**A:** I'm going to take the last question, which is on the endangered species issue.

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If the studies identify endangered or threatened species or other cultural resources, your ongoing operations are not going to be affected because those are ongoing activities that would not require any additional change in the operations.

The issue would be if you were to, for example, construct a new flood control facility. That would be a changed condition and you would be required to do studies in any event during that time. So, it really isn't going to change anything for you as far as your ongoing operations.

**Q: One farmer had a piece of property and he decided to put vineyards in. He ran into some real problems there because there was a little microorganism in the pondings. These are things that can happen.**

**A:** I think that would be a changed condition requiring a new entitlement. We actually asked the five counties in this area specifically because this question about crop changes has come up before. According to the counties, there are no regulations to get any kind of permit in order to do that, and they don't believe that any change in cropping would trigger any action.

**Q: Will DWR pay our legal fees? You're putting excess costs on farmers that have to hire a lawyer look at the temporary entry permit for something they didn't want to be done on their property to start with.**

**A:** I honestly don't know. We will have to defer that to our legal staff. I'm sorry, I just don't have the answer to that one.

**Q: I live in Clarksburg and I represent North Delta Cares. If during the permit entry process, the investigation or study phase, an individual from your agency comes across, for example, a giant garter snake, and follows federal law and reports that giant garter snake where it needs to be reported, that goes into a database. Somebody at the federal government or maybe the state could pick up on that and say, 'Wow, there's a giant garter snake here, we need to do something.' And if a farmer changes from a row crop of some kind to a permanent crop of some kind, which happens, can you assure farmers that they are free to change their farming practices, even though there's a giant garter snake discovered in their field, without any restriction, retribution or consequence of any kind?**

**A:** I can tell you that that is a question that has been asked and the answer I have received is, yes, you can make changes in your cropping patterns.

**Q: Is your department or your agency willing to put that in writing so that if an environmental NGO files a federal lawsuit, you'll defend the farmers?**

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- A:** I'm not going to tell you we'll defend everybody. I do believe that we have put it in writing as part of our frequently asked questions and that is what we understand the rules to be.
- Q:** **The people in the north Delta, are reluctant to allow you on our property. The permit is for a number of years, long periods of time, and may be extended. You may come at night, and it's possible that if you discover something that you think is an endangered species, you may shut us down or keep us from putting in grapes or trees or something else that we want to do. There's not that level of assurance. Am I correct?**
- A:** Yes, I think you're correct. I think it would be really hard for me or for anybody to say absolutely we can guarantee that wouldn't happen. I think it's highly unlikely, but you're right.
- Q:** **If landowners say, "No, you can't come on and we're not going to sign this entry permit," then does the state sue the landowners to gain access? Is that the plan in place?**
- A:** I think our goal is to not do that. Our goal is to actually find enough people and places, do things as many ways as we can to get onto sites so that we don't have to do that. So, for example, the first set of letters, I think we invited close to a thousand people to meetings. In the end we ended up with 140 people where we need to get on these 140 different sites. After we narrow the number of sites down, our goal is to go meet with those people and see if we can work through the issues, and in some places maybe we can, in some places maybe we can't. In the end, there is a legal process that DWR can go through if they need to.
- Q:** **How will we know when you're able to enter enough lands that you don't have to sue the remaining people that are identified by the darkened areas on the map? What criteria specifically are you using to know when you start needing to sue people?**
- A:** Right now in our planning process we've identified these sites and it's our intent to go and collect those field surveys for both the engineering and the environmental, so it's our intent to get onto all of those properties. In the one-on-one meetings with the land agents, they will be trying to work with you, and at that point that's when they will tell you whether we feel we've resolved it or that it needs to pursue that other process. There are multiple times that we will try and work with you to resolve your issues. It may require going back and talking within our staff before coming back to you with what we can or cannot do. So it's not a one-shot deal.
- Q:** **I'm looking at a Bay Delta Conservation Project Report to the Steering**

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Committee dated October 17. With regard to the shaded-in area next to the deep water ship channel, which is called the deep water ship channel bypass, the information that's been discussed at the committee levels—the conveyance committee, the habitat restoration program technical team and at the steering committee—has identified that area first as a habitat restoration area, and within the last three weeks the vocabulary changed so now it's called a flood bypass. I followed this very closely. Nowhere in the literature that I've seen has study or information been written up that refers to this area as a conveyance planning area. And I asked the gentleman back here why it's referred to as conveyance both in the presentation here and, if I heard correctly, on the map, but in the reports it's talked about as having flood benefits. I understand conveyance means moving water from point A to point B, mainly from the river down through the Delta to Tracy pump area, whereas flood control, as it says right here, the benefit would be to protect Clarksburg and Pocket from flooding. Am I misunderstanding something or is there just a division between what the report says referring to the flooding and what the map in front of us refers to as conveyance?

**A:** I think what we're seeing is a difference in terminology where there's a set of engineers that are working on options for different conveyances, and then there's the Bay Delta Conservation Project which is developing habitat restoration actions. So I think what you're hearing is terminology from that other group that's developing the plan that's talking about a restoration action that sounds like a flood bypass.

**Q:** **My request is that, if the state really intends to use an area as a flood conveyance and that's what's being presented here on the map, that it would be helpful to the public not to on one side say this is conveyance and then in other documents talk about flood benefit and be silent on conveyance. Do you have an explanation why your two sides aren't talking?**

**A:** Maybe I can clear up a little bit of confusion here. What you saw at the steering committee was the intersection of all of the BDCP workgroups. They're all working independently on a suite of actions that have not been brought together yet in a symphonized fashion. That's work just now beginning. So I think the flood bypass that you're referring to came out of one of the other groups, not the conveyance workgroup, and so they were developing concepts that they thought had some benefit for habitat conservation measures dealing with things like tidal restoration, etc. That was another proposal that they came up with. That has not been merged yet with the conveyance part of the program, which is what, basically, these temporary entry permits at this time are about.

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**Comment:** There's only \$1,000, I believe, in damage money in the permit, and that's way low.

**Q:** Good evening. Welcome to the Delta. Earlier you stated that this project has a very broad base and you mentioned that flood control really was not going to be talked about tonight, but it's part of it. You mentioned that fisheries are a part of it. Transportation of water is commerce, so commerce is definitely a part of it. And I'm going to assume that this is all being done under the auspice of the common law of public trust coming down and doing this. So I assume that is correct, my assumption that it's commerce we're looking at?

**A:** In this case, this is both state, federal and we hope, in the end, that ultimately this involves local agencies, too. Transportation is not a part of this project.

**Comment:** My property is on the north end of this. In fact, what's very interesting, your entrance up there goes across a corner of my property and I have not received any letters. But I think you have not done a lot of research in this. I'm sure East Bay MUD would not appreciate your taking water up there because a lot of that sewage water from the big regional plant will go up to their intake. Of course, I think we'd love in the Delta to get rid of that water, so, you know, they might object to it. But another thing. You're assuming that you're going to be coming in doing a lot of survey on the public roads. I would like to caution you, most of our roads in this Delta are prescribed easements, not for anything but transportation, they are prescribed easements. I'm sure you're very familiar with our levees in this Delta. Many, many of them were built under the Green Act, which means these are privately owned by the landowners. Department of Water Resources has a right-of-way for flood control over them, but they are privately owned. So I'm saying that many of the public roads that you're talking about using, many of our levees, are privately owned. Now, when they come into our area to do gas exploration and they use the public roads, they have to pay us to use them. Now, you folks are not offering anybody anything for their inconvenience here, you know. Why is that?

I think you better research the resource code and some of these historical documents concerning swamp and overflow land. Also, the Department of Water Resources may want to look at the Green Act real close. Folks, you have not done your homework here. You've opened a Pandora's Box. You're looking out here at peoples' families that made this Delta, reclaimed this Delta. That resource code told us how we could do it.

**Q:** Basically, under the California Freedom of Records Act, anything that's done through this is going to be available to everybody to request; isn't

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that true?

**A:** We're not going to be documenting the presence of endangered or threatened species by parcels, and that's where a lot of the concern has been as to that documentation. The general distribution and location of those species are going to be provided on maps, and if someone does do a Freedom of Information request, yes, they would be able to get that information but it would not be at a parcel base level.

**Q:** How are you going to guarantee to some farmer that you're not going to identify his parcel? You're just going to say it, right? Because you can't write it down. Everyone here should understand and recognize that you are nuts if you allow a temporary entry permit no matter what they say to you, because any information they get becomes public records information. This is not the FBI, there's no level of security here. They're going to disclose everything to anybody. Despite what you're trying to say that you're going to come up with a general report, if somebody wants to know what the basis of that report is, what are you going to do, shred it?

**A:** No, it will be provided in the records at DWR.

**Q:** So, we can get a copy of any records at DWR that have anything to do with this, correct?

**A:** That's my understanding if you go through process. But, the information is not going to be disclosed without having people go through a detailed process.

**Q:** I am a landowner and farmer here in the Delta. The Delta is the Delta, and what makes the Delta? It's water. The third item on this Delta Vision handout states that "Delta Vision holds ecosystem restoration and water supply reliability as the highest co-equal values." You cannot have ecosystem restoration and water supply reliability coming out of the same mouth. It's impossible. It's either the Delta's going to get preserved, as it should be because of what it is, or you're going to take the water out of it and it's going to suffer tremendously. But it's not both. It's one or the other. There's no way that you can make the Delta sustainable and take that much water out of the Delta. Particularly, if we're faced with this global warming issue, which I think we are, be it manmade or a natural occurrence or both, you know, we're talking about less snowpack in the Sierras. That's where the vast majority of our water comes from. So if that snowpack is going to lessen and the water content is going to lessen, what good is it for you to have a conveyance system if there's no water to put in it? Taking water out of the Delta is not the answer. It never will be the answer. It is a band-aid of the smallest caliber for what we're facing as far as water shortages in

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**the State of California. If you're going to continue to have 500,000 people move into the State of California every year, they have to have water. You're not going to get that supplied by taking water out of the Delta. I heard a DWR official say, "This is the cheapest way it's going to go and that's the way we're going to do it." It may be the cheapest, but it's not the answer.**

**You have got to be able to store this water that we have when we have it in excess, or what little excess we may have in the future. Be that dams, be that raising dams, be that conservation, be that desalinization, whatever. But the Delta is not the answer. You guys are going to screw this up so bad, it's unbelievable to me, and it's incomprehensible. You have no idea what the effects of this are going to be 50 years from now or 100 years from now.**

**Regarding permits, you said that the county has no statutes that would prevent us from changing our crops from a permanent to a semi-permanent crop. That's the county maybe. That doesn't preclude anybody from the state or the feds coming down on my head and saying, "Sorry, you got a new bug over here and you can't do that." We've all heard the horror stories and it goes on all the time. But you're going to come onto our property, use the information that you have, and it's going to be public record. You know that. There's no way that you can say this is going to be a confidential deal.**