California Restoration and Enhancement Permitting

Challenges to California's Permitting Process for Restoration and Enhancement Projects

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Abstract:

Voluntary restoration and enhancement takes place on thousands of farms and ranches throughout California with the goal of improving natural resources and wildlife habitat. Annually, tens of millions of federal Farm Bill conservation dollars are matched with those of private individuals to improve natural resources and wildlife habitat voluntarily on privately owned lands. These projects often require permits to ensure they adequately conform to federal, state and local regulations.

The survey has found that reform to the permitting process can, among other things, substantially decrease project costs, reduce landowner and resource staff time required in implementing projects, and reduce delay and cancellation of environmentally beneficial projects.

Introduction:

AB 1074 by Assemblymember Guy Houston was introduced in the California Legislature in 2007, where it received unanimous bipartisan support and will be considered by the California Senate in early 2008. This bill seeks to reform permitting process for restoration and enhancement projects in California.

Partners of the California Rangeland Conservation Coalition and other interested stakeholders gathered to discuss AB 1074. Stakeholders agreed that there was little information known as to the extent and specificity of challenges with restoration and enhancement permits on private lands in California, therefore the group agreed that a survey of those who coordinate restoration and enhancement projects that require permits would be beneficial. This survey was designed to gather information on the permitting challenges from those who implement voluntary conservation projects on private lands.

Methods:

A survey was sent to all California Natural Resources Conservation Service district conservationists, Resource Conservation District executive directors, and U.S. Fish and Wildlife Service Partners staff. Additionally, a number of non-governmental organizations involved in conservation/restoration were sent the survey.

Study Area:

Sixty-seven (67) responses were received from individuals coordinating conservation projects in forty-seven (47) California counties.

Permitting Process Survey Responses by County

RCD
Butte
Glenn
Nevada
Lake
Yolo
Placer/El Dorado
Sonoma
San Joaquin
Kern
Ventura
Riverside

USFWS
Siskiyou
Humboldt
Shasta/Tehama
Sonoma/Marin/San- Mateo
Merced
Ventura
Imperial

NRCS
Siskiyou
Trinity
Humboldt
Tehama
Butte
Nevada
Placer/ El Dorado
Placer
Napa
Alpine/Calaveras/
Tuolumne
San Joaquin
Contra Costa
Alameda
San Mateo
Santa Cruz
Santa Clara/San Benito
Stanislaus
Madera
Merced
Mariposa
Mono/Inyo
Tulare
Monterey
San Luis Obispo
Santa Barbara
Ventura
Riverside
San Diego

No Response (11)
Del Norte
Mendocino
Plumas
Sierra
Yuba
Sutter
Colusa
Solano
Fresno
Kings
Orange

NGO
Amador
Alpine
Mono
Tuolumne
Calaveras

Sacramento Valley

Results:

Barriers to Voluntary Restoration and Enhancement Projects

All of the survey respondents indicated that barriers exist to implementing conservation projects. The three biggest barriers identified for voluntary restoration and enhancement projects include:

- Lack of funding – Virtually all respondents (97%) agreed that financial limitations from public allocated funds and cost-share requirement from landowners to plan, implement and monitor projects is a significant barrier.
- Permitting – Sixty percent (60%) of respondents indicated that permitting inconsistency, complexity, delays and lack of coordination amongst permitting agencies hindered the implementation of conservation projects.
- Landowner assistance and awareness – Thirty percent (30%) of respondents noted that staffing limitations are a challenge to assist landowners in implementing sound projects. Furthermore, a lack of awareness and understanding of landowners regarding conservation programs and projects is found to be a barrier to project implementation.

Types of Restoration and Enhancement Projects

Survey respondents are involved in a variety of different voluntary restoration and enhancement projects on private lands. The most common responses for types of projects included:

- Stream enhancement or riparian projects - Over sixty percent (60%) of respondents assist private landowners with projects that enhance riparian habitat and improve water quality.
- Wetland projects - Nearly half of respondents (49%) are involved in wetland projects, these types of projects include, but are not limited to wetland creation and enhancement, stockpond creation and enhancement, and vernal pool management.
- Over a third of respondents are involved in invasive species-related projects (37%) or managed grazing projects (39%)

Types of Permits Required for Restoration and Enhancement Projects

Survey respondents cited the most common permits required for the restoration and enhancement projects voluntarily completed on private lands include:

- CA Department of Fish and Game (1600 permits) - 76%
- U.S. Army Corps of Engineers (section 404 permit) - 65%
- Regional Water Quality Control Board (section 401 permit) - 54%
- Endangered Species Act requirements - 49%
- California Environmental Quality Act requirements - 22%

Challenges to Acquiring Permits

Not all respondents have faced challenges with required permits for restoration and enhancement projects, however eighty eight percent (88%) of respondents indicated having experienced difficulties with permitting, for the following permits:

- CA Department of Fish and Game (1600 permits) - 53%

- Regional Water Quality Control Board (section 401 permit) - 40%
- U.S. Army Corps of Engineers (section 404 permit) - 34%
- Endangered Species Act (section 7, incidental take) - 24%
- Local Ordinance - 13%
- California Coastal Commission (development permit) – 9%
- California Endangered Species Act - 7%
- National Marine Fisheries Service - 6%
- National Historic Preservation Act - 6%
- Air Permit - 3%
- State Reclamation Board (encroachment permits) - 6%
- U.S. Forest Service – 3%

Types of Challenges with Permits

The following types of challenges due to permitting were cited by respondents:

- Delay of project implementation as permits are processed - 61%
- Permit costs and the increased cost of projects due to delays - 54%
- Landowners frustration - 52%
- Staff time (to assist landowners through permitting process) - 46%
- Permit complexity - 42%

Respondents also noted that regulatory agency turnover and interagency communication problems were a challenge to acquiring permits for conservation projects.

Avoiding Restoration and Enhancement Projects that Require Permits

Sixty-six (66%) percent of respondents state they've cancelled, avoided or decreased the scope of restoration and enhancement projects due to the difficulty in obtaining permits. Of these respondents, the most common responses for cancelling or avoiding conservation projects because of permitting included:

- Complexity and difficulty of obtaining permits from multiple agencies - 44%
- Cost of permits - 30%
- Time to acquire permits - 26%

Also, twenty-eight percent (28%) of respondents declared that they discouraged landowners from implementing voluntary restoration and enhancement projects that would require permits.

Local/Regional Permit Coordination

At the local level, many parties have been involved in attempts to coordinate permitting processes for conservation projects. Thirty-four (34) respondents have participated in local/regional permit coordination efforts.

There were twenty-three (23) respondents who identified the amount of staff hours their office had committed to developing a coordinated permitting program. Responses varied from tens of hours to thousands of hours. The average time spent by the 23 respondents was 717 hours. Also, less than one third (1/3) of the respondents who participated in permit coordination programs have completed there program.

Benefits of Local/Regional Permit Coordination

The benefits of local/regional permit coordination processes were noted by a number of respondents:

- Better coordination between agencies - 24 respondents
- Effective and timely implementation of projects - 10 respondents

There were also respondents, which indicated frustration with the local/regional permit coordination due to lengthy time commitments resulting in limited success.

Solutions to Permitting Challenges

Respondents that have taken steps to address the challenges associated with the permitting of voluntary conservation projects found that the successful actions include:

- Participation in local/regional permit coordination effort - 21 respondents
- Developing relationships with permitting agencies - 18 respondents

The most common barriers respondents noted for preventing local solutions to permitting challenges includes:

- Regulatory staff turnover - 6 respondents
- Maintaining and expanding permit coordination
- Inconsistency and frustration between regulatory agencies

Discussion:

Fiscal constraints were cited by nearly all respondents as a barrier to enacting conservation and restoration projects on private lands. Thus, efforts to dedicate public funds for conservation programs to enhance, restore and preserve the natural resources on California's privately owned lands must remain a top priority. *Survey Responses…*

> "There is not enough funding to allow all priority projects to be implemented…costs of materials are consistently raising and dynamics of projects are always changing"
>
> "Need adequate funding to help landowners implement restoration and enhancement projects. Many landowners have the desire to implement projects but cannot"

Permitting-related problems was deemed by a majority of respondents as a significant barrier to the implementation of conservation projects due to processing time and complexity. Thus, by addressing the state's cumbersome permitting process, voluntary projects that enhance California's private lands will benefit. *Survey Responses…*

> "Some staff have an environmental consultation/regulatory compliance background which helps us navigate the process. Also, we have a consultant with knowledgeable colleagues at the Army Corps on how to do things. Yet even with this background and assistance, permitting still provides large challenges to timely restoration project delivery."
>
> "I try to shelter the landowner/applicant from the permitting side of things. I am hoping that this will keep them interested and not frustrated."

> "Landowners are trying to save soil, riparian habitat, etc. 'do the right thing' but yet they must complete forms and are subject to review like they are planning a development or 'a take' rather than restoration."

Varying experiences by respondents shows the inconsistency of permitting requirements throughout the state. Thus, there is a need for an equitable, state-wide approach to address regulatory requirements. *Survey Responses…*

> "We try to partner with CDFG as much as possible – they are great with permits! Their process seems to work pretty well."
>
> "We don't have permitting issues."
>
> "The biggest delays relate to the Fish and Game 1602 permit and the U.S. Fish and Wildlife Service Biological Opinion. One of the problems with permitting processes is that many of the permits/certifications are sequential."
>
> "The process is so incredibly variable depending on the agency staff personalities, which constantly change…..permit coordination is supposed to function independent of individual personalities."

Over half of respondents have participated in formal permit coordination, and dedicated a significant amount of time to this effort. Thus, the development of a state-wide permit coordination process would benefit a number of conservation organizations - only 8 respondents have completed coordination plans. *Survey Responses…*

> "[Because of permit coordination] the permitting agency is much more aware of the work we are doing…which has improved our working relationship, freed up funding for other projects, and contributed to landowners feeling that they are protected against legal intrusions."
>
> "The permit coordination program has forced the agencies to work more closely together thereby developing a higher level of understanding."

Avoiding restoration and enhancement projects that require permits was practiced by over half of the respondents, suggesting that many beneficial projects, with the greatest opportunities to improve natural resources, go undone. Thus, indicating that there is a need to improve the current permitting practices to facilitate additional beneficial projects being implemented on private lands.

> "Project scope is often reduced to avoid permitting i.e. many of the greatest opportunities to improve ecosystem function are ignored because they involve riparian areas or other permit hot-button issues."
>
> "Projects have definitely been avoided by landowners and planners because permitting seems entirely too overwhelming."

Conclusion:

Permitting agencies need to revaluate how they handle permitting for voluntary restoration and enhancement projects on private lands. There should not be widespread challenges or regional differences in acquiring permits for conservation projects. Furthermore, permits that are required to implement projects that will improve California's natural resources should be economical, coordinated and timely to acquire.

"In the permitting process there is no distinction between restoration projects and financially based projects like housing developments – everyone goes through he same meat grinder."

"Restoration and enhancement projects that landowners implement with assistance from NRCS and RCD's are completely voluntary. Voluntary conservation should be easier to achieve than it currently is. Landowners are implementing and want to implement really great projects that benefit resources and wildlife. Many projects are being avoided because of the permitting process. The regulatory agencies should be doing everything they possibly can to encourage and not hinder the process. Complex applications, fees and inconsistencies prevent conservation from getting on the ground."