

**Board of Forestry and Fire Protection
Range Management Advisory Committee (RMAC)**

Policy Focus Group

**Minutes
March 17, 2009**

Attending:

RMAC:

Ken Zimmerman
Ed Anchordoguy
Scott Carnegie
Chuck Pritchard
Mel Thompson
Jeff Stephens

Representing

California Cattlemen's Association (CCA)
California Wool Growers Association (CWG)
California Forestry Association (CFA)
California Association of Resource Conservation Districts
California Wool Growers Association (CWG)
CAL FIRE / RMAC Executive Secretary

Members of the Public:

Representing

Ron Eng

Items 1 & 2 Call to Order and Introductions:

Ken Zimmerman called the meeting to order at 9:30 AM.

Items 3, Review of the January 2009 Minutes

Corrections were noted and deferred to the following day for Full Committee vote on approval.

Item 4, Draft White Paper, *State Owned Lands: A Discussion of their Acquisition and Recommendations for Sustaining Natural Resource Values.* Possible actions items include forwarding any further comment from the Resource Protection Committee to the Full RMAC.

Ken Zimmerman asked Jeff Stephens to report on the Resource Protection Committee meeting results, since he attended the meeting on behalf of RMAC. Mr. Stephens stated that he reported to RPC the results of the RMAC investigations of the tax code as it pertains to how bond funds may be spent for management and maintenance of land acquired with bond funding. The RPC did not report on work they volunteered to complete which was to obtain the assistance of the Fire and Resource Assessment Program (FRAP) to address the number of acres that are owned by government for conservation purposes.

Jeff Stephens stated that the RPC has sent the paper to the Natural Resources Agency for review before the RPC proceeds any further on the matter.

The information reported to the RPC included GC (Government Code) 16270 provided by Brendan McCarthy with the LAO (Legislative Analyst Office). Mr. McCarthy indicated that the ability to use bond funds for management and maintenance activities has in the past been a "grey area." The traditional/classic answer to this question is that use of bond funds

is not allowed for routine maintenance, such as activities that occur yearly or less frequently, but they are allowed for activities required for the operations that occur far less frequently, 5-10 years for example. He also agreed that activities that are specifically stated in the bond legislation take precedents and are permitted.

Jeff Stephens also referred to IRS Code Section 103 Title 26 provided by Larry Camp with the IRS, San Francisco. He found similarities in the law and the work by Holloran regarding the word “arbitrage” and limits placed on the use of bond funds. Section 148 makes reference to use of bonds for working capital purposes. It also makes reference to exceptions to this limitation whereby bond funds can be used for other purposes provided the amount does not exceed 5% of the bond issue. Mr. Stephens encouraged the committee to further investigate these code sections in order to obtain better understanding of the limits placed upon bond fund expenditures.

Jeff Stephens distributed a handout from Larry Camp that contained actual bond language for prop 84, 50, and 40. He referred to bolded text within the bond language that mentions “development and reconstruction,” also text that allows for the writing of a management plan. There is also language that states development includes the “physical improvement of property.” There is language that refers to the actions necessary for the continued use of natural resources. Subsequent discussion by RMAC led to the conclusion that the bond language itself creates opportunities for management and maintenance activities, at least in the examples examined by RMAC.

Scott Carnegie raised the issue that if the goal of land acquisition by agencies is protection of land and resources, perhaps the tact to take is to argue enhanced protection is achieved through better management and maintenance of property.

Mel Thompson stated that the discussion has made it clear that RMAC needs to continue the investigation with people/agencies that are engaged in the administration of bond funds. Chuck Pritchard agreed but called for a representative from treasury or legal council. Ed Anchordoguy pointed out that each bond is different and that allowable practices depend on the bond language to a great degree.

Ken Zimmerman suggested that the word maintenance is not properly defined in the State and Federal Code. RMAC’s best course may be to offer a definition of maintenance that allows for proper maintenance of property. Scott Carnegie stated that the authors may be avoiding the term maintenance all together because it is too generic or avoids conflict with other language in law. Hence, use of words like “restoration” that may in fact cover what RMAC seeks to accomplish. Ken Zimmerman focused on Government Code 16720 language which refers to “enhancement of the life of capital assets” as a strategy to achieve maintenance of property. He suggested using this language in the white paper as a means of defending a position that maintenance is allowed, but not typically done under bond funding.

Ed Anchordoguy stated his belief that the term capital asset used in conjunction with terms such as “enhancement of the life of capital assets” found in the government code is not referring to land, but rather other tangible property, and that clarification is needed. Chuck Pritchard stated that the interpretation depends on the specific bond legislation.

The committee in further review of the Federal Code and the Government Code elected to delete from the white paper the following statement: *Federal Tax Code bars the*

expenditure of tax-exempt bond funds for debt arbitrage. (Page 3 line 28-32, January 14, 2009 revision)

Ed Anchordoguy recommended that the paragraph containing this sentence be completely rewritten stating that based on RMAC's interpretation of the Federal Code and State Government Code that the use of bond funds for maintenance is allowed, but it is not being done or interpreted as such by the authors of bond legislation. Ken Zimmerman offered new language as a concept intended to capture the needed changes and used citations from the Federal Code section in support of the proposed revision. Chuck Pritchard stated that it should be offered as RMAC's interpretation of the law.

Ken Zimmerman recommended inserting language from Government Code 16272 indicating that costs for maintenance may not exceed more than 10% of bond proceeds following the statement: *Few provisions have been made to ensure that the State has adequate resources to maintain its public lands to at least the habitat value for which they were acquired. (Page 1 line 39, January 14, 2009 revision)*

Scott Carnegie recommended that RMAC not rewrite the paper at this time, but provide a summary of findings based on Code review. Ken Zimmerman and RMAC members agreed.

Mel Thompson asked if it was possible to use the paper as a vehicle to continue on with the themes that RMAC has established in the process of writing the paper. For example, invite Marilyn Cundiff (WCB) to testify before RMAC on her interpretation of the issues surrounding bond fund expenditures for maintenance. Ken Zimmerman stated that he would prefer to consult with George Gentry on the issue of bringing others in at this point. The paper has been referred to RPC and RPC has sent the paper to Resources Agency for review. It would be best to wait for the results of that review before engaging the WCB.

Item 5. Focus Group Structure and Methods for Selecting RMAC Officers.

Scott Carnegie provided a summary of his work with recommended language for incorporation into the RMAC Strategic Plan. Mr. Carnegie stated that recommended changes are not in conflict with RMAC policy; it documents how transition of officers occurs.

Recommendation with agreed upon changes shown in strikeout and underline are as follows:

1. The election of the RMAC Chairperson and vice-chairperson and the appointment of the focus group chairpersons shall occur at the January meeting of each year.
2. The RMAC chairperson shall annually appoint from its voting membership a chairperson for each focus area. ~~The Chairpersons shall~~ may serve one or more one-year terms.
3. At the January RMAC meeting of each year the prior year's focus group goals and objectives shall be reviewed and the current year's goals and objectives shall be established and reported annually to the State Board of Forestry and Fire Protection.

It was determined that the 2009 goals and objectives had not been sent to the Board for review. Jeff Stephens was instructed to accomplish this task.

Item 6, New and Unfinished Business

Ken Zimmerman asked Ron Eng to report on the Invasive Species Council of California at the full RMAC meeting the following day. Mr. Eng was not certain of attendance but would try to attend.

Item 7, Public Comment

None
Adjourn