



CNPS Conservation Program Report

Chapter Council Meeting, March 2007

This report is an overview of the activities that the CNPS Conservation Program undertook in 2006 and describes what is ahead for 2007.

CONSERVATION TEAM

In the absence of a Program Director and paid staff, a Conservation Team was formed to assist Amanda Jorgenson, CNPS Executive Director, in making decisions about conservation issues that face the program. Such decisions included whether to join a coalition on a specific issue, endorse a position, or planning for events such as the September Conservation Conference. The Conservation Team has been working together for most of 2006 and its members are: Amanda Jorgenson, Sue Britting, Ileene Anderson, Carol Witham, and Vern Goehring. If you have conservation issues or concerns, please contact Sue (britting@earthlink.net), Ileene (ieanderson@adelphia.net), or Carol (cwitham@ncal.net) and we will do our best to assist you.

PROGRAM ACTIVITIES FOR 2006

Although we lacked paid staff in 2006, there was much activity in the Conservation Program. With the support of Sue Britting, Ileene Anderson, David Chipping, Charlie Danielson, Vern Goehring, Jen Kalt, Todd Keeler Wolf, Vivian Parker, and Carol Witham, the Conservation Program underwent a revision and a new program conceptual framework was developed. The new program outline includes all the conservation activities CNPS has traditionally carried out and proposes as well to develop CNPS' capacity to promote conservation planning at a regional scale. In addition, we identified specific activities that would integrate the Conservation Program with the Vegetation and Rare Plant Programs (e.g., formalize CNPS mapping and vegetation classification standards appropriate for regional planning, convey the importance of conserving locally rare species and populations at the periphery of a species range to land use planners, and identify ways in which the scientific information CNPS generates gets incorporated into adaptive management plans). The new program outline is the basis for a new fund raising strategy to implement the Conservation Program.

Forest Conservation

Dedicated volunteers Jennifer Kalt and Vivian Parker lead up CNPS's efforts to improve land management in our public and private forests. Each submitted numerous comment letters on projects or management plans that will affect sensitive plant resources. On the coast, Jen Kalt focused on review of timber harvest plans (THPs) and projects that proposed to convert forest and woodlands to other uses (e.g. development, vineyards). Conversion of woodlands and forests to intensive uses is increasing throughout the state and is one of the primary threats to these habitats. Jen also continued her work with the California Department of Fish and Game to adopt guidelines for addressing rare plant issues in THPs. In 2005, CDFG adopted guidelines specifically addressing botanical issues on timberlands, and in 2006 Jen has been monitoring and promoting their use. The guidelines can be viewed at:
http://www.dfg.ca.gov/bdb/pdfs/THP_BotanicalGuidelines_July2005.pdf

These guidelines also are an excellent model for any review of the potential impacts to sensitive native plant species.

Vivian Parker has been working diligently in the Sierra Nevada region, including the Modoc Plateau. Vivian provided comments on behalf of CNPS on several land management plans, including the Bureau of Land Management's draft environmental impact statement (DEIS) for Vegetation Treatments Using Herbicides in 17 Western States and the draft management plan for the Surprise Field Office of the BLM that encompasses 1,220,644 acres in northeast California. Vivian also commented on a number of specific projects on private lands (THPs) and national forest land (e.g. timber harvest and salvage sale projects), and provided research support for the Larson and Cottonwood lawsuits. She also commented on the Forest Service's "Secure Rural Schools Land Sales Initiative" proposal to sell off public forest lands in order to fund an agency program. The proposal has since been withdrawn in 2006 and is now back again in the 2007 federal budget discussions.

In April 2006, we learned that attorney Michael Graf, environmental attorney, was successful in state appellate court in the case of *Ebbetts Pass Forest Watch and Central Sierra Environmental Resource Center et al. v. California Department of Forestry and Fire Protection*. The court found that the use of herbicides to kill native plants in a timber harvest plan is a "project" as defined by CEQA, and the environmental effects of such use must be analyzed in the THP. The decision also lays out for the first time a requirement to analyze cumulative impacts of the THP based on the appropriate range of the species affected. Vivian and Jennifer have been providing information and research in support of this successful court decision since 2004. The case is currently in the State Supreme Court where it is being appealed by California Department of Forestry and Sierra Pacific Industries. Vivian and Jen continue to provide back up on this case. With the assistance of Keith Wagner, environmental attorney, CNPS filed an amicus brief in support of the district appellate court decision.

Achieving Good Land Management: Enforcing the Law

Environmental attorney Keith Wagner has been chairing the Lawsuit Committee this past year and will continue in 2007. Keith drafted and the board of directors approved new lawsuit procedures for CNPS to follow that help to clarify roles and responsibilities. We have been using these new procedures with great success this year. Keith prepares a quarterly report for the board of directors on the status of each lawsuit in which that CNPS is involved. Several new lawsuits were approved in 2006. Each lawsuit focuses on protecting sensitive native plant resources. The following lawsuits were approved last year.

Highway 149 Litigation

Challenge on various Federal ESA grounds to FHA/CalTrans highway improvement project for State Routes 70-99-149-191 in Butte County – adequacy of biological opinion, failure to reinstate consultation, failure to ensure project will not jeopardize continued existence of species. This suit has not yet been filed, although a 60-day notice stating the intent to file has been sent.

Sunrise Douglas Litigation

Federal court case challenging the federal agencies' approval of individual projects within a large residential development planning area based a "conceptual mitigation strategy" negotiated with the developers that never underwent appropriate NEPA, ESA or public review. Defenders of Wildlife and Butte Environmental Council are co-plaintiffs. A motion for Preliminary Injunction was heard in December. We may know the outcome of that motion by the Chapter Council meeting.

West Mojave (WEMO) Plan route designation

This suit filed against the Bureau of Land Management seeks an invalidation of the Bureau of Land Management's route designation for the West Mojave Plan and the permits issued by the US Fish and Wildlife Service for the plan. CNPS has been commenting on this planning process for many years. The plaintiff group is made up of a large coalition of environmental groups. The suit is ongoing.

Santa Cruz Tarplant Litigation

The Santa Cruz chapter of CNPS has teamed with the local Sierra Club chapter and a local group called Friends of Arana Gulch, to challenge the City of Santa Cruz' approval of a bike path in Arana Gulch that will adversely impact Santa Cruz tarplant. This suit is ongoing and a hearing is scheduled for March 13, 2006. The Santa Cruz Chapter worked with the state office to obtain a \$10,000 grant from the Newman's Own Foundation to support this lawsuit.

Appeal of the Four Southern California National Forest Plans

This litigation is against the US Forest Service for refusing to accept the appeal prepared by CNPS and others (The Wilderness Society, Defenders of Wildlife, Sierra Club, Los Padres Forest Watch, and Center for Biological Diversity) on the forest plan revisions for the 4 southern California national forests. The Forest Service denied the appeal on procedural grounds claiming that the postmark provided by the United Parcel Service, a private company, was not adequate to satisfy the requirement that the appeal be "postmarked" by a specific date. This case is ongoing and a classic example of wasted taxpayer dollars.

Preserve at Sunridge Litigation (Sunrise Douglas III)

This litigation challenges the City of Rancho Cordova's approval of the "Preserve" project, which is a subdivision in the center of the Sunrise Douglas Planning Area. This case challenges the Preserve for its inconsistency with the City's general plan, and with the minimal standards described as necessary to avoid jeopardy to vernal pool species in the area by the federal government in its Conceptual Conservation Strategy for the Sunrise Douglas Planning Area. This suit is ongoing.

Pine Hill Preserve Litigation

Challenge to El Dorado County's approval of a senior housing facility near Placerville, on sensitive gabbro soils. County approved project on a CEQA mitigated negative declaration, despite the fact that at least four sensitive, endemic species will be impacted, including *Ceanothus roderickii* and *Calystegia stebbinsii*. CNPS is concerned that far too little habitat (6 acres) was set aside for the destruction of approximately 27 acres of habitat, and that the negative declaration's reliance on transplanting of thousands of cuttings of *Ceanothus* is unproven, and does not help in any event, since the transplanting is proposed to occur in areas that already serve as occupied habitat for the affected plants. A temporary restraining order was granted in February and the court is deciding whether or not to issue a preliminary injunction.

Several lawsuits were resolved in favor of CNPS this past year.

Pygmy Forest Litigation

The Dorothy King Young Chapter CNPS filed a CEQA challenge to a lot split and boundary line adjustment approved by Mendocino County – wetlands/pygmy forest resources not adequately surveyed/protected prior to project approval. CNPS has prevailed. Lawsuit was filed, and the developer shortly thereafter abandoned the project. CNPS was able to recover the costs for litigation.

Larson Litigation

CNPS is challenging the US Forest Service for violations of the National Forest Management Act ("NFMA") and NEPA in authorizing aerial herbicide spraying of 1,200 acres of hardwood dominated plant ecosystems in the Stanislaus National Forest, 17 years after a wildfire killed many of the conifer overstory species. Sensitive plant species are also allowed to be sprayed and eliminated under the project decision. Shortly after the first brief was filed, a separate federal case was decided that held that the Forest Service had failed to adequately monitor "at risk" and MIS species, as required by the Sierra Nevada Framework. This same issue is involved in the Larsen case. As a result of the federal court's holding in the other case, the Forest Service has requested this case to be put off indefinitely. A preliminary injunction has been issued, prohibiting the Larsen Project from being implemented while the Forest Service contemplates how it wants to proceed.

Cottonwood Fire Litigation

This case involves a challenges on NFMA and NEPA grounds to the US Forest Service's proposal to implement the Cottonwood Fire Vegetation Management Project ("the Cottonwood Project") FEIS and ROD in the Sierraville Ranger District in the Tahoe National Forest northwest of Truckee. The lawsuit seeks to protect 13,500 acres of post-fire montane chaparral and montane mixed conifer habitat, and rare plant habitat, from ground-based broadcast herbicide application intended to kill native plants. CNPS co-plaintiffs include Forest Issues Group and the Sierra Foothills Chapter of Audubon Society. CNPS appealed a previous version of the Cottonwood Project in 2000. A preliminary injunction has been issued by the court, but this litigation is otherwise on indefinite hold for the exact same reasons that the Larson litigation is on hold.

Vernal Pool Critical Habitat II / Pacific Legal Foundation Intervention

CNPS, with Butte Environmental Council and Defenders of Wildlife, sued the US Fish and Wildlife Service for completing a flawed economic analysis in their designation of critical habitat for vernal pool species. A competing lawsuit by Pacific Legal Foundation was consolidated with the CNPS case. The case has been decided. CNPS won – Judge Shubb ruled against PLF on all grounds. USFWS must now go back to reconsider whether its exclusion of UC Merced and Highway 99 areas from its critical habitat designation was arbitrary and capricious. Judge Shubb also ruled that USFWS failed to consider actual recovery of species in designating critical habitat. CNPS requested and was granted clarification, the ruling is now clear that the failure to consider recovery requires the Service to reconsider its entire designation of critical habitat (not just the last minute exclusions of UC Merced and Highway 99). Carol Witham notes that this is now the third lawsuit that has been decided regarding vernal pool critical habitat/species, and environmentalists have consistently won. PLF may seek to appeal Judge Shubb's ruling.

Our success in litigation depends on a combination of expert scientific review from CNPSers, outstanding legal advice from numerous partner attorneys, partnerships with a variety of environmental groups, and financial support from the chapters.

Developing Resources for Chapter Volunteers: September Conservation Conference

The theme of the 2006 Conservation Conference was regional or landscape level planning. Speakers focused their presentations on describing tools and resources that CNSPers could use to improve conservation outcomes in areas with sensitive plant resources that we care so much about. The agenda and presentations for this conference are posted on the CNPS website:

<http://cnps.org/cnps/conservation/conference/2006/index.php>

We encourage you to share this site and resources with others interested in increasing the protection afforded to native plants.

Partnerships

One of the most successful ways we can get our message out about native plants is to partner with other organizations. We do this in project comments and litigation. We also are often invited to join coalitions whose aim is to advocate for increased environmental protection. When such initiatives address native plant resources in a manner that is consistent with CNPS culture, we generally join. There are a variety of issues that we supported this past year. Examples include:

CNPS continues to be an active participant in the California Rangeland Conservation Coalition to further protection and conservation of species and habitats on Central Valley rangelands in conjunction with numerous environmental organizations, the California Cattlemen's Association, and wildlife agencies.

CNPS continues to be a key player in the California Endangered Species and Habitat Alliance that meets with key regulators on a quarterly basis to discuss common and regional issues

related to species and habitat protection, regional planning, recovery plan implementation, violations, etc.

Letter to Senators Feinstein and Boxer requesting their support for Land and Water Conservation Fund funding for the Carrizo Plains National Monument

Letter opposing the nomination of Idaho governor Dirk Kempthorne as U.S. Secretary of Interior (Unfortunately, this effort to oppose was not successful and Kempthorne was confirmed in May, 2006.)

Letter requesting the restoration of funding to a number of programs supported by the Farm Bill that provide for conservation of native plants

Letter opposing the FY 2007 Defense Authorization Bill concerning Santa Rosa Island, part of the Channel Islands National Park which would counteract restoration efforts at the national park

If you are interested in having state CNPS support a conservation initiative or action, send a description of the issue to Sue Britting (britting@earthlink.net) or Carol Witham (cwitham@ncal.net). We will bring it before the Conservation Team for consideration.

Legislation

Legislative consultant, Vern Goehring, pursued the culmination of a year-long effort, largely initiated by CNPS, to increase the fees the Department of Fish & Game charges project proponents to cover its costs of reviewing environmental documents (EIRs NDs, etc.). SB 1535, for example, increases the fee paid to the Department for a project which requires an EIR will increase from \$850 to \$2,500. While this increase will not completely solve the Department's budget shortage for its environmental review duties, it will help secure an increased reliable funding source. SB 1535 also once and for all defines "wildlife" every place that term occurs in the Fish & Game Code to include native plants. There were a few code sections where this was not clear, resulting in some concerns for CNPS conservation efforts.

It took a second bill and two years to get legislation passed (AB 984) and signed by the Governor authorizing a program to remove and control tamarisk plants from the Colorado River watershed and restore the riparian areas with native plants. This bill was signed by the Governor in 2006. CNPS continued to actively participate in a broad based collaboration of other environmental and environmental justice organizations working to ensure a more reliable and successful working relationship with the State legislature and Administration. The groups collaborate on priorities and positions regarding legislation, budget issues and Governors appointments. Although SB 1608 was not successful, this bill allowed CNPS to educate some in the Legislature regarding the benefits of using native plants in landscaping. The bill would have required Caltrans and other transportation agencies to use natives or low water using plants in all landscape projects. A number of CNPS volunteers assisted with identifying justification for the bill.

Invasive Exotics Working Group

The Invasive Exotics Working Group (IEWG) continued to represent CNPS at every bimonthly meeting of Cal-IWAC in Sacramento, took part in Invasive Weed Day at the Capitol, and CNPS Conservation Program Report (March 5, 2007)

participated in National Invasive Weeds Awareness Week (NIWAW) in Washington, DC. The IEWG and the Executive Director represented CNPS at the statewide Weed Management Area Conference in Woodland. IEWG promoted AB 2479 which authorizes funding for Weed Management Areas.

PLANS FOR 2007

Carol Witham, Amanda Jorgenson, and Sue Britting have been developing a proposal focused on the implementation of the Vernal Pool Recovery Plan issued by the US Fish and Wildlife Service in 2005. The proposal is for CNPS to undertake and lead a campaign to implement the recovery plan for the three vernal pool regions that make up the Central Valley. There are five components to the campaign:

Component 1: Advocate for the implementation of the recovery plan in the Central Valley.

CNPS will develop alliances and partnerships with government agencies and other stakeholders to support the implementation of the plan. CNPS will lobby for federal and state funding to support the plan. CNPS will initiate meetings with key agencies to ensure establishment of the Recovery Team and working groups for the three regions. CNPS will monitor the progress of these planning teams and provide technical assistance and feedback on a regular basis.

Component 2: Conduct site assessments for vernal pool habitat as directed by the recovery plan.

CNPS is listed in the recovery plan as one of several partners able to assist in the completion of site assessments. CNPS will work with USFWS and other agencies to establish a plan of work to complete the site assessments. CNPS will make a substantial contribution of specialists' time to complete site assessments. CNPS will assist in the compilation and summary of site assessment data. CNPS will provide opportunities for the public distribution of site assessment data.

Component 3: Ensure that Federal, State and local agencies use their authority to protect vernal pool species and habitat.

CNPS will follow the implementation of land use plans and actions that affect the vernal pool regions identified in the Central Valley. CNPS will provide expert review and comment on actions that affect vernal pool species and will support actions that meet the recovery plan. CNPS will develop its internal network of conservationists to create an action team for each of the three regions. CNPS will develop partnerships with other stakeholders to broaden the base of support for implementation of the recovery plan, including allies in the ranching and farming community.

Component 4: Develop conservation principles for the selection and management of lands intended for vernal pool conservation.

CNPS will produce a white paper on the principles of adaptive management relevant to vernal pool conservation and enhancement. CNPS will produce a white paper on landscape scale conservation of grasslands and vernal pools that addresses ecosystem functions, connectivity, ecotones, and conserving common species.

Component 5: Monitor and assess implementation of conservation actions in the three planning areas.

CNPS will monitor the implementation of conservation actions in the three regional planning areas and will provide feedback to the planning agencies. CNPS will evaluate the success of developing and implementing conservation actions in the three regional planning areas after three years and will provide feedback to the planning agencies.

We have drafted a three year budget for this campaign and are now looking for grants to support its implementation.

Ileene Anderson, Sue Britting, Vern Goehring, Diana Hickson, Amanda Jorgenson, Jennifer Kalt, Keith Wagner and Carol Witham, will explore and identify strategic linkages between the legislation and litigation on which to base CNPS's future policy work as well as identify key institutional partners with whom to work.

Shortly, we will begin planning the Conservation Conference to be held at the Chapter Council meeting in September, 2007. We will be asking folks at the Chapter Council meeting at Ranch Santa Ana Botanic Garden what types of presentations, information and workshops would interest them for the 2007 conference. Please be thinking about topics and speakers to help us make this year's conference a success.

PLANS FOR 2008

The California Native Plant Society and the California Department of Fish and Game are planning a California Conservation Conference for October 19-22, 2008, at Asilomar, Monterey County. . We envision a solutions-driven conference focusing on regional and statewide conservation planning for California's sensitive plant populations, habitats, and ecosystems. This conference seeks to translate the latest findings of conservation biology into more effective regional and statewide conservation planning tools and policies.

It has been over 20 years since CNPS teamed-up with state and federal agencies to produce a state-wide conference. Since then, the threats to California's flora and vegetation have only grown in magnitude and complexity. Therefore, we find a second state-wide conference is long overdue. We envision a solutions-driven conference focusing on regional and statewide conservation planning for California's sensitive plant populations, vegetation, and ecosystems. This conference seeks to translate the latest findings of conservation biology into more effective science-based regional and statewide conservation planning tools and policies.

Gordon Leppig, Diana Hickson, and Amanda Jorgenson are leading this planning effort with the support of many others. On February 23, the first coordination meeting was held and about 22 participants from CNPS, Department of Fish and Game and other institutions attended. In addition to establishing a steering committee and coordination committees, the structure and thematic content of the conference was agreed upon.

This report was compiled with the assistance of Ileene Anderson, Sue Britting, Vern Goehring, Amanda Jorgenson, Jennifer Kalt, Keith Wagner and Carol Witham. Another Conservation Program report will be prepared for the September meeting.