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September 5, 2013

Secretary Jewell
United States Department of the Interior
Bureau of Reclamation
Mid-Pacific Region, Bay-Delta Office
801 I Street, Suite 140
Sacramento, CA 95814-2536

Secretary John Laird
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Comments on the Revised Administrative Draft of the Bay Delta Conservation Plan

Dear Secretary Jewell and Secretary Laird:

This letter communicates comments from the County of Yolo (County) on the administrative draft of the Bay Delta Conservation Plan (BDCP). The County's comments on specific text in the administrative BDCP should be read to apply to all substantially similar text appearing in the document. The County also reserves the right to provide additional comments on BDCP--including detailed legal and technical comments--as work on the BDCP continues.

1. **The BDCP Conservation Measure 2 ("CM2") Biological Objectives Undermine Existing Collaboration and Limit Adaptive Management.**

CM2 still does not include a balanced approach to habitat restoration that places adequate weight on existing land uses, including agriculture, recreation, and waterfowl habitat. While CM2 has changed in some respects over time, it continues to entail flooding a large area of the Yolo Bypass on a frequent basis for an amount of time that may significantly impact agriculture and other existing land uses, all without a sound scientific basis for concluding that the hypothesized fish benefits will ever materialize. The County has long offered alternative approaches that would minimize or avoid adverse effects while restoring substantial floodplain habitat in the Yolo Bypass, but the administrative draft does not yet reflect Yolo County's efforts.

Specifically, Yolo County strongly objects to the use of the criteria that flooding should be achieved in 70% of all years, as well as the specific acreage criteria, in the CM2 biological objectives. Based on the County's understanding of biological objectives, including such specific

criteria in the biological objectives will limit options to minimize impacts of the proposal. The biological objectives are especially egregious considering it is the County's understanding that the fish benefits associated with such broad objectives are still uncertain. The BDCP should start with biological objectives that minimize impacts, as well as take into account the scientific uncertainty associated with fish benefits, and then use adaptive management to increase the percent of years inundation occurs and acreage of inundation, if necessary. The biological objectives, as currently written, will undermine the ongoing collaborative process between the County and the BDCP because they lock in critical parameters of the proposed project.

In addition to creating specific acreage targets in the CM2 biological objectives, the County believes a fundamental problem with the BDCP and EIR/EIS is that both rely on a published paper (Sommer et al. 2007) to state the Yolo Bypass floods in 70 percent of all years. The statistic is used as the basis for at least three biological objectives in Chapter 3 of the BDCP (Objectives FRCS1.2, STHD1.2, and WRCS1.2) that are central to certain actions proposed in CM2. There are at least two problems with this statistic, however, which are problems also described in the County's comments on the EIR/EIS. First, this statistic is potentially inaccurate. Before it is used as the basis for a biological objective or the EIR/EIS baseline, this statistic must be thoroughly evaluated for accuracy. Second, even if accurate, the statistic does not define the extent of Bypass flooding. It likely includes very small overtopping events that caused only localized inundation within the Bypass. This statistic thus cannot be used to define current or "natural" conditions that have any significant bearing on appropriate restoration strategies. Its use in CM2 and the above-referenced objectives is scientifically questionable in the absence of any apparent connection to research regarding the appropriate frequency of inundation for covered aquatic species.

The County urges the state and federal government to revise the biological objectives to allow the state and federal government to incorporate the results of the ongoing collaborative process in the BDCP, rather than predetermining the outcome by adopting restrictive biological objectives. The County further urges the BDCP to create a Yolo Bypass governance structure, as discussed by Yolo County with Deputy Secretary Jerry Meral and other parties that will apply to the planning, as well as the implementation process for CM2.

2. CM2 is Mitigation for Adverse Effects, but Taxpayers are Paying for CM2.

The state and federal government have already identified increased inundation of the Yolo Bypass floodplain as mitigation for operation of the existing water supply system as part of the Bureau of Reclamation's Yolo Bypass Salmonid and Habitat Restoration Project, proposed to comply with a federal Biological Opinion. In addition, CM2 is referenced as sufficient to avoid the need to mitigate for CM1 *Water Facilities and Operation* ("CM1") impacts throughout the BDCP administrative draft. Yolo Bypass inundation is, consequently, documented as mitigation for both CM1 and existing water supply operations. The state and federal water contractors are paying for construction of CM1 (including mitigation), but the taxpayers are paying for CM2. There is no funding, for example, allocated to the contractors in the draft BDCP, as indicated in Table 8.50 (Ch8, p94-96). This is of utmost importance to Yolo County because the costs of the project include compensation for impacts to Yolo County from CM2. As the County has demonstrated through multiple studies, CM2 could potentially have significant impacts on

agriculture, waterfowl habitat, and other existing land uses. In addition, there are potentially significant local economic impacts from CM2. The beneficiaries of CM1 must fully pay for CM2 if BDCP uses CM2 to avoid mitigation for CM1 impacts, including compensation for local economic impacts. Yolo County, as well as the taxpayers at large, should not be shouldering the financial burden for a project that benefits other parts of the state.

It is clear from language in the BDCP draft that BDCP uses benefits of CM2 as a means to avoid implementing specific mitigation measures (and associated costs) for the impacts of CM1. Chapter 5 of the BDCP administrative draft describes in detail the anticipated benefits of CM2 to covered fish species. Specifically, CM2 "will improve passage and habitat conditions for Sacramento splittail, Chinook salmon, green and white sturgeon, lamprey, and possibly steelhead (Ch5, p19, lines 16-17)… *CM2 Yolo Bypass Fisheries Enhancement* is expected to improve spawning, substrate, rearing habitat, and food production benefits to covered fish species" (Ch5, p115, lines 21-22). The following are examples of using CM2 for "mitigation avoidance":

- **Juvenile winter-run Chinook salmon impacts.** The north Delta intakes may have near-field (screen contact/impingement and predation) and far-field (reduced flow-related survival) effects on juvenile winter-run Chinook salmon. "The *CM2 Yolo Bypass Fisheries Enhancement* will enhance conditions in the Yolo Bypass, which has been shown to be a highly beneficial habitat for juvenile salmonids (Sommer et al. 2001a)" (Ch5, p256, lines 13-15). These positive effects outweigh the negative effects for a net result of a "low beneficial effect" (Ch5, p256, line 16).

- **Spring-run Chinook salmon impacts.** The adverse effects for Chinook salmon, central valley spring-run evolutionarily significant unit (ESU) include the north Delta intakes may have near-field (screen contact/impingement and predation) and far-field (reduced flow-related survival) effects on juvenile winter-run Chinook salmon, and exposure to increased contaminants. These adverse effects are outweighed by CM2 enhanced conditions in the Yolo Bypass, "which has been shown to be a highly beneficial habitat for juvenile salmonids (Sommer et al. 2001a) " (Ch5, p278, lines 15-16). for a net result of a "modest beneficial effect" (Ch5, p278, lines 17).

- **Steelhead impacts.** The same adverse effects are posed for steelhead, central valley distinct population segment (DPS). The adverse effects are again, outweighed by CM2 by increasing food resources and providing a greater use of an alternative, relatively high-survival migration pathway. The BDCP calculates a net result as a "beneficial effect" (Ch5, p342, lines 35).

- **Splittail impacts.** The adverse effects for Sacramento splittail are the greater exposure to contaminants and In-Water and Maintenance Activities. CM2 will have a "large positive effect" (Ch5, p358, line 19) on splittail spawning and rearing habitat availability. "*CM2 Yolo Bypass Fisheries Enhancement* is also expected to reduce the per capita risk of stranding in the Yolo Bypass" (Ch5, p358, lines 25-26). The BDCP concludes "the overall effect of the BDCP on splittail will be to increase the abundance, productivity, and diversity of the species and improve the species' chances for survival. The BDCP

will adequately mitigate the impacts of the covered activities and conserve the species in the Plan Area." (Ch5, p369, lines 18-21).

- **White and green sturgeon impacts.** The adverse effects to white and green sturgeon include the increased exposure to contaminants and reduced transport or migration flows. The beneficial effects provided by CM2 are expected to reduce the illegal harvest of green and white sturgeon, improve passage, and provide food that contributes to increased productivity and higher abundance. The BDCP concludes "the positive effects of the BDCP are expected to outweigh the adverse effects." (Ch5, p382, line 35).

- **Pacific and river lamprey impacts.** The adverse effects for Pacific and River Lamprey are increased predation and take. The beneficial effects of CM2 are expected to reduce impediments to passage and stranding. Due to this offset, it is found that BDCP will provide a small net benefit to both Pacific and river lamprey.

The state and federal government need to ensure the BDCP financing chapter includes strategies that ensure the beneficiaries of the BDCP pay for its implementation, rather than state taxpayers and Yolo County.

3. Insufficient Budget for Necessary Methylmercury and other Contaminant Monitoring and Mitigation.

The BDCP needs to state clearly how it intends to measure and mitigate for the increased loading, concentrations, and bioavailability of methylmercury in the aquatic system in the Yolo Bypass and areas downstream, as well as other contaminants. The BDCP also need to assure that the state and federal contractors will fully fund such mitigation. The current BDCP draft does not meet either of these goals for methylmercury or other contaminants.

Based on Table 8.50, the state and federal contractors have budgeted no funding for CM12-Methylmercury Management. Appendix 5.D, Section 5D.4, however, states the covered activities for the Yolo Bypass have the potential to increase the loading, concentrations, and bioavailability of methylmercury in the aquatic system in the Yolo Bypass. "Currently, the methylmercury in water discharging from the Yolo Bypass to the Sacramento River is 0.27 ng/L (annual average) (Foe et al. 2008). This concentration likely will increase under the BDCP, but may be mitigated to some extent by CM12 (Ch8, p36, lines 15-18). Chapter 8 states "more detailed mercury surveys may be required for designing specific restoration plans…project design surveys for mercury will be conducted for approximately 40,400 acres of restoration area at one sample per 50 acres and will include collection and analysis of composite samples representing the 0- to 12-inch depth interval and, on a more limited basis, the 12-inch to 14- or 16-inch depth interval."(Ch8, p45, lines11-13) The "estimated cost for methylmercury site characterization and project design surveys is $1.7 million in undiscounted 2012 dollars[1]." (Ch8, p45, lines14-15) Given the Central Valley Regional Water Quality Control Board's Delta Total Maximum Daily

Load for methylmercury and the unknown impacts of CM2 on Yolo Bypass and Delta methylmercury levels, providing funding for monitoring of methylmercury is essential. [1]

With regard to other contaminants, the BDCP draft states in multiple places that CM2 could increase the loading of contaminants in important waterways and affect fish species. In Chapter 5, for example, the draft states "The BDCP could adversely affect winter- run Chinook salmon life stages occurring in the Plan through changes in contaminants as a result of changes in water operations (*CM1 Water Facilities and Operation, CM2 Yolo Bypass Fisheries Enhancement*) and habitat restoration (principally, *CM4 Tidal Natural Communities Restoration*)." (CH5, p248, lines10-13). Yet it dose not appear that the BDCP budgeted sufficient funding budgeted to monitoring changes in contaminants resulting from these changes in water operations. The BDCP should provide adequate funding for this monitoring in the financing chapter.

4. Adaptive Management Process' Nine-Step Plan Does Not State Goals Clearly or Ensure Mitigation for Impacts.

Before adaptive management can be instated, the methodology for collecting baseline and post construction measurements needs to be clearly outlined with an appropriate timeline. Additionally, BDCP must state, for each of the potentially adverse actions, what the acceptable variance is between pre and post construction measurements and how significant differences will be calculated.

Figure 3.6-1 illustrates the adaptive management process through the "Nine-Step Plan." This circular diagram returns to Step 1, 2, 3 or 4 after Step 9, implying that adaptive management will be a constant process. Generally, the adverse effects described in the BDCP have quantitative outcomes (e.g. population counts, entrainment numbers, MeHg concentrations). This general, non-scientific Nine-Step Plan does not specify the statistical difference at which mitigation is necessary or how BDCP will mitigate for identified significant adverse effects. It is imperative the BDCP details the acceptable variation from baseline data, what methodology they will use for creating the baseline and measuring significant differences, and which management techniques will be implemented to ameliorate any problems that arise. Without such information, it is impossible to evaluate the BDCP's adaptive management approach whether it could lead to additional environmental, economic, or other impacts during the term of BDCP. The state and federal government must address these critical issues prior to BDCP approval.

5. The BDCP Needs to Improve Coordination with the Yolo Natural Heritage Program

The County recognizes the Yolo County HCP/NCCP Joint Powers Agency (JPA) released the first administrative draft of the Yolo Natural Heritage Program after the BDCP draft was

[1]To collect, analyze, and provide a report for 808 sites (40,400 acres/ one sample per 50 acres) and to sample at surface and depth at each site is a total of 1,616 samples. These calculations use a conservative estimate of $500/sample (see values stated on Ch8, p45, lines 5-6). The $1.7 million budget will cover baseline sampling and only one sampling effort during the fifty years post construction.

released. The JPA is currently working on the second administrative draft. Given the extent of the terrestrial species impacts identified in the draft plan and the EIR/EIS, the County encourages close coordination with the BDCP in the months ahead to ensure accurate information is included in the public draft of the BDCP and implementation of the BDCP does not affect implementation of the Yolo Natural Heritage Program.

The BDCP plan section 1.5.5 also incorrectly states that the Yolo Natural Heritage Program provides habitat for 28 sensitive species and 21 of these species are in common with the BDCP. The Yolo Natural Heritage Program provides habitat for *32* sensitive species and *20* of these species are in common with the BDCP. The Yolo Natural Heritage Program does not cover the California red-legged frog (*Rana draytonii*).

The County appreciates this opportunity to comment on the Administrative Draft of the BDCP. We look forward to hearing from you with respect to the issues raised in this letter.

Very truly yours,

Duane Chamberlain,
Chair, Yolo County Board of Supervisors

cc: Yolo County Board of Supervisors
Rep. Doris Matsui
Rep. John Garamendi
Senator Dianne Feinstein
Senator Barbara Boxer
Senator Lois Wolk
Assemblymember Mariko Yamada
Assemblymember Roger Dickinson