County of Yolo

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July 12, 2012

VIA ELECTRONIC MAIL ONLY

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

Re: Comments of Yolo County on Preliminary Draft Chapters of the Bay Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

Dear Ms. Chrisney:

This letter responds to your April 5, 2013, letter requesting comments from the County of Yolo (County) on the administrative draft EIR/EIS for the Bay Delta Conservation Plan (BDCP). The County's comments on select chapters of the draft EIR/EIS are included in Attachment 1 hereto.

As you are aware, the County is a "cooperating agency" pursuant to an October 12, 2010 Memorandum of Understanding with the Bureau of Reclamation and other federal agencies responsible for preparation of the BDCP EIR/EIS pursuant to the National Environmental Policy Act (NEPA). The Office of the County Counsel submits this letter in its capacity as the County representative to the federal agencies responsible for the NEPA process (MOU, Section 5). As a cooperating agency, the County sincerely desires to assist the federal agencies in ensuring that the BDCP EIR/EIS is credible, thorough, and legally sound.

Previously, on April 16, 2012, the County submitted written comments on an earlier administrative draft version of the EIR/EIS. A copy of that comment letter is included as Attachment 2 hereto. Those comments focused on identifying key studies and other information that the County believed must be developed and included in future drafts of the EIR/EIS. Over a year later, on June 12, 2013, the EIR/EIS consultant for the BDCP (ICF) provided a one-page written response that is included herewith as Attachment 3. As both the timing and substance of the ICF response makes clear, responding to the comments of cooperating agencies is apparently regarded as little more than an afterthought.

This begs the question of whether the cooperating agency process serves any meaningful purpose. For the time being, the County will postpone judgment on that question with the expectation that deficiencies in the existing process will be remedied with due haste. Specifically, the County respectfully requests the courtesy of a response to the comments in this letter (and more importantly, Attachment 1) within 30 days. The County also

requests that the Bureau (or other agency, as appropriate) ensure that ICF designates a liaison to the cooperating agencies to provide useful non-technical information, such as where to look in the draft EIR/EIS for coverage of particular issues. This will greatly aid the County and other cooperating agencies in reviewing the draft EIR/EIS and engaging constructively in the environmental review process.

Turning now to the County's substantive comments on the draft EIR/EIS, the County provides these comments pursuant to Section IV.b.3, b.5, b.6, b.7, and b.8 of the MOU. The County's comments on specific text in the draft EIR/EIS (including those in the attached comment forms) 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 the EIR/EIS--including detailed legal and technical comments--as work on the EIR/EIS continues.

1. The EIR/EIS and Certain BDCP Objectives Misstate Yolo Bypass Flooding Data.

A fundamental problem with the BDCP and EIR/EIS is that both rely on a published paper (Sommer et al. 2008) 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 Conservation Measure 2 ("CM2"). However, there are at least two problems with this statistic.

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. The County has previously been advised that Bypass flooding data prior to 1984 is unreliable. On that basis, the report prepared by UC Davis economists for Yolo County (*Agricultural and Economic Impacts of Yolo Bypass Fish Habitat Proposals* (Howitt et al 2013)) relies on a 26-year time series of hydrologic conditions (1984-2009).

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. Nor is it appropriately used as the baseline for evaluating related impacts in the EIR/EIS. Legally, a properly defined baseline requires reliable data on the frequency, duration, and extent of Bypass flooding.

2. The EIR/EIS Wrongly Ignores or Defers the Analysis of Conservation Measures 2-22 Under the Guise of Taking a "Programmatic" Approach to Review.

In preparing these comments, the County fully considered the "programmatic" nature of the draft EIR/EIS. Just like a project-level, EIR, however, a programmatic EIR must "give the public and government agencies the information needed to make informed decisions, thus protecting not only the environment but also informed self-government." (In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal.4th 1143, 1162 (2008).) The "semantic label accorded to the [EIR]" does not determine the level of specificity required. (Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners of the City of Long Beach, 18 Cal. App. 4th 729, 741-42 (1993).) Rather, the "'degree of specificity required in an [EIR] will correspond to the degree of specificity involved in the underlying activity which is described in the [EIR].'" (In re Bay-Delta, 43 Cal.4th at 1176, citing CEQA Guidelines § 15146.) The level of detail in the Draft EIR must therefore reflect—at a minimum—the level of detail in the BDCP, including Conservation Measure 2. Similarly, both project-level and programmatic environmental analyses must include "accurate, stable, and

finite" project descriptions. (Rio Vista Farm Bureau Center v. County of Solano, 5 Cal. App. 4th 351, 370 (1992).)

Additionally, while subsequent environmental analyses will "tier" from or otherwise draw upon a programmatic EIR, tiering is not a device for deferring the analysis of present issues. "Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases *when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases*." (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, 40 Cal.4th 412, 431 (2007) (emphasis added).) "'[T]iering' is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause," and "fundamental and general matters" should be addressed in the first-tier EIR. (Stanislaus Natural Heritage Project v. County of Stanislaus, 48 Cal. App. 4th 182, 199 (1996).) The draft EIR/EIS for the BDCP, accordingly, must identify and consider foreseeable significant environmental impacts that will result from the actions authorized by its adoption.

In particular, the County believes the EIR/EIS must specifically analyze the impacts of CM2 given the defined nature of certain biological objectives in the BDCP. Objectives FRCS 1.2 (fall-run/late fall-run Chinook salmon juveniles), STHD 1.2 (steelhead juveniles), WRCS 1.2 (winter run Chinook salmon), and SAST 1.1 (splittail), for example, all specifically identify access to 7,000 acres of inundated floodplain habitat in the Yolo Bypass and/or the Cache Slough ROA. CM2 presents a "plan of action" for realizing these objectives within the Yolo Bypass. More than enough information exists for the EIR/EIS to include specific information about potential impacts using the acreage data, modeling, and other presently available information regarding the seasonal floodplain restoration element of CM2. Indeed, the draft EIR/EIS includes some specific information on such impacts based on a UC Davis study (referenced in the prior section of this letter) commissioned by Yolo County. This approach illustrates that it is presently possible—and thus, required as a matter of law—to include a much more detailed analysis of potential environmental impacts of CM2 in the draft EIR/EIS.

3. The EIR/EIS Existing Conditions Baseline is Out-of-Date and Seriously Flawed.

CEQA Guidelines Section 15125(a) provides that the appropriate baseline for environmental review is "normally" the conditions existing at the time the notice of preparation ("NOP") is published. Presumably on this basis, the draft EIR/EIS states that it generally uses a baseline tied to the 2009 date of publication of the NOP. This approach is not reasonable for a project like BDCP given its lengthy and tremendously complex planning and environmental review process, as well as the overall timeframe for implementation. Among other flaws resulting from application of the outdated baseline, the EIR/EIS does not appear to consider the Central Valley Flood Protection Plan (adopted in mid-2012) ("CVFPP"). Coordinating the implementation of BDCP and CVFPP, however, will be a very real issue for many years to come, and it deserves consideration in the EIR/EIS. The County thus urges consideration of an updated baseline as work on the EIR/EIS proceeds.

4. Improvements to the MIKE-21 Model are Critical to Ensure Accurate Estimates of Bypass Impacts.

Although the EIR/EIS does not evaluate all impacts of CM2 as mentioned above, the EIR/EIS does appear to use a footprint for inundation in the Yolo Bypass generated with a draft MIKE-21 model to estimate impacts to terrestrial species.[1] Yolo County hired Northwest Hydraulic Consultants ("NHC") to conduct an independent

[1] Figures 5.J-1 to 5.J-7 in Appendix 5J of the BDCP administrative draft contain maps of the difference between existing and proposed Bypass inundation based on the preliminary MIKE-21 modeling results. Given the

review of the MIKE-21 model being used by DWR, resulting in the September 2012 report entitled *Yolo Bypass MIKE-21 Model Review: Strengths, Limitations, and Recommendations for Refinement.* This report indicates data and modeling results important to answering the questions about potential impacts of CM2 are currently unavailable or inadequate, including insufficient model detail (computational mesh size and extent) to accurately depict shallow flooding on fields adjacent to the toe drain, inaccurate topographic and bathymetric data, unvalidated west side tributary flow information, and improper location of tributary inflow entry points in the model. In addition, there are a number of MIKE-21 assumptions and inputs that need to be tested, including verification of boundary conditions, computational cell sizes, and validation of wetting and drying assumptions. Finally, the model needs to be validated and additional sensitivity analysis performed to verify that shallow flow results are reliable.

The improvements needed are significant enough to call into question any results generated with the MIKE-21 model. Most of these shortcomings, however, can be addressed in the manner described in the Recommended Next Steps" section of the NHC report. This work should occur now, prior to the release of the final draft EIR/EIS, to ensure that related analyses of potential environmental impacts are accurate, credible, and complete.

5. Impacts of CM2 on Yolo Natural Heritage Program and Yolo Bypass Wildlife Area Need to be Further Evaluated.

Chapter 12 of the EIR/EIS lists specific impacts of CM2 on terrestrial species, many of which are covered by the Yolo Natural Heritage Program (YNHP). The YNHP is an HCP/NCCP and a local conservation strategy that is under preparation by a joint powers authority consisting of the County, the cities of Woodland, Davis, Winters, and West Sacrament, and the University of California, Davis (the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency ("Habitat JPA")). In addition, Chapter 12 indicates CM2 will result in both the temporary and permanent loss of managed wetlands in the Yolo Bypass, which includes the Yolo Bypass Wildlife Area.

The first administrative draft of the YNHP was released in June 2013. The next draft of the BDCP EIR/EIS should therefore more fully evaluate the potential impact of BDCP on the YNHP. The YNHP released an issue paper on May 23, 2013 describing the overlap of BDCP and the YNHP entitled *Interface with the Bay Delta Conservation Plan: Background, Summary, and Remaining Issues* (Attachment 4). The EIR/EIS should build on this work and evaluate issues related to plan overlap, including the potential for BDCP to interfere with the Yolo NHP's ability to achieve its conservation goals. Current language in the BDCP referring to only considering effects substantial if there is a conflict with an "adopted HCP or NCCP" ignores HCPs and NCCPs like Yolo that are still in the planning process.

Also, the EIR/EIS should specifically evaluate the impacts of CM2 on the Yolo Bypass Wildlife Area. Given there is no inundation footprint specifically referenced for this analysis, it is difficult to isolate the specific impacts on the Wildlife Area. In addition, the EIR/EIS does not (aside from an isolated comment in Chapter 15) reference or appear to utilize the important 2012 work by Ducks Unlimited to evaluate the potential CM2 impacts on managed wetlands entitled *Waterfowl Impacts of Proposed Conservation Measure 2 for the Yolo Bypass – An Effects Analysis Tool.* Yolo County and the state and federal government have worked hard to support the Wildlife Area and the educational programs associated with it, including securing millions of dollars to create the wetlands in the 1990s. The EIR/EIS must fully evaluate the specific impacts on the Yolo Wildlife

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estimates of terrestrial species impacts in Chapter 12 of the EIR/EIS, the County assumes the preliminary MIKE-21 modeling results were used to generate these impact estimates

Area and utilize the Ducks Unlimited model as the best information available to assess these impacts. These impacts are even more important to understand because the BDCP as a whole will result in a net loss of wetlands in the plan area, potentially impacting decades of work to create additional habitat for migrating waterfowl habitat along the Pacific Flyway consistent with the North American Waterfowl Management Plan and the Central Valley Joint Venture.

Finally, Yolo County questions the EIR/EIS conclusion for a number of terrestrial species that no mitigation is necessary for impacts from CM2 because BDCP will restore or preserve habitat elsewhere in the plan area. This is not a conclusion BDCP should make without close coordination with the Yolo Basin Foundation, the Habitat JPA, and Yolo County. The loss of important habitat in Yolo County may undermine the goals of the YHNP, the Open Space Element of the Yolo County General Plan, and the Yolo Bypass Wildlife Area Land Management Plan.

6. Additional Studies Are Necessary to Ensure a Meaningful Analysis of Certain Potential Impacts.

While Yolo County is pleased that the Bureau of Reclamation is providing funding in 2013 to complete the Yolo Bypass "tipping point analysis" described in the County's April 16, 2012 comment letter, Yolo County has not received funding for any of the other studies described in that letter. These studies are outlined below. Yolo County would like to partner with the state and federal government to secure funding for all of the remaining studies at one time, including prioritizing studies and developing a schedule to complete the studies by June of 2015.

A. **Flood Risks.** Yolo County has worked with the Sacramento Area Flood Control Agency to develop an approach to analyze flood impacts, including peer review of any flood impacts analysis performed by the state and federal government related to CM 2. As noted in the April 2012 comment letter, Yolo Bypass levees are already of "high concern" to the California Department of Water Resources. While the County appreciates language in the EIR/EIS that states any modification of the Yolo Bypass will be designed and implemented to maintain flood conveyance capacity at design flow level "and to comply with other flood management standards and permitting processes," Yolo County needs to verify through independent peer review that CM2 will not impact existing flood protection for Yolo County and the Sacramento region. This includes ensuring vegetation maintenance will continue if CM 2 results in the cessation of agriculture in parts of the Bypass.

B. **Infrastructure Impacts**. As indicated in the April 2012 letter, the Yolo Bypass contains important agricultural water supply, transportation, and other infrastructure that may be affected by the increased frequency and longer duration of flood flows proposed as part of CM2. It is essential that the County evaluate potential impacts of CM2 on Bypass infrastructure before CM2 is further refined.

C. **Increased Methylation of Mercury.** The EIR/EIS determines, in essence, that effects of CM2 on methylation of mercury are significant and unavoidable, but no specific mitigation is available because nobody knows what the effects will be, they cannot be predicted, and nobody knows how to effectively reduce or eliminate those effects even if they occur. The BDCP states, "seasonal inundation of floodplain areas, such as the Yolo Bypass, has the potential to create anaerobic conditions that contribute to the methylation of mercury, which increases toxicity" (BDCP 2A 3.5.7) and "the highest concentrations [of mercury in sediments] have been reported in Cache Creek and Yolo Bypass…"

(BDCP 3.4.12.1). Given these conclusions, the County's longstanding request for a detailed study of adverse effects of CM2 on methylation of mercury is more critical now than it has been in the past.

D. **Fish Benefits Analysis**. Given the uncertainty associated with the fish benefits of some CM2 elements, such as the amount of acreage required to provide sufficient habitat and the number of fish that will enter the Bypass through the proposed notch in the Fremont Weir, an independent analysis of the fish benefits of CM2 should be performed in conjunction with the EIR/EIS. The EIR/EIS should include consideration of alternatives to the existing splittail biological objective, for example, which currently requires 7,000 acres of floodplain habitat in the Yolo Bypass (Objective SAST 1.1). It is Yolo County's understanding that splittail, which are not even a threatened species, can successfully spawn in a small area of floodplain.

E. **Intakes Impacts.** The three proposed 3,000 cfs intakes are located directly across the Sacramento River from Yolo County. The EIR/EIS should analyze the impacts of diverting water at these locations on downstream diversions in Yolo County, as well as other issues.

F. **Additional Studies.** In addition to the studies identified above, the County also believes that a vector control analysis and a groundwater impact analysis focused on CM2 should be performed in connection with the EIR/EIS. Funding necessary to analyze the impacts of refined CM2 proposals on agriculture and waterfowl habitat should also be provided.

7. An Inclusive Governance Structure—Particularly for Conservation Measure 2—Should Promptly be Developed.

The County is encouraged by some of the language in Conservation Measure 2 related to "minimizing impacts" and "proposing a sustainable balance between important uses of the Bypass" (see Chapter 3 comments). The success of this approach, however, will require the establishment of a robust, inclusive governance structure for CM2 that includes Yolo County and other interested agencies and stakeholders. A "sustainable balance" will not emerge from a governance process that excludes local government, agricultural stakeholders, and others presently left out of the limited group of agencies designated for service on the leading governance entities for the BDCP. Yolo County strongly encourages the BDCP to work with Yolo County immediately to develop a mutually agreeable governance structure for CM2 operations.

As a starting point, Yolo County has developed the attached proposed governance structure for BDCP (Attachment 5). Yolo County hopes to work with interested parties to adapt this proposal to CM2 in the near future.

8. The EIR/EIS is Vastly Complex and Lengthy, and Must be Simplified.

In its April 16, 2012 comment letter, the County stated that "the BDCP and draft EIR/EIS are tremendously complex and lengthy." This statement should have been reserved for the current draft, which dwarfs the 2012 administrative draft both in volume (increased by many thousands of pages) and overall complexity.

The County is hard pressed to make constructive suggestions for reining in the substance of the draft EIR/EIS. As the County also suggested over a year ago, however, it would be very helpful if the federal (and state) agencies responsible for the EIR/EIS develop a chapter or appendix that concisely summarized the anticipated project features and environmental effects of the BDCP on a county-by-county basis. Such an approach would

further many of the policy aims underlying both NEPA and its state analog, the California Environmental Policy Act (CEQA), by facilitating informed public participation in the decisionmaking process. (E.g., In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal.4th 1143, 1162 (2008).) Particularly in an EIR/EIS of such unusual complexity, a county-by-county summary of anticipated project features and environmental effects is both necessary and appropriate.

Even this suggestion, however, is only a starting point. The draft EIR/EIS should be thoroughly revised for the sake of clarity and simplicity. The need for such work is apparent by virtue of the length of the EIR/EIS alone. The length of the document presents an immediate obstacle for reviewers that (like many affected counties and stakeholders) with limited resources. Chapters of 300+ pages in length do not even contain a detailed table of contents, executive summary, or other material intended to aid reviewers.

Certainly, the EIR/EIS will never be an easy read. In its current state, however, it is far too complex to serve its informative purposes under CEQA or NEPA.

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

Very truly yours,

Robyn Truitt Drivon
County Counsel

Philip J. Pogledich
Senior Deputy County Counsel

Attachments:
Att. 1—April 16, 2012 Yolo County Comment Letter
Att. 2—ICF Response (June 2013) to 2012 Comment Letter
Att. 3—January 24, 2013 Yolo County Comment Letter on Agricultural Mitigation
Att. 4—Paper entitled "*Interface with the Bay Delta Conservation Plan: Background, Summary, and Remaining Issues*"
Att. 5—Proposed BDCP Governance Structure

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 3 (Description of Alternatives)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

Summary of the County's Previous Comments: Some of the comments raised in the County's April 16, 2012 comment letter are relevant to the discussion in Chapter 3. For instance, the County had requested detailed figures and graphics illustrating the potential location of major water conveyance infrastructure and related facilities, including transmission lines. Also, as noted below, the County previously commented on a range of flood risks that require full evaluation in the draft EIR/EIS.

ICF Response: ICF responded that maps identifying effects within Yolo County are included in the draft EIR/EIS. On the topic of flood risks, ICF stated that the draft EIR/EIS now contains a discussion of flood impacts in several chapters.

Update on Issues Raised in County's Previous Comments: Figures depicting the location of major water conveyance infrastructure and related facilities now appear in the draft EIR. The County has not been able to find a full evaluation of potential flood risks, including but not limited to a discussion of the potential for longer duration wetting of Yolo Bypass levees to adversely affect their integrity.

No.	Page	Line #	Comment	ICF Response
1	3-101	34-38	The text states that any modification of the Yolo Bypass will be designed and implemented to maintain flood conveyance capacity at design flow level "and to comply with other flood management standards and permitting processes." The meaning of this text is at least partly unclear. Increasing the duration, magnitude, and frequency of inundation in the Bypass poses flood protection risks that go well beyond mere effects on flood conveyance capacity. These risks, including the potential for longer duration wetting to adversely affect levee integrity in the Yolo Bypass, were raised in the County's April 16, 2012 comment letter in Section 3.C (Flood Risks), which is incorporated herein by reference.	
2	3-102	4-31	The description of three categories of actions to be implemented as part of CM2 is very vague and uninformative. It is clear, however, that additional	

No.	Page	Line #	Comment	ICF Response
			environmental review and stakeholder outreach are contemplated as part of the Category 2-3 actions. Also, the text states that the YBFED "would propose a sustainable balance between important uses of the Yolo Bypass such as flood protection, agriculture, . . ." and various other uses. The discussion continues on to eventually state that projects included within the YBFEP are intended to "provide the greatest biological benefit to the covered fish species . . . while also minimizing impacts to other uses of the Yolo Bypass, such as flood control, agriculture, waterfowl use and hunting, and habitat for covered terrestrial species." In general, the County is very encouraged by these comments. The success of this approach, however, will likely require the establishment of a robust, inclusive governance structure for CM2 that includes Yolo County and other interested agencies and stakeholders. A "sustainable balance" will not emerge from a governance process that excludes local government, agricultural stakeholders, and others presently left out of the limited group of agencies designated for service on the leading governance entities for the BDCP.	
3	3-102	32-39	This paragraph explains that "[i]f the YBFEP does not support implementation of one or more component projects, they would not be implemented. Reasons that implementation may not be supported by the YBFEP include, but are not limited to the following: the action would not be effective; the action is not needed because of the effectiveness of other actions; the action would have unacceptable negative effects on flood control; the action would have unacceptable negative effects on land use or species...or; landowner agreement cannot be achieved with respect to implementing the action." This discussion is imprecise due to overreliance on the phrase "unacceptable negative effects," which raises various questions: • What thresholds will be used? • Who will apply them? • What opportunities for public input, peer review, and other external	

No.	Page	Line #	Comment	ICF Response
			inputs into the decisionmaking process will be afforded? In the absence of a more precise explanation of these and other related matters, this paragraph offers little of substance to guide the County's evaluation of the adequacy of the EIR/EIS. Also, there is no provision in the BDCP itself for additional studies relevant to land use impacts, including studies to define what changes may be necessary if projects included in CM2 do not function as expected. Similar to the identification of biological uncertainties in Table 3.4.2-4, there should be a listing of key land use and other uncertainties and the steps that will be taken to evaluate those at appropriate times.	
4	3-106	22-28	This paragraph discusses "Phase 4" of the operation of CM2, defined as occurring in "approximately 2027-2063." It explains that operations may be adjusted based on monitoring and studies, and that operation of the gated Fremont Weir could shift to earlier or later timeframes with "the adaptive management range." A clear project description requires a discussion of the "adaptive management range" referenced in this paragraph. Without such information, the draft EIR/EIS cannot meet legal standards under CEQA and NEPA that require a project to be clearly defined for the purposes of environmental review.	

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 6 (Surface Water)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

Summary of the County's Previous Comments: In its April 16, 2012 comment letter, the County raises a range of concerns relating to flood risks (see p. 4, Section 3.C thereof).

ICF Response: ICF responded that flood-related issues are discussed in several chapters of the draft EIR/EIS.

Update on Issues Raised in County's Previous Comments: At this point in its review of the draft EIR/EIS, the County has not been able to locate a comprehensive evaluation of the potential for CM2 to exacerbate flood risks. Among other things, the draft EIR/EIS does not appear to discuss the potential for longer-duration wetting of Bypass levees to reduce their durability, potentially leading to levee failure during a high flow event.

No.	Page	Line #	Comment	ICF Response
1	6-13	4-16	The text mentions that the Yolo Bypass "was inundated 46 years out of the 65 years between 1935 and 1999." In addition, the BDCP relies on a published paper (Sommer et al. 2008) to state the Yolo Bypass floods in 70% of all years. The statistic is also used as the basis for development of at least three biological objectives in Chapter 3 of the BDCP (Objectives FRCS1.2, STHD1.2, and WRCS1.2). Before such a statistic is used as the basis for a biological objective or the EIR/EIS, and therefore sets the regulatory standard for development of CM2, this statistic needs to be thoroughly evaluated for accuracy and applicability to CM2. In the report prepared by UC Davis economists for Yolo County entitled *Agricultural and Economic Impacts of Yolo Bypass Fish Habitat Proposals* (Howitt et al 2013), the researchers rely on a 26-year time series of hydrologic conditions (1984-2009) because of information provided to the researchers that data regarding flooding in the Bypass prior to 1984 is unreliable. Further, the mere fact that the Bypass "was inundated" does little to define the appropriate baseline for environmental review. If "inundated" means that the Fremont Weir overtopped, that does not mean that lands within the Bypass were necessarily	

No.	Page	Line #	Comment	ICF Response
			affected to a significant degree. In fact, text in the paragraph prior makes clear that overtopping at the Weir is no indication of Bypass inundation, stating: "The Yolo Bypass is flooded about once every 3 years, on average...." The text is thus somewhat unclear on this issue, as it presents much different data for the frequency of Bypass "flooding" and "inundation." The resulting baseline for evaluating flood-related impacts is thus unclear. Separately, the text also mentions (at line 1 on p. 6-13) that the Yolo Bypass "encompasses about 40,000 acres." The Yolo Bypass includes about 59,000 acres.	
2	6-39 and 6-40		The methodology discussion at line 21 on p. 6-39 appears to say that this Chapter of the draft EIR/EIS evaluates surface water conditions under three scenarios that integrate anticipated sea level rise and climate change impacts except with respect to "existing conditions." These factors appear to be considered, for example, in the discussion at page 6-48 with respect to the Yolo Bypass and other features (discussed below). However, the following 120 pages of the EIR/EIS only infrequently appear to include any analysis of sea level rise or climate change in discussing the potential effects of the BDCP. Overall, it appears sea level rise and climate change have been largely omitted from the analysis of surface water and flood issues in Chapter 6. This shortcoming is significant and needs to be addressed prior to the release of the public draft EIR/EIS. Neither the public nor decisionmakers can evaluate the potential effects of BDCP on flood flows at various Delta locations in the absence of data that fully evaluates potential effects of the BDCP and sea level rise and climate change. [Alternatively, if a conclusion regarding sea level rise and climate change in the context of each project alternative appears in Chapter 6, it needs to be more directly called out so that a reader does not have to sift repeatedly through 167 pages of analysis (which this particular reader did) in an effort to find any analysis of these critical issues.]	
3	6-48	32-36	The "CEQA Conclusion" for the "no action alternative" is confusing. It states in	

No.	Page	Line #	Comment	ICF Response
			pertinent part: No Action Alternative could result in an increase in potential risk for flood management compared to Existing Conditions because of the changes due to sea level rise and climate change unless flood management criteria are not modified for changed climate. This statement needs to be revised for the sake of clarity and accuracy. As currently drafted, it makes no sense.	

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 8 (Water Quality)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

Summary of the County's Previous Comments: The County's April 16, 2012 comment letter urged completion of a detailed study of the potential for adverse mercury (and methylmercury) effects in connection with Conservation Measure 2. It noted that the need for such a study was highlighted by the content of the draft EIR/EIS, which noted the potential for such effects due to existing data on fish tissue mercury concentrations (five times higher than the Delta TMDL recommendation) in fish originating in the Yolo Bypass. The County's comments also noted that a proposed mitigation measure included in the draft EIR/EIS called for avoiding the Yolo Bypass (and other locations) for habitat restoration because it is in the "direct path of large mercury ... loading sources."

ICF Response: ICF did not respond to any of the concerns raised by the County aside from referring the County to Chapter 8 of the current draft of the EIR/EIS for information on water quality issues.

Update on Issues Raised in County's Previous Comments: The current treatment of mercury issues alone in the draft BDCP and EIR/EIS is a good illustration of unreasonable complexity of these documents. A reader must navigate a labyrinth of documents laden with internal cross-references to yet more documents in order to arrive at an understanding of this and many other issues. For instance, the first page of the discussion of methylmercury at p. 3.4-233 of the draft BDCP directs reviewers to read all of the following in order to understand mercury and methylmercury effects associated with the BDCP:

- Chapter 2 of the BDCP (Existing Conditions)
- Conservation Measure 12 of the BDCP (in Chapter 3)
- Section 3.3 of Chapter 3 of the BDCP
- Chapter 6 of the BDCP (Plan Implementation)
- Chapter 8 of the EIR/EIS
- Appendix 3.C (Avoidance and Minimization Measures)
- Appendix 5.D (Contaminants)

Surely, there must be a more straightforward way of presenting this issue.

In relation to the County's previous comments, the draft EIR/EIS appears to dismiss the need for a detailed study of the potential for adverse mercury (and methylmercury) effects in connection with Conservation Measure 2. It says that such studies will happen as individual projects are developed, though it is unclear why such studies are not presently timely given the overall importance of Conservation Measure 2 in the BDCP and the critical need to ensure its overall viability.

The County also observes that the draft EIR/EIS appears to retain information regarding the high concentrations of mercury in the tissue of fish originating in the Yolo Bypass. Not surprisingly, the mitigation measure calling for avoidance of the Yolo Bypass in habitat restoration has been omitted.

No.	Page	Line #	Comment	ICF Response
1	8-431	20-32	This paragraph explains the uncertainties inherent in predicting methylmercury formation in restored areas, including that no models are currently available. It concludes by referring to "modeled restoration assumptions" that purportedly "provide some insight into potential hydrodynamic changes that could be expected related to implementing CM2 and CM4 and are considered in the evaluation of the potential for increased mercury and methylmercury concentrations under Alternative 4." This is so vague as to be of little value to a reviewer. At the very least, a reasonable qualitative analysis and discussion of methylmercury formation and related issues should be included in the draft EIR/EIS, particularly for CM2.	
2	8-432	14-33	This paragraph describes the CEQA conclusion on mercury and methylmercury issues. The conclusion, in essence, is that: • Nobody knows what the mercury/methylmercury effects of the BDCP will be; • Nobody can predict those effects in any useful way; • CM 12, relating to methylmercury reduction, will ensure the development of site-specific mercury management plans—all of unknown effectiveness—as restoration plans are implemented; and • The effects must be deemed "significant and unavoidable, and no specific mitigation is available because nobody knows what the effects will be, they cannot be predicted, and nobody knows how to effectively	

No.	Page	Line #	Comment	ICF Response
			reduce or eliminate those effects even if they occur. This is a rather bleak scenario that must be further developed and explained with a discussion of potential outcomes, such as what the effects of an "unquantifiable" (p. 8-432, line 18) increase in methylmercury concerntrations would be on fish, wildlife, and humans in the Delta. It is not legally adequate to simply say that unknown effects will occur without explaining what those effects might be aside, presumably, from some unquantifiable level of increased concentrations in fish tissue. It is especially important to attempt to explain the effects given the information provided about Yolo Bypass mercury levels in the draft BDCP, such as "the highest concentrations [of mercury in sediment] have been reported in Cache Creek and Yolo Bypass and the Mokelumne-Cosumnes River system (Wood et al. 2010)." (3.4.12.1 of the 2013 draft BDCP) and "Seasonal inundation of floodplain areas, such as in the Yolo Bypass, has the potential to create anaerobic conditions that contribute to the methylation of mercury, which increases toxicity" (2A.3.5.7 of 2013 draft BDCP).	
3	8-432	14-33	The notion of developing mitigation on a project-by-project basis is unsatisfying and unnecessary where sufficient detail presently exists to enable that analysis (at least in a preliminary way) for some proposed projects, such as seasonal floodplain habitat restoration included in CM2. As noted elsewhere in the draft EIR/EIS, this element of CM2 has already been defined to a conceptual degree that fairly detailed analyses of environmental issues are possible. Legally, that analysis must happen now (as the County has long contended), even though the EIR/EIS is programmatic.	

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 11 (Fish and Aquatic Resources)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

No.	Page	Line #	Comment	ICF Response
1	11-83	6-11	The text in this location misstates the number of species covered by the Yolo Natural Heritage Plan (an HCP/NCCP). The Plan currently covers 32 species, not "70 to 80." Also, the entity preparing the plan is referred to as the "Yolo Natural Heritage Foundation." It is actually a joint powers agency that is known as the Yolo County Habitat/Natural Communities Conservation Plan Joint Powers Agency.	

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 12 (Terrestrial Biological Resources)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

No.	Page	Line #	Comment	ICF Response
1	General		The County observes that Chapter 12 contains various specific estimates of the acres of various species habitats that may be affected by implementation of CM2. This is precisely the type of information that needs to be included in other chapters of the EIR/EIS, as noted in the County's comments on individual chapters and in its cover letter.	
2	General		This Chapter should include a discussion of the potential for the BDCP to shift the implementation of conservation requirements in local HCP/NCCPs to areas outside of the Delta. Such shifting could occur if, for example, suitable habitat for one or more covered species exists within the Delta but an easement or other preservation mechanism is infeasible because of competition with BDCP for mitigation and conservation lands (or for related issues, such as the conversion of certain habitat types in discrete locations by BDCP).	
3	12-99 Part 1	25-33	The County disagrees with the significance criteria expressed with regard to conflicts with an adopted HCP, NCCP, or similar plan. It is well known that the BDCP may conflict not only with adopted plans, but plans that are currently under preparation (like the Yolo Natural Heritage Program, which includes a Countywide HCP/NCCP). The Yolo Natural Heritage Program recently released a first draft of its plan on June 28, 2013. Consequently, the significance criteria relating to HCP/NCCPs and similar plans should be expanded to include draft plans. Also, the significance criteria for conflicts relevant to HCP/NCCPs defines an unrealistically high threshold for evaluating the significance of impacts (i.e., treating certain conflicts as significant only if the HCP/NCCP "could not achieve	

No.	Page	Line #	Comment	ICF Response
			its conservation goals"). Not only is this highly subjective and difficult to apply, it is also inappropriate to deem a conflict "significant" only if the conservation goals of another HCP/NCCP are rendered impossible to achieve (as opposed to significantly more difficult, time consuming or expensive). Finally, it is not clear whether the criteria relating to conservation goals applies only upon a demonstration that all goals, as opposed to fewer than all, cannot be achieved.	

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 13 (Land Use)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

Summary of the County's Previous Comments: The County's April 16, 2012 comments addressed land use issues only briefly due to the relatively vague and general treatment of such issues in the draft EIR/EIS. Among other things, the County requested detailed figures and graphics illustrating the potential location of BDCP infrastructure.

ICF Response: ICF responded that such graphics and figures appear in the revised draft EIR/EIS.

Update on Issues Raised in County's Previous Comments: The County appreciates ICF's effort to provide graphics and figures depicting the potential location of major BDCP infrastructure components. As noted below, a similar approach is appropriate for the elements of CM2.

No.	Page	Line #	Comment	ICF Response
1	13-40	28-38	The discussion refers to the Yolo County moratorium on certain types of habitat projects. The moratorium expired in October 2012. The County subsequently adopted an ordinance requiring a use permit for certain habitat projects, including those undertaken in the County to mitigate for habitat losses or species impacts occurring outside of the County. Related text (of which this page/line number reference is only one example) should be updated to describe the County's current ordinance, which appears in Title 10, Chapter 10 of the Yolo County Code.	
2	13-123	24-33	The text indicates that potential conflicts between CM2-CM21 with local land use designations for agricultural and other uses cannot be assessed because "the locations for implementation of CM2-CM21 are not known at this point." To the contrary, the location of CM2 is very well known and has been described and modeled in detail. While project design may result in a reduced or somewhat different footprint for the floodplain habitat restoration component of CM2, there is enough information presently available to assess potential land use	

No.	Page	Line #	Comment	ICF Response
			conflicts and related environmental effects, such as the loss of farmland. Legally, this analysis must appear in the draft EIR/EIS. The absence of this information is a fundamental flaw in Chapter 13 (and other Chapters of the draft EIR/EIS) that leaves the County unable to offer constructive comments or suggestions.	

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 14 (Agricultural Resources)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

Summary of the County's Previous Comments: The County's April 16, 2012 comment letter included the following remarks pertaining to agricultural resource impacts:

- Farmland impacts should be analyzed on a local level in addition to a regional level; information regarding affected crop types, infrastructure, and other key agriculturally-related features should be discussed.

- Even though CM2 is still somewhat conceptual, it is possible to study its potential environmental and economic effects in detail. The County's agricultural impacts analysis is an example of such a study. [Note: That study is now complete and is available online at: http://www.yolocounty.org/Index.aspx?page=2421.]

- The modest amount of land committed to rice cultivation in the BDCP Planning Area (7,298 acres per p. 14-6 of the draft EIR/EIS) raises the prospect of an economic "tipping point" for rice cultivation, and study of this potential outcome and related direct/indirect environmental effects is required.

- As farmland is converted to other uses, species dependent upon that farmland (e.g., Swainson's hawk and giant garter snake) may be detrimentally affected.

ICF Response: ICF responded to the County's comments with a single sentence that reads as follows: "Significant efforts have been undertaken, including public outreach and workgroups with Delta stakeholders in regard to agricultural impacts."

Update on Issues Raised in County's Previous Comments: While the current draft EIR/EIS appears to include some discussion of farmland impacts at a local and crop-specific level, that analysis is focused primarily on effects of new water conveyance facilities and does not include CM2 or other BDCP elements that could also be studied in the same level of detail. The fact that Chapter 14 now includes a table indicating the number of acres of each crop type affected by water conveyance facilities under the various alternatives helps to illustrate this point. Even more tellingly, the draft EIR/EIS specifically states: "However, the potential for increased frequency of inundation events in the Yolo Bypass differs from most other measures in its geographic certainty. Analysis of related effects on agricultural resources relies on a comparison between a geographic estimate of the area that would be more frequently inundated, along with data about the agricultural resources present in this area."

[Admin. Draft EIR/EIS at p. 14-26, lines 41-45.] Notwithstanding this statement, a close analysis of CM2 does not appear in the current draft of Chapter 14 except to the extent it describes information previously provided by the County itself (e.g. pp. 14-52 and 53).

County Comments on Agricultural Land Stewardship Paper (enclosed): On January 24, 2013, the County commented on an October 15, 2012 working draft document entitled "Discussion Paper—BDCP and Delta Farmland." That document is very similar to many elements of the discussion in Chapter 14 and, where relevant, the County's comments below refer to and incorporate text from that letter.

No.	Page	Line #	Comment	ICF Response
1	14-10 and 14-11	§14.1. 1.5	This section is one of several places where the draft EIR/EIS distinguishes between different types of farmland for analytical purposes. The end result is that some types of farmland, such as grazing land, are effectively excluded from the impacts discussion and related mitigation. The County objected to this approach in its January 24, 2013 comment letter. Please see pp. 3-4 thereof (Section II.D-E), which are incorporated herein by this reference.	
2	14-24	3-21	This paragraph generally describes the general plans of Delta counties and cities, referring in places to local farmland mitigation programs. These programs should be described in greater detail to enable an evaluation of conflicts between the mitigation proposed in (or omitted from) the draft EIR/EIS for farmland conversions. The significance of that conflict should be explored either in Chapter 13 (Land Use) or 14 (Agricultural Resources), or both.	
3	14-26	1-7 and 41-45	The text in these paragraphs seems to say two different things regarding the evaluation of CM2 and agricultural resources. Lines 1-7 appear to say that the draft EIR/EIS defers any meaningful evaluation of CM2's agricultural resource effects to the project-level environmental review. However, lines 41-45 (as noted above) seem to instead say that the seasonal floodplain element of CM2 will be analyzed in detail. Unfortunately, while the latter statement should be the case, the former statement appears to more accurately describe the content of the draft EIR/EIS. As the County asserted above, the draft EIR/EIS should include a detailed	

No.	Page	Line #	Comment	ICF Response
			evaluation of the agricultural resource impacts of those elements of CM2 that are already defined sufficiently to enable a relatively precise analysis.	
4	14-27	32-36	The text in this location further narrows the range of farmland analyzed in the draft EIR/EIS, defining "Important Farmland" as only those types of farmland that are both: • Listed in Public Resources Code Section 21060.1(a) (i.e., prime farmland, farmland of statewide importance, or unique farmland); and • "[L]and located in areas that can continue to be farmed economically and on a sustainable basis for an indefinite period of time absent a conversion to a different use under the BDCP." The County objected to this approach in its January 24, 2013 comment letter. Please see p. 4 thereof (Section II.E), which is incorporated herein by this reference.	
5	14-28	10-14	The text states that the draft EIR/EIS "does not use a numerical approach" to assessing impact severity and the need for mitigation, but rather identifies "degrees of impacts." This may be reasonable to an extent, but some impacts can be quantified at least in general terms—again, in the context of CM2—and a quantitative approach should be employed where feasible to promote a solid understanding of the potential impacts of the BDCP. The omission of such information is puzzling and unnecessary.	
6	14-38	1-15	Here and elsewhere, the draft EIR/EIS calls for preparation of an Agricultural Lands Stewardship Plan (ALSP) to mitigate the loss of farmland and preserve agricultural productivity. Many elements of the proposed ALSP approach described in this mitigation measure are similar or identical to the Discussion Paper that was the subject of the County's January 24, 2013 comment letter. The County thus has the same concerns with this mitigation measure as it had with the approach proposed in the Discussion Paper. Perhaps most significantly	

No.	Page	Line #	Comment	ICF Response
			for CEQA and NEPA purposes, this mitigation measure lacks clear performance standards and it thus appears to constitute improper "deferred mitigation." The County raised a concern with the lack of performance standards in its January 24, 2013 comment letter. Please see p. 3 thereof (Section II.B), which is incorporated herein by this reference. These comments apply equally to all other instances in Chapter 14 where this mitigation measure is essentially repeated.	
7	14-40	14-23	This text makes the baffling and inaccurate claim that preserving farmland for the Swainson's hawk is "the equivalent of full mitigation for impacts to Important Farmland or land subject to Williamson Act contracts or in Farmland Security Zones, provided that the easements for biological values also incorporate agricultural preservation." The County objected to this approach in its January 24, 2013 comment letter. Please see p. 5 thereof (Section II.G), which is incorporated herein by this reference. These comments apply equally to all other instances in Chapter 14 where this mitigation measure is essentially repeated.	
8	14-42	22-36	These paragraphs propose different methods of funding implementation of an Optional Agricultural Lands Stewardship Approach. Some proposed sources are reasonable (i.e., greenhouse gas offsets) but others appear to shift the burden of funding this program—which is after all, mitigation for implementation of the BDCP—to state taxpayers generally rather than the beneficiaries of the BDCP. Setting aside policy questions, this raises considerable uncertainty about the feasibility of this approach to mitigation and further diminishes its legal adequacy. These comments apply equally to all other instances in Chapter 14 where this mitigation measure is essentially repeated.	
9	14-44	33-38	This text explains that the default mitigation ratio for conventional agricultural mitigation (via conservation easements) shall be 1:1, but a lesser ratio "may be sufficient to reduce impacts to a less than significant level" based on various	

No.	Page	Line #	Comment	ICF Response
			factors. The County discourages this approach, particularly for any permanent farmland conversions (rather than short-term or temporary impacts). As it proposed in its January 24, 2013 comment letter (p. 6 thereof, Section III.B), incorporated herein by this reference, local agricultural mitigation programs that apply uniformly to other forms of development in a jurisdiction should generally be followed in implementing the BDCP. These comments apply equally to all other instances in Chapter 14 where this mitigation measure is essentially repeated.	
10	14-49	22-25 and 37-39	The text states that the extent of certain effects is unknown because "locations have not been selected" for various BDCP-related activities. Certainly, some sense of the magnitude of these effects—the conversion of "Important Farmland" and land under Williamson Act contracts—can be conveyed in general quantitative terms. 83,700 acres of habitat restoration will have to go somewhere, and it takes no great leap of logic to assume that farmland will be the landing place for a significant portion of this restoration activity. The Draft EIR should not obfuscate this issue, and should provide some numerical context for these types of impacts. These comments apply equally to all other instances in Chapter 14 where this discussion is essentially repeated.	
11	14-52 and 14-53	All	The County notes that much of the information on these pages is derived from the County's own agricultural impacts analysis. The apparent value of this information to the overall environmental impact analysis underscores the need to support the County's longstanding requests for additional funding to complete other studies relevant to the environmental and economic effects of the BDCP. Indeed, without this information, the EIR/EIS would contain virtually no specific analysis of CM2 despite the existence of sufficient project-specific information to enable such analysis. These comments apply equally to all other instances in Chapter 14 where this discussion is essentially repeated.	
12	14-55	12-30	The CEQA Conclusion in this section—which should relate at least in part to	

No.	Page	Line #	Comment	ICF Response
			CM2—instead discusses other issues and appears to be the result of an erroneous “cut and paste.” These comments apply equally to all other instances in Chapter 14 where this error is essentially repeated.	

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 15 (Recreation)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

No.	Page	Line #	Comment	ICF Response
1	15-287	8-28	This passage describes how changes associated with CM2, particularly relating to "flood management in the Yolo Bypass," could adversely affect waterfowl and recreational uses such as hiking, hunting, and bird watching. It also attempts to describe the conclusions of a 2012 Ducks Unlimited study of waterfowl-related impacts. Unfortunately, the information provided is too vague to be of any significant value. The Yolo Bypass Wildlife Area receives tens of thousands of visitors each year and offers some of the best winter waterfowl hunting opportunities in the region. It also offers education programs that serve thousands of students each year, but these do not merit even a mention in the text of the draft EIR/EIS. Surely, the draft EIR/EIS can be revised to include a greatly expanded discussion of recreational and other related uses of the Yolo Bypass Wildlife Area and, in particular, how CM2 and other elements of the BDCP could affect those uses in the future. In its present state, the draft EIR/EIS says virtually nothing informative on these topics, and does not describe how the loss of such recreational and related opportunities could have an adverse environmental effect (e.g., by shifting such uses to other existing facilities).	
2	15-290	16-26	The CEQA Conclusion addressing impacts to recreation in the Yolo Bypass and various other locations is highly general and uninformative. In a nutshell, the conclusion is that impacts are "not considered significant" because they are not "anticipated to result in a substantial long-term disruption of upland recreational opportunities." This absurdity is excusably for the sole reason that the draft EIR/EIS remains	

No.	Page	Line #	Comment	ICF Response
			preliminary in nature, and will undergo substantial refinement before it is an "official" draft EIR//EIS. CM2 is not a temporary measure, but instead proposes a variety of actions that will continue for decades and perhaps into perpetuity. Managing the Bypass as seasonal floodplain habitat could thus—absent sensible design and operational features—have effects on recreation and related activities that are essentially permanent in nature. The County raised this concern in a letter over three years ago, in April 2010, and is greatly frustrated to see that it remains essentially an afterthought in the environmental analysis under CEQA and NEPA.	

BDCP EIR/EIS Review Document Comment Form

Document: ***Administrative Draft—Chapter No. 16 (Socioeconomics)***

Comment Source: Yolo County
Submittal Date: July 12, 2013

No.	Page	Line #	Comment	ICF Response
1	16-24	Table 16-13	This table describes crop yields, prices, and value per acre in the Delta Counties between 2005-2007 based on DWR data. As the table shows, rice and tomatoes—the two most prevalent crops in the Yolo Bypass—have a per-acre value that is between 3-7 times higher than safflower, which is often mentioned as a substitute crop that may be planted if inundation associated with CM2 precludes rice or tomatoes. This illustrates the dramatic difference in agricultural values that could result from implementation of CM2, and should be evaluated carefully in Chapter 16 and elsewhere in the draft EIR/EIS. [Note: This same principle is set forth at p. 16-46 at lines 15-17, where the text states that such changes are part of the NEPA analysis.]	
2	16-36	19-29	The text in this location attempts to summarize relevant portions of the Yolo General Plan, identifying two General Plan policies that are relevant to socioeconomic issues. There are many more policies in the General Plan that bear on socioeconomic issues. The County can provide a suggested list of policies if requested.	
3	16-45	9-12	This text repeats the frequent claim that CM2-22 are conceptual, so no quantitative (or other meaningful) analysis of their environmental effects is possible. The County has commented on the problems with this approach in other chapters of the draft BDCP EIR/EIS, and it incorporates those comments by reference.	
4	16-162	38-44	Here and elsewhere in Chapter 16, the text describing a "CEQA Conclusion" states that "when required," the BDCP proponents will pay landowners for "economic losses" due to the implementation of BDCP. Compliance with state	

No.	Page	Line #	Comment	ICF Response
			and federal constitutional provisions regarding the payment of just compensation for the governmental taking of private property is appropriate to note, but this is hardly a substitute for meaningful analysis of related indirect economic effects of the widespread conversion of Delta farmland and other private property to water supply infrastructure and habitat as part of the BDCP. Presumably, this text will be revised to include appropriate CEQA and NEPA analysis in the final draft EIR/EIS.	
5	16-45 and 46		This discussion explains the approach to evaluating economic effects under NEPA. It includes various metrics for determining when a change in relevant socioeconomic circumstances occurs due to BDCP. However, it is difficult to determine whether these metrics are applied in the balance of Chapter 16. NEPA conclusions are not presented—only CEQA is specifically referenced in the text throughout the rest of the Chapter. The draft EIR/EIS should take a more direct and explicit approach to analyzing socioeconomic issues in the context of NEPA.	
6	16-169	5-44	This discussion attempts to describe effects on the Delta's regional economy due to implementation of Conservation Measures 2-22. As one would expect given the brevity (four paragraphs) of this discussion, it appears this issue has received only preliminary consideration. For instance, a fair amount of the discussion simply summarizes select portions of the County's agricultural impacts analysis before concluding that those impacts will be offset by "an increase in construction and operation and maintenance-related employment and labor income," as well as the untold (and as yet, entirely hypothetical) benefits of the Agricultural Land Stewardship Program described in Chapter 14 (Agricultural Resources). The County looks forward to reviewing a comprehensive analysis of this issue in the future. The current discussion of this issue is not sufficiently advance to warrant specific comments or suggestions, though the County encourages the BDCP proponents to begin expanding this analysis by referring to the list of NEPA-related socioeconomic considerations set forth at pages 16-45 and 46.	

No.	Page	Line #	Comment	ICF Response
7	16-172	5-29	This discussion explains that BDCP proponents will "offset forgone property tax and assessments levied by local governments and special districts on private lands converted to habitat." The County has received such promises before, yet it has been more than a decade since the state paid amounts owed under state law for land within the Yolo Bypass Wildlife Area. The draft EIR/EIS needs to explain the source of this funding and affirm that it is reliable (i.e., not subject to appropriation as part of the annual state budget process). Ideally, a mechanism for such payments would be included as an enforceable mitigation measure.	
7	16-173 and 174	15-44 and 1-17	This discussion (relating to effects on Delta agricultural economics) is very similar to the text that is the subject of Comment 6, above, and differs only in that it is more narrowly focused on agricultural economic issues. The County incorporates its remarks in Comment 6 by reference.	

County of Yolo

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Philip J. Pogledich, Senior Deputy

April 16, 2012

VIA ELECTRONIC MAIL ONLY

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

Re: Comments of Yolo County on Preliminary Draft Chapters of the Bay Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

Dear Ms. Chrisney:

This letter responds to your March 1, 2012, letter requesting comments from the County of Yolo (County) on certain preliminary draft chapters of the EIR/EIS for the Bay Delta Conservation Plan (BDCP).

As noted in your letter, the County is a "cooperating agency" pursuant to an October 12, 2010 Memorandum of Understanding with the Bureau of Reclamation and other federal agencies responsible for preparation of the BDCP EIR/EIS pursuant to the National Environmental Policy Act (NEPA). The Office of the County Counsel submits this letter in its capacity as the County representative to the federal agencies responsible for the NEPA process (MOU, Section 5). As a cooperating agency, the County sincerely desires to assist the federal agencies in ensuring that the BDCP EIR/EIS is credible, thorough, and legally sound. To this end, in consideration of the preliminary stage of the BDCP planning process and the EIR/EIS, the following comments focus on identifying key studies and other information that the County believes must be developed and included in future drafts of the EIR/EIS.

The County provides these comments pursuant to Section IV.b.3, b.5, b.6, b.7, and b.8 of the MOU. We reserve the right to provide additional comments on the EIR/EIS--including detailed legal and technical comments--as work on the EIR/EIS continues.

1. The EIR/EIS Should Include a County-by-County Summary of Anticipated Project Features and Impacts (Environmental and Economic).

As an initial matter, the BDCP and draft EIR/EIS and tremendously complex and lengthy. It is very difficult for the County (and, we suspect, other cooperating agencies) to review, analyze, and fully understand the many thousands of pages of documents released for public review over the past 60 days. Certainly, the challenge of

reviewing these documents is even more daunting to landowners, farmers, and other members of the public with an interest in the BDCP.

On this basis, the County urges the federal (and state) agencies responsible for the EIR/EIS to develop a chapter or appendix that concisely summarizes the anticipated project features and environmental effects of the BDCP on a county-by-county basis. Such an approach would greatly help the County and others to understand and efficiently analyze the potential local effects of BDCP implementation. It would also further many of the policy aims underlying both NEPA and its state analog, the California Environmental Policy Act (CEQA), by facilitating informed public participation in the decisionmaking process. (E.g., In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal.4th 1143, 1162 (2008).) Particularly in an EIR/EIS of such unusual complexity, a county-by-county summary of anticipated project features and environmental effects is both necessary and appropriate.

2. The EIR/EIS Should Include Detailed Figures and Graphics Illustrating the Potential Location of Major Water Conveyance Infrastructure and Related Facilities.

As part of the effort encouraged in Comment 1, above, the County also urges the agencies responsible for the EIR/EIS to prepare more detailed, county-specific versions of Figure 4-3 in Chapter 4 of the draft BDCP. Figure 4.3 provides a basic overview of anticipated project water conveyance infrastructure and related facilities, but the scale of the figure makes it difficult to determine even the approximate locations of key facilities. Figure 4-3 also omits certain types of project infrastructure that are discussed throughout the draft BDCP and EIR/EIS, such as the location of the large 230-kv transmission lines that will apparently be built to provide electricity for project operations.[1] The location of these transmission lines (and other major project infrastructure not currently shown on Figure 4-3) is tremendously important to the County and others throughout the Delta.

In all candor, it is unreasonable to request the County's comments on over 2,400 pages of the draft EIR/EIS without first providing basic information on the location of project features that are expected to have significant environmental effects. Appropriate county-level figures or other graphics displaying this information should be included in the county-by-county summary chapter(s) proposed in Comment 1, above. Such an approach will greatly aid the County, other cooperating agencies, and the general public in understanding the EIR/EIS and participating in the project planning and environmental review process.

3. Additional Studies Are Necessary to Ensure a Meaningful Analysis of Certain Potential Impacts.

The County strongly encourages the NEPA lead agencies to provide funding for the completion of the following studies in connection with the EIR/EIS. In the County's judgment, each of the following studies is integral to the adequacy of certain chapters of the EIR/EIS (even accounting for its programmatic character with respect to many conservation aspects of the BDCP). The County would like to have principal responsibility for all aspects of the development and performance of these studies, coordinating as appropriate with the state and federal agencies responsible for BDCP and the EIR/EIS. With the exception of the proposed

[1] The figures included in Chapter 3 (Description of Alternatives), which are intended to illustrate components of the conveyance infrastructure integral to each alternative, are similarly deficient.

Yolo Bypass infrastructure study, the County has previously proposed all of the following studies at various points in the past 1-2 years.

A. Agricultural Impacts. Various chapters of the draft EIR/EIS discuss potential conversions of farmland and other impacts of the BDCP on Delta agriculture. Generally, the discussion of such impacts occurs on a regional level. Even where impacts are discussed with more geographical precision, however, no effort is made to specifically identify the crop types, public and private infrastructure, and other key agricultural elements that could foreseeably be affected by implementation of the BDCP. The result is a generally uninformative discussion that leaves the County (and no doubt, other readers) without any clear sense of how BDCP could affect local agriculture.

To illustrate that a more refined analysis is both feasible and necessary, the County offers the example of Conservation Measure 2 (CM 2) and its potential effect on agricultural operations within the Yolo Bypass. With financial support from the State and Federal Contractors Water Agency, the County is completing a detailed economic analysis of how CM 2 could affect the cultivation of specific crops--including rice and processing tomatoes--in the Yolo Bypass. This analysis is nearly complete and it is expected to show the possibility of a severe decline in the cultivation of certain crops, particularly rice, if inundation continues into March and April.[2]

In light of the modest amount of acreage committed to rice cultivation through the BDCP Planning Area (7,298 acres per p. 14-6 of the Admin. Draft EIR/EIS), the loss of a significant portion of rice acreage within the Yolo Bypass raised the potential of an array of indirect economic and environmental effects. This includes the possibility of reaching a "tipping point" for rice cultivation, meaning that rice cultivation ceases to be commercially viable even on unaffected lands throughout the County due to a decline in rice volumes, the resulting closure of local rice mills, and the eventual rise of unit processing costs to unacceptable levels. While this evaluation is beyond the limited scope of the County's agricultural impacts analysis for CM 2, it is feasible to expand the analysis to encompass this issue. This additional work would help illuminate the broader economic and environmental consequences of changes to agriculture that are best considered at a programmatic level. (Stanislaus Natural Heritage Project v. County of Stanislaus, 48 Cal. App. 4th 182, 199 (1996).) In turn, such information would allow the County to participate constructively in a discussion of potential means of mitigating the economic effects of CM 2, potentially establishing a useful framework for addressing similar issues in other parts of the Delta.[3]

Lastly, while the EIR/EIS notes in several places that farmland provides significant foraging and other benefits to endangered, threatened, and other species of concern, it does not fully explore the connection between potential conversions of farmland (or changes in crop selection) and effects on such species. The California Department of Fish and Game has emphasized the importance of sustaining alfalfa, rice, and other crops that provide significant benefits to certain species in connection with the development of the Yolo Natural Heritage Program (an HCP/NCCP). The next draft of the EIR/EIS should include considerably more detail on the potential for such changes, the types of species that will be affected, and the measures that may be employed to address such effects—including whether such measures will themselves have any adverse environmental or economic impacts.

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[2] The County will forward a copy of the completed study under separate cover as soon as it is released to the public (within the next few weeks).

[3] The draft EIR/EIS frequently reminds readers that economic effects are generally beyond the purview of both NEPA and CEQA. Even so, the County believes that the success of the BDCP depends upon implementation of appropriate mitigation for all impacts--economic as well as environmental.

B. Mercury. The County has long requested a detailed study of the potential for adverse mercury effects in connection with the floodplain habitat component of CM 2. This analysis should occur now, before the completion of BDCP and the EIR/EIS, because the success of CM 2 depends upon effectively controlling adverse mercury effects (including the methylation of mercury). The draft EIR/EIS itself makes this clear, extensively discussing the hazards posed by mercury and methymercury and, in addition, specifically noting problems that currently exist in the Yolo Bypass.

For example, at pp. 8-64 and 8-65, the EIR/EIS references recent studies that identified elevated fish tissue mercury concentrations—five times higher than the Delta TMDL recommendation—in fish originating in the Yolo Bypass. Despite this, the EIR/EIS fails to discuss CM 2 in evaluating the potential for cumulative adverse mercury impacts on water quality in the Delta and the SWP/CVP Export Service Areas (see p. 8-456 and 8-458). Worse still, the EIR/EIS concludes that some combination of mitigation measures should effectively address adverse mercury effects, including the following proposed measure:

> [Ensure] [a]ppropriate consideration of conservation measure locations, preferably not in the direct path of large mercury or selenium loading sources such as the Sacramento River, **Yolo Bypass**, Consumnes River or San Joaquin River. (EIR/EIS at p. 8-459 (emphasis added).)

To put it mildly, this proposed "mitigation measure" directly calls into question the feasibility of the floodplain habitat component of CM 2—a key element of the Delta habitat restoration proposed by the BDCP. This text highlights the need for analysis of mercury issues before CM 2 can be appropriately included within the BDCP.

C. Flood Risks. As noted, increasing the frequency and duration of inundation within the Yolo Bypass—an important flood control facility—is central to CM 2 (and likely to the overall success of the BDCP). The County is concerned, however, that increased inundation will adversely affect the Bypass levees and increase the level of flood risk for local communities. This concern has been heightened by the release of data showing that portions of the Bypass levees are already of "high concern" to the California Department of Water Resources.[4] Similarly, the draft Central Valley Flood Protection Plan states at p. 3-18 that "some levees along the bypasses may not be as durable as levees along the main rivers—levee reliability could also be lowered by longer duration wetting." These are all indications of the need to fully evaluate and mitigate potential flood risks and related hazards associated with elements of CM 2 in the EIR/EIS.

Additionally, agriculture controls the growth of vegetation and thus plays an important role in maintaining the conveyance capacity of flood control facilities like the Yolo Bypass. The potential for adverse flood impacts arising from the cessation of agriculture in portions of the Yolo Bypass and in other locations should be evaluated closely as part of the EIR/EIS. To some extent, this analysis dovetails with the additional agricultural impact studies proposed in subsection A, above, as the scale of agricultural impacts (including the potential for indirect impacts, such as the cessation of agriculture on unaffected lands) directly influences the maintenance of vegetation in many flood-prone areas of the Delta.

D. Infrastructure Impacts. The Yolo Bypass contains important agricultural water supply, transportation, and other infrastructure that may be affected by the increased frequency and longer duration of flooding

[4] Draft Central Valley Flood Protection Plan, Figures 1-7 and 2-1. The draft Plan is available online at http://www.cvfpb.ca.gov/CVFPP/.

proposed as part of CM 2. The draft EIR/EIS currently analyzes the potential for impacts on such infrastructure on a regional basis. It does not, however, appear to include any significant discussion of potential impacts on existing infrastructure in the Yolo Bypass.

Under both NEPA and CEQA, the level of analysis set forth in the draft EIR/EIS should correspond with the level of detail provided in the draft BDCP. (In re Bay-Delta, 43 Cal.4th at 1176, citing CEQA Guidelines § 15146.) The omission of any detailed discussion of potential infrastructure impacts within the Yolo Bypass is one example of an instance where the draft EIR/EIS fails to meet this legal requirement. Clearly, the draft BDCP describes CM 2 in significant detail. Such information, together with the availability of detailed hydrodynamic modeling and other data, enables a meaningful analysis of infrastructure impacts within the Yolo Bypass as part of evaluating the environmental impacts of CM 2. A study evaluating the potential impacts of CM 2 on Bypass infrastructure is therefore necessary and appropriate at this stage of the environmental review process.

E. Additional Studies. In addition to the studies identified above, the County also believes that a vector control analysis focused on CM 2 should be performed in connection with the EIR/EIS. Other studies that are currently underway, such as a waterfowl impacts analysis of CM 2 (being performed by Ducks Unlimited), also need to be integrated into the next draft of the EIR/EIS and likely should be expanded to consider Delta-wide impacts on migratory birds and other species that currently depend on alfalfa, rice, and other common crops and agricultural practices. The County will continue to evaluate the need for other studies as its review of BDCP documents proceeds.

* * *

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

Very truly yours,

Robyn Truitt Drivon
County Counsel

Philip J. Pogledich
Senior Deputy County Counsel

BDCP EIR/EIS Review Document Comment Form

Document: 1st Administrative Draft – February 2012

Comment Sources: **Additional Comments Not Received Through Comment Tables**

Yolo County	p. 1	The EIR/EIS Should Include a County-by-County Summary of Anticipated Project Features and Impacts (Environmental and Economic). The County urges the agencies responsible for the EIR/EIS to develop a chapter or appendix that concisely summarizes the anticipated project features and environmental effects of the BDCP on a county-by-county basis.	The 2nd Administrative Draft includes maps that will assist each impacted County in identifying effects within its jurisdiction.
Yolo County	p. 2	The EIR/EIS should include detailed figures and graphics illustrating the potential location of major water conveyance infrastructure and related facilities. (for example – county-specific versions of Figure 4-3 in Chapter 4)	The 2nd Administrative Draft includes maps that will assist each impacted County in identifying effects within its jurisdiction, including maps that provide a greater level of detail for the alternatives analyzed in the EIR/S.
Yolo County	pgs. 2-5	Additional studies are necessary to ensure a meaningful analysis of certain potential impacts. Including the following: (A) Agricultural impacts – conversion of farmland; (B) Mercury – detailed study of the potential adverse mercury effects in connection with the floodplain habitat component of CM2; (C) Flood Risks – concern with increased inundation of Yolo Bypass will adversely affect Bypass levees and increase the level of flood risk for local communities; (D) Infrastructure Impacts – impacts to ag water supply, transportation and other infrastructure affected by increase in frequency and longer duration of flooding of bypass	The 2nd Administrative Draft analyses the impacts of CM1 at a project level and as such includes a greater level of detail that the previous public administrative draft. Significant efforts have been undertaken, including public outreach and workgroups with Delta stakeholders in regard to agricultural impacts. Further discussion of Mercury impacts can be found in Chapter 8 – Water Quality. Flood impacts are discussed in several chapters including Chapter 6 – Surface Water and Chapter 7 – Groundwater. Public Health

		proposed as part of CM2; (E) Additional studies – vector control analysis, waterfowl impacts analysis of CM2.	risks related to vector control are discussed in Chapter 23 – Public Health.

The Yolo Natural Heritage Program
Interface with the Bay Delta Conservation Plan
Background, Summary, and Remaining Issues
May 23, 2013

Background

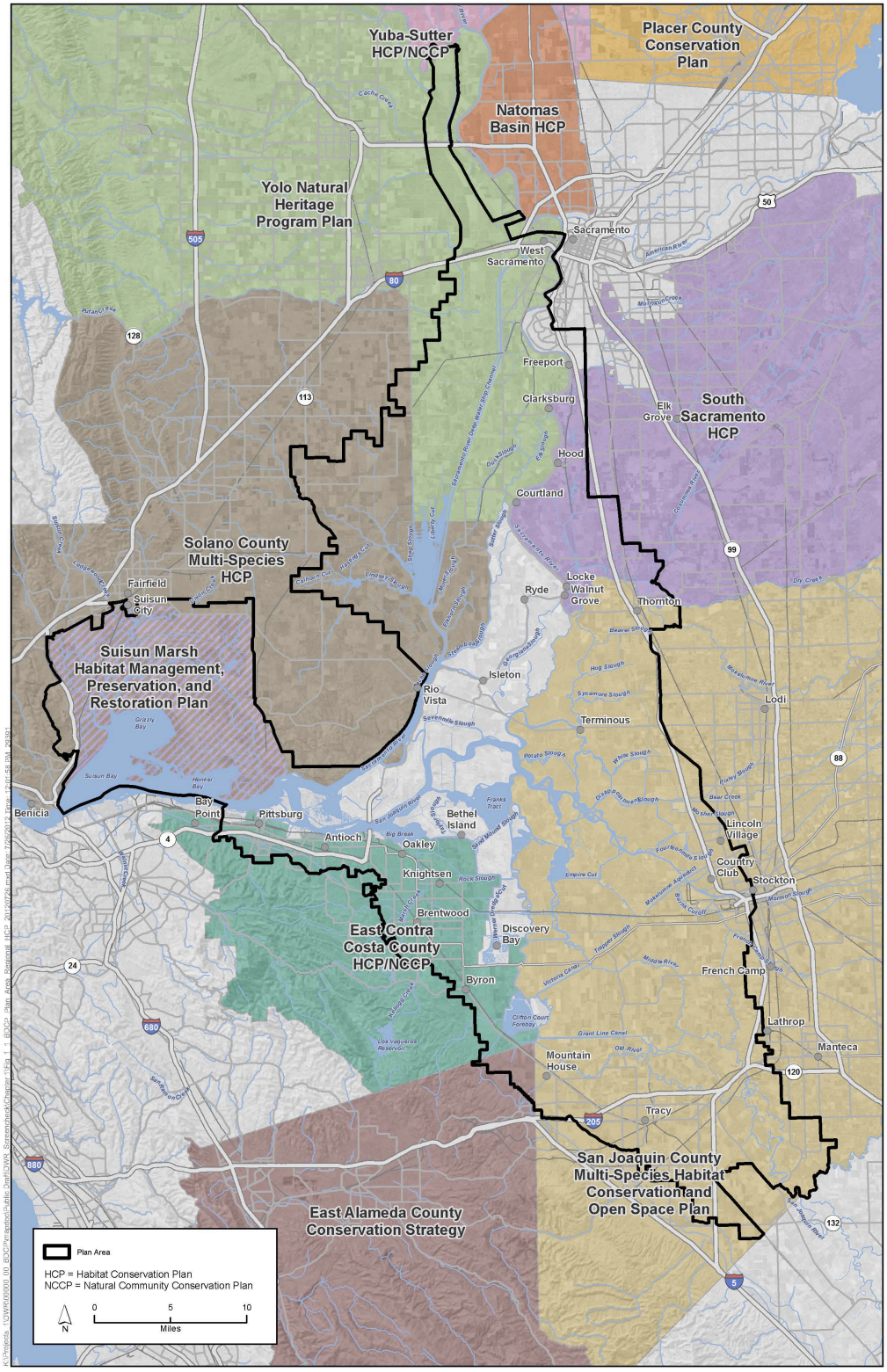
The Yolo Natural Heritage Program (Yolo HCP/NCCP) and Bay Delta Conservation Plan (BDCP) Plan Areas overlap (Figure 1-2 from 2013 BDCP draft). The Yolo HCP/NCCP encompasses the entirety of Yolo County, covering an area of 653,820 acres of which approximately 108,000 acres in Yolo HCP/NCCP Planning Units 15-18 and 21 overlap with the BDCP Plan Area (Figure 1). The BDCP encompasses the statutory Sacramento-San Joaquin Delta as defined in the California Water Code, Section 12220 and additional lands in the upper Yolo Bypass and Suisun Marsh necessary to implement the proposed BDCP conservation actions. In addition, the BDCP has adjusted its planning area to allow the BDCP to undertake conservation actions in Yolo County that could lead to additional overlap with the Yolo HCP/NCCP. The BDCP has expanded the BDCP Plan Area to allow for protection of approximately 1,400 acres of giant garter snake habitat in Planning Unit 11 adjacent to and west of the Yolo Bypass.

The Yolo HCP/NCCP and BDCP both cover the following 18 species. Each plan also covers other species as well (e.g. BDCP covers fish species).

- Alkali-milkvetch
- Brittlescale
- San Joaquin spearscale
- California linderiella
- Conservancy fairy shrimp
- Midvalley fairy shrimp
- Vernal pool fairy shrimp
- Valley elderberry longhorn beetle
- California tiger salamander
- Western pond turtle
- Giant garter snake
- Swainson's hawk
- White-tailed kite
- Western burrowing owl
- Western yellow-billed cuckoo
- Least Bell's vireo
- Yellow-breasted chat
- Tricolored blackbird

Summary of BDCP Actions

The BDCP is proposing to implement several conservation measures within the shared portions of the Yolo HCP/NCCP and BDCP plan areas. The proposed BDCP conservation measures include: (1) physical modifications to the Fremont Weir and Yolo Bypass to provide habitat for juvenile salmon and splittail, as well as upstream passage for salmon other fish species (the Yolo HCP/NCCP does not cover fish species); (2) potential channel margin restoration along Sutter and Steamboat Sloughs and the Sacramento River; (3) tidal habitat restoration within the southern portion of the Yolo Bypass for the Delta smelt (an endangered fish); and (4) habitat protection. These conservation measures would be implemented in BDCP Conservation Zones 2 and 3, which include portions or all of Yolo HCP/NCCP Planning Units 15-18, and 2.1



GIS Data Source: Plan Area, ICF 2012; Conservation Plan Boundaries, ICF 2012.

Figure 1-2
BDCP Plan Area in Relation to Neighboring Conservation Plan Boundaries

BDCP Fremont Weir and Yolo Bypass Modifications and Operations. The BDCP includes a conservation measure to modify the Fremont Weir and Yolo Bypass and to operate the Fremont Weir to increase the availability of floodplain habitat for spawning and rearing for juvenile salmon and splittail, increase food production on and downstream of the Yolo Bypass, and improve fish passage in and near the Yolo Bypass for adult salmon, sturgeon, and other fish species. The Fremont Weir and Yolo Bypass will be modified with an operable gate and operated to improve rearing and spawning habitat for covered fish species, provide for a higher frequency and duration of inundation of the Yolo Bypass, and improve fish passage in the Yolo Bypass, Putah Creek, and past the Fremont and Sacramento weirs. These actions are expected to result in some removal of riparian, grassland, wetland, and agricultural habitats within the footprint of new structures and could alter the farming practices if necessitated by BDCP Fremont Weir operations. (The BDCP has not yet fully developed the Yolo Bypass project and Yolo County is working with BDCP to identify and minimize potential impacts of the proposal.) Implementation of this BDCP conservation measure affects Yolo HCP/NCCP natural communities and covered species in Yolo HCP/NCCP Planning Units 17 and 18, including giant garter snake habitat if farmers can no longer produce rice in the Yolo Bypass as a result of increased flooding.

Habitat Protection and Restoration. The BDCP includes the following actions to protect and restore habitat, a portion of which could be implemented in the Yolo HCP/NCCP Plan Area. Maps from the draft plan showing giant garter snake and Swainson's hawk habitat in Yolo County are included at the back of this paper for comparison, since these are the two species for which there may be the most significant overlap with BDCP conservation efforts.

- Restoration of over 5,000 acres of tidal habitat in the Cache Slough/lower Yolo Bypass area, some of which could be implemented in Planning Unit 18. This habitat is primarily focused on restoring habitat for covered fish species, but will also provide benefits for many terrestrial covered species. (Based on conversations with BDCP staff, it is expected that approximately 1,400 acres of this tidal marsh restoration will occur in Yolo County on the Yolo Ranch. The rest is expected to occur in Solano County.)
- Restoration of at least 5,000 acres of riparian habitat, some of which could be implemented in the Planning Units 15, 17, 18, and 21. At least 3,000 acres of the restored riparian habitat will occur on restored floodplains in the south or east Delta. The remaining acreage can be distributed throughout the BDCP plan area, a portion of which is likely to occur as a component of the tidal habitat restoration in the Cache Slough/lower Yolo Bypass area.
- Restoration of at least 600 acres of nontidal wetland in Planning Units 17, 18, or 11.[1]
- Protection and enhancement of 5,000 acres of managed wetland, some of which could be implemented in Planning Units 17 and 18. It is likely that protection and enhancement of managed wetland will be focused in Solano County to meet the needs of species that occur in Suisun Marsh.

[1] BDCP has expanded its Plan Area to include a portion of Planning Unit 11 to accommodate protection and restoration of giant garter snake habitat, of which nontidal wetland is a component.

- Protection of grassland, some of which could be implemented in Planning Unit 18. The majority of the conservation would occur in BDCP conservation zones outside Yolo County.
- Restoration of 2,000 acres of grassland, some of which could be implemented in Planning Units 11, 16, and 18 to provide upland habitat adjacent to tidal and nontidal wetlands.
- Protection of at least 45,405 acres of cultivated lands throughout the BDCP plan area, much of which will be required to be in alfalfa rotation, and plant trees and establish hedgerows on protected lands, some of which could be located in Planning Units 15-18. This protection of cultivated lands is primarily driven by the needs of the Swainson's hawk, sandhill crane, and giant garter snake, but several other covered species will also benefit.
- Protection of at least 50 acres of occupied/recently occupied tricolored blackbird nest sites, some of which could be implemented in Planning Units 15-18 if unprotected tricolored blackbird nest sites are present.

These habitat restoration and protection objectives will be implemented such that at least 800 acres of giant garter snake habitat is restored and at least 700 acres, comprised of cultivated lands, is protected (at least 500 acres of rice) adjacent to the Yolo Bypass (Planning Units 17 and 18).

Coordination with local HCP/NCCPs. The BDCP overlaps several HCP and NCCP plan areas, in addition to the Yolo HCP/NCCP. To coordinate BDCP implementation in overlapping plan areas, the BDCP proposes to enter into partnerships with the HCP/NCCP Implementing Entities. The 2013 draft of the BDCP identifies the following criteria for establishing these partnerships (Section 3.2.4.2.3 on page 3.2-26 and 3.2-27).

- The BDCP is responsible for the mitigation of its effects.
- The mitigation actions and the mitigation requirements of the BDCP must be additive to the mitigation obligations of other plans (i.e., BDCP mitigation cannot supplant the mitigation obligations of other plans and vice-versa).
- In cases where the BDCP shares the goal of providing for the conservation of covered species with another conservation program, where actions contributing to species or natural community conservation are not related to either program's mitigation requirements and limited opportunities exist for either plan to achieve its goal separately, the BDCP and the other conservation program may share conservation credit for the same action with fish and wildlife agency approval. (This situation is most likely to arise for requirements to protect rare and fragmented natural communities.)
- Actions contributing to species or natural community conservation, when implemented by another conservation program in the Plan Area on behalf of the BDCP, could be funded by the BDCP to cover the costs of initial implementation, long-term management, long-term monitoring, and remedial actions.

The Yolo HCP/NCCP will comment on the 2013 draft of the BDCP, including the above coordination criteria. It is important to keep in mind, however, that the BDCP (as an HCP/NCCP) must be granted a permit by the state Department of Fish and Wildlife and U.S. Fish and Wildlife Service, similar to the Yolo HCP/NCCP. As a result, the wildlife agencies

view of acceptable means to coordinate overlapping plan areas is more important than language in the draft BDCP document. DFW staff have expressed that the above language in the BDCP draft is not permit-worthy. In addition, DFW staff have consistently indicated over time that it is unlikely the BDCP and other conservation programs may share conservation credit for the same action with fish and wildlife agency approval. DFW staff have further indicated that additional discussion is needed to determine whether actions implemented by another conservation program in the Plan Area on behalf of BDCP to achieve species or natural community conservation goals could receive funding from BCP to cover the costs of initial implementation, long-term management, long-term monitoring, and remedial actions.

Issues

The JPA has identified the following related to implementation of BDCP actions in the Yolo HCP/NCCP Plan Area that the JPA, wildlife agenices, and BDCP will need to be resolve.

1. Mechanism for achieving conservation objectives in BDCP overlap areas. The JPA, BDCP, and the wildlife agencies, must establish a mechanism must to provide assurances to all parties that the conservation objective for covered species can be met in the area of overlap between the Yolo HCP/NCCP and BDCP by either or both plans. The California Department of Fish and Wildlife (CDFW) and United States Fish and Wildlife Service (USFWS) have indicated they will work with the Yolo HCP/NCCP to establish the conservation objective for species covered by both plans in the area of plan overlap, independent of the mitigation requirements of either plan, and based upon the guidance of published recovery plans and the best available science. Where actions contributing to species or natural community conservation are not related to either program's mitigation requirements, the wildlife agencies have indicated that either plan or both plans may contribute to meet the conservation objective, with agreements and assurances made through an implementing instrument such as a Memorandum of Understanding (MOU). Given limited availability of local sources of funding to meet Yolo HCP/NCCP habitat restoration and protection objectives, coordination with BDCP may be a critical component of the success of the Yolo HCP/NCCP. Further discussion about potential increases in funding to the Yolo HCP/NCCP in return for coordination with BDCP and/or means to reduce Yolo HCP/NCCP costs will be a critical component of future discussions with both BDCP and the wildlife agencies.

2. Mitigation for BDCP impacts outside of Yolo County within Yolo County (and vice versa). The JPA, wildlife agencies, and BDCP need to develop policies related to BDCP mitigation efforts implemented in the Yolo HCP/NCCP Plan Area for impacts of BDCP actions outside of the Yolo HCP/NCCP Plan Area and vice versa – the potential for BDCP to mitigate outside of the Yolo HCP/NCCP Plan Area for BDCP impacts in the Yolo HCP/NCCP Plan Area. Both situations could negatively affect the ability of the JPA to achieve Yolo HCP/NCCP biological objectives.

3. Assurances re Yolo HCP/NCCP permit commitments. The JPA, wildlife agencies, and BDCP need to discuss the possibility of USFWS and DFW assurances in the Yolo HCP/NCCP regarding any failure of Yolo HCP/NCCP to achieve Yolo HCP/NCCP permit commitments resulting from implementation of permitted BDCP actions. Such assurances would include mechanisms for ensuring Yolo HCP/NCCP commitments can be achieved into the future regardless of BDCP conservation actions in Yolo County. The wildlife agencies have indicated

that if BDCP is permitted first, the JPA and the wildlife agencies should be able to anticipate some of BDCP's implementation actions, so the Yolo HCP/NCCP could be developed in coordination with BDCP implementation actions.

4. Consistency of BDCP and Yolo HCP/NCCP implementation actions. The JPA, wildlife agencies, and the BDCP need to ensure consistency of BDCP habitat restoration, protection, and management actions in the Yolo HCP/NCCP Plan Area with Yolo HCP/NCCP implementation requirements (e.g., mitigation requirements, application of conservation land assembly principles). The wildlife agencies have indicated there is a mechanism for addressing the consistency issue through a process that is part of the Natural Community Conservation Planning Act related to interim projects, which needs to be further explored as part of this discussion. BDCP proposed actions currently include, for example, the easement requirement for Swainson's hawk of maintaining 50% of land under Swainson's hawk easements in alfalfa in perpetuity. Some farmers have expressed concern about such requirements and therefore more discussions with landowners and farmers are needed before the JPA can agree to base the Yolo HCP/NCCP conservation strategy on such requirements. (See Swainson's hawk issue paper developed by the JPA.) Another example includes mitigation for loss of giant garter snake habitat in the Yolo Bypass (e.g. rice and wetlands). The USFWS is currently considering permitting a giant garter snake mitigation bank in the Bypass, but the USFWS recovery strategy for giant garter snake discourages preservation of giant garter snake habitat in the Bypass. Such issues need to be resolved as both BDCP and the Yolo HCP/NCCP move forward.[2]

5. **Land cost increases or other impacts resulting from competition.** The wildlife agencies, BDCP and the JPA need to identify mechanisms for avoiding/minimizing competition between Yolo HCP/NCCP and BDCP for acquisition of lands necessary for Yolo HCP/NCCP and BDCP to achieve their biological goals and objectives and permit commitments. Such mechanisms could include coordination prior to making offers to purchase available land from willing sellers. Without such coordination, land and easement costs could increase as a result of competition between BDCP and the Yolo HCP/NCCP for conservation lands for covered species in Yolo County. (In Merced County, the University of California at Merced paid a large sum for land to mitigate for vernal pool impacts. This purchase impacted the price of land for vernal pool mitigation within the County.) Such mechanisms should include policies for ensuring effective coordination between the Plans during implementation to avoid conflicts and to increase implementation cost effectiveness (e.g., consolidated monitoring of biological resources, management of contiguous YOLO HCP/NCCP and BDCP conservation lands) and mechanisms for addressing any impacts of BDCP actions on Yolo HCP/NCCP protected lands.

[2] The Bay Delta Field Office of the USFWS will likely be providing some language to help clarify any issues regarding mitigation banks.

DRAFT

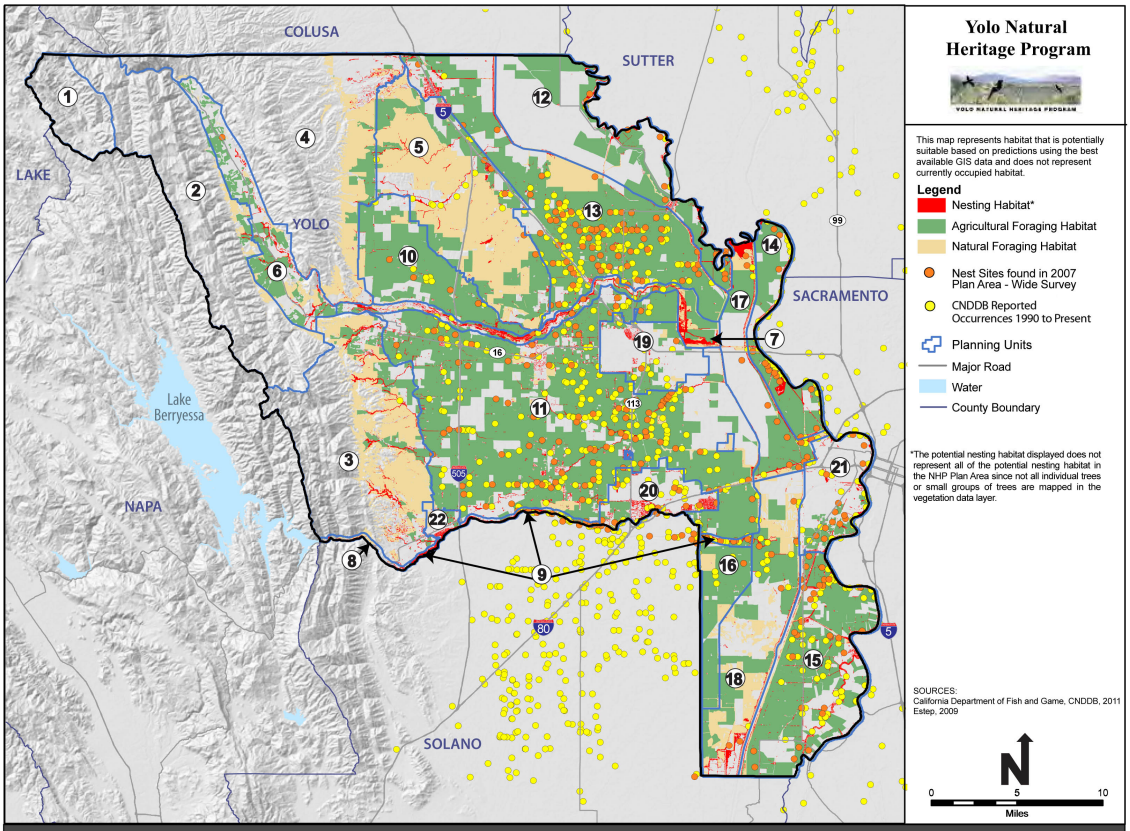


Figure A-21. Swainson's Hawk Modeled Habitat and Nest Sites

02/19/13 S:\GRAPHICS-WORKING FILES\YOLO - Figures\Appendix

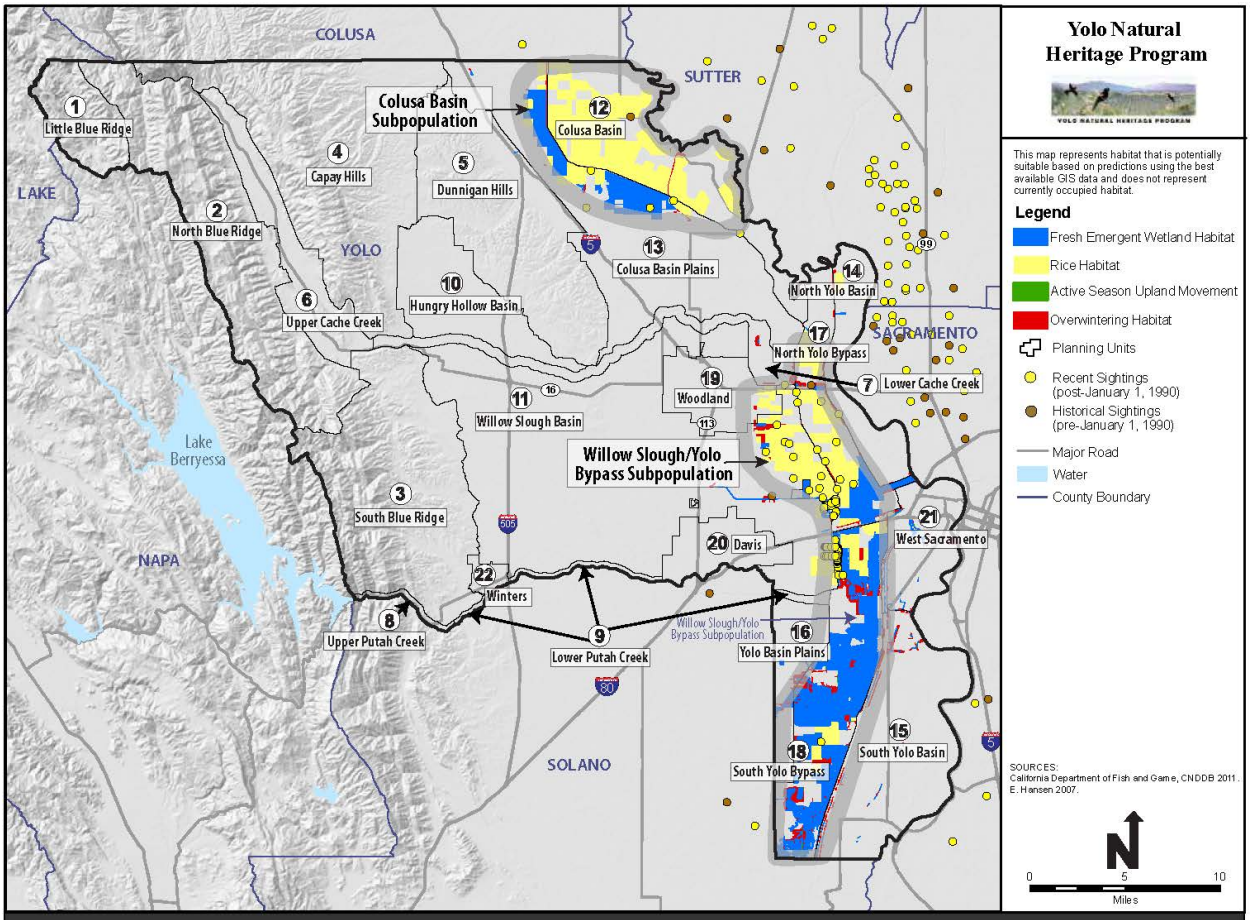


Figure A-19. Giant Garter Snake Modeled Habitat and Occurrences

Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County

"Working together on water and Delta issues"

April 16, 2013

The Honorable Michael L. Connor
Commissioner
Bureau of Reclamation
1849 C Street NW
Washington D.C. 20240-0001

Re: Yolo County's Proposed BDCP Governance Model

Dear Mr. Connor:

The Sacramento-San Joaquin Delta Counties Coalition (DCC) – a consortium of Contra Costa, Sacramento, San Joaquin, Solano and Yolo counties – supports "in concept" the attached draft Bay Delta Conservation Plan (BDCP) governance model prepared by Yolo County.

The DCC has consistently advocated for full, fair, and effective participation of the Delta Counties in the BDCP development and implementation process including involvement as voting members of the governance body developing and approving the BDCP. This model provides the Delta Counties with meaningful participation and control over both BDCP planning and implementation.

Also attached is a white paper prepared by outside counsel to Yolo County that describes historical agreements among local, state and federal government entities that allow for and require meaningful participation from county government officials in federal/state projects that will be planned and implemented in the affected counties.

We appreciate your ongoing engagement with the Delta counties and respectfully request that you integrate the Delta Counties into a meaningful BDCP governance role. We anticipate

making further refinements to this draft governance model and will keep you informed as we progress with these efforts.

Sincerely,

Mary Nejedly Piepho
Supervisor, Contra Costa County

Skip Thomson
Supervisor, Solano County

Don Nottoli
Supervisor, Sacramento County

Mike McGowan
Supervisor, Yolo County

Larry Ruhstaller
Supervisor, San Joaquin County

Enclosures (2)

cc: Dr. Jerry Meral, California Natural Resources Agency

Bay Delta Conservation Plan – Enhancing Local Control

(DRAFT – FOR DISCUSSION PURPOSES ONLY)

PREPARED BY
Yolo County

April 16, 2013

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BAY DELTA CONSERVATION PLAN GOVERNANCE-- ENHANCING LOCAL CONTROL

I. INTRODUCTION

Yolo County prepared this paper to describe a proposed Bay Delta Conservation Plan (BDCP) governance model that provides the Delta Counties (Sacramento, San Joaquin, Contra Costa, Solano, and Yolo) with meaningful participation and control over both BDCP planning and implementation. The Delta Counties Coalition (DCC) has endorsed the governance model proposed herein in concept and recently requested that Yolo County circulate this draft for review and comment.

The proposed governance model includes the following key elements:

- Executive Council. The Executive Council sits atop the organizational structure of BDCP governance entities. Its 11 voting members include senior federal and state officials (six total members), together with elected representatives of the five Delta Counties (five total members). The Executive Council also includes two non-voting seats reserved for representatives of the CVP and SWP contractors. The Executive Council would be responsible for both the completion of planning for the BDCP and the actual implementation.

- Technical Advisory Group (TAG). Appointed by the Executive Council, the TAG takes the place of the Adaptive Management Team described in the existing governance framework in Chapter 7 of the draft BDCP. It will begin work shortly after the Executive Council is formed, and its primary function is to provide the Executive Council with objective technical and scientific expertise from a range of disciplines to guide decisions relating to BDCP planning and implementation.

- Permit Oversight Group (POG). Also appointed by the Executive Council, the POG is responsible for evaluating compliance (post-BDCP approval) with BDCP permit terms and interacting with the Executive Council and TAG on related matters. As described herein, the POG would perform many of the same tasks as currently described in Chapter 7 of the draft BDCP (entitled "Implementation Structure).

- Program Manager. The Program Manager is to be retained by the Executive Council for day-to-day activities associated with BDCP implementation. The Program Manager interacts with the TAG and the POG, and also conducts public outreach (including management of the Coordinating Council).

- Coordinating Council. The Executive Council also appoints a Coordinating Council to serve as a stakeholder forum that facilitates regular information sharing, feedback, and some measure of broader public influence in the BDCP planning and implementation process. Like the POG, the Coordinating Council is currently

described in Chapter 7 of the draft BDCP (denominated therein as a stakeholder council).

In comparison with the governance framework currently described in Chapter 7 ("Implementation Structure") of the draft BDCP, the proposed model does not merely envision "governance" as something that begins after BDCP is fully approved. Rather, the proposed model establishes a governance structure that applies to both BDCP planning and implementation. In this respect, the proposed model addresses the current absence of local government participation in the BDCP planning effort, which is governed solely by the January 2012 Memorandum of Agreement between various agencies and the water contractors. Additionally, the proposed model greatly strengthens the role of local governments in BDCP implementation. It gives the Delta counties a prominent position within the lead governance entity, the Executive Council, rather than consigning the Delta counties to membership with dozens of other entities and the general public on a "stakeholder council." These changes respond to fundamental problems with the BDCP that must be addressed, whether by advancing the approach described in this paper or otherwise.

Presently, the Delta counties seek feedback on the composition and general role of the proposed Executive Council in BDCP planning, approval, and implementation. The composition and role of other subordinate governance entities described in this paper remains conceptual and is subject to further refinement. With that caveat, comments on those entities and their functions are also welcomed.

II. GOVERNANCE ENTITIES: COMPOSITION AND ROLES.

A. BDCP Executive Council (EC)

Consists of eleven voting members from federal (3) and state (3) agencies and elected local governments (5). Two non-voting seats will also be held by CVP and SWP water contractor representatives.

(1) Members are: BOR, USFWS, NMFS, Delta Conservancy, Department of Water Resources, Department of Fish and Wildlife, and Yolo, San Joaquin, Sacramento, Solano, and Contra Costa Counties. Two representatives of the CVP and SWP contractors will also participate in a non-voting capacity.

(2) Engages in BDCP planning and environmental review, supported by appropriate staff and consultant expertise (including the Technical Advisory Group). Ultimately, in addition to the individual agency actions necessary for BDCP approval as an HCP/NCCP under federal and state laws, the EC votes as a group to approve the final BDCP.

(3) During BDCP implementation, the EC receives all substantive information from the Technical Advisory Group, the Permit Oversight Group, and the BDCP Program Manager.

(4) EC provides input to the BDCP implementation process through Technical Advisory Group and Permit Oversight Group.

(5) EC decides policy regarding BDCP, including decisions on the allocation of resources, the priority of capital improvements, how the BDCP Program Manager's office is staffed, the staff qualifications, the scope of the authority of the TAG, the POG and the Program Manager, and the budget.

(6) EC decides on implementation steps for BDCP, including review and approval of actions undertaken to implement conservation measures, adaptive management, mitigation, and all related matters.

(7) EC votes on all significant matters concerning BDCP implementation, and proceeds by consensus or, where broad consensus is not achievable, by majority vote. Where federal or state agency proposal or action is involved, that agency does not vote, since it would be a conflict of interest for the responsible agency to vote on its own proposal.

(8) EC is authorized by federal and state legislation and funded by federal and state funds. EC will require an initial MOU or similar document to guide its organization and functions, as well as to provide a decisionmaking process that includes robust dispute resolution provisions (including the potential for resort to third-party mediation or other forms of alternative dispute resolution).

(9) EC appoints BDCP Program Manager and provides advice and direction to the Program Manager regarding office staffing. Each EC member also appoints a member of the Technical Advisory Group, the Permit Oversight Group, and the Coordinating Council.

B. BDCP Technical Advisory Group (TAG)

The TAG will provide relevant scientific and technical expertise to the EC, Permit Oversight Group, and Program Manager during BDCP planning, approval, and implementation. It is not a decisionmaking body, but instead provides advice by consensus. It will consist of individuals with scientific and technical qualifications in water resources, fisheries and wildlife, and agriculture (among other relevant disciplines). Each EC member will appoint one member of the TAG.

Some of the principal functions of the TAG may include:

(1) Identify special status species, not already identified in existing draft documents.

(2) Assemble additional baseline information on agriculture, hydrologic, geologic, habitat and special status species, not already assembled in existing draft documents.

(3) Develop and implement a continuing baseline monitoring program within the statutory Delta and any other areas affected by the BDCP.

(4) Create and operate a computer model of the BDCP, including both an accounting model for the movement of water and a predictive model for impacts from BDCP decisions on agriculture, water resources, species and habitat.

(5) Identify representative sample of indicators to monitor and establish early signs of adverse effects on agriculture, water resources or species.

(6) Develop a monitoring plan for detecting adverse effects to agriculture, water resources and species.

(7) Identify and seek funding for research projects to help characterize relationship among agricultural, water and biological resources.

(8) Specify procedures for data management, sharing, analysis and reporting.

(9) Coordinate with the Permit Oversight Group.

(10) Develop recommendations to mitigate unreasonable effects on agriculture, water resources and species from individual projects that implement the BDCP, especially where such mitigations were not fully identified or developed during the EIR/EIS process.

(11) Monitor success of mitigation efforts and propose any changes to increase mitigation effectiveness or otherwise adjust mitigation for consideration by EC.

C. BDCP Permit Oversight Group (POG)

The POG is responsible for overseeing compliance with BDCP permits and approvals, including Section 7 and Section 10 permits under the federal ESA. Its members are appointed by the Executive Council (one each). Some of its principal functions may include:

(1) Using baseline information from the TAG to monitor status of species.

(2) Developing and implementing monitoring programs to ensure that reasonable and prudent measures and terms and conditions of the incidental take permits are met.

(3) Consulting with the TAG on water resource issues related to indicator species.

(4) Preparing monitoring reports on species status.

(5) Making recommendations to the Executive Council on conservation measures related to BDCP implementation.

D. BDCP Coordinating Council

The Coordinating Council will serve as the public outreach and information sharing arm of the BDCP governance structure. Its members will consist of EC member appointees, stakeholders, environmental groups, together with other NGOs, scientific organizations, university professionals, water districts, and other local governmental entity representatives. Some of its principal functions may include:

(1) Receiving periodic reports and updates from the BDCP Program Manager, TAG and POG.

(2) Reviewing and providing comments on all technical and policy related information used by the BDCP Program Manager, TAG and POG.

(3) Commenting, both individually and as a group, upon proposals, actions and recommendation related to implementation of BDCP.

E. BDCP Program Manager

The BDCP Program Manager is responsible to the Executive Council for overall implementation of BDCP and permits in accordance with Council direction. The Program Manager will retain and manage appropriate staff and consultant expertise to (a) prepare and oversee the BDCP budget; (b) prepare and oversee work plans; (c) coordinate closely with the TAG and POG on implementation recommendations and other matters; (d) prepare reports on compliance and progress of implementation; and (e) work with the Coordinating Council to provide information, receive comments, and provide responses.

WHITE PAPER Re: MODELS FOR GOVERNANCE TO BE USED IN BAY DELTA CONSERVATION PLAN

April 12, 2013

Yolo County has requested a Paper that describes various historical agreements among local, state and federal government entities that allow for and require meaningful participation from county government officials in federal/state projects that will be planned and implemented in the affected counties. Based on the research we have done, there are many examples where federal and state agencies have entered into agreements with counties and other local governments that require meaningful participation in decisions for planning and implementation of these projects. Many times the participation includes voting rights for counties on matters that come before an executive council charged with overall responsibility for the project.

This Paper will first review various authorities that require federal and state agencies to work cooperatively with the counties and other local government entities and to provide them meaningful participation in federal or state projects undertaken within their boundaries. The Paper will then review some examples of agreements where federal and state agencies have engaged with local government in planning and implementing a project. The specific examples I have chosen are: 1) Truckee River Operating Agreement; 2) Klamath Basin Restoration Agreement; and 3) Coyote Springs Memorandum of Agreement

INTRODUCTION

The purpose of this Paper is to describe various models that have been used in the past by federal, state and local governments in managing projects or initiatives where the interests of all three entities are involved. Yolo County (and other affected Delta counties) is interested in taking a more proactive role in the decision making associated with the Bay Delta Conservation Plan (BDCP). The BDCP involves many different aspects of water resource management in and around the Bay/Delta. All of these activities have the potential to impact local governmental entities. It is important in these federal and state processes that local government is not overlooked, and that the concerns of the local populace, who may be most affected by these decisions, be included not only by public comment, but that their elected representatives have a meaningful input to the planning process and implementing decisions.

Federal and state agencies are sometimes reluctant to allow meaningful local participation in the decision making process for a variety of reasons. Those reasons may be policy-based, budget-based, or authority-based to name a few. Overcoming these objections, however, is possible where the need for an inclusive, credible approach supports having the local government at the table assisting, as opposed to having the local government on the outside criticizing the actions. It takes a commitment on both sides to work by consensus and only when the position of a local government is truly incompatible with legitimate federal or state policies or interests should there be a recognition that the local government's position cannot be accommodated.

Many times the source of the inspiration for cooperation between federal, state and local governments on a major project comes from the United States Congress. The Congress has recognized in the context of the National Environmental Policy Act that the cooperation of local government is absolutely necessary to accomplish the environmental goals and project goals that are authorized. So for example, 40 CFR 1501.6, 1506.2 and 1508.5 all address the question of cooperating agencies and encourage close cooperation between the federal agency and local agencies, especially for the purposes of avoiding duplication and to allow for joint planning.

The Federal Land Policy Management Act also contains specific direction to the Secretary of Interior to allow for the participation of state and local government in the commenting on the formulation of standards and criteria for the execution of the Secretary's plans and programs, but also to require the Secretary to allow state and local government the opportunity to participate in the preparation and execution of such plans and programs. 43 U.S.C. §§ 1712(c)(9), 1739(e). The Secretary must also establish advisory councils of ten to fifteen members appointed by the Secretary from representatives of the various major citizens' interests concerning land use planning in the area where the public lands are located. At least one of the representatives shall be an elected official of general purpose government serving the people in the area. 43 U.S.C. § 1739(a).

The federal Endangered Species Act (ESA) also requires cooperation with state and local agencies to resolve water resource issues in concert with conservation of endangered species. The ESA states: "It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species." 16 U.S.C. § 1531(c)(2).

There are also federal regulations that require coordination and consultation with state and local agencies to reduce duplication between NEPA and state and local requirements. The cooperation extends to: 1) joint planning processes; 2) joint environmental research and studies; 3) joint public hearings; and 4) joint environmental assessments. 40 C.F.R. § 1506.2. Moreover, this section directs federal agencies to cooperate with state and local agencies to the fullest extent possible to reduce duplication of efforts. Subsection (d) of section 1506.2 states:

> To better integrate environmental impact statements into state and local planning processes, statements shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

Thus, there is significant authority requiring federal agencies to coordinate with Yolo County and, importantly, to substantively address inconsistencies with plans and laws that Yolo County has adopted.

Under California law, the Natural Communities Conservation Planning Act (Cal. Fish & Game Code §§ 2800 *et seq.*) (NCCPA) similarly requires coordination with local government in developing a Natural Communities Conservation Plan such as the BDCP. Indeed, the Legislature expressly found in adopting the NCCPA that:

> Natural community conservation planning promotes coordination and cooperation among public agencies, landowners, and other private interests[.] (Cal. Fish & Game Code § 2801(d).)
>
> and
>
> Natural community conservation planning is a voluntary and effective planning process that can facilitate early coordination to protect the interests of the state, the federal government, and local public agencies, landowners, and other private parties. (Cal. Fish & Game Code § 2801(f).)

Consistent with these findings, the NCCPA authorizes the California Department of Fish and Wildlife to enter into planning agreements for individual plans "in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species...." (Cal. Fish & Game Code § 2810(a).) Consistent with the holding in *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal. App. 4th 603, it is likely that these provisions of the NCCP would be read broadly to require meaningful involvement of affected local governments—and in particular, involvement by those local governments with "land use permit authority" over activities to be carried out pursuant to the BDCP.

As these statutes, regulations and cases illustrate, it is both necessary and appropriate for Yolo County to be included meaningfully in the planning and implementation of the BDCP, including any related governance structures.

EXISTING PROPOSAL FOR BDCP GOVERNANCE

The existing proposal for BDCP governance would relegate the counties to a fifty (50) member stakeholder group, including environmental groups, non-governmental organizations, and concerned citizens. The stakeholder group is designed as an informational forum where the BDCP Governing Body may, but is not obligated to, shareinformation about the BDCP planning and implementation process. The stakeholder group is not permitted to provide input or advice to the BDCP Governing Body because receiving such advice from the private citizens and other non-governmental groups would violate the Federal Advisory Committee Act. Including Yolo County in this stakeholder group does not meet either the letter of the spirit of the federal laws and regulations requiring meaningful participation by local governments in federal programs, nor would it fulfill state requirements under the NCCPA.

MODELS FOR BDCP GOVERNANCE

There are several models for BDCP Governance. They range from bodies where the parties receive only information to bodies where voting authority exists to actually decide how programs will be planned and implemented. Usually, there are several levels of governance, with the highest level consisting of elected officials from local government with appointed officials from state and federal agencies, along with Indian Tribes. This group is often called the Executive Coordinating Council. At the second level there is the Advisory Group or Council who actually makes decisions about the project, and where votes are actually taken. Many times it takes a supermajority (two-thirds) to pass an item. Below that are Technical Advisory Groups or Teams(TAG/TAT) which provide recommendations to the Advisory Council. The TAG consists

mainly of qualified scientists or professionals who can develop and evaluate alternatives for consideration and can also track progress.

Here are some examples.

1. Truckee River Operating Agreement

This agreement was mandated by 1990 federal legislation entitled: Truckee-Carson-Pyramid Lake Water rights Settlement Act, P.L. 101-618, 104 Stat. 3294, November 16, 1990. The act was designed to provide for a resolution of an Interstate Compact between California and Nevada and to create a new operating agreement on the Truckee River. The operating agreement or TROA was signed in 2008, but has not gone into effect.

The governing scheme consists of two layers of parties. First, the primary signatories are the United States, California, Nevada, Pyramid Lake Paiute Tribe of Indians, and the Truckee Meadows Water Authority (TMWA), a joint powers agency. TMWA consists of three governmental entities, Washoe County, City of Reno and City of Sparks, Nevada. These agencies have overall executive control over TROA. The Executive Committee of five, including the JPA, have the power to name and hire the Administrator of TROA, to set the budget, to provides plans for improving the reservoirs and to implement the water exchange programs. The other 20 signatories to TROA act more in an advisory capacity. The U.S. Congress has been funding the efforts of the major participants by providing $10M to $20M per year.

2. Klamath Basin Restoration Agreement

This Klamath Basin Restoration Agreement (KBRA) was negotiated by the Department of Interior and will require the remove of four dams in the Klamath Basin and restoration of the rivers for fisheries. The parties will be seeking federal funding and federal legislation to authorize their activities in a federal settlement act.

The governance provisions of the KBRA consist of three major tiers. First, the agreement establishes the Klamath Basin Coordinating Council. On this council are all the federal agencies, California, Oregon, Indian Tribes and the Counties of Klamath, Oregon, Siskiyou, Humboldt, and Del Norte, California. Conservation/Restoration Groups and Fishery Groups may also be represented. Despite its name, this Council is not designed to provide advice to the federal agencies. It is a coordinating body only. This is to avoid the Federal Advisory Committee Act (FACA) requirements, which are stringent.

The second tier is the Klamath Basin Advisory Council. This body consists of federal, state, local government, and Tribal representatives, who are the only voting members. The council must comply with the FACA. Other entities may participate in the Advisory Council, but they are not voting members. When a recommendation for a specific federal agency is being voted on, that agency becomes a non-voting member.

The third tier is the Technical Advisory Team (TAT). Any party with technical expertise may participate in the TAT. Funding is to be supplied through federal appropriations. The TAT is tasked to use the technical expertise of the parties with expertise in water resources and fisheries management to inform the implementation of the Agreement. The TAT makes recommendations to the non-federal agencies.

3. Coyote Springs Memorandum of Agreement

The Coyote Springs Memorandum of Agreement (MOA) relates to the Coyote Springs hydrologic basin in eastern Nevada. The agreement is among the Southern Nevada Water Authority, which is a joint powers authority of a number of local water districts in and around Las Vegas, and a political subdivision of the state of Nevada, the United States Fish and Wildlife Service (USFWS), the Coyote Springs Investment LLC, the Moapa Band of Paiute Indians, and the Moapa Valley Water District, also a local government entity. The purpose of the MOA is to allow for the protection and recovery of the endangered Moapa dace.

Under the governance scheme created by the MOA, the parties listed above have created a Hydrologic Review Team (HRT). Each party appoints two representatives to the HRT, including at least one with substantial formal training and experience in hydrogeology. The two HRT Representatives from each party have one vote on HRT matters. The HRT by consensus may offer voting or non-voting membership to others who may provide regional monitoring records and analyses to the HRT.

The objectives of the HRT are: 1) to identify opportunities and make recommendations for the purpose of coordinating and ensuring accuracy, consistency and efficiency in monitoring, other data collections, and analytical activities under a Regional Monitoring Plan; 2) to establish technically sound analyses of impacts on Muddy River Springs and Muddy River flows resulting from regional groundwater pumping; 3) to assess whether pumping restrictions should be adjusted; and 4) to adopt by consensus appropriate adjustments to pumping restrictions.

The Technical Representatives to the HRT provide an annual report to the HRT containing a well-documented analysis of regional pumping, and recommendations for pumping restriction adjustments.

If the HRT cannot agree on annual determinations for pumping restrictions, then the matter may be referred to a peer review group of qualified scientists, having substantial formal training in hydrogeology. The makeup of the panel may be from the U.S. Geological Survey, the Desert Research Institute and a private firm with the requisite qualifications, appointed by the majority of the parties to the HRT. Funding for the HRT is provided by each of the parties in equal shares.

CONCLUSION

The goal of the governance scheme for BDCP should be to allow maximum participation and meaningful input for local government entities like Yolo County, much like the Klamath model, with federal or other outside funds supporting the activities. The BDCP planning process should be fundamentally reorganized to allow Yolo County (and other Delta counties) to to participate in a meaningful manner as the federal law provides. As reflected in the proposed governance model developed by the County, this should also carry over into the implementation phase of the BDCP to ensure full and meaningful participation for Delta local governments.

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