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July 29, 2014

Secretary Sally Jewell
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240

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

Re: Comments on the Public Draft EIR/EIS for the Bay Delta Conservation Plan

Dear Secretary Jewell and Secretary Laird:

This letter describes the County of Yolo's ("County") principal concerns with the Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS") for the Bay Delta Conservation Plan ("BDCP"). Additional comments are also included in a table enclosed with this letter (**Attachment 1**).

The County recognizes the inherent difficulty of preparing a legally adequate EIR/EIS for a complex program like the BDCP, with many elements described only conceptually for implementation throughout a large geographic area. Perhaps as a consequence of these characteristics of the BDCP, the Draft EIR/EIS is both tremendously voluminous—nearly 40,000 pages in length—and very difficult to understand. Beyond the problems presented by its sheer volume and complexity, however, the Draft EIR/EIS is also incomplete and does not properly inform decision-makers and the public about the potentially significant environmental effects of the BDCP—a fundamental requirement of both the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). This basic deficiency manifests itself repeatedly throughout the document and has numerous apparent causes, ranging from the misapplication of programmatic environmental review standards to simply using data that is outdated, wrong, or otherwise faulty.

The County's comments focus on these shortcomings and, where possible, offer recommendations for consideration. At least some of the problems identified in the County's comments will require further analysis and—in all likelihood—substantial revisions to the Draft EIR/EIS and recirculation for additional public review. The County reserves the right to provide additional comments on the legal adequacy of the Draft EIR/EIS (as well as the Response to Comments) prior to a final decision on adoption of the BDCP. The County also incorporates

herein by this reference its comment letters dated April 16, 2012 (**Attachment 2**) and July 12, 2013 (**Attachment 3**) on administrative drafts of the EIR/EIS, as well as its April 5, 2010 letter identifying several key issues for consideration with regard to Conservation Measure 2 of the BDCP (**Attachment 4**).

I. GENERAL ISSUES.

A. The Draft EIR/EIS Incorrectly Defers the Analysis of Many Issues By Misapplying Programmatic Environmental Review Standards.

In preparing these comments, the County fully considered the “programmatic” nature of the Draft EIR/EIS with respect to Conservation Measures (“CM”) 2 through 22 of the BDCP. 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.”¹ In short, 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].”² The level of detail in the Draft EIR/EIS must therefore reflect—at a minimum—the level of detail in the BDCP. Similarly, both project-level and programmatic environmental analyses must include “accurate, stable, and finite” project descriptions.³ 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.

As the County asserted in its July 12, 2013 comment letter addressing a preliminary version of the Draft EIR/EIS, projects necessary to implement the BDCP and related environmental effects should receive full environmental review at the outset, as part of the EIR/EIS on the BDCP, rather than in separate documents that may follow years (and in some cases, decades) later. The County previously explained as follows:

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. . . . 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 . . . 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. (See discussion at p. 3 of Attachment 3 hereto).

¹ In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal.4th 1143, 1162 (2008).

² In re Bay-Delta, 43 Cal.4th at 1176, citing CEQA Guidelines § 15146.

³ Rio Vista Farm Bureau Center v. County of Solano, 5 Cal. App. 4th 351, 370 (1992).

These comments apply equally to the Public Review Draft EIR/EIS for the BDCP with respect to CM2.

Even beyond the context of CM2, the Draft EIR/EIS relies far too heavily on programmatic standards as justification for truncating the scope of environmental review. In a report to the Delta Stewardship Council entitled “How the Bay Delta Conservation Plan Addresses the Delta Reform Act’s Goals and Objectives” (May 2014) (the “Arcadis Report”), the consulting firm Arcadis advised the Council that “[t]he programmatic nature of conservation measures inhibits fully understanding and better mitigating impacts to agriculture, recreation, community character, and historical and archaeological resources in the Delta.” (Arcadis Report at p. 4.) In its “Key Recommendations for Consideration,” the Arcadis Report says “[t]he BDCP should more thoroughly identify impacts to agriculture, recreation, community character, and historical and archaeological resources in the Delta, and offer specific, feasible, and enforceable mitigation measures.”

These comments by an impartial, highly experienced consulting firm underscore the validity of the County’s concerns with the programmatic approach in the Draft EIR/EIS. Throughout the document, detailed consideration of the potential impacts of CM2-22 on agriculture and other resources is improperly deferred to later documents. Specific instances of this are noted throughout the County’s comments in the table accompanying this comment letter (see Attachment 1).

2. The EIR/EIS Baseline is Unclear, Outdated, and Otherwise Flawed.

Similar to the issues raised above, the County has previously objected to the use of an outdated “existing conditions” baseline for the Draft EIR/EIS that is tied to the February 13, 2009 publication of a Notice of Preparation (“NOP”) for the EIR/EIS. The County’s basic assertion was expressed in its July 2013 comment letter, as follows:

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. (See discussion at p. 3 of Attachment 3 hereto.)

These comments remain applicable to the Draft EIR/EIS with respect to its analysis of CM2 and more broadly. The very fact that CEQA Guidelines § 15125(a) uses the word “normally” suggests that there are circumstances where a baseline tied to conditions existing as of the NOP

release date is not appropriate. As expressed in Save our Peninsula Committee v. Monterey County Board of Supervisors, 87 Cal. App. 4th 99, 125 (2001), “[i]n some cases, conditions closer to the date the project is approved are more relevant to a determination of whether the project’s impacts are significant.” Other courts have reached similar conclusions:

Administrative agencies not only can, but should, make appropriate adjustments, including to the baseline, as the environmental review process unfolds. No purpose would be served, for example, if an agency was required to remain wedded to an erroneous course and could only make a correction on remand after reversal on appeal. (Citizens for East Shore Parks v. California State Lands Commission, 202 Cal. App. 4th 549, 563 (2011).

On these grounds, the baseline for the Draft EIR/EIS should have been adjusted (with corresponding changes to the text of its substantive chapters) to include conditions existing close in time to its release. The failure to use accurate and current data, including updated modeling and other information, constitutes a failure to proceed in the manner required by law.⁴ This is particularly true for the Central Valley Flood Protection Plan, as the superficial treatment of that program in the Draft EIR/EIS and its implications for flood protection, aquatic and terrestrial species, agriculture, and public safety presents a key example of the need for an updated baseline rather than one that is nearly five and a half years out of date.

The County thus requests that the Draft EIR/EIS include an updated baseline, consistent with the foregoing authorities, and that Chapter 4 (entitled “Approach to Environmental Analysis”) be substantially revised to fully and clearly explain the baseline used in the chapters that follow.

3. The Draft EIR/EIS Demonstrates that the BDCP Fails to Comply with the Delta Reform Act.

Of relevance to the BDCP, the Delta Reform Act dictates that the “coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Public Resources Code § 29702(a); Water Code § 85054.) This concept is not merely an afterthought. Rather, it appears repeatedly throughout the Delta Reform Act and shapes the basic responsibilities of the Delta Stewardship Council, Delta Conservancy, and the Delta Protection Commission.⁵ As a matter of law, an overarching strategy for achieving the coequal goals--which the BDCP certainly is--must therefore assure the protection and enhancement of these fundamental values and other

⁴ “If an EIR fails to include relevant information and precludes informed decisionmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred.” Save our Peninsula, 87 Cal. App. 4th at 128; see also Sierra Club v. State Board of Forestry, 7 Cal.4th 1215, 1236 (1994); Fall River Wild Trout Foundation v. County of Shasta, 70 Cal. App. 4th 482, 492 (1999); County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4th 931, 954 (1999); Public Resources Code § 21005(a).

⁵ In addition to Public Resources Code § 29702(a) and Water Code § 85054, language reflecting this concept also appears at (among other places) Public Resources Code §§ 32320(i) and 32322(a), as well as Water Code §§ 85020(b) and 85301.

objectives "inherent in the coequal goals" in the course of its implementation. (Water Code § 85020.)

The Draft EIR/EIS offers no such assurances. Appendix 3.I to the Draft EIR/EIS simply notes the requirements set forth above, asserts that the BDCP will contribute to the coequal goals, and says nothing substantive about how it "protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." The balance of the Draft EIR/EIS similarly fails to fully analyze related issues of concern, often dismissing the need for meaningful analysis on the basis that the level of review is "programmatic" (for CM2-22) or because mitigation measures (often legally deficient themselves) might purportedly reduce or eliminate certain impacts. The following sections of this letter identify a handful of related issue areas of greatest concern to the County.

II. COMMUNITY IMPACTS.

A. Community and Land Use Impacts Support Elimination of "West Alignment" Alternatives.

Particularly in the Clarksburg area (and for traffic and transportation infrastructure, within West Sacramento), the Draft EIR/EIS provides some analysis of environmental impacts that will affect community character and quality of life. The comment table enclosed with this letter provides detailed comments on many of these topics. Community noise, groundwater, and traffic issues are addressed specifically below, with noise also receiving focused consideration in an independent analysis performed for the County by Ascent Environmental (**Attachment 5**).

As a preliminary matter, however, the County is compelled to address certain land use issues described in Chapter 13 of the Draft EIR/EIS in connection with the west alignment alternatives (Alternatives 1C, 2C, and 6C). As shown in Table 13.4 of the Draft EIR/EIS, the west alignment alternatives conflict with--and will likely require the removal of--far more homes and structures than Alternative 4 or any of the other east alignment alternatives. For instance, each of the west alignment alternatives conflicts with an estimated 194 homes and 726 structures overall. By comparison, the east alignment included in Alternative 4 (the "preferred alternative") will conflict with only 19 homes and 81 structures overall. While even these figures are significant, they make clear that the west alignments will affect nearly 10 times more homes and other structures than Alternative 4. Other east alignments have the potential to affect considerably more homes and structures than Alternative 4, but even the worst of these (Alternatives 1B, 2B, and 6B) impacts only about 50-60 percent of the number of homes and structures that would be affected by the west alignments.

The temporary and permanent conversion of farmland is also considerably greater under the west alignments than under Alternative 4 and some of the other east alignments. For example, under Alternative 1C, an estimated 3,170 acres of farmland in Yolo County will be temporarily converted due to construction impacts and an additional estimated 13,014 acres of farmland will be permanently converted due to conveyance infrastructure and related facilities. Much of this land is prime farmland, and about half of it is currently subject to Williamson Act contracts. As shown in Table 14-8 of the Draft EIR/EIS, however, Alternative 4 will convert only an estimated

1,315 and 4,975 acres of farmland temporarily and permanently--about 1/3 of the amount that would be affected by any of the west alignments.

On these grounds alone, the west alignments should be dismissed from consideration. That said, even if Alternative 4 or another east alignment is chosen, community impacts within Clarksburg and West Sacramento (traffic/roads) will be significant. Several key community concerns and issues relevant to the Draft EIR/EIS--including but not limited to Alternative 4 and other east alignments--are discussed in subsections B-D, below.

B. Community Noise Impacts are not Properly Characterized.

Under Alternative 4 (the preferred alternative), the Draft EIR/EIS indicates that BDCP intake construction is expected to have significant noise impacts on 110 parcels (including 9 residential parcels) during daytime hours, and 179 parcels (including 70 residential parcels and the Clarksburg Middle School) during nighttime hours. Yet even these figures may underestimate actual noise impacts. As explained in the Ascent Environmental memorandum enclosed herewith, the noise standards employed in the Draft EIR/EIS do not appear to be entirely appropriate for characterizing noise impacts on sensitive receptors such as small rural communities. The accuracy of noise attenuation calculations and assumptions (e.g., the use of "soft ground" in calculating attenuation, rather than attenuation rates based on actual physical conditions) also appears to understate the level of noise impact and the number of residential parcels and other sensitive receptors that may be impacted. Further, the mitigation measures proposed to address traffic-related noise are insufficient and may not lead to any reduction in noise impacts.

The County respectfully requests a response to each comment raised in the Ascent Environmental memorandum, and incorporates that memorandum herein by this reference.

C. Community and Agricultural Groundwater Impacts Require Further Analysis and Enhanced Mitigation.

The Draft EIR/EIS describes groundwater impacts resulting from construction and operation of the new conveyance facilities (i.e., intakes, pipelines/tunnels, forebays), primarily due to dewatering activities that facilitate construction. Groundwater impacts resulting from construction are a potential issue in the Clarksburg area, though to a considerably lesser extent (under Alternative 4 and other eastern alignment alternatives) than in Sacramento County. The Draft EIR/EIS notes that in some instances, well yields may be affected substantially and shallow agricultural or domestic wells "may not be able to support existing land uses" while dewatering is occurring.

As explained in the attached comment table, the Draft EIR/EIS does not appear to fully account for the highly variable nature of groundwater aquifers. It instead assumes effects will be distributed uniformly outward from the dewatering operation. In reality, the effects will likely vary greatly across affected aquifers and potential effects in Clarksburg could be more (or less) significant than described in the Draft EIR/EIS. This factor is an important limitation on the accuracy of the analysis in the Draft EIR/EIS and should be explained clearly and fully. Much

more local involvement in developing and implementing related monitoring and mitigation is also necessary and appropriate.

D. Local Traffic and Road Mitigation Measures are Inadequate.

The Draft EIR/EIS devotes considerable attention to traffic impacts—including increased vehicle trips and reduced pavement integrity—during the construction phase of BDCP. Construction traffic impacts will be significant in West Sacramento and on some roads near the town of Clarksburg. In some instances, road segments will operate at "unacceptable" levels of service for 9-13 hours each day during construction (e.g., Industrial Blvd./Lake Washington Blvd., from Harbor Blvd. to Jefferson Blvd., and Jefferson Blvd. at West Sacramento City Limits to Courtland Road). Several local road segments will also experience significant levels of pavement deterioration due to construction traffic, requiring repairs or reconstruction.

The mitigation measures proposed to offset these impacts are merely run of the mill "fair share" provisions that purport to obligate the BDCP proponents to pay for part of related road improvement, repair, and reconstruction costs, with local governments expected to contribute the remainder. Needless to say, in many instances this will prove infeasible.

III. OTHER SPECIFIC ISSUES.

A. Agriculture and Agricultural Economic Impacts.

The County has previously expressed a wide range of concerns with the agricultural and agricultural economic impacts of BDCP and the treatment of those issues in earlier versions of the Draft EIR/EIS. (See Attachment 2 at p. 3, and Attachment 3 (Attachment 1 thereof).) Similarly, County staff have commented on a draft discussion paper on "BDCP and Delta Farmland." (Attachment 6 hereto). These concerns remain applicable to the current Draft EIR/EIS.

With regard to agricultural impacts, the Draft EIR/EIS continues to sidestep virtually all analysis of CM2-22 by referencing its "programmatic" treatment of those components of the BDCP. The following statement is typical of the analysis in Chapter 14 (Agricultural Resources):

The new inundation schedule [for CM2] could substantially prevent agricultural use of these lands. The amount of agricultural land potentially affected by these and related activities (up to 17,000 acres) suggests the potential for an adverse effect on agricultural resources; however, the extent of these effects is unknown at this point and will be analyzed in forthcoming documents (Draft EIR/EIS, Ch. 14, p. 14-55.)

Certainly, the potential for adverse effects is more than a mere "suggestion" that can properly be deferred for future analysis. As explained in the County's discussion of programmatic environmental review, above, CEQA Guidelines § 15146 states that 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.” The specificity required for the environmental analysis of CM2, accordingly, must correspond to the very specific description of CM2 in the BDCP itself.

The County certainly recognizes that CM2 may evolve substantially from its current description in the BDCP during project-level planning. That does not, however, legally excuse a complete analysis of the measure in the Draft EIR/EIS. An appropriate analysis would include consideration of its estimated conversion of farmland—both directly and indirectly as a result of the decline in economic viability in agriculture on affected lands—and assess related environmental and socioeconomic effects. Put simply, that analysis can and should proceed now rather than years later.

This basic point also appears in the comments of the Delta Independent Science Board (“ISB”), created by the Delta Reform Act of 2009 to support the work of the Delta Stewardship Council. In a May 15, 2014 report to the Delta Stewardship Council, the ISB critiqued Chapter 14 of the Draft EIR/EIS as follows:

This is mostly an acreage analysis, and omits most relevant economic analysis. Quite a bit of economic analysis capability is available for agricultural land and economic issues in the Delta, Yolo Bypass, and the Central Valley—very little of it has been used in the DEIR/DEIS. . . . For crop inundation in the Yolo Bypass, there is a nice study led by Dr. Howitt quantifying these effects in general. This study is cited, but its results are not employed to give more precise economic impacts. . . . Even though specific locations for habitat restoration have not been specified, it is still possible to come up with a reasonable range of likely agricultural and agricultural economic impacts. Several reasonable estimation methods are readily available. (ISB Report at p. B-60, emphasis added [available at <http://deltacouncil.ca.gov/science-board/delta-isb-products>].)

While it is legally important to perform further work on these issues, such work is also essential to the credibility of the BDCP. Farming, as the ISB report notes at p. B-59, is the primary economic activity in the Delta. As such, the analysis of CM2 and other measures with the potential to affect agriculture deserve a straightforward and detailed assessment in the EIR/EIS rather than deferral for consideration at some uncertain point in the future. The County reiterates the suggestions for additional study and analysis set forth in its April 16, 2012 letter addressing certain preliminary draft chapters of the Draft EIR/EIS.

B. Recreation and the Yolo Bypass Wildlife Area.

In its July 12, 2013 letter commenting on an earlier draft version of the Draft EIR/EIS, the County expressed a number of concerns with the impact analyses relating to the Yolo Bypass Wildlife Area (“YBWA”). (See Attachment 3 at p. 4.) Those comments remain fully applicable to the current Draft EIR/EIS, including but not limited to Chapter 15 (Recreation).

In particular, as with impacts on agriculture, the EIR/EIS should specifically evaluate the impacts of CM2 on the Yolo Bypass Wildlife Area (“YBWA”) and its recreational amenities. As discussed in the enclosed comment table, the Draft EIR largely neglects these issues and

provides a number of mitigation measures that are vague, uncertain, and otherwise flawed both analytically and legally. A good example is the following statement in Chapter 15:

BDCP proponents and agencies will work with CDFW to provide alternate public hunting opportunities and access and address additional management costs resulting from increased inundation of the Yolo Wildlife Area resulting from CM2. Additionally, environmental commitments are available to reduce the effects of inundation on upland recreational opportunities. (Draft EIR, Ch. 15, p. 106.)

The balance of the text, however, does not explain what it may mean for BDCP proponents to “work with” CDFW to address access and increased costs. Nor does it offer any “environmental commitments” aside from a single statement in an appendix indicating that the YBWA could compete with a host of other recreational areas for an as-yet undetermined amount of recreational funding. Yet on the basis of this statement (and other equally dubious grounds), the Draft EIR/EIS somehow concludes that impacts on “upland recreational opportunities” within the YBWA will be less than significant. Certainly, more is required to support this conclusion.

Altogether, the content of Chapter 15 is legally inadequate with respect to the YBWA and otherwise. In revising Chapter 15, in addition to providing additional substantive analysis of potential impacts, the County encourages the BDCP proponents to develop additional, specific mitigation measures to address potential recreational impacts consistent with recommendations provided in the Arcadis Report (see pp. 17-18.)

C. Clarksburg Fire Protection District.

The County incorporates herein by reference the comments of the Clarksburg Fire Protection District on the Draft EIR/EIS (provided by the District under separate cover). As the District asserts in its comments, the Draft EIR/EIS fails in numerous respects to adequately characterize emergency response issues and inform the public of the potentially significant effects of the BDCP—particularly CM1—on the District and other emergency service providers. The District also provides comments on a range of other issues, including community cohesion, socioeconomics, and transportation facilities, which are equally relevant. The County supports and shares the District’s concerns and urges the BDCP proponents to respond thoroughly to the issues raised in the District’s comment letter.

IV. RECIRCULATION IS REQUIRED.

CEQA Guidelines § 15088.5(a) requires recirculation of a Draft EIR when “significant new information is added” The Draft EIR/EIS’s truncated review of CM2-22, its failure to incorporate an updated baseline, and many of the other issues noted in this letter (and other accompanying documents) necessarily require substantial edits and recirculation. Additionally, the entire document should be revised for the sake of clarity and simplicity. 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 (as suggested in the County’s July 12, 2013 letter at p. 7).

Recirculation of the Draft EIR/EIS should include a public review period that is commensurate with the scope of the changes. To the extent feasible, the revised document should identify specific changes made in response to public comments to ease the burden on reviewing agencies and the public generally.

V. MISAPPLICATION OF HABITAT CONSERVATION PLAN AND NATURAL COMMUNITY CONSERVATION PLAN LAWS.

The BDCP misrepresents the nature of the new conveyance facilities and related physical and operational features by casting them as “Conservation Measure 1.” As made clear in the Draft EIR/EIS, the “effects analysis,” and other elements of the public review draft BDCP, CM1 will have a broad range of adverse environmental effects and it is in no sense appropriately included in an HCP/NCCP. At best, it is environmentally beneficial only in comparison with the “status quo” operation of the existing Central Valley Project and State Water Project facilities, and its hypothesized benefits extend only to aquatic species. There is no question that, by comparison to the status quo, many terrestrial species will be worse off as a consequence of CM1.

The Federal Endangered Species Act provides, in part, that if incidental take of endangered and threatened species will occur and a HCP is prepared,

- (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;**
- (iii) the applicant will ensure that adequate funding for the plan will be provided;**
- (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild[.]**

16 U.S.C. § 1539, emphasis added.

The California Endangered Species Act also provides, in part, that the NCCP required for incidental take of endangered and threatened species must contain conservation measures that provide:

- (A) Conserving, restoring, and managing representative natural and seminatural landscapes to maintain the ecological integrity of large habitat blocks, ecosystem function, and biological diversity.**
- (B) Establishing one or more reserves or other measures that provide equivalent conservation of covered species within the plan area and linkages between them and adjacent habitat areas outside of the plan area.**

(C) Protecting and maintaining habitat areas that are large enough to support sustainable populations of covered species.

(D) Incorporating a range of environmental gradients (such as slope, elevation, aspect, and coastal or inland characteristics) and high habitat diversity to provide for shifting species distributions due to changed circumstances.

(E) Sustaining the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the habitat areas within the plan area.

Cal. Fish and Game Code § 2820, emphasis added.

On this basis, including the new conveyance facilities and related features within the BDCP is a misuse of the HCP and NCCP laws. “If a HCP fails to mitigate and minimize harm to the species “to the maximum extent practicable”—because the applicant rejected another alternative that would have provided more mitigation or caused less harm to the endangered species *and* FWS determine[s] in its expert judgment that the rejected alternative was in fact feasible—then FWS cannot approve the application for an ITP using that less protective proposal.” Southwest Center For Biological Diversity v. Bartel, 470 F.Supp.2d 1118, 1158 (S.D.Cal., 2006).

Just as an airport expansion that converts wetlands to infrastructure and open fields with increased foraging value for protected raptors cannot properly be cast as a “conservation measure,” CM1 is not a true conservation measure, as constructing and operating a water conveyance facility will create more harm to terrestrial species than it will protect, as intended under the statutes and it should be removed from the BDCP. The Federal Fish and Wildlife Service’s Habitat Conservation Planning Handbook provides guidance on the form of mitigation measures:

“They should address specific conservation needs of the species and be manageable and enforceable. Mitigation measures may take many forms, including, but not limited to, payment into an established conservation fund or bank; preservation (via acquisition or conservation easement) of existing habitat; enhancement or restoration of degraded or a former habitat; establishment of buffer areas around existing habitats; modifications of land use practices, and restrictions on access. Which type of mitigation measure used for a specific HCP is determined on a case by case basis, and is based upon the needs of the species and type of impacts anticipated.”⁶

These guidelines do not allow for construction of a facility that will create more adverse environmental effects than without implementation of the conservation measure. In fact, each of the examples provided by the handbook demonstrate a protective and defensive measure that *addresses the needs of the species*. The current approach is publicly misleading and it sets a

⁶ <http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf>

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precedent for misapplication of laws intended to protect endangered, rare, and threatened species. Development projects and related infrastructure, particularly of the scale of CM1, are simply not conservation measures that will mitigate and minimize harm to endangered and threatened species or otherwise appropriately included in an HCP/NCCP as a matter of law.

* * *

The County appreciates the opportunity to comment on the Draft EIR/EIS. We look forward to your response to the issues and concerns raised in this letter.

Sincerely,



Don Saylor
Chair, Yolo County Board of Supervisors

Enclosures

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

ATTACHMENT 1

**REVIEW OF DRAFT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL
 IMPACT STATEMENT**

The following comments augment the comments provided in Yolo County’s letter dated July 29, 2014, including all enclosures thereto. In reviewing the comments below, a comment on an issue that recurs throughout a Draft EIR/EIS chapter—in connection with other BDCP alternatives or otherwise—should be read to apply equally to all such discussion.

CHAPTER-PAGE	ISSUE AREA	COMMENTS
<i>Chapter 3--Alternatives</i>		
General		<p>Chapter 3 of the Draft EIR/EIS describes and analyzes various alternatives as a means of attempting to satisfy CEQA Guidelines § 15126.6, which requires an EIR to describe a range of reasonable alternatives to the proposed project that would feasibly attain most of the basic project objectives <i>while also avoiding or substantially lessening its significant environmental effects</i>. There are at least three problems with Chapter 3.</p> <p>First, while Chapter 3 contains many different alternatives, this does not <i>per se</i> satisfy the legal requirement that it contain an adequate <i>range</i> of alternatives. The California Supreme Court has clearly stated that one of an EIR’s major purposes is to ensure that the lead agency thoroughly assesses all reasonable alternatives to a proposed project. (<u>Laurel Heights</u>, 47 Cal.3d at 406). The Draft EIR/EIS, however, does not include alternatives that focus on enhancing flow and other changes to provide a more natural flow regime, as previously proposed by the Delta Stewardship Council. In addition, with respect to CM2, no consideration appears to have been given to alternatives that propose a more modest floodplain restoration component (in particular, with an earlier end date to seasonal inundation). As a result, the approach leads the County to believe that the authors of the Draft EIR/EIS have predetermined that a major seasonal floodplain habitat restoration project in the Yolo Bypass should be adopted as a key part of the BDCP.</p> <p>Second, because CM2-22 are so vaguely defined in the Draft EIR/EIS and there is essentially no discussion of alternatives to those measures, it is difficult to evaluate whether the alternatives described in Chapter 3 (primarily in connection</p>

CHAPTER-PAGE	ISSUE AREA	COMMENTS
		<p>with CM1) avoid or substantially lessen the adverse environmental effects of CM2-22. This fundamental problem plagues the analysis throughout the balance of the document, compromising virtually every substantive chapter. A valid alternatives analysis is legally impossible in these circumstances.</p> <p>Third, as noted by Sacramento County in its comments, the Draft EIR/EIS should include an alternative focused specifically on reducing BDCP’s significant impacts on farmland. To comply with the Delta Reform Act, this approach could be carried a step further by including an alternative that focuses more broadly on reducing impacts to the Delta “as a place,” including but not limited to its agricultural resources. Consideration of such an alternative is particularly appropriate due to the legal requirement that the “co-equal goals” are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The Delta Protection Commission’s comment letter on the Public Review Draft EIR/EIS identifies issues that would inform the development of such an alternative.</p>
3-123/3.6.2.1	Description of Alternatives, including CM2	The last sentence of the first full paragraph should be amended to read as follows: “These activities would be coordinated, as appropriate, with USACE, DWR, Central Valley Flood Protection Board (CVFPB), and other flood management agencies, and Yolo County.”
<i>Chapter 4—Approach to the Environmental Analysis</i>		
General	Geographic Scope of the Study Area	As noted in the May 15, 2014 report entitled “Review of the Draft BDCP EIR/EIS and Draft BDCP,” prepared by the the Delta Independent Science Board (hereinafter, “ISB Report”) (available at http://deltacouncil.ca.gov/sites/default/files/documents/files/Attachment-1-Final-BDCP-comments.pdf) for the Delta Stewardship Council, the EIR/EIS fails to consider geographic areas downstream of the Delta, including the San Francisco Bay, even though there are several potential impacts such as those listed in the ISB report as well as other impacts that could arise from the use of the Port of San Francisco as a base for construction

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		<p>activity associated with CMI. The County incorporates herein by reference the ISB Report (e.g., p. B-13) and the comments of Sacramento County on this same issue. These areas should be included in the geographic scope of the EIR/EIS, including but not limited to the “baseline” for environmental analysis.</p> <p>Legally, EIRs are required to discuss the area that will be directly and indirectly affected by the project. CEQA Guidelines §§ 15126.2(a), 15360. This area must not be defined so narrowly that a significant portion of the affected environment is ignored in the analysis. <i>Bakersfield Citizens for Local Control v. City of Bakersfield</i>, 124 Cal. App. 4th 1184 (2004); <i>County Sanitation Dist. No. 2 v. Kern County</i>, 127 Cal. App. 4th 1544 (2005). For this reason, as noted on p. 4-7 of the Draft EIR/EIS, the relevant geographical area for CEQA purposes may be larger than the project area.</p> <p>The County’s basic objection, in sum, is that the defined study area is fundamentally inadequate for CEQA purposes.</p>
General	Outdated Baseline	<p>As set forth in the cover letter accompanying this matrix, the “existing conditions” baseline utilized for most analyses in the Draft EIR/EIS is generally outdated, arising from conditions existing as of the most recent NOP (February 13, 2009), and cannot properly be relied upon. This is a fundamental error that pervades many chapters of the Draft EIR/EIS and requires recirculation of the document following the completion of related studies and edits necessary to establish an updated baseline.</p> <p>Additionally, departures from the “existing conditions” baseline are not well explained. At p. 4-4, the Draft EIR/EIS notes that updated assumptions were used in some instances because it “made sense” and “would have been anomalous” to rely on existing conditions data for material such as the June 2009 biological opinion for salmonid species. These explanations do not sufficiently provide the lead agency’s reasoning for setting aside the “existing conditions” approach that “normally” applies under CEQA Guidelines Section 15126.2(a).</p> <p>Nor is the explanation provided for selectively using only some portions of the smelt and salmonid biological opinions sufficient to advise reviewers of the precise extent to which</p>

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		<p>the baseline is derived from those opinions, existing conditions, or some other metric. For instance, the discussion at p. 4-5 is confusing and does not clearly present a full explanation of the extent to which the biological opinions are integrated into the baseline for CEQA and NEPA analysis. This confusion is compounded by a statement on the following page (p. 4-6) indicating that while it may be legally permissible to use existing and future conditions baselines, “here DWR did not use dual baselines . . .” In fact, this is precisely what DWR did according to the immediately preceding text.</p> <p>The County also incorporates by reference the comments of Sacramento County on this topic (including but not limited to comments relating to omission of the Fall X2 salinity standard).</p>
4-11, 4-12, Appendix 3D, and generally	Omission of Central Valley Flood Protection Plan	<p>Consistent with the “Outdated Baseline” comments expressed above, the omission of the Central Valley Flood Protection Plan (CVFPP) in the definition of “existing conditions” is a serious deficiency. Fundamentally, the potential conflict (as well as potential synergies) between CM2 and CVFPP projects affecting the Yolo Bypass ought to be considered in the EIR/EIS and integrated into the planning and environmental review for both efforts. This is particular true in light of the fact that DWR is the lead CEQA agency for both the BDCP and the CVFPP; a lead agency should not ignore its own plans, programs, and policies covering a common geographic area in the course of defining “existing conditions” for the purposes of CEQA review.</p>
4-10 and 4-11	Temporary and permanent impacts	<p>The discussion on these pages explains the treatment given temporary and permanent effects in the Draft EIR/EIS, noting that in some instances, such as terrestrial biological resources, “impacts are treated as permanent, even though the impact mechanism would end following construction of water conveyance facilities” (i.e., after about nine years). The County believes this is a reasonable approach in the context of terrestrial biological resources and suggests consideration of extending this approach to agricultural resources, which can similarly be affected for extended periods of time in connection with CM1 and many other CMs included in the BDCP. At the very least, the decision</p>

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		not to extend this approach to other environmental impacts should be fully explained.
4-16	Use of MIKE-21 model	<p>The County has previously provided DWR and USBR with an independent analysis of the MIKE-21 model. The deficiencies of the MIKE 21 model used predict water surface elevation, flows, and average velocity in the Yolo Bypass (per p. 4-16) are well understood. The County has long advocated for corrections and other work to address these deficiencies, and there is no reasonable basis for disputing that such work could have occurred. In fact, a new model is now available (TUFLOW) that may substantially improve the accuracy of analysis within the Yolo Bypass, including effects related to CM2. This model should be integrated into the Draft EIR/EIS once it has been independently reviewed and any significant concerns are addressed.</p> <p>From a legal perspective, while perfection is not required (particularly in an area such as hydrodynamic modeling, where uncertainty always exists), agencies must nonetheless use their best efforts to find out and disclose all that can reasonably be expected. CEQA Guidelines §§ 15144, 15151. Relying on a faulty hydrodynamic model—particularly when its primary shortcomings can feasibly be addressed through application of a new model that is presently available—is inconsistent with this basic requirement. Even at a programmatic level of review, there is no sound basis for disclaiming any duty to develop and apply a reasonably accurate hydrodynamic model to the Yolo Bypass and utilize the modeling results in estimating potential effects on terrestrial species, agriculture, and other resources. Improved modeling was feasible (CEQA Guidelines § 15151) and would not have taken a significant amount of time to complete (compare <i>National Parks and Conservation Association v. Riverside County</i>, 71 Cal. App. 4th 1341 (1999)).</p>
Chapter 6—Surface Water		
Generally	Levees	As expressed in the ISB Report, the treatment of potential flood protection impacts in the EIR/EIS “does not measure up to their importance.” This is an issue that could influence

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		<p>both public health and safety within the project area and the success of the BDCP in meeting its stated objectives because of the influence of levees on water quality and ecosystem restoration.</p> <p>With regard to the latter issue, the BDCP appears to assume that levee failures will be promptly addressed. This is an encouraging but not entirely realistic assumption, particularly given the 50-year term of BDCP and the inherent uncertainties of climate change, levee maintenance funding, and related matters. This issue requires reconsideration and, in all likelihood, further substantive analysis in the Draft EIR/EIS.</p> <p>The County agrees with the ISB’s suggestion that the Draft EIR/EIS be revised to include a “comprehensive levee chapter” that brings all levee and flood protection issues into a single place for ease of review and comprehension. Such an important issue deserves focused treatment in the EIR/EIS.</p>
6-13	Yolo Bypass	<p>The text describes the Yolo Bypass as “about 40,000 acres” in size. The Yolo Bypass is considerably larger, occupying about 59,000 acres.</p> <p>Further down on the page (lines 25-32), the discussion about the frequency of Yolo Bypass inundation is inconsistent. The text states that “[e]very year, there is approximately a 33% chance of flooding in the Yolo Bypass, and flood flows generally occur during the winter months of December, January, and February.” A few lines later, the text states “[t]he bypass was inundated 46 years out of the 65 years between 1935 and 1999.”</p> <p>It is not clear why these figures are significantly different or if “flooding” is intended to mean something different than “inundation.” This text should be revised for clarity and, in particular, it should explain that overtopping of the Fremont Weir is not one in the same as “flooding” of the Yolo Bypass. Also, as part of the discussion of these figures, the EIR/EIS should discuss the reliability of Bypass flooding data prior to 1984. The County has long understood that pre-1984 data 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</p>

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		<p>conditions (1984-2009).</p> <p>The County incorporates herein by reference the discussion of this topic in its July 12, 2013 comment letter on the Second Administrative Draft EIR/EIS.</p>
6-20	Clarksburg	<p>The text states that “Clarksburg does not have official boundaries.” This is inaccurate, as the Town of Clarksburg has long had an established growth boundary. The current growth boundary is included in the 2009 Yolo County General Plan.</p>
6-63	Impact SW-8	<p>The discussion does not fully capture the potential for adverse impacts on flood protection associated with CM2, including its seasonal floodplain component. The Draft EIR should evaluate the potential public safety and property damage consequences of the proposed incremental increase in the frequency, duration, and amount of water diverted into the Yolo Bypass.</p> <p>This concern is supported by data in the Central Valley Flood Protection Plan showing that portions of the Bypass levees are already of “high concern” to the California Department of Water Resources. Similarly, the CVFPP states 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.</p> <p>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 Draft EIR/EIS. The cessation of agriculture is not, contrary to asserts elsewhere in the Draft EIR/EIS, purely or even primarily an economic issue.</p>
6-153	Cumulative impacts	<p>The cumulative analysis appears largely confined to water supply issues and merely mentions, without analyzing, the flood protection and levee issues that are within the scope of impacts SW-7 and SW-8 (or their cumulative analysis</p>

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		counterparts, SW-17 and SW-18) in this Chapter. Nor does this discussion address the Central Valley Flood Protection Plan or its proposal to expand the Yolo Bypass. These issues must be addressed in the Draft EIR/EIS and, in particular, the document must include substantial evidence to support the significance determinations for these impacts.
<i>Chapter 7—Groundwater</i>		
Generally		<p>The EIR/EIS analysis does not account for the highly variable nature of groundwater aquifers. It instead assumes effects will be distributed uniformly outward from the dewatering operation, as indicated in figures appearing in the EIR/EIS. In reality, the effects will likely vary greatly across affected aquifers and potential effects in Clarksburg and elsewhere in the study area could be more (or less) significant than described in the EIR/EIS.</p> <p>This factor is an important limitation on the accuracy of the analysis in the EIR/EIS and it should be explained in the document to enable reviewers to develop a clear understanding that the predicted effects may be considerably different than effects observed once construction activity begins. Additionally, the EIR/EIS should explain why additional field work to fully characterize potential groundwater impacts was not performed. A network of test wells in the vicinity of each intake could have provided highly useful information regarding recharge rates, groundwater flow, and related matters.</p>
7-31	Groundwater (Environmental Consequences)	The qualitative analysis of groundwater recharge from the canals fails to provide sufficient information regarding the range of recharge rates from different designs and fails to inform the public of the extent of the impact that could result from these different designs.
7-32	Groundwater (Analysis of Groundwater Conditions in Areas that Use SWP/CVP Water Supplies)	<p>Analysis excludes Sacramento Valley Groundwater Basin from discussion based on statement that potential for 2% increase in groundwater use in the Basin would not be substantial.</p> <ul style="list-style-type: none"> • There is no evidence to support that 2% increase would not be substantial and that increase needs to be

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		<p>related to current use to determine whether the increase has a potentially significant impact on groundwater supply</p> <ul style="list-style-type: none"> • The analysis acknowledges some locations do experience drawdown, but dismisses these locations without specifically identifying where they are or further analysis of the project’s impacts on drawdown in those areas • The analysis acknowledges there are circumstances under which significant impacts could result in the Sacramento Valley (if pumping is concentrated in a particular area), but does not identify the areas or provide analysis of the project’s impacts on such areas
7-33	Groundwater (Analysis of Groundwater Conditions in Areas that Use SWP/CVP Water Supplies)	<p>Analysis does not include a comparison of Existing Conditions (without sea level rise) to BDCP alternatives (without sea level rise). Similarly, there is no comparison of the No Action Alternative. Therefore, there is no analysis of the project’s independent impacts as compared to baseline conditions. The comparison of the No Action Alternative to the BDCP alternatives (both with sea level rise) allows for analysis of supply availability due only to the Project, but does not clearly distinguish between impacts attributable to the Project vs. those attributable to sea level rise. Thus, clear significance determinations and mitigation measures based on the Project are not included.</p> <p>Sea level rise should be included as part of the cumulative environment, but should not be embedded into the baseline or the Project. This approach prevents a clear articulation of the Project’s impacts. (See also, p. 7-34 “the precise contributions of sea level rise and climate change to the total differences between Existing Conditions and LLT conditions under each alternative cannot be isolated.”)</p>
7-35	Groundwater (Central Valley Hydrologic Model Methodology)	Model assumptions regarding the same deliveries for different types of conveyance per alternative and only one delivery time series results in incomplete analysis of distinctions between alternatives
7-38	Groundwater (Determination of	First bullet indicates conclusion of effects is based on potential to impact shallow wells. Although shallow wells

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	Effects)	are most likely to be impacted, the analysis and mitigation should ensure protection of all wells.
7-38	Groundwater (Determination of Effects)	Second bullet limits groundwater quality analysis to changes in flow that would result in poor groundwater quality migration. There is no analysis of other potential Project actions that could impact groundwater quality (e.g., construction activities).
7-38	Groundwater (Determination of Effects)	Fourth bullet does not address whether groundwater subsidence could occur in areas other than the Export Service Areas
7-41	Groundwater (No Action: Changes in Delta Groundwater Levels and Changes in Delta Agricultural Drainage)	Analysis of No Action Alternative concludes Delta groundwater levels would increase up to 5 feet, but concludes without analysis that this change would have only “minor” impacts on agricultural drainage. This issue needs further analysis, particularly in areas like Merritt Island and other areas with a shallow groundwater table.
7-43	Groundwater (No Action: Ongoing Plans, Policies, and Programs)	<p>There is no NEPA conclusion regarding the effects of the No Action alternative.</p> <p>The CEQA conclusion regarding the No Action alternative is unclear. On the one hand, the document concludes there would be significant impacts to groundwater resources in the Export Service Areas, yet the next paragraph concludes that ongoing programs and plans under the No Action alternative would not result in significant impacts to groundwater.</p>
7-48	Impact GW-1	<p>Groundwater modeling described in the EIR/EIS indicates that groundwater levels could be reduced in a "worst case scenario" for Alternative 1A by up to four feet in an areas south of the town of Clarksburg that lie directly across the river from Intake 1. The Draft EIR/EIS does not clearly describe the length of time it may take for wells to recover. This information should be provided, preferably based on modeling that accounts for observed flow and recharge rates of the affected groundwater basin.</p> <p>*This comment applies to all Alternatives that, similar to the analysis set forth for Alternative 1A, do not clearly describe the length of time it may take for groundwater wells to</p>

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		recover following construction.
7-48	Groundwater (Mitigation Measure GW-1)	<p>Mitigation to offset agricultural water supply losses provides either that alternative water supplies be provided OR compensation be provided to offset for production losses.</p> <p>Compensation for loss of production does not fully mitigate the agricultural impacts associated with loss of production.</p> <p>*This comment applies to all Alternatives that incorporate GW-1 as a mitigation measure.</p>
7-48	Groundwater (Impact GW-2)	<p>Discussion of NEPA effects addresses impacts to agriculture from groundwater encroaching on the ground surface in the vicinity of the new forebays. This is not identified as a CEQA impact, and should also be included in the CEQA analysis.</p> <p>*This comment applies to all Alternatives that result in agricultural impacts from groundwater encroaching on the surface in the forebay areas.</p>
7-50 (and related discussion in Alternatives 1C, 2C, and 6C)	Groundwater (Impact GW-5; Mitigation Measure GW-5)	<p>The analysis concludes operation of the project in the vicinity of the forebays could interfere with agricultural drainage in the Delta, and acknowledges that mitigation will not fully address the impact. This creates a significant and unavoidable impact to agriculture. The text of the mitigation measure is vague and uncertain in many respects, referring in one instance simply to unspecified mitigation that will be developed in cooperation with affected landowners on a case by case basis. While the mitigation measure also includes a (very general) performance standard, the text also indicates that this performance standard will be unrealistic and unachievable in some instances. Additional mitigation measures should be considered.</p> <p>As one example, while the analysis discusses lined versus unlined canals in some instances (e.g., in connection with Alternatives 1C, 2C, and 6C), the lining of canals is not itself presented as a mitigation measure to address adverse effects on agricultural drainage. Canal lining should be included as an additional mitigation measure in connection with CM1 infrastructure that may contribute to impacts within the scope of Impact GW-5.</p>

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		<p>* This comment applies to all Alternatives that result in significant and unavoidable impacts to agricultural drainage and/or that incorporate Mitigation Measure GW-5.</p>
7-52	Groundwater (Mitigation Measure GW-7)	<p>The measure is not clear and does not adequately address the impact. The mitigation must be clear and enforceable. In addition, the measure as written includes language that is not mitigation, but rather analysis and conclusion. Following are suggested revisions:</p> <p style="padding-left: 40px;">For areas that will be on or adjacent to implemented restoration components, groundwater quality shall will be monitored....For wells affected by degradation in groundwater quality, water of a quantity and quality comparable to pre-project conditions shall will be provided. Options for replacing the water supply could include drilling ...Construction activities are anticipated to be localized and would not result in change in land uses. The well drilling activities would result in short term noise impacts for several days. (Chapter 31 provides an assessment of the impacts of implementing proposed mitigation measures.)</p> <p>*This comment applies to all Alternatives that incorporate Mitigation Measure GW-7.</p>
Section 7.3.3 generally	Groundwater (Effects and Mitigation Approaches)	<p>Several of the Alternative analyses refer back to prior analysis for discussion of potential impacts. The cross-referencing is confusing and the information is not clearly presented. More importantly, however, throughout the section the analysis concludes that impacts will be “similar to” or “the same as” impacts of previously discussed Alternatives. There is no explanation of the distinction between impacts that are “similar to” or “the same as” previously disclosed impacts. Moreover, while indicating that impacts will be “similar to” or “the same as” previously discussed impacts, in many instances there is no conclusion regarding whether the same or similar impact will be significant or less than significant. This lack of information results in inadequate presentation of potential significance of the impacts of the various Alternatives.</p>
Generally	Mitigation	<p>The potential for unmodeled effects in the Clarksburg area under all of the Alternatives underscores the need for a</p>

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		<p>carefully designed monitoring program and, if feasible, a mutually agreeable approach to addressing impacts that occur. This could include, among other things:</p> <ul style="list-style-type: none"> • After BDCP approval but prior to construction, cooperate with the County to jointly retain a groundwater consultant to design an effective groundwater monitoring well system at the cost of the BDCP proponents. This is covered to a degree by the mitigation measures included in the Draft EIR/EIS, but public health and safety issues implicated by a reduction of potable water balances in favor of included the County in efforts to characterize and respond to problems that may arise. • In addition, a specific strategy for responding to any impacts that occur should be developed in consultation with affected jurisdictions prior to the commencement of construction. This should include, at a minimum, adequate arrangements for the provision of substitute water supplies for municipal and agricultural uses (as indicated in the EIR/EIS). <p>The County requests consideration of revised mitigation measures to incorporate these suggestions.</p>
<i>Chapter 8—Water Quality</i>		
Generally	North Delta water quality; narrow geographic focus	<p>The Draft EIR/EIS omits any information regarding water quality in the Yolo County portions of the north Delta. For instance, there is no discussion about surface water quality effects near Clarksburg, West Sacramento, or in the vicinity of the intake (under construction) for the Woodland-Davis Water Supply Project. No reason for the omission of this information is provided, yet it seems highly implausible that there are simply no water quality effects despite the proposed construction and operation of new facilities included in CM1 and various other changes in Delta hydrology in connection with CM2-22.</p> <p>Similarly, as noted by the ISB, the water quality analysis omits any discussion of potential impacts downstream of the</p>

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		<p>Delta despite recommendations by the National Research Council. (ISB comments, p. B-22.) This information should be included in the EIR/EIS, along with information relating to eutrophication and other water quality effects in the Delta and San Francisco Bay due to operation of the North Delta Intakes and CM2. On this point, the County incorporates by reference the comments of Sacramento County in its EIR/EIS comment letter and the comments of the ISB in its May 15, 2014 report (e.g., pp. 7-8).</p>
Generally	Mercury	<p>The County has previously expressed significant concerns about mercury and methylmercury, including but not limited to comments included in its 2013 comment letter and the attached comment table addressing Chapter 8 of the administrative draft EIR/EIS. Those concerns remain applicable to the draft EIR/EIS and are incorporated herein by this reference.</p> <p>The County has also 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, as 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 methylmercury and, in addition, specifically noting problems that currently exist in the Yolo Bypass.</p>
8-446	Mitigation for methylmercury	<p>Conservation Measure 12 is discussed as potentially addressing methylmercury on a project by project basis to minimize the impact of habitat restoration on methylation. 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.</p> <p>In addition, as noted separately by Sacramento County in its comment letter, the implementation language in CM12</p>

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		indicated that it will only apply to tidal wetlands restoration projects. This measure should be revised to apply to all conservation measures with the potential to have methylmercury impacts. This includes CM1 due to the potential for construction to disturb “[r]eservoirs of contaminants” (in the words of the ISB) that “could have detrimental impacts on organisms due to their tendency to bioaccumulate.” (ISB at p. B-24.)
8-766 (example)	Cumulative conditions	This is one example (among many) of the cursory nature of the cumulative impacts discussion for various water quality constituents. Referring to Conservation Measures 2, 4, 5, and 10, this text explains that “[t]he methylation of mercury in these restored wetland habitats would contribute substantially to the cumulative condition for mercury in the Delta.” This conclusion is not substantially augmented by other text appearing earlier or later in Chapter 8, leaving reviewers without a clear understanding of the potential environmental significance of this effect or its “real world” consequences.
8-771	CM2—mercury and methylmercury	The discussion on pp. 8-770 and 8-771 indicates that “[a]ppropriate strategies and control measures” for mercury, methylmercury, and selenium may include . . . [a]ppropriate consideration of conservation measure location, preferably not in the direct path of large mercury loading sources such as the Sacramento River, Yolo Bypass, Consumnes River, or San Joaquin River.” This is a baffling suggestion and, as the County previously stated in its April 16, 2013 comment letter, it calls into question the viability of CM2.
8-770 (example)	Mitigation measures	The discussion on p. 8-770 and throughout the discussion of mitigation in Chapter 8 indicates that (in this particular example) methylmercury mitigation shall be implemented on a project-specific basis if it is “practicable,” which is defined as “both feasible and reasonable from a cost-benefit perspective.” This is not a lawful standard for implementation of a mitigation measure. Rather, CEQA is clear that “feasibility” is the sole measure for evaluating whether a mitigation measure must be implemented. The term “feasible” is defined precisely in Public Resources Code Section 21061.1 and CEQA Guidelines Section 15364. This definition should be substituted for the terms “practicable” and “reasonable” in the discussion on p. 8-770 and elsewhere in Chapter 8 to ensure that mitigation standards conform to

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		CEQA requirements.
<i>Chapter 12—Terrestrial Biological Resources</i>		
12-7	Acreage totals; omission in other chapters	Table 12-ES-1 shows the number of acres of various types of land, including cultivated land, affected under each alternative. This is precisely the type of data that should be provided and analyzed in other chapters, including agricultural land, and its omission in such chapters underscores the basic problem created by overreliance on a programmatic approach to environmental review. The same goes for the total acres of land restored to habitat (83,839) and the total acres restored and protected (153,114), as set forth on p. 12-9. These figures are remarkable and should be an integral part of the analysis in the agricultural resources and socioeconomics chapters of the Draft EIR/EIS (among others). What is the basis for their omission?
12-8	Purpose of BDCP	The text states that the "principal intent" of the BDCP is to improve habitat conditions for covered species. This is not accurate and should be rephrased to refer to the water supply reliability objectives of BDCP.
12-124	Delta Plan status	Discussion of status of Delta Plan and associated EIR appears inaccurate, referring to adoption of the plan prior to the completion of environmental review.
12-157	Lower Yolo Restoration Project	The text refers to the "DWR Lower Yolo Restoration Project." The project proponent is the State and Federal Contractors Water Agency, not DWR. Also, the project size is only about one-half the total acreage (over 3,400 acres) mentioned in the text.
12-225 and 12-226	Managed Wetlands	The text discusses the potential loss of managed wetlands due to CM2 and other CMs. The impact analysis, however, does not capture the diminution in biological resource value due to CM2 implementation and its effect on managed wetlands in the Yolo Bypass. Various issues mentioned in the Ducks Unlimited study, incorporated herein by this reference (and discussed elsewhere in the Draft EIR/EIS), require attention. Consequently, the impact conclusion (less than significant) set forth a few pages later is flawed and likely inaccurate because it does not consider many relevant issues.

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12-229		The acreage figures for managed wetlands impacted by CM2 seem inaccurate, as the acreage totals decline as flow rates increase from 4,000 cfs to 8,000 cfs.
12-345 (and similar text)	Terrestrial species and methylmercury; mitigation efficacy	The discussion concludes that the effects of increased methylmercury exposure on the California black rail will be less than significant, citing the potential for project-by-project implementation of mitigation measures to "address the uncertainty of methylmercury levels in restored tidal marsh." However, the text two pages earlier (12-343) states that floodplain habitat restoration may also cause increases in methylmercury levels affecting the California black rail. The impact conclusion is thus unsupported by substantial evidence because it is confined to tidal marsh and, in addition, it relies on future mitigation measures of unknown content and efficacy. Rather than less than significant, the impact conclusion should be significant and unavoidable for these reasons (for the California black rail and other species where the impact conclusion is similarly flawed, such as the tricolored blackbird (p. 12-458)).
12-441 (and similar text)		<p>Repeatedly, the text in this chapter states that CM2 will result in Yolo Bypass inundation in no more than 30% of all years, as the Fremont Weir overtops in the remaining 70% of years. The text continues to explain that in more than 50% of all years under existing conditions, an area larger than the anticipated footprint of CM2 (a footprint conspicuously absent from virtually every other chapter in the Draft EIR/EIS) already floods. On this basis, the text concludes that habitat conditions for the Swainson's hawk will not change substantially following implementation of CM2.</p> <p>This analysis ignores the likelihood that increased duration of inundation will inhibit agriculture in the Yolo Bypass--a key contributor to the value of existing foraging habitat. The diminution in habitat value due to a decline in agriculture or a shift to crops of less foraging value (e.g., from tomatoes to safflower) needs to be analyzed in the Draft EIR/EIS, and it is an important factor to understand in assessing the true scope of the BDCP's potential adverse effect on the Swainson's hawk. In the absence of such information, the impact conclusions are faulty.</p>

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<i>Chapter 13—Land Use</i>		
Generally	Outdated and incomplete information; inadequate consideration of available information	<p>The County incorporates herein by reference its July 12, 2013 comments on the Land Use Chapter in the Second Administrative Draft EIR/EIS, which focused on:</p> <p>(1) Requesting that discussion of the expired County moratorium on certain habitat projects be replaced by discussion of the County ordinance requiring a use permit for certain habitat projects, adopted on January 29, 2013; and</p> <p>(2) Requesting deletion, in whole or part, of general and inaccurate statements such as “the locations for implementation of CM2-CM21 are not known at this point.” To the contrary, at least with respect to CM2, the location is very well known and has been described and modeled in detail.</p> <p>As the Land Use Chapter is essentially unchanged on matters relevant to these two issues, the County’s prior comments remain fully applicable. In fact, since the County’s first round of comments on the initial Administrative Draft EIR/EIS on April 16, 2012, the Land Use Chapter has not improved significantly and it continues to substitute vague generalizations for meaningful analysis (consistent with point (2), above) of the issues within its scope.</p> <p>Altogether, additional information and analysis is necessary to ensure the Draft EIR/EIS is legally adequate. Discrete impact discussions (e.g., LU-1 and -2) must also include conclusions as to whether impacts are significant and unavoidable, less than significant, or otherwise. The omission of such information is inappropriate and cannot be excused by the programmatic nature of the analysis for CM2-22 in the Draft EIR/EIS.</p>
Generally	Western Alignments (1C, 2C, 6C)	The County incorporates herein by reference the comments of Sacramento County in its discussion of impacts on Delta Communities and Delta Plan Policy DP-2 with respect to the Land Use Chapter of the Draft EIR/EIS. That discussion applies equally to impacts within Yolo County (though Clarksburg, rather than Hood, will be directly impacted) in

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		<p>the event a western alignment is ultimately selected. As the text notes (e.g., p. 13-81), more than 6,000 acres of land in Yolo County could be impacted by the selection of a western alignment, including more than 5,000 acres of permanent effects on County farmland. Potential impacts on homes and other structures are also severe, as discussed in the County's comment letter that accompanies this table.</p> <p>These figures, of course, include only impacts associated with CM1; the many thousands of additional acres impacted by CM2-22 constitute an additional land use impact that requires discussion both individually and cumulatively in Chapter 13 and elsewhere in the Draft EIR/EIS.</p>
<p><i>Chapter 14—Agricultural Resources</i></p>		
<p>14-7 and 14-8 (Table 14-2); 14-26</p>	<p>Use of County Ag Economic Data</p>	<p>Table 14-2, relating to crop acreages in the Plan Area, does not use the best available information for cropping patterns in the Yolo Bypass, as it ignores the report by Dr. Howitt and others on the potential impacts of floodplain habitat restoration proposals on agriculture in the Yolo Bypass. This report is mentioned in passing elsewhere in Chapter 14 and should be integrated more broadly into the analysis, particularly for CM2.</p> <p>At p. 14-26, the text states that the analysis of impacts on agricultural resources in the Yolo Bypass “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.” However, the “data about the agricultural resources” does not appear to draw on the Howitt report mentioned above. Also, as noted in several places below, the balance of Chapter 14 largely eschews any sort of geographic estimates and data about agricultural resources. This information is available and should be included in the Draft EIR/EIS.</p>
<p>14-14 and 14-15; 14-26</p>	<p>Crop water table tolerances</p>	<p>The discussion in this location underscores the potential adverse effects of raising the groundwater table (i.e., “The water table elevation must be <u>below</u> the crop root zone to maximize growth and yield and minimize root rotting from oversaturation.”).</p>

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		<p>Later in the EIR, however, the impact analysis assumes that the opposite is true in assessing the significance of related impacts on crops. For example, at p. 14-26, the EIR says “The water table elevation must be <u>within</u> the crop root zone to maximize growth and yield and minimize root rotting from oversaturation.” This text should be revised for the sake of clarification.</p>
14-15 and 14-16	Crop salinity tolerances	<p>This discussion highlights the potential adverse effects of increased irrigation water salinity. No data appears in the EIR, however, with regard to the potential for such effects within Yolo County. This information should be included.</p>
14-18	Farmland Protection Policy Act (FPPA)	<p>The discussion references an NRCS summary of the FPPA and (1) defines farmland as including land of statewide or local importance, and (2) identifies the FPPA as intended to assure that “to the extent possible federal programs are administered to be compatible with state, local units of government, and private programs and policies to protect farmland.”</p> <p>The EIR/EIS ignores the FPPA with a general practice of ignoring, rather than attempting to harmonize, the BDCP and farmland protection programs of local government. Compliance with the FPPA should be evaluated in the Draft EIR/EIS and otherwise.</p>
14-25	Methods for Analysis	<p>The introductory paragraph explains that the EIR analyzes farmland impacts that include “footprint effects that would be temporary/short-term or permanent in nature,” but it does not include any meaningful analysis of long-term effects that are intermittent (as in the case of the Yolo Bypass). No reason is provided for this distinction. It should either be fully explained or the text should be revised to treat intermittent, ongoing effects in a manner similar to permanent effects.</p> <p>The introductory paragraph also refers to an analysis of “potential changes to agricultural viability from the project as it relates to operational effects on water quality, groundwater elevation, and inundation frequency.” However, these issues are considered only in superficial detail and should be the subject of a much more intensive analysis. In particular, the County requests that the Draft EIR/EIS include information specific to the groundwater table of Merritt Island and the potential for reduced agricultural viability due to BDCP</p>

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		<p>implementation.</p> <p>Lastly, the introductory paragraph refers to “several indirect consequences on agricultural resources that may result from implementation of the BDCP.” It is unclear what this means. However, it does not appear to include consideration of the reduction in agricultural value of tens of thousands of acres of Delta farmland that will be encumbered by Swainson’s hawk and other habitat conservation easements during the course of BDCP implementation. This diminution in agricultural value arising from crop restrictions contained in such easements should be considered in the Draft EIR/EIS, just like the diminution in value (noted above) that may follow increased use of land in the Yolo Bypass for seasonal floodplain habitat.</p>
14-25 and 14-26	Project/Program Level	<p>This discussion explains that activities associated with CM2-22 (with a few exceptions) are “conceptual at this point” and are therefore the subject of “a programmatic approach to addressing effects on crops using similar analytical approaches and tools as for the placement of the water conveyance facilities.” For CM2, this is neither necessary nor appropriate and it contradicts language elsewhere in Chapter 14.</p> <p>For example, at the bottom of p. 14-26, the text acknowledges that “. . . 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.” Yet as previously noted, while the County agrees with these statements, Chapter 14 does not actually include any related analytical content.</p>
14-26	Use of MIKE-21	<p>The text at the bottom of p. 14-26 indicates that Yolo Bypass agricultural impacts are based on “a geographic estimate of the area that would be more frequently inundated.” Not only is this information absent from Chapter 14, the model purportedly relied on to produce the geographic estimate (MIKE-21) is flawed as noted briefly in connection with Chapter 4, above. The County has published a paper,</p>

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		previously provided to DWR, that explains the flaws in the MIKE-21 model.
14-27	Importance of Farmland as a Resource	<p>The text of the EIR states:</p> <p style="padding-left: 40px;">High quality soils are complex bio-geo-chemical systems and some of California’s most valuable natural resources. The higher the quality of a soil type, the greater and more diverse options it provides to potential users. To the extent that agricultural land produces commodities for sale, such land represents an economic resource, much like lands with significant mineral resources.”</p> <p>Farmland has economic value, but this is not to the exclusion of it also being an environmental resource. The text also highlights the problem with placing habitat easements or otherwise disturbing high quality farmland—it interferes with a wide range of potential agricultural uses. Habitat easements should therefore target compatible lands—i.e., lands with physical restrictions that make them suited to a more limited range of crop types consistent with easement restrictions. This strategy should be incorporated into the mitigation offered in Chapter 14.</p>
14-27	Restricting “Important Farmland”	<p>The text states that: “For purposes of this EIR/EIS, ‘Important Farmland’ is defined as land designated under any of these four categories, and refers to land 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.”</p> <p>What does that mean? What areas have been excluded on the basis that they do not meet the latter criterion? Without some discussion of this and an illustration of excluded areas, by maps or otherwise, it is impossible for a reader to know how this restrictive approach is being applied and the extent to which actively cultivated land is being excluded from the analysis. The County also objects to this narrow approach to defining the types of farmland for analysis in the Draft EIR/EIS for reasons described on p. 4 of a January 24, 2013 letter from Phil Pogledich, Senior Deputy County Counsel, to Katy Spanos, DWR staff counsel (Attachment 6 to the comment letter accompanying this matrix), which is</p>

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		incorporated by reference herein in its entirety.
14-28	Programmatic Analysis of CM2; Howitt Report	Chapter 14 does not appear to include any information relating to impacts on individual crop types as a result of CM2. This information should be included in much the same manner that it is presented in Appendix 14A (Individual Crop Effects as a Result of BDCP Water Conveyance Facility Construction). As acknowledged elsewhere in Chapter 14 (e.g., p. 14-26), “. . . 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.”
14-28	Agricultural viability; economic effects	<p>Page 14-28 states that “changes in crop selection and crop yield are considered primarily economic effects, rather than changes to the physical environment.” This statement is repeated elsewhere in Chapter 14 in several places.</p> <p>The County disagrees with this statement and believes it arises from the false premise that a decline in agricultural production is an economic issue. To the contrary, farmland is legally and physically an environmental resource. As restrictions (legal or otherwise) limit its utility for agricultural purposes, the viability of agriculture could be threatened. This issue does not appear to be considered in the Draft EIR/EIS despite the potential for a decline in agricultural viability to ultimately have environmental effects as farmland goes out of production. Among other things, a decline in economic viability and the subsequent cessation of agricultural activity on some affected lands could have adverse effects on flood protection and terrestrial species in addition to causing socioeconomic effects and related environmental consequences (i.e., urban blight). These issues require focused attention in the Draft EIR/EIS.</p>
14-32	Important Farmland, defined	At p. 14-32, the text states: “The future of agricultural activities in the study area is uncertain.” This may be true in a limited sense but it does not apply generally to all farmland within the study area. The EIR/EIS then compounds the problems presented by this statement by defining “Important Farmland” as excluding “land located in areas that can

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		<p>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.” So if the future of agriculture is uncertain, what land “can continue to be farmed economically and on a sustainable basis”? This misstatement creates many problems and could result in an inaccurate (or at the very least, unclear) baseline.</p>
14-38 (Table 14-9)	Intermittent effects	<p>Table 14-9 identifies the estimated conversion of protected farmland permanently and for temporary periods. Why not also include estimates for lands that will be affected intermittently, such as in the Yolo Bypass?</p>
14-39 through 14-48	MM AG-1: Develop an ALSP	<p>The following comments apply to MM AG-1 wherever it appears in the Draft EIR/EIS.</p> <p>The ALSP strategy suffers from various flaws and, its present form, it is not legally valid mitigation:</p> <ul style="list-style-type: none"> • While MM AG-1 says that an ALSP must contain three elements, only the first two will typically be required. The third element, relating to conventional agricultural mitigation or an “optional approach,” is required only where the project at issue does not include (as mitigation) habitat conservation easements recorded on farmland that also serves as wildlife habitat. This greatly narrows the application of agricultural mitigation to only those instances where conservation easements addressing terrestrial habitat losses are not required. • The first element includes a factor that prioritizes “public lands and existing conservation lands” for projects can cause to additional impacts (recreation, managed wetlands, land conserved for agriculture), as compared to the use of private lands, and should be used very judiciously. • The County applauds the first element language that calls for consideration of subsidies to allow economically viable rice farming on lands due to its environmental benefits, which should be specifically defined to include GGS habitat in addition to the stabilization of subsidizing areas and creation of GHG/methylmercury sinks. • Requiring compliance with Gov. Code Sections 51290-

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		<p>95 is not mitigation (in context of WA), but is legally required.</p> <ul style="list-style-type: none"> • The third element (AG-1c) does not clearly explain how to evaluate the “overall quality” of farmland in a conventional mitigation approach (p. 14-47). Will this include application of LESA modeling or another approach? • The third element applies “where the mitigation already being required for the biological resource values for the land at issue (e.g., for its value as habitat for the Swainson’s hawk) . . . already requires the equivalent of 1:1 mitigation (based on the net area of land remaining in agriculture) . . . provided the easements for biological values also incorporate agricultural preservation.” This is not adequate to fully address the loss of agricultural resource values. Reducing agricultural mitigation requirements by “crediting” land encumbered with crop restrictions and other factors that reduce its agricultural viability is inconsistent with the “like for like” notion that is inherent in mitigation for lost resource values. Moreover, it is logically inconsistent to require that agricultural conservation easements be placed on land of “the same overall quality” (p. 14-47, line 25) while relieving the BDCP proponents of any agricultural mitigation obligation if farmland restricted by a habitat conservation easement is fully credited toward agricultural mitigation requirements. This approach should be reconsidered and revised to eliminate the application of habitat conservation lands toward agricultural mitigation requirements. • At p. 14-48, the text indicates the agricultural conservation easements can be recorded in other counties (i.e., outside the jurisdiction where the impact occurs), “with a preference for counties in the greater Sacramento metropolitan urban area, as long as the property is at-risk for conversion from agricultural uses to developed uses from encroaching urban development in the absence of such long-term protection, and as long as such purpose does not undermine the overall BDCP conservation strategy by potentially putting off-limits lands that may be needed for habitat purposes during the permit duration

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		<p>of the BDCP (i.e., up until 2060).”</p> <p>This creates at least two problems. First, while this is generally a proper and laudable objective, it needs to be squared with local general plans and should be implemented cautiously and only with the consent of the receiving jurisdiction. Second, it does not account for potential conflicts with other HCP/NCCPs. The BDCP is not the only HCP/NCCP in the Delta, but rather one of a handful of developing or existing plans. Potential conflicts should be accounted for, as this statement acknowledges (albeit solely in the context of the BDCP).</p>
<p>14-48 through 14-50 (Impact AG-2)</p>	<p>Other effects on agriculture due to building/operating the conveyance facility</p>	<p>See comments on dewatering and groundwater generally in response to the groundwater chapter of the Draft EIR/EIS.</p> <p>With regard to the salinity discussion, see comments on the surface water chapter. In particular, please see the County’s comments on the omission of surface water quality information in the North Delta (i.e., Yolo County).</p> <p>At p. 14-50, the County notes that the “Environmental Commitments” will include funding or providing other assistance toward obtaining alternative water supplies or modifying operations to handle increased EC/salinity. This is similar in some respects to the economic mitigation proposal offered by the County in that it helps to sustain agriculture in a region impacted by the implementation of BDCP.</p>
<p>14-51 (Impact AG-3)</p>	<p>Farmland conversions due to CM 2-11, etc.</p>	<p>The analysis in the IMPACT AG-3 section repeatedly states “[w]hile locations have not been selected . . .” for the projects included in CMs 2-11, 13, 15, 16, 20 and 21, other text in the Draft EIR acknowledges that this is not true for CM2. The result is an incomplete analysis that does not utilize available information on agriculture in the Yolo Bypass, modeling results (even if somewhat flawed), and even the text of CM2 of the BDCP. Needless to say, the environmental analysis of a plan cannot ignore the text of the plan that it studies, as has happened here with respect to CM2.</p> <p>In addition, this analysis fails to describe how CM2 could affect agriculture. It does not even try, and concludes only that “it is anticipated that a substantial area of Important Farmland would be directly converted to habitat under this alternative.” This is not a meaningful analysis or conclusion,</p>

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		and much more is both possible and legally required.
14-52 (Impact AG-3, continued)	Williamson Act impacts due to CM 2-11, etc.	The discussion states that land subject to WA contracts will be affected, “leading to the potential cancellation of existing contracts and the direct conversion of agricultural land to other uses.” Projects that conflict with a Williamson Act contract do not lead to farmland conversions because such projects are prohibited as a matter of law unless the applicable contract(s) is cancelled by the affected county. The proper issue for analysis in this section is thus whether ecosystem restoration could require the cancellation of a Williamson Act contract. The discussion should be revised accordingly.
14-53 (Impact AG-4)	Other agricultural impacts due to CM2-11, etc.	<p>There are three other impacts relevant to CM2 (and possibly other CMs) that should receive more attention in the Draft EIR/EIS:</p> <p>(1) <i>Effects resulting from changes in groundwater elevation.</i> This issue is studied only in passing and does not receive close attention in the Groundwater or Agricultural Resources chapters of the Draft EIR/EIS. It should receive more attention in connection with CM1, but even in the context of CM2 it can and should be studied in light of the availability of information about the location and (possibly) the timing, extent, and duration of flooding in the Yolo Bypass.</p> <p>(2) <i>Effects resulting from disruptions to agricultural infrastructure in the Yolo Bypass.</i> The County has actively sought funding for a study on potential disruptions to agricultural infrastructure due to seasonal floodplain habitat restoration. This study should be performed and considered in the Draft EIR/EIS despite its programmatic treatment of CM2.</p> <p>(3) <i>Effects on agriculture as a result of increased frequency of inundation events.</i> This issue is briefly summarized in the Draft EIR, including a discussion of the potential operations of the gated Fremont Weir, resulting footprints of inundation, etc. It includes the timing requirements for agriculture from the study by Dr. Howitt and others (mentioned above), yet it does not include other information from the study such as effects on various types of crops. It specifically notes that CM2 “is expected to result in crop yield losses and an increase in fallow acres, as well as agricultural revenue</p>

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		<p>losses.” However, the discussion dismisses these effects as “economic, rather than environmental, in nature,” a proposition that the County has disagreed with in comments set forth above.</p> <p>In conclusion, the discussion notes that “[t]he new inundation schedule could substantially prevent agricultural use of these lands. The amount of agricultural land potentially affected by these and related activities (up to 17,000 acres) suggests the potential for an adverse effect on agricultural resources; however, the extent of these effects is unknown at this point and will be analyzed in forthcoming documents for the YBFEP, which would be completed under CM2. Mitigation Measure AG-1 is available to mitigate this effect.” The County objects that this discussion is conclusory and should include a more precise analysis of potential effects on farmland given the amount of information available about the anticipated features of CM2, as well as related mitigation measures.</p> <p>Oddly, the discussion then states that “some benefits could result from an increased presence of water. An increase in potential groundwater recharge could raise the groundwater table to within the root zone of some crops.” It is unclear how this is a potential benefit and, in fact, a high groundwater table can impair or even preclude continued agricultural production. This text should be reviewed and clarified or deleted, as appropriate.</p>
14-56	Easement stacking	<p>The text states “the project proponents would acquire and protect approximately 48,100 acres of nonrice cultivated lands and manage them for specific habitat values corollary to agricultural use for species including the Swainson’s hawk, giant garter snake.... Additionally, 3,500 acres of rice lands or similarly functioning habitat would be maintained annually for giant garter snake in Conservation Zones 4 and/or 5.”</p> <p>This is all offered as farmland conservation, and presumably will be applied to reduce agricultural mitigation obligations in accordance with Mitigation Measure AG-1. The decline in agricultural crop production that will result from crop restrictions, restrictions on pesticide application, increased predation due to the increased proximity of nearby habitat, etc., are all dismissed as “primarily economic in nature” (p.</p>

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		<p>14-57).</p> <p>This is not appropriate. Other environmental resources covered by CEQA—water quality, air quality, aesthetics—can be impacted incrementally and in ways that lead to economic impacts. But the presence of an economic impact does not transform an environmental impact into something else. These direct and indirect environmental impacts of these effects on farmland must be considered—not dismissed as “primarily economic”—in the EIR/EIS.</p>
14-187	Cumulative Effects	<p>For some reason, the cumulative effects analysis does not consider the Central Valley Flood Protection Plan and, specifically, the potential widening of the Yolo Bypass to provide increased flood protection to downstream communities. This omission is difficult to understand. The CVFPP will have a significant effect on farmland in Yolo County and will convert hundreds (perhaps thousands) of acres as part of a widened Yolo Bypass. In Appendix A (CVFPP Cost Estimate Methodology) to Attachment 8J (Cost Estimates) to the CVFPP, there is a significant additional amount of information concerning the proposed Yolo Bypass expansion and other CVFPP elements. All of the following assumptions were apparently relied on in developing estimated costs for CVFPP implementation:</p> <ul style="list-style-type: none"> • The Yolo Bypass expansion will require the acquisition of <u>25,500 acres</u>; • Agriculture on <u>6,500 acres</u> of the land acquired for the Yolo Bypass expansion will be “developed for environmental conservation.” Presumably, this means agricultural production will cease. The remaining <u>19,000 acres</u> will be “leased back to farmers for environmentally friendly agricultural practices such as planting of corn, rice, and other grains.” • In the regions that include Yolo County (Lower Sacramento and Delta North), an additional <u>10,000 to 20,000 acres</u> will be acquired for agricultural conservation easements; • Based on a GIS analysis of specific proposed levee locations, the following new levees will be built to

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		<p>facilitate the Yolo Bypass expansion:</p> <ul style="list-style-type: none"> • Yolo Bypass near Fremont Weir, Left Bank (2.5 miles) • Yolo Bypass upstream of Putah Creek, Right Bank (16.5 miles) • Yolo Bypass downstream of Putah Creek and near Rio Vista, Right Bank (18.5 miles) <p>Surely, this program should have been considered in the cumulative analysis and its omission should be addressed in a recirculated Draft EIR.</p>
	Western Alignments (1C, 2C, 6C)	<p>The cover letter accompanying this table discusses the farmland impacts of the west alignment alternatives compared with Alternative 4 and other east alignments. In addition to the issues raised therein, the County observes that the discussion of Impact AG-2, relating to changes in groundwater elevation and other effects, does not include a significance determination. This determination should be included and additional mitigation discussed in connection with the Groundwater Chapter of the Draft EIR/EIS, set forth above (relating to canal lining), should be included.</p>
<i>Chapter 15--Recreation</i>		
Generally	Inadequate mitigation	<p>The County incorporates herein by reference the comments set forth at p. 17 of the Arcadis report (May 2014) prepared for the Delta Stewardship Council, entitled “How the Bay Delta Conservation Plan Addresses the Delta Reform Act’s Goals and Objectives” (hereinafter, “Arcadis Report”), with regard to impacts on recreational facilities. As noted therein, impacts associated with intake and conveyance construction will "adversely impact recreation in construction areas both on land and water for ten or more years." A variety of potential impacts, including a general decline in regional recreation-related economic activity, are discussed in the Arcadis Report, many of which require more detailed analysis in the Draft EIR as noted in the comments below.</p> <p>The County also concurs with the observation that</p>

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		<p>"[i]mproved mitigation, including enhancing opportunities for visitor serving businesses (DP R17), could partly compensate for these impacts." To date, however, the BDCP proponents have offered no such mitigation. The County recommends that the BDCP proponents consider one or more mitigation measures that implement the recommendation by Arcadis, consistent with Recommendation DP R17 in the Delta Plan.</p>
Generally	Recreational spending	<p>The County incorporates herein by reference the comments of the Delta Protection Commission in its forthcoming comment letter on the Draft EIR/EIS relating to the "undercounting" of recreational spending in the Delta, the reduction in recreational boating activity and a related economic impact on marinas, and other recreation-related impacts. The discussion relating to recreational spending should be reviewed for accuracy and corrected if needed.</p>
Generally	Flows and river levels	<p>The County incorporates herein by reference the comments of Sacramento County regarding the lack of clear and detailed information about changes in flows and river levels in Chapter 15 (Recreation) of the Draft EIR/EIS. This information should be included in sufficient detail to enable readers to understand whether recreational uses will be affected and, if so, the anticipated magnitude of such effects. A section in Chapter 15 devoted specifically to a discussion of this issue would be helpful.</p>
Generally (e.g., pp. 15-87 and 15-88)	Baseline	<p>The County incorporates herein by reference the comments of Sacramento County on the baseline used in assessing recreational impacts, which appears to use a future baseline that includes sea level rise as a consequence of climate change rather than existing conditions. The basic problem with this approach, as Sacramento County asserts, is that it obscures the actual significance of BDCP's effects on recreation and access to recreational facilities.</p>
Generally (e.g., p. 15-76)	Impact REC-2	<p>The discussion in this section is quite confusing in places, including at p. 15-76 in the "CEQA Conclusion." For instance, the text states with respect to conveyance facility construction impacts: "These impacts would be temporary, but may occur year-round and would occur over the long-term." Later in the same paragraph, the text states: ". . . it is not certain the mitigation would reduce the level of these</p>

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		<p>impacts to less than significant in all instances such that there would be no reduction of recreational opportunities or experiences over the entire study area. Therefore, these impacts are considered significant and unavoidable. However, the impacts related to construction of the intakes would be less than significant."</p> <p>This language is unclear at best and the concluding sentence appears to be entirely at odds with the preceding discussion. Substantial clarifying edits are required.</p>
15-97	Construction impacts within YBWA and in other recreational locations	<p>Construction impacts within the Yolo Bypass Wildlife Area in connection with CM2 are not studied in meaningful detail. Rather, the Draft EIR/EIS mentions such impacts only in passing. As one example, at p. 15-97, the text states that "[c]onstruction of facilities could have short-term impacts on the noise or visual setting and could indirectly affect recreational fishing." Nonetheless, the text then concludes that CM2-21 would be "considered beneficial" with regard to fishing opportunities over the long term. Even assuming this is true, it does not excuse the need for meaningful analysis and discrete consideration of temporary construction-related impacts on fishing and other forms of recreation in the YBWA and elsewhere in the study area.</p>
15-106	Upland recreational opportunities in YBWA	<p>The text in this location (and similar text appearing later in the Chapter in connection with other alternatives) explains the potential for adverse effects on recreational opportunities in the YBWA due to the implementation of CM2 and increased inundation of lands used for hunting, hiking, birdwatching, and other recreational uses. This discussion concludes with the following statement: "BDCP proponents and agencies will work with CDFW to provide alternate public hunting opportunities and access and address additional management costs resulting from increased inundation of the Yolo Wildlife Area resulting from CM2. Additionally, environmental commitments are available to reduce the effects of inundation on upland recreational opportunities."</p> <p>This language is promising but far too vague to be legally adequate or useful to readers. What does it mean to "work with" CDFW to provide alternative hunting opportunities and access? Similarly, what does it mean to "address additional</p>

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		<p>management costs"? What "environmental commitments are "available," specifically—the funding discussed generally in Section 3B.2.3 of the “Environmental Commitments” appendix? The Draft EIR/EIS does not appear to answer any of these questions.</p> <p>While this section concludes by stating that related impacts will be “less than significant,” this conclusion rests solely on the generalities mentioned above. It is thus lacking in evidentiary support and—even taking into account the text of Section 3B.2.3 of the Environmental Commitments appendix—appears to rely on mitigation that is illusory and inadequate. Section 3B.2.3 of the Environmental Commitments offers only the promise of future mitigation without any accompanying performance standards or other criteria required for legally adequate mitigation under CEQA. Section 3B.2.3 does not constitute legally adequate mitigation because it does not mention the <i>amount</i> of funding that may be made available, it does not assure that such funding will be <i>adequate</i> to reduce the effects of inundation on upland recreation, and it does not even assure that <i>any funding</i> will be made available to the YBWA in connection with CM2-related impacts. It thus cannot be properly considered in assessing the significance of impacts on upland recreational opportunities.</p>
Generally	Vectors	<p>As observed in the ISB Report (pp. B-61 and B-62), construction of the water conveyance facilities will include the creation of sedimentation basins and lagoons. These features will include standing water and could result in an increase in vector breeding locations, populations (including mosquitoes), and related human health effects. The consequence for recreational impacts, as the ISB report suggests, is that "[i]ncreases in mosquito populations will affect virtually all recreational activities in the Delta (e.g., fishing, camping, wildlife viewing, sightseeing), resulting in [a] loss of recreational opportunities and increased human discomfort. The County incorporates by reference herein the balance of the ISB Report's comments and recommendations on this topic.</p>
Generally	Impact REC-12	<p>The discussion and analysis of Impact REC-12, relating to compatibility of the BDCP with federal, state, and local plans</p>

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		<p>and policies addressing recreation, is far from adequate.</p> <p>As noted earlier in Chapter 15, the Yolo Bypass Wildlife Area is covered by a comprehensive management plan. Additionally, Yolo County General Plan Policy CO-9.14 calls for establishing Clarksburg "as a gateway entry for visitors to the Delta region seeking agricultural tourism, ecotourism, and recreational opportunities." Various other General Plan policies call for increasing public access and recreational uses in the Yolo Bypass and Sacramento River (Policy CO-1.24), and balancing the needs of agriculture with recreation, flood management, and habitat within the Yolo Bypass (Policy CO-1.29). Lastly, the <i>Land Use and Resource Management Plan</i> (Delta Protection Commission) and the <i>Delta Plan</i> (Delta Stewardship Council) each contain policies and other material relevant to Impact REC-12.</p> <p>Rather than study relevant provisions of these plans, however, the Draft EIR/EIS dismisses the need for such discussion by simply stating that various observed "incompatibilities" between the BDCP and such plans "indicate the potential for a physical consequence to the environment" studied elsewhere in the document. This conclusion is incomplete and lacks any evidentiary support or reasoned discussion. More importantly, it obscures the tradeoffs inherent in the BDCP, as it effectively sidesteps consideration of impacts on existing and planned recreational opportunities that the BDCP will impair or preclude altogether. These tradeoffs must be identified and studied, particularly in connection with CM1 and elements of CM2-22 that are presently described (or capable of being described) in sufficient detail to enable such analysis.</p>
15-110 and 15-111	Compatibility with YBWA management	<p>Here and elsewhere in Chapter 15, the analysis includes a statement that: "<u>Proposed restoration areas in the Yolo Bypass, on Sherman Island, and in Suisun Marsh would be designed to be compatible with and complement the current management direction for these areas and would be required to adapt restoration proposals to meet current policy established for managing those areas.</u>"</p> <p>This seems highly unlikely. The County is not aware of any written commitments that support this statement. None appear in the "Environmental Commitments" appendix of the</p>

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		BDCP. Additionally, this statement contradicts representations made in staff level discussions involving the County, DWR, CDFW, and other agencies. If this is nonetheless the intent of the BDCP proponents, it should be further described in the BDCP, Implementing Agreement, or other appropriate document. Otherwise, it should be revised or deleted from the EIR/EIS and related text (including impact determinations) should be modified accordingly. To the extent it is offered as mitigation, it is also deficient and constitutes deferred mitigation because of the lack of performance standards and other relevant details.
<i>Chapter 16--Socioeconomics</i>		
<p>The County incorporates herein by reference portions of the May 22, 2014 paper authored by Dr. Jeffrey Michael on the socioeconomic effects of the BDCP, included with the Draft EIR/EIS comments of Sacramento County. Only the comments specifically directed at Chapter 16 of the Draft EIR/EIS, are incorporated herein. While those comments generally pertain to Sacramento County impacts, Yolo County is equally likely to experience the same adverse socioeconomic and other effects described by Dr. Michael. Consequently, to the extent it may be necessary or appropriate to further analyze Sacramento County impacts, the same is true for potential impacts in Yolo County.</p> <p>Separately, the County’s specific comments on Chapter 16 are as follows:</p>		
16-23	YBWA	Table 16-12 projects “direct economic contributions from recreation in the Delta.” It shows substantial growth in each category of recreational income—about 60% over a 50 year period—with the sole exception of the Suisan Marsh and Yolo Bypass. For those two areas, the Table shows zero recreational income growth between 2010 and 2060. This needs to be explained, as it appears to create an artificially low baseline for these areas that may contribute to underestimating the economic effects of BDCP implementation.
16-25	Crop Values	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

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		<p>that could result from implementation of CM2.</p> <p>This difference in values ties into one of the County’s main comments: that the EIR/EIS must consider the economic viability of agriculture in areas where a change to lower value crops is anticipated, particularly where other changes in risk factors (i.e., more frequent inundation, longer period of inundation, etc.) are present. This undertaking will illuminate the potential for increased fallowing of farmland and related social effects—as well as potential environmental effects like a decrease in flood conveyance capacity—that is currently absent from the EIR/EIS.</p>
16-34	Delta Plan	This text is outdated and describes the Delta Plan as “in process.”
16-39	Temporary Effects	<p>The text on this page describes the analytical approach of dividing effects into “temporary effects and “permanent effects.” It explains that the construction period is assumed to be eight years, and that this assumption “may differ slightly from the period assumed for other chapters.” The reason for this is unclear, as the only explanation provided states: “This is due to the refinement of the estimated length of the construction period for purposes of providing cost data used to model socioeconomic effects.” What this may mean is difficult to determine.</p> <p>This also relates to one of the County’s principal comments on the EIR/EIS—the arbitrary treatment of some temporary effects as requiring permanent mitigation, while mitigation for other temporary effects is dismissed on the ground that the impact is temporary. The Draft EIR/EIS should be revised to better explain the disparate treatment of some effects and related mitigation or, alternatively, to harmonize the treatment of temporary effects and mitigation throughout the document.</p>
Generally	Western Alignments (1C, 2C, 6C)	The analysis of Impacts ECON-3, 6, 7, 9, 12, 13, 15, and 18, relating to changes in community character and agricultural economics due to new conveyance facilities, is superficial and legally inadequate. In a handful of pages for each impact, the Draft EIR attempts to analyze these impacts with respect to each west alignment alternative. Both the analysis and conclusions set forth for each alternative appear to represent little more than educated guesswork without any

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		<p>evidentiary basis. The reader is left to wonder how a project that converts over 16,000 acres of farmland in the Clarksburg region would not have a significant effect on community character or agricultural economics. This analysis simply needs to be redone in its entirety with an appropriate focus on the Clarksburg and Yolo County areas that are "ground zero" for these alternatives, also taking into account CM2 and other elements of BDCP with reasonably foreseeable impacts in Yolo County.</p> <p>In addition, the cumulative impacts analysis is also deficient because it fails to consider CM1 together with CM2-22, instead analyzing CM1 separately from CM2-22. This results in an incomplete and understated portrayal of potential direct and indirect environmental effects. The entirety of BDCP needs to be considered together in the cumulative effects analysis, together with other appropriate projects.</p>
<i>Chapter 19--Transportation</i>		
19-27/19.1.5 to 19.1.5.11	Transportation (Air Transportation Facilities)	Air facilities that would appear to be within or adjacent to the transportation study area, but that are not identified or the absence of which is not explained include: Yolo County Airport (Yolo County); California Highway Patrol Academy Airport (W. Sacramento); Borges-Clarksburg Airport (Clarksburg); Watts -Woodland Airport; and Medlock Field (Woodland).
19-35	Transportation (Methods for Analysis)	<p>Last Paragraph, first sentence: "An intersection-level analysis was not performed because sufficient information regarding construction traffic patterns is not available for this level of analysis and it would be speculative and potentially misleading to assign construction related traffic by turning movement."</p> <p>Does the absence of intersection analysis regarding construction traffic eliminate from consideration some number of potentially necessary intersection improvements?</p>
19-41	Transportation (Alternative 1A, Impact TRANS-1)	Last paragraph: "If an improvement that is identified in any mitigation agreements(s) contemplated by Mitigation Measure TRANS-1c is not fully funded and constructed before the project's contribution to the effect is made, an

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		<p>adverse effect in the form of unacceptable LOS would occur. Therefore, this effect would be adverse. If, however, all improvements required to avoid adverse effects prove to be feasible and any necessary agreements are completed before the project’s contribution to the effect is made, effects would not be adverse.”</p> <p>This impact assessment fails to inform the public about the nature and extent of the environmental effect. The analysis suggests that either a significant adverse effect will exist (LOS), or there will be no adverse effect. EIRs must clearly identify “[d]irect and indirect significant effects of the project on the environment.” (Pub. Resources Code §15126.2(a).)</p> <p>Related to the foregoing comments, the County seeks a response to two questions:</p> <ul style="list-style-type: none"> • What are the grounds upon which to assume that there may not be full funding for one or more improvements? • Won’t all mitigation measures in Mitigation Measure TRANS-1a be required pursuant to the MMRP?
19-52 and related text	<p>Transportation (Alternative 1A, Impact TRANS-1)</p> <p>Transportation (Alternative 1B, Impact TRANS-1)</p> <p>Transportation (Alternative 1C, Impact TRANS-1)</p> <p>Transportation (Alternative 2A, Impact TRANS-1)</p> <p>Transportation (Alternative 2B, Impact TRANS-1)</p>	<p>The CEQA Conclusion section indicates that “Mitigation Measures TRANS-1a through TRANS-1c would reduce the severity of this impact [Impact TRANS-1] but not to a less than significant level.”</p> <p>This same CEQA Conclusion continues: “The BDCP proponents cannot ensure that the improvements will be fully funded or constructed prior to the project’s contribution to the impact. If an improvement that is identified in any mitigation agreement(s) contemplated by Mitigation Measure TRANS-1c is not fully funded and constructed before the project’s contribution to the impact is made, a significant impact in the form of unacceptable LOS would occur. Accordingly, this impact would be significant and unavoidable. <i>If, however, all improvements required to avoid significant impacts prove to be feasible and any necessary agreements are completed before the project’s contribution to the effect is made, impacts would be less than significant.</i>” (Emphasis added.)</p>

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	Transportation (Alternative 2B, Impact TRANS-1) Transportation (Alternative 2C, Impact TRANS-1) Transportation (Alternative 3, Impact TRANS-1) Transportation (Alternative 4, Impact TRANS-1)	a. The final sentence above suggests a less than significant impact with complete mitigation, and therefore appears inconsistent with the above language in the same CEQA Conclusion that even with mitigation, Impact TRANS-1 cannot be reduced to less than significant. b. The statement raising the possibility that mitigation improvements may not be “fully funded and constructed before the project’s contribution to the impact is made”, and the resulting significant impact, undermines the integrity of both the impact assessment and the proposed mitigation measures. It is always the case that mitigation measures or improvements that do not receive adequate funding cannot be implemented as planned, and will consequently result in significant adverse effect. This is, at least in part, the intent of the Mitigation Monitoring Program, to demonstrate compliance with the stated mitigation proposal. If any question remains about the viability of the proposed mitigation measure(s), including funding, then the impact should be declared significant. c. Because the impact assessment for Impact TRANS-1 wavers between a determination of significance and less than significant, the DEIR fails to comply with CEQA by providing a clear and understandable analysis for the public to follow and understand. (See Public Res. Code §21061.)
19-52 and related text	Transportation (Alternative 1A, Mitigation Measure TRANS-1a)	The text indicates: “The BDCP proponents will also ensure development of site-specific construction traffic management plans..., including the mitigation measures and environmental commitments identified in this EIR/EIS. This will include potential expansion of the study area identified in this EIR/EIS to capture all potentially significantly affected roadway segments.” By leaving the door open for a potentially expanded study area, the DEIR violates CEQA and introduces the possibility that the existing identified impacts and mitigation measures are insufficient. Additionally, the suggestion that “all potentially significantly affected roadway segments” have not already been captured in the study area to date confirms that the DEIR’s existing review and conclusions are based on

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		insufficient data regarding potentially affected roadway segments.
19-54 and related text	Alternative 1A, Mitigation Measure TRANS-1b	The County incorporates herein by reference the comments of Sacramento County with regard to Mitigation Measure TRANS 1-b. This measure is unlikely to prove fully feasible in most instances, and it should not be relied upon in determining the significance of related impacts.
19-61 and 19-62 and related text	Alternative 1A, Mitigation Measure TRANS-1c Transportation (Alternative 4, Mitigation Measure TRANS-1c)	The County incorporates herein by reference the comments of Sacramento County with regard to Mitigation Measure TRANS 1-c. This measure is vague, impermissibly defers mitigation, and otherwise raises a number of legal and practical questions, including those presented by Sacramento County.
19-68 and related text	Transportation (Alternative 1A, Impact TRANS-2) Transportation (Alternative 2A, Impact TRANS-2) Transportation (Alternative 2B, Impact TRANS-2) Transportation (Alternative 4, Impact TRANS-2)	<p>The CEQA Conclusion section indicates that “Mitigation Measures TRANS-2a through TRANS-2c would reduce the severity of this impact [Impact TRANS-2] but not necessarily to a less than significant levels, as the BDCP proponents cannot ensure that the agreements or encroachment permits will be obtained from the relevant transportation agencies...a significant impact in the form of deficient pavement conditions would occur.”</p> <p>This same CEQA Conclusion continues: “If, however, mitigation agreement(s) or encroachment permit(s) providing for the improvement or replacement of pavement are obtained and any other necessary agreements are completed, impacts would be reduced to less than significant.” These conflicting contingent impact determinations mislead the public and provide no clear indication of what the ultimate effect of Impact TRANS-2 will be.</p>
19-68 and related text	Transportation (Alternative 1A, Mitigation Measure TRANS-2a) Transportation (Alternative 2A, Mitigation Measure	This mitigation measure calls for prohibitions against construction traffic using roadway segments with pavement conditions below certain thresholds, but the actions proposed (both the prohibitions and the implementation) are only required “to the extent feasible”. Because the measure can be avoided, TRANS-2a constitutes inadequate and illusory mitigation.

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	TRANS-2a) Transportation (Alternative 2C, Mitigation Measure TRANS-2a) Transportation (Alternative 3, Mitigation Measure TRANS-2a) Transportation (Alternative 4, Mitigation Measure TRANS-2a)	
19-69 and related text	Transportation (Alternative 1A, Mitigation Measure TRANS-2c) Transportation (Alternative 2A, Mitigation Measure TRANS-2c) Transportation (Alternative 2C, Mitigation Measure TRANS-2c) Transportation (Alternative 4, Mitigation Measure TRANS-2c) Transportation (Alternative 3, Mitigation Measure TRANS-2c)	a. The delay of pre-construction pavement analysis is problematic because there is no mechanism for assessing the potential impacts of any required improvements identified by the analysis. b. The statement in the fifth paragraph that major transportation infrastructure improvements, including bridge repair and new highway interchanges are “not anticipated”, but that “construction activities could cause the need for such major transportation infrastructure improvements [and] the BDCP proponents retain the flexibility to seek alternative means of transporting people, equipment, and materials...” is ambiguous and open ended. The stated uncertainty regarding the need for physical construction leaves the significance determination for the resulting impact open ended, and introduces an unanswered question regarding possible growth inducing impacts. Further, to the extent the need for transport alternatives is caused by the project, there is no analysis of what the flexible alternatives actually are (the only limited example provided is barges), or how their development and use might affect the environment.
19-70 and related	Transportation	The statement raising the possibility that mitigation

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text	(Alternative 1A, Impact TRANS-3) Transportation (Alternative 1C, Impact TRANS-3) Transportation (Alternative 2B, Impact TRANS-3) Transportation (Alternative 4, Impact TRANS-3)	<p>improvements may not be “fully funded or constructed prior to the project’s contribution to the impact”, and the resulting significant impact, undermines the integrity of both the impact assessment and the proposed mitigation measures. It is always the case that mitigation measures or improvements that do not receive adequate funding cannot be implemented as planned, and will consequently result in a significant adverse effect. This is, at least in part, the intent of the Mitigation Monitoring Program, to demonstrate compliance with the stated mitigation proposal. If any question remains about the viability of the proposed mitigation measure(s), including funding, then the impact must be declared significant.</p> <p>The impact uncertainties are furthered by the concluding mitigation statement that if the improvements are feasible “and any necessary agreements are completed”, the impact would be less than significant. Because the impact assessment for Impact TRANS-3 vacillates between a determination of significance and less than significant, the DEIR fails to comply with CEQA by providing a clear and understandable analysis for the public to follow and understand. (See Public Res. Code §21061.)</p>
19-78 to 79	Transportation (Alternative 1A, Impact TRANS-10)	<p>The list identified on page 19-78 does not seem to include any West Sacramento roadways, this despite the CEQA Conclusion statement that “roads and highways in and around Suisun Marsh and the Yolo Bypass could experience increases in traffic volumes, resulting in localized congestion and conflicts with local traffic.” (Emphasis added.)</p> <p>Here too, a significant and unavoidable impact conclusion is rendered confusing and potentially meaningless by the statement, if “all improvements required to avoid significant impacts prove to be feasible and any necessary agreements are completed before the project’s contribution to the effect is made, impacts would be less than significant.” The DEIR continues to try and avoid a conclusive impact designation decision, opting instead to indicate that significance determinations are entirely funding dependent and thus can go either way.</p>
19-127	Transportation (Alternative 1C,	The CEQA Conclusion states in pertinent part, “the BDCP proponents cannot ensure that the improvements will be fully

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	Impact TRANS-6)	<p>funded or constructed prior to the project’s contribution to the impact. If an improvement identified in the mitigation agreement(s) is not fully funded and constructed before the project’s contribution to the impact is made, a significant impact in the form disruptions [sic] to transit service would occur. Therefore this impact would be significant and unavoidable.”</p> <p>This impact assessment fails to inform the public about the nature and extent of the environmental effect. The analysis suggests that either significant adverse effects relating to construction activities and traffic congestion will exist in the absence of funding or construction of the necessary improvements, or alternatively there will be no adverse effect. EIRs should not conclude there will either be a significant effect or there will none. The ambiguity does little to inform the public about the true environmental effects of the project. Rather, EIRs should clearly identify all “[d]irect and indirect significant effects of the project on the environment.” (Pub. Resources Code §15126.2(a).)</p>
19-130	Transportation (Alternative 1C, Impact TRANS-10)	<p>The CEQA Conclusion states in pertinent part, “the BDCP proponents cannot ensure that the improvements will be fully funded or constructed prior to the project’s contribution to the impact. If an improvement identified in the mitigation agreement(s) is not fully funded and constructed before the project’s contribution to the impact is made, a significant impact would occur. Therefore the project’s impacts to roadway segment LOS would be conservatively significant and unavoidable. If, however, all improvements required to avoid significant impacts prove to be feasible and any necessary agreements are completed before the project’s contribution to the effect is made, impacts would be less than significant”</p> <p>This impact assessment fails to inform the public about the ultimate environmental effect. The analysis suggests that either significant adverse will exist in the absence of funding or alternatively there will be no adverse effect if the identified improvement(s) are funded and constructed. EIRs should not conclude there will either be a significant effect or there will none. The ambiguity does little to inform the public about the true environmental effects of the project. Rather, EIRs should clearly identify all “[d]irect and indirect</p>

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		significant effects of the project on the environment.” (Pub. Resources Code §15126.2(a).)
19-187	Transportation (Alternative 4, Impact TRANS-7	The CEQA Conclusion notes possible temporary bicycle disruption. Although the DEIR concludes that the impact is less than significant, this is the result of the application of Mitigation Measure TRANS-1a, which is fundamentally flawed for the reasons set forth above. (See 19-52/19.3.3.2.)
19-192	Transportation (Alternative 4, Impact TRANS-10)	<p>The CEQA Conclusion section indicates that “Mitigation Measures TRANS-1a through TRANS-1c would reduce the severity of this impact [Impact TRANS-10] but not to a less than significant level.”</p> <p>This same CEQA Conclusion continues: “The BDCP proponents cannot ensure that the improvements will be fully funded or constructed prior to the project’s contribution to the impact. If an improvement that is identified in any mitigation agreement(s) contemplated by Mitigation Measure TRANS-1c is not fully funded and constructed before the project’s contribution to the impact is made, a significant impact in the form of unacceptable LOS would occur. ... <i>If, however, all improvements required to avoid significant impacts prove to be feasible and any necessary agreements are completed before the project’s contribution to the effect is made, impacts would be less than significant.</i>” (Emphasis added.)</p> <ol style="list-style-type: none"> a. The final sentence above, which suggests a less than significant impact with mitigation appears to be inconsistent with the conclusion that even with mitigation, Impact TRANS-10 cannot be reduced to less than significant. b. The statement raising the possibility that mitigation improvements may not be “fully funded and constructed before the project’s contribution to the impact is made”, and the resulting significant impact, undermines the integrity of both the impact assessment and the proposed mitigation measures. It is always the case that mitigation measures or improvements that do not receive adequate funding cannot be implemented as planned, and will consequently result in significant adverse effect. This is, at least in part, the intent of the Mitigation

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		<p>Monitoring Program, to demonstrate compliance with the stated mitigation proposal. If any question remains about the viability of the proposed mitigation measure(s), including funding, then the impact should be declared significant.</p> <p>c. Because the impact assessment for Impact TRANS-10 wavers between a determination of significance and less than significant, the DEIR fails to comply with CEQA by providing a clear and understandable analysis for the public to follow and understand. (See Public Res. Code §21061.)</p>
<p><i>Chapter 20—Public Services and Utilities</i></p>		
Generally	Law enforcement, fire protection, and emergency response	<p>The County incorporates herein by reference the comments of Sacramento County on this topic, including but not limited to its position that the Draft EIR/EIS does not include substantial evidence or analysis to support the conclusion that BDCP will not have a significant effect on public service demands. In addition to the specific criticisms offered by Sacramento County, Yolo County observes generally that it not plausible the BDCP--the largest public infrastructure project in decades, with billions of dollars in construction costs and thousands of workers over a ten-year period (for CM1 alone)--will have a less than significant effect on law enforcement, fire protection, and emergency response. Certainly, a series of major projects such as those included in the BDCP will impact first responders. Also, as noted in the cover letter accompanying this document, the County incorporates by reference the comments of the Clarksburg Fire Protection District on this range of issues.</p> <p>This comment applies equally to the "western alignment" alternatives in the Draft EIR/EIS (Alternatives 1C, 2C, and 6C), which are analyzed in substantially the same manner as Alternatives 1A and 4.</p>
Generally	Wastewater treatment and disposal	<p>The County incorporates herein by reference the comments of Sacramento County on this subject. In particular, the County questions the adequacy of the analysis set forth in Impact UT-4 throughout Chapter 20. Like Sacramento County, Yolo County is troubled by the lack of detail regarding wastewater</p>

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		composition, volume, and treatment methodology (among other things).
<p><i>Chapter 23--Noise</i></p> <p>The County incorporates herein by reference the comments on Chapter 23 provided by Ascent Environmental in a memorandum dated July 7, 2014, a copy of which is enclosed as Attachment 5 to the letter accompanying this matrix. In addition, the County offers the following additional comments on Chapter 23.</p>		
23-15	Noise (Yolo County)	The document does not include noise standards applicable in the City of West Sacramento. Given that the project is likely to generate significant traffic and transportation noise in the City of West Sacramento, the City's noise standards should be included.
23-20 and related text	Noise (Existing Baseline Conditions in the Study Area)	The analysis conservatively assumes that ambient noise levels in the entire plan area are 40dBA. This results in a significance threshold for construction noise of 60 dBA. However, if ambient noise levels at certain locations exceeds 60 dBA, a construction noise threshold of 5 dBA should apply. The DEIR/DEIS acknowledges that ambient noise monitoring at specific locations has not been conducted and, therefore, if there are locations that with ambient levels that exceed 60 dBA, the DEIR/DEIS fails to apply the appropriate construction noise threshold to these locations.
23-23 and related text	Noise (Determination of Effects)	As noted in the above comment, the analysis fails to address construction noise impacts that may occur in locations where ambient exceeds 60 dBA because ambient monitoring at specific locations has not been conducted. This failure is repeated in Table 23-16 and the analysis fails to identify the distance at which thresholds would be exceeded where ambient exceeds 60 dBA. (See also, e.g., pp. 23-31 to 23-41 and Tables 23-17, 23-21, 23-22.) This deficiency is repeated throughout analysis of construction impacts of each alternative.
23-26 and related text, including p. 23-181	Noise (No Action Alternative, Future of Noise Conditions in the Delta)	The analysis suggests that noise impacts under the No Action alternative would be significant in the event of levee failure repair/construction activity. Such an event is highly speculative and could occur under any of the alternative scenarios. Thus, the analysis should not suggest that some

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	(Cumulative Impact NOI-5, No Action Alternative)	greater noise impact might result from a catastrophic event if the project is not implemented.
23-41, and related text	Noise (Mitigation Measure NOI-1a)	The analysis fails to identify the noise reductions that will be achieved by implementation of Mitigation Measure NOI-1A. This information should be included to enable informed consideration of the efficacy of this measure.
23-44, and related text	Noise (Mitigation Measure NOI-2)	Mitigation Measure NOI-2 is vague and unenforceable, and improperly deferred. It does not identify with specificity what measures are required to be implemented for the various vibration generating activities. Additionally, the analysis does not specify the vibration reductions that will be achieved by implementation of the mitigation.
23-48, and related text	Noise (Mitigation Measure NOI-3)	Mitigation Measure NOI-3 is vague and unenforceable, and is improperly deferred. It does not identify with specificity what measures will be required and, therefore, it is impossible to determine whether such measures will be effective at reducing operational noise impacts to less than significant levels.
23-48, and related text	Noise (Impact NOI-4: Exposure to Noise-Sensitive Land Uses from Implementation of Proposed Conservation Measure 2-10)	The analysis of noise impacts from implementation of CM 2-10 is wholly inadequate. While these aspects of the project are evaluated at a programmatic level, CEQA requires that the analysis be commensurate with the information that is available, and not be deferred to the future. As described in the DEIR/DEIS, there is information regarding the types of noise-inducing construction activities that would result from implementation of CM 2-10, yet the analysis is performed at a “qualitative” level and is insufficient given the extent of information available regarding these aspects of the project.
23-174	Noise (Alternative 9, Impact NOI-2)	The CEQA conclusion only concerns whether residences would be exposed to construction vibration and groundborne noise, without discussion of other sensitive receptors that could be impacted. This information should be included.

ATTACHMENT 2



County of Yolo

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April 16, 2012

VIA ELECTRONIC MAIL ONLY

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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 are 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.

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 methylmercury 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

ATTACHMENT 3



County of Yolo

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**ROBYN TRUITT DRIVON
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Philip J. Pogledich, Senior Deputy

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
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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 Sacramento, 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

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

Ms. Ann Chrisney
July 12, 2013
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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.

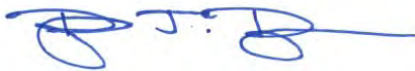
Certainly, the EIR/EIS will never be an easy read. In its current state, however, it is far too complex to serve its informative purposes under CEQA or NEPA.

* * *

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



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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	<p>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."</p> <p>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.</p>	
2	3-102	4-31	<p>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</p>	

No.	Page	Line #	Comment	ICF Response
			<p>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."</p> <p>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.</p>	
3	3-102	32-39	<p>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."</p> <p>This discussion is imprecise due to overreliance on the phrase "unacceptable negative effects," which raises various questions:</p> <ul style="list-style-type: none"> • 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
			<p>inputs into the decisionmaking process will be afforded?</p> <p>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.</p>	
4	3-106	22-28	<p>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."</p> <p>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.</p>	

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	<p>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 <i>Agricultural and Economic Impacts of Yolo Bypass Fish Habitat Proposals</i> (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</p>	

No.	Page	Line #	Comment	ICF Response
			<p>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.</p> <p>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.</p>	
2	6-39 and 6-40		<p>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.</p> <p>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 <u>and</u> 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.]</p>	
3	6-48	32-36	The "CEQA Conclusion" for the "no action alternative" is confusing. It states in	

No.	Page	Line #	Comment	ICF Response
			<p>pertinent part:</p> <p style="padding-left: 40px;">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.</p> <p>This statement needs to be revised for the sake of clarity and accuracy. As currently drafted, it makes no sense.</p>	

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	<p>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.”</p> <p>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.</p>	
2	8-432	14-33	<p>This paragraph describes the CEQA conclusion on mercury and methylmercury issues. The conclusion, in essence, is that:</p> <ul style="list-style-type: none"> • 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
			<p style="text-align: center;">reduce or eliminate those effects even if they occur.</p> <p>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 concentrations 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).</p>	
3	8-432	14-33	<p>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.</p>	

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	<p>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.</p> <p>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</p>	

No.	Page	Line #	Comment	ICF Response
			<p>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 <u>all goals</u>, as opposed to fewer than all, cannot be achieved.</p>	

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
			<p>conflicts and related environmental effects, such as the loss of farmland.</p> <p>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.</p>	

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	<p>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.</p> <p>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.</p>	
2	14-24	3-21	<p>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.</p>	
3	14-26	1-7 and 41-45	<p>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.</p> <p>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</p>	

No.	Page	Line #	Comment	ICF Response
			<p>evaluation of the agricultural resource impacts of those elements of CM2 that are already defined sufficiently to enable a relatively precise analysis.</p>	
4	14-27	32-36	<p>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:</p> <ul style="list-style-type: none"> • 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.” <p>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.</p>	
5	14-28	10-14	<p>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.</p>	
6	14-38	1-15	<p>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</p>	

No.	Page	Line #	Comment	ICF Response
			<p>for CEQA and NEPA purposes, this mitigation measure lacks clear performance standards and it thus appears to constitute improper “deferred mitigation.”</p> <p>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.</p>	
7	14-40	14-23	<p>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.”</p> <p>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.</p>	
8	14-42	22-36	<p>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.</p>	
9	14-44	33-38	<p>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</p>	

No.	Page	Line #	Comment	ICF Response
			<p>factors.</p> <p>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.</p>	
10	14-49	22-25 and 37-39	<p>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.</p> <p>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.</p>	
11	14-52 and 14-53	All	<p>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.</p>	
12	14-55	12-30	<p>The CEQA Conclusion in this section—which should relate at least in part to</p>	

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	<p>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.</p> <p>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).</p>	
2	15-290	16-26	<p>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.”</p> <p>This absurdity is excusably for the sole reason that the draft EIR/EIS remains</p>	

No.	Page	Line #	Comment	ICF Response
			<p>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.</p>	

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
			<p>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.</p>	
5	16-45 and 46		<p>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.</p>	
6	16-169	5-44	<p>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).</p> <p>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.</p>	

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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ROBYN TRUITT DRIVON
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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 are 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.

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 methylmercury 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	<p>The EIR/EIS Should Include a County-by-County Summary of Anticipated Project Features and Impacts (Environmental and Economic).</p> <p>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.</p>	The 2 nd 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 2 nd 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	<p>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</p>	The 2 nd Administrative Draft analyses the impacts of CM1 at a project level and as such includes a greater level of detail than 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.
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The Yolo Natural Heritage Program
Interface with the Bay Delta Conservation Plan
Background, Summary, and Remaining Issues
May 23, 2013

Background

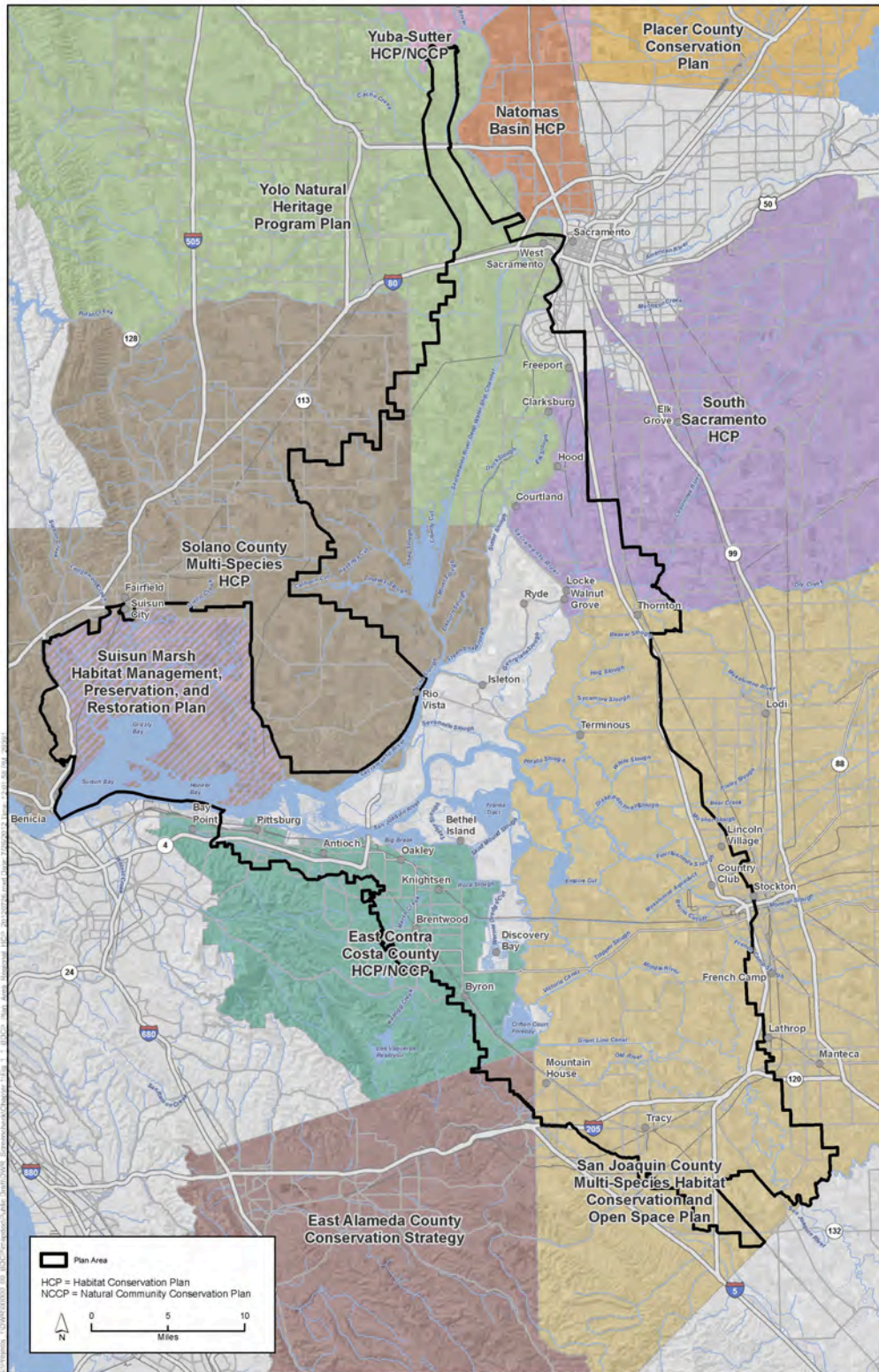
The Yolo Natural Heritage Program (Yolo HCP/NCCP) and Bay Delta Conservation Plan (BDCP) Plan Areas overlap (Figure 1-2 from 2013 BDCP draft). The Yolo HCP/NCCP encompasses the entirety of Yolo County, covering an area of 653,820 acres of which approximately 108,000 acres in Yolo HCP/NCCP Planning Units 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 agencies, and BDCP will need to 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

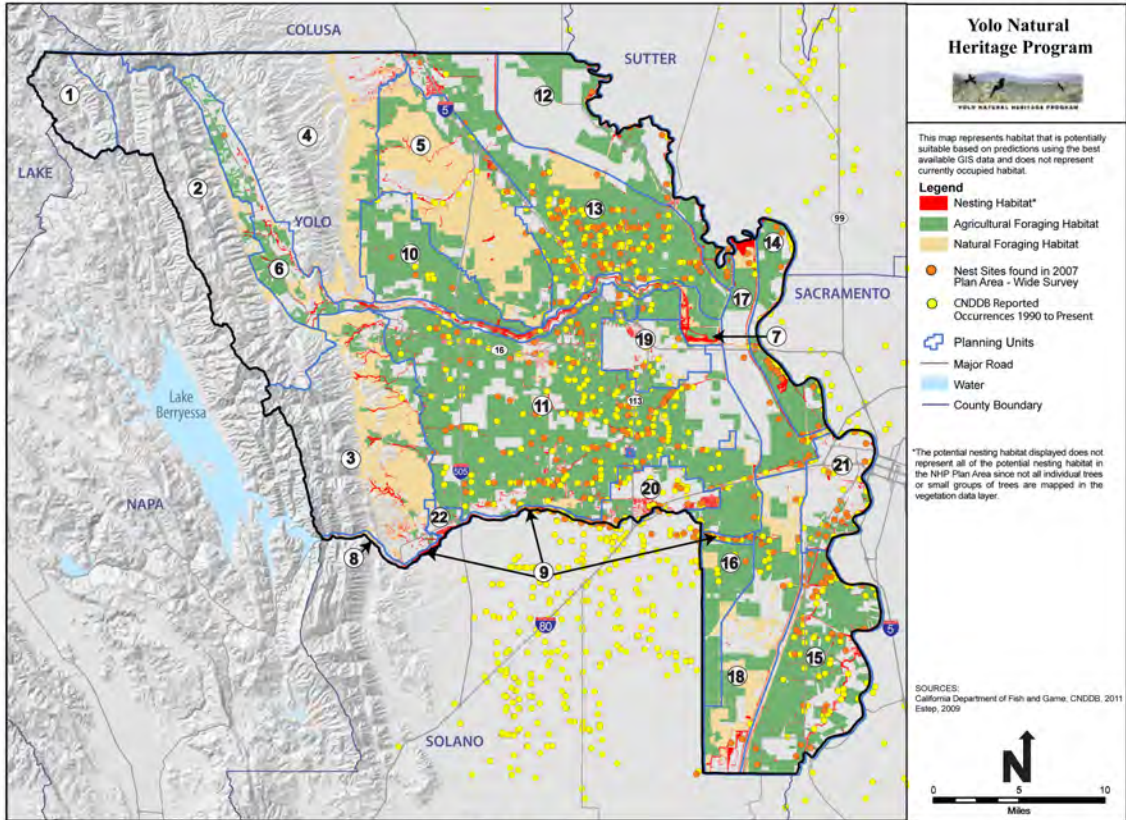


Figure A-21. Swainson's Hawk Modeled Habitat and Nest Sites

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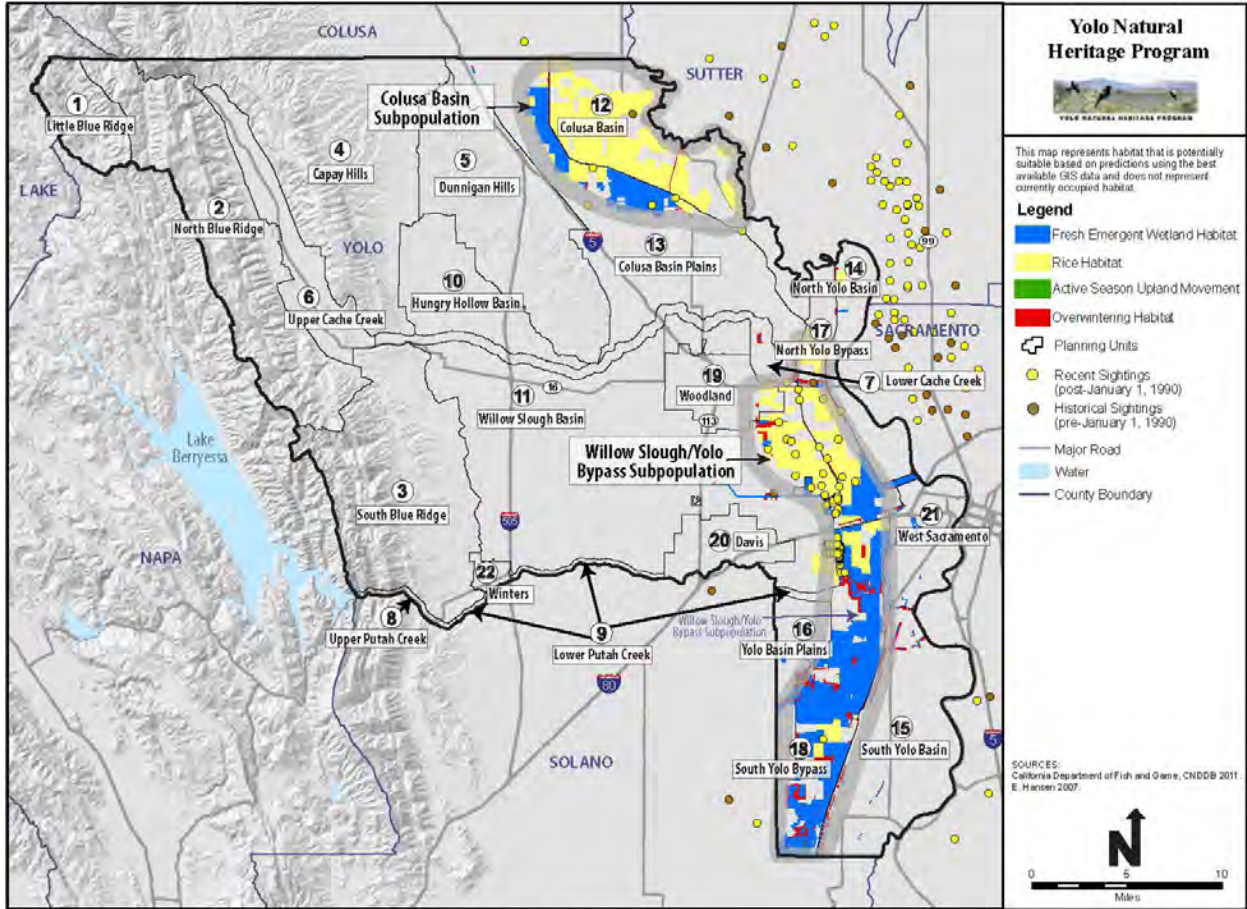


Figure A-19. Giant Garter Snake Modeled Habitat and Occurrences



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, share information 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 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.

Prepared by Michael J. Van Zandt, Hanson Bridgett LLP

ATTACHMENT 4



County of Yolo

BOARD OF SUPERVISORS

625 Court Street, Room 204
Woodland, California 95695-1268
(530) 666-8195 FAX (530) 666-8193
www.yolocounty.org

First District – **Michael H. McGowan**
Second District – **Helen M. Thomson**
Third District – **Matt Rexroad**
Fourth District – **Jim Provenza**
Fifth District – **Duane Chamberlain**

County Administrator – Patrick S. Blacklock

April 5, 2010

Secretary Lester Snow
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95815

Re: Bay Delta Conservation Plan—Yolo Bypass/Fremont Weir Modification

Dear Secretary Snow:

This letter sets forth the position of the County of Yolo (“County”) on the development of the “Fremont Weir/Yolo Bypass Habitat Improvements Conservation Measure” (the “Conservation Measure”) and related projects.

As an initial matter, the County cannot commit to a position on the Conservation Measure until all of its details have been developed, made public, and thoroughly reviewed. Under no circumstances, however, will the County support the Conservation Measure unless the following conditions are assured:

- **Flood protection afforded by the Yolo Bypass is maintained.** The County cannot accept changes in the Yolo Bypass that increase the level of flood risk to local properties. The design and operation of the Conservation Measure must not have an adverse effect on the flood protection function of the Bypass.
- **Agriculture in the Yolo Bypass is preserved.** Agricultural activities in the Bypass are a significant contributor to the County’s agricultural economy, the operation of the Yolo Bypass Wildlife Area, and the flood protection afforded by the Bypass. The Conservation Measure must include appropriate design and operational criteria to avoid jeopardizing agriculture—particularly the cultivation of rice—in the Yolo Bypass.
- **The Yolo Bypass Wildlife Area is protected.** The habitat, recreational, and educational opportunities afforded by the Wildlife Area make it an invaluable asset to Yolo County and the surrounding region. The Conservation Measure should not jeopardize the Wildlife Area and, if possible, it should be enhanced and preserved in perpetuity as part of the Bay Delta Conservation Plan (“BDCP”).
- **Completion and implementation of the Yolo Natural Heritage Program are assured.** The County and the four cities (Woodland, Davis, West Sacramento, and Winters) have worked for years to complete a local HCP/NCCP through a joint powers authority. This effort is nearing completion and BDCP must not interfere with—and should assist where possible—in the completion and implementation of this effort.

- **Local economic impacts are addressed.** All appropriate steps must be taken to identify and fully mitigate local economic impacts of the Conservation Measure, including but not limited to its effects on County revenues and the agricultural industry. The County should be closely consulted as financial assistance programs or other mitigation measures are developed.

This is a partial list of the most pressing concerns of the County and many of its local stakeholders and constituents with regard to the Conservation Measure. We expect the Natural Resources Agency (“Agency”) to carefully study all of the issues underlying these concerns as part of the BDCP planning process. Similarly, meaningful local participation in these issues is also vital to the success of the planning effort.

To facilitate local participation, the County asks the Agency to take action on several items. First, the County needs financial resources to enable it to perform an independent technical review of the local effects of the BDCP on flood protection, agriculture, and other issues identified above. We have previously requested \$500,000 for this purpose, and we now urge the Agency to act promptly upon this request. Independent local review of these issues is necessary if the County and its constituents are expected to have a meaningful role in the BDCP planning process, particularly regarding this Conservation Measure.

Second, the Agency must engage in a robust local outreach effort to develop stakeholder input regarding the design and operation of the Conservation Measure. We recognize that the Agency proposes to convene a “local issues group” for the Yolo Bypass and certain related issues. The County encourages the Agency to convene such a group so long as it proceeds in the following manner, which we believe is the only reasonable way of assuring its success:

- **Identify key stakeholders.** Many stakeholders have a sincere interest in the flood protection, agriculture, habitat, and recreational attributes of the Yolo Bypass and the Yolo Bypass Wildlife Area. Appropriate representatives of these diverse stakeholders must be included in the local issues group.
- **Give them a meaningful role.** The issues group must be a forum for meaningful review and discussion of the Conservation Measure, suggested alternatives and mitigation measures, and other issues of concern. The Agency will need to devote the time and resources necessary to review and respond to concerns, suggestions, and other matters appropriately raised by the group.
- **Provide the group with the resources it needs to succeed.** Additional technical modeling and studies may be needed to address certain topics with the local issues group. Similarly, the Agency should make appropriate staff and outside consultants available for local issues group meetings.
- **Assure that the County plays a key role.** A proper role for the County must include an Agency commitment to promptly respond in writing to the County’s written comments, to provide the County with reasonable access to Agency decision makers, and to otherwise assure a true cooperative relationship between the County and the Agency in the manner envisioned in the Natural Community Conservation Planning Act.
- **Integrate local stakeholder input into the final text of the Conservation Measure.** If stakeholder input demonstrates that changes to the Conservation

Measure are appropriate (before or after the September 2010 draft is released), the Agency should make such changes. For example, if the work of the issues group shows that additional options for the design and operation of the Conservation Measure are reasonable, they should be integrated into the final Conservation Measure. An Agency commitment of this nature is fundamental to the success of the issues group and is of great importance to the County.

The County expects to have a prominent role in the local issues group and to work closely with the Agency on each of these matters. (We appreciate your initial efforts to include the County in this manner.) This role is appropriate in light of the County's jurisdiction over local land use matters, its interest in ensuring a strong local agricultural industry, and its general responsibility to ensure the continued health, safety, and welfare of local residents.

We look forward to confirmation that the Agency concurs with each of these points and is committed to taking all actions necessary to respond. Assuming this is the case, the County looks forward to working collaboratively with the Agency to make the local issues group a success. Consistent with our prior correspondence, we look also forward to working out the details of County participation in the overall BDCP planning process in the near future, and we expect to provide you with an additional letter on that topic shortly.

As a final matter, the County has long sought payment of nearly \$1,000,000 owed by the Department of Fish and Game for payments in lieu of taxes and local assessments on the Yolo Bypass Wildlife Area. We recently raised this issue with Agency staff and hereby reiterate our request for prompt Agency assistance with this matter. A productive long-term relationship between the County and state agencies on BDCP depends on the fulfillment of the state's financial obligations to the County, both now and in the future. Payment of this debt would be a significant demonstration of good faith.

Altogether, while the BDCP has an opportunity for meaningful success in Yolo County, many challenges lie ahead. The success of BDCP in Yolo County will require a strong commitment by the Agency, the County, and local stakeholders to confront and resolve obstacles to the effective integration of the Conservation Measure into the existing land use regime of the Yolo Bypass. At the end of the process, the County sincerely hopes that, on balance, the Conservation Measure and related actions provide an overall benefit to our constituents.

We hope to work closely with you to achieve this outcome, and we look forward to your response to this letter.

Sincerely,



Helen M. Thomson, Chairwoman
Yolo County Board of Supervisors

cc: Senator Lois Wolk
Assemblywoman Mariko Yamada
Assemblyman Jim Nielsen

ATTACHMENT 5

Review Memo



455 Capitol Mall, Suite 300
Sacramento, CA 95814
916.444-7301

Date: July 7, 2014

To: Phil Pogledich, Senior Deputy Counsel, Yolo County; Petrea Marchand, Consero Solutions

From: Austin Kerr, Senior Noise Specialist

Subject: Review of Noise Analysis in the Bay Delta Conservation Plan Draft EIR/EIS

Summary

Ascent's noise specialists have reviewed the noise and vibration impact analysis provided in Chapter 23 of the Bay Delta Conservation Plan Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and developed the following comments. Our review paid particular attention to the potential for noise and vibration impacts on residents and other noise-sensitive receptors in Yolo County, including land uses in the Clarksburg district. The primary purpose of our review is to determine whether the analysis and proposed mitigation for the project are consistent with the California Environmental Quality Act (CEQA) and Yolo County General Plan Goal HS-7, Noise Compatibility, which strives to protect people from the harmful effects of excessive noise (Yolo County 2009:HS-64).

Our comments seek clarification about the noise standards used in the analysis; identify ways in which those noise standards could lead to erroneous impact conclusions; question the accuracy of the noise attenuation calculations used to support the analysis; seek information about the extent to which noise levels would increase; explain why Yolo County's Community Noise Equivalent Level (CNEL) standards should also be used to make significance determinations; seek detail about traffic noise increases at actual roadside residences; explain the inadequacy of mitigation to address significant traffic noise impacts; and seek important detail about construction of the transmission lines, substations, and corona noise, as well as the potential for project-generated ground vibration to result in structural damage.

Our detailed comments follow:

The analyses of construction noise and operational noise from the conveyance facilities apply hourly L_{eq} noise standards; however, the origin of these standards is unclear and the reasoning for their use is not provided.

The assessment of construction noise impacts applies noise standards from DWR Specification 05-16 (page 23-23, lines 11 to 14). The approach discussed in the EIR/EIS states the following (page 23-23, lines 33 to 42):

Onsite construction and restoration activity between the hours of 7:00 a.m. to 10:00 p.m. (daytime) would have adverse noise effects if the activity is predicted to result in a 1-hour A-weighted equivalent sound level that exceeds 60 dBA at noise-sensitive land uses where the ambient noise level is less than 60 dBA, or if the activity is predicted to increase the ambient noise level at

residential locations by 5 dB or more where the ambient noise level is already greater than 60 dBA (pursuant to Section 01570 of DWR Specification 05-16).

Onsite construction and restoration activity between the hours of 10:00 p.m. to 7:00 a.m. (nighttime) would have adverse noise effects if the activity is predicted to result in a 1-hour A-weighted equivalent sound level that exceeds 50 dBA at noise-sensitive land uses where the ambient noise level is less than 50 dBA, or if the activity is predicted to increase the ambient noise level at residential locations by 5 dB or more where the ambient noise level is already greater than 50 dBA. The lower noise threshold for nighttime activity is based on the 5 to 10 dB reduction in noise performance standards that is commonly applied to noise levels during nighttime hours as used in local noise ordinances in the Plan Area.

DWR Specification 05-16 is stated in the regulatory section, without a citation, as follows (page 23-13, lines 1-13):

Where ambient noise levels are less than 60 dBA and it is determined that construction-related noise will cause noise levels to exceed 60 dBA, or where the ambient noise levels are greater than 60 dBA and it is determined that construction related noise will cause noise levels to exceed the ambient level by 5 dBA, a temporary sound wall shall be constructed between the sensitive area and the construction related noise source. The 60 dBA limit is not a regulatory requirement. Although the 60 dBA limit is not a regulatory requirement, it has been established as a threshold for establishing noise impacts by consensus of experts, local and resource agencies, including the U.S. Fish and Wildlife Service (USFWS). It is estimated that among other things, noise levels above 60 dBA may interfere with communication among birds and other wildlife.

An explanation of DWR Specification 05-16 is found in the contract bid specifications for another DWR project document called the *Tehachapi East Afterbay-Completion-Phase II* (DWR 2005:R-05). This document reveals that the purpose of the noise criteria in DWR Specification 05-16 is to protect bird species and other wildlife. In fact, the same noise criteria are written in the section of DWR Specification 05-16 that focuses on the need to conduct preconstruction bird surveys prior to construction activity. See section 1.07, Collection and Harassment of Species, part B (DRW 2005:R-05).

Therefore, the Draft EIR/EIS assesses the potential for noise impacts to residents and people using hourly L_{eq} metrics that were intended to the assessment of noise impacts to wildlife. No explanation is provided about whether these criteria are also suitable for assessing noise impacts to residents and other human, noise-sensitive receptors.

Applying these noise standards alone has the potential to lead to erroneous impact conclusions, as explained in the next two comments.

The construction noise analysis and operational noise analysis do not disclose the degree in which ambient noise levels would increase.

Ambient noise levels in the rural parts of Yolo County are relatively quiet given that these locations are not located in close proximity to freeways, high-volume road ways, rail lines, mining operations, industrial facilities, or densely populated areas.

The analysis of construction noise under Impact NOI-1 does not reveal how these relatively low ambient noise levels would increase during the 9-year construction period. This information is important to disclose to readers regardless of whether resultant noise levels would exceed any particular standard. For instance, if the ambient noise level during a daytime hour is 46 dBA L_{eq} , which can be the case in a rural area, and construction activity would cause noise levels to increase to 58 dBA L_{eq} then application of DWR's

Specification 05-16 criteria would lead to the conclusion that this increase would be less than significant. However, this would be a 12 dBA increase and, as explained on page 23-3 of the Draft EIR/EIS (line 35), a 10 dBA increase would be perceived as a doubling in loudness. , Given that a 10 dBA increase is considered to be a doubling in loudness, a 12 dBA increase threshold is not as protective of public health. Substantial increases in noise to sensitive uses are significant impacts under CEQA, as suggested by the checklist questions from the CEQA Guidelines, which ask whether the proposed project would result in a substantial permanent (or temporary) increase in ambient noise levels in the project vicinity above levels existing without the project.

Sole use of the hourly L_{eq} standards does not inform readers about the level of noise increases during the non-peak hours of the day.

A determination that the hourly L_{eq} standard of 60 dBA would be exceeded during the worst-case daytime hour and therefore be a significant impact, nonetheless does not reveal the extent of the impact or, more specifically, whether the 60 L_{eq} dBA standard would be exceeded during multiple hours of the day. There is no indication of whether the impact would occur during all, some, or only one hour of the day during daytime hours. The analysis should provide more information about the duration of construction-generated and operational noise impacts. For instance, are there reasons that various construction activities or operational noise sources would generate noise levels that are noticeably greater during one hour of the day than other times? It's more likely, that both construction and operational noise levels would be consistent throughout the day, at least during daytime hours.

The hourly noise standards established by other rural counties in California are more stringent than the hourly L_{eq} standards used in the analysis.

While Yolo County is still in the process of developing its noise ordinance, as called for by Action HS-A61 from the Yolo Countywide General Plan (Yolo County 2009), comprehensive noise standards established by other rural counties would be worth considering as thresholds of significance. For example, the noise standards established by Madera County and Fresno County are presented below:

Maximum Allowable Noise Exposure for Non-Transportation Noise Sources in Madera County		
	Daytime (7am - 10pm)	Nighttime (10pm - 7 am)
Hourly L_{eq} , dB	50	45
Maximum level (L_{max}), dB	70	65

Source: Madera County General Plan 1995.

dBA= A-weighted decibel

L_{eq} = the average noise level during a specified time period

L_{max} = the maximum noise level

Note: As determined at the property line of the receiving land use. When determining the effectiveness of noise mitigation measures, the standards may be applied on the receptor side of noise barriers at the property line. Each of the noise levels specified above shall be lowered by 5 dBA for pure tone noises, noises consisting primarily of speech or music, or for recurring impulsive noises. These noise level standards do not apply to residential units established in conjunction with industrial or commercial uses (e.g., caretaker dwellings).

Exterior Noise Level Standards for Non-Transportation Noise Sources, dBA, Fresno County Noise Ordinance

Category	Cumulative Number of Minutes in Any One-Hour Time Period (L _x)	Daytime (7am – 10pm)	Nighttime (10pm – 7 am)
1	30 (L ₅₀)	50	45
2	15 (L ₂₅)	55	50
3	5 (L _{8.3})	60	55
4	1 (L _{1.7})	65	60
5	0 (L _{max})	70	65

Source: Fresno County Ordinance Code 8.40.040

Notes:

dBA = A-weighted decibel

L_x = the noise level exceeded X percent of a specific period

L_{max} = maximum noise level

In the event the measured ambient noise level exceeds the applicable noise level standard in any category above, the applicable standard shall be adjusted so as to equal the ambient noise level.

Each of the noise level standards specified above shall be reduced by five dB(A) for simple tone noises, noises consisting primarily of speech or music, or for recurring impulsive noises.

If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient noise level can be measured, the noise level measured while the source is in operation shall be compared directly to the noise level standards.

If more stringent noise standards, such as the ones established by Madera and Fresno counties, which were specifically established to evaluate construction noise and other non-transportation noise sources, were used as significance criteria it is more likely that noise impacts would be determined to be significant in the Draft EIR/EIS for the BDCP.

The EIR/EIS does not address local CNEL standards.

The action alternatives of the BDCP include the construction and operation of noise-generating facilities in Yolo County, including the Clarksburg General Plan Area. However, the noise analysis does not recognize the following noise standards from the Noise Element of the Clarksburg General Plan (Yolo County 2002), particularly Policy N-5:

- ▲ **Policy N-4.** New development of residential or other noise-sensitive land uses will not be permitted in noise-impacted areas unless effective mitigation measures are incorporated into project designs to reduce noise to the following levels:
 - For noise sources preempted from local control, such as street and highway traffic:
 - 60 dB Community Noise Equivalent Level (CNEL) or less in outdoor activity areas.
 - 45 dB CNEL or less within interior living spaces or other noise-sensitive interior spaces.
 - Where it is not possible to achieve reductions of exterior noise to 60 dB CNEL or less by using the best available and practical noise reduction technology, an exterior noise level up to 65 dB CNEL will be allowed.
 - Under no circumstances will interior noise levels be allowed to exceed 45 dB CNEL with windows and doors closed.

- ▲ **Policy N-5.** New development of industrial, commercial, or other noise generating activities will not be permitted if resulting noise levels will exceed 60 dB CNEL in areas containing residential or other noise-sensitive land uses unless effective mitigation measures are incorporated into project designs to reduce noise levels consistent with Noise Policy N4 above.

As explained in the Draft EIR/EIS the CNEL metric is a 24-hour noise metric that accounts for the greater annoyance of noise to humans during the evening and nighttime hours between 7:00 p.m. and 7:00 a.m. (page 23-2, lines 12 to 21). The noise impact analysis should determine whether construction activity and long-term operations would expose noise-sensitive receptors in the Clarksburg General Plan Area to 24-hour noise levels that exceed local CNEL standards.

This oversight is particularly concerning given that other environmental assessments for DWR projects have applied the applicable noise standards of the applicable local city or county to make significance determinations. For instance, in the *Dutch Slough Tidal Marsh Restoration Project Draft EIR*, DWR's noise analysis applied both the CNEL standards and hourly L_{eq} standards of the City of Oakley (DWR 2008:3.7-2 through 3.7-5). Also, noise standards of both the City of Perris and Riverside County noise standards were used to make significance determinations about project-related construction noise in the *Perris Dam Remediation Program EIR* (DWR 2010: 3.9-6 through 3.9-9). Moreover, in the *Salton Sea Species Conservation Habitat Project Draft EIS/EIR*, which was prepared by DWR for the U.S. Army Corps of Engineers, the noise analysis applied the noise standards of Imperial County (DWR 2011:3.14-3 through 3.14-6).

Moreover, one reason local jurisdictions have different noise standards, or even use different noise metrics in their standards (e.g., L_{dn} , CNEL, hour L_{eq} , and/or L_{max}) is because they have different ambient noise environments under existing conditions.

The EIR/EIS does not to apply any noise standards based on a 24-hour metric

Figure 23-1 shows the Federal Railroad Administration's (FRA) and Federal Transit Administration's (FTA) allowable increase in cumulative noise level and is based on Figure 3-1 from the FRA's *High-Speed Ground Transportation Noise and Vibration Impact Assessment* (FRA 2012)—which is the most up-to-date version of the 2008 document cited in the EIR/EIS. The concept portrayed in Figure 23-1 is that a greater noise increase is considered to be more tolerable if existing ambient noise levels are relatively low and only smaller noise increases are considered tolerable if existing ambient noise levels are high. Figure 23-1 notes that the assessment of noise increase impacts for Category 1 land uses should use the hourly L_{eq} metric (i.e., $L_{eq}(h)$) and the assessment of noise increase impacts for Category 2 land uses should use the L_{dn} metric. As explained in the Draft EIR/EIS the L_{dn} metric is a 24-hour noise metric that accounts for the greater annoyance of noise to humans during the nighttime hours between 10:00 p.m. and 7:00 a.m. (page 23-2, lines 18 to 20). According to FRA's report, Category 1 land uses include "residences and buildings where people normally sleep. This category includes homes, hospitals, and hotels where a nighttime sensitivity to noise is assumed to be of utmost importance" (FRA 2012:3-5). FRA's report also states that the L_{dn} metric should be used for land uses where nighttime sensitivity is a factor and the L_{eq} during the hour of the day when maximum transit noise exposure should be used to assess land uses that only host only daytime activities (FRA 2012:3-4). The noise impact analysis in the Draft EIR/EIS does not assess noise impacts to residential land uses and other noise-sensitive land uses using a 24-hour noise metric, such as L_{dn} or CNEL. Noise impacts to noise-sensitive receptors need to be assessed for all times of day rather than just the peak daytime and nighttime hours.

The construction noise analysis does not characterize ambient noise levels in rural areas of Yolo County that could potentially be affected by the proposed project.

Ambient noise levels in Yolo County are not well characterized in the environmental setting. Table 23-6 on page 23-9 shows that the traffic noise level 100 feet from State Route 84 near Clarksburg is 56.8 dBA L_{dn} . However, no information is provided about ambient noise levels in areas where traffic noise is not the predominant noise source, such as the community of Clarksburg which is located across the Sacramento River and approximately 800 feet from State Route 84 and approximately 1,000 feet from the site of Water Intake 2 under Alternative 1C; 1,500 feet from the site of Water Intake 2 under Alternative 4; or the residential land uses across the river from the proposed site of Water Intake 3 under Alternative 4. Also, according to Figure M3-3 for Alternative 4, some residential land uses would be located across the Sacramento River and approximately 600 feet from both Water Intakes 2 and 3.

While the County or its consultants have not conducted any sound level measurements at these locations, it's not unreasonable to expect, given the rural nature of the area, that the ambient sound levels in these locations would be between 40 and 50 L_{eq} during daytime hours and between 25 and 40 dBA L_{eq} during nighttime hours. These levels have been measured in other rural areas with similar levels of development (Amador County, Buena Vista Biomass Facility Subsequent EIR, 2010:4.3-7). This information differs from the text in the Environmental Setting/Affected Environment which states that "existing noise levels are in the range of 40 to 50 dBA" (page 23-7, lines 19 and 20). Rather than rely on estimates or measurement performed for other projects, we suggest that 24-hour noise measurements be conducted in areas of Yolo County that would be impacted by project-related noise to properly characterize existing conditions. Collecting project-specific noise measurements would also be consistent with other noise impact analyses published by DWR, including the analyses for in the *Dutch Slough Tidal Marsh Restoration Project Draft EIR* (DWR and California State Coastal Conservancy 2008:3.7-5) and the *Perris Dam Remediation Program Draft EIR* (DWR 2010:3.9-8).

Characterizing the baseline noise levels is important to understand the degree to which construction activity would change the ambient noise environment, as discussed further in the next comment.

Locations and potential quantitative noise impacts from construction related to conservation measures CM2 through CM10, discussed on page 23-49.

Noise impacts from the implementation of conservation measures (CM) 2 through 10 are discussed under Impact NOI-4. This analysis states, "Because the specific areas for implementing these conservation measures have not been determined, this effect is evaluated qualitatively" (page 23-49, lines 10 and 11). However, the analysis lacks much detail that could be provided at this time and quantitative analysis for at least some of the features that would be a part of CM2 is possible. For instance, at least the general location is known for the following features:

- ▲ Installing fish ladders and experimental ramps at Fremont Weir or widening the existing fish ladder.
- ▲ Installing fish screens on small Yolo Bypass diversions.
- ▲ Constructing new or replacement operable check-structures at Tule Canal/Toe Drain.
- ▲ Replacing the Lisbon Weir with a fish-passable gate structure.
- ▲ Realigning Lower Putah Creek.
- ▲ Increasing operation of upstream unscreened pumps.

- ▲ Installing operable gates at Fremont Weir.
- ▲ Constructing physical barriers in the Sacramento River.
- ▲ Constructing associated support facilities (operations buildings, parking lots, access facilities such as roads and bridges).
- ▲ Improving levees adjacent to the Fremont Weir Wildlife Area.
- ▲ Replacing agricultural crossings of the Tule Canal/Toe Drain with fish-passable structures such as flat car bridges, earthen crossings with large, open culverts.

To the extent possible, general locations should also be considered and analyzed for additional features of CM2 that include grading, removal of existing berms, levees, and water control structures, construction of 30 berms or levees, re-working of agricultural delivery channels, and earthwork or construction of structures to reduce Tule Canal/Toe Drain channel capacities.

At the very least, the analysis should discuss the types of construction activities and construction equipment that would be needed for these CMs and estimate associated noise levels. The analysis should also discuss whether any noise-sensitive receptors are located in the general area of each CM feature and calculate the distance at which applicable noise standards would be exceeded. For instance, the realignment of Lower Putah Creek would likely involve the use of excavators, dozers, graders, front loaders, and/or haul trucks—types of equipment for which reference noise levels are known, as presented in Table 23-12 on page 23-18. It is also possible to explain to the reader whether pile driving would be involved in the implementation of any of these features.

Therefore, the analysis provided under Impact NOI-4 is insufficient and additional, detailed analysis should be provided to determine whether applicable, local noise standards would be exceeded at any noise-sensitive receptors located near the construction and operation locations of these conservation measures. Noise impacts on wildlife should also be evaluated using DWR Specification 05-16 or other appropriate methodology.

The attenuation rate used in the analysis of construction noise impact is too high.

The analysis of noise generated during the construction of water intakes is discussed under Impact NOI-1, beginning on page 23-30. The analysis states that potential reasonable worst-case noise levels from construction of the intakes were evaluated (page 23-30, lines 31 to 32). The analysis then presents Table 23-16 which shows the estimated sound levels from construction activity as a function of distance (page 23-31, line 1). The attenuated noise levels shown in Table 23-16 indicate that an attenuation rate of 8 dBA per doubling of distance (dBA/DD) was used to estimate noise attenuation. This likely overestimates noise attenuation, meaning that noise will likely be higher at sensitive receptors than reported in the EIR/EIS.

According to guidance from the Federal Transit Administration noise from point sources typically attenuate at a rate of 6 dBA/DD through divergence alone and some additional attenuation may occur from ground absorption when sound paths lie close to freshly-plowed or vegetation-covered ground (FTA 2006:2-10). The same guidance also explains that for acoustically “hard” ground conditions no ground absorption should be applied to attenuation calculations (FTA 2006:6-22). Caltrans defines acoustically hard sites as those with a reflective surface between the source and receiver, such as parking lots or smooth bodies of water (Caltrans 2009:2-32). No excess ground attenuation is assumed for these sites. With hard sites, changes in noise levels with distance are related to geometric spreading only. Caltrans recommends that an attenuation rate of 7.5 dBA/DD should be used to estimate noise levels from point sources around soft sites and 6.0 dBA/DD should be used for point sources around hard sites (Caltrans 2009:2-32).

Thus, the analysis under Impact NOI-1 overestimates the level of attenuation and ground absorption in two ways. First, it assumes that the surfaces around the sites where water intakes would be constructed are acoustically soft. However, the sites are along a body of water than is typically at minimum flow during the low-flow times of year when construction would occur. Also, as shown in Figures 3-19, the water intakes would be built of concrete and surrounded by paved parking areas, and these surfaces thus need to be considered in assessing operational impacts. Second, even if the surrounding surface were acoustically soft, the attenuation rate of 8 dBA/DD used in the analysis is greater than the Caltrans-recommended attenuation rate of 7.5 dBA/DD. For these reasons, the analysis understates the level of noise impact and the number of parcels that would be adversely affected, as shown in Table 23-16 (page 23-33) and Table 23-17 (page 23-34), as well as all the corresponding tables for the other action alternatives.

The analysis does not address single-event noise levels from trucks passing noise-sensitive receptors.

The noise impact analysis does not address intermittent Single-Event Levels (SEL) associated with trucks hauling materials to and from the various construction sites. The SEL describes a receiver's cumulative noise exposure from a single impulsive noise event (e.g., an automobile passing by or an air craft flying overhead), which is a rating of a discrete noise event that compresses the total sound energy of the event into a 1-second time period, measured in decibels (Caltrans 2011a:D-20). It is a different metric than L_{eq} or L_{max} . While noise generated by truck activity may not exceed the applicable hourly L_{eq} standard, or applicable L_{dn} or CNEL standards, nearby receptors may still be exposed to SELs that result in speech disruption, or during nighttime hours, sleep disruption. Increased attention to the evaluation of SELs and their effects on sleep is highlighted by the court decision in *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland, 2001*. The Federal Interagency Committee on Aviation Noise (FICAN) has studied the effects of SELs and their likelihood to result in people being awakened while sleeping inside their residences (FICAN 1997) and this research will be helpful in developing a threshold against which to evaluate these types of noise events.

Other environmental documents have addressed SEL impacts from haul trucks, including the *Mitchell Ranch Center Draft EIR* (City of Ceres 2010:4.10-23 through 4.10-24). This analysis determined that exposure to 65 dBA SEL would result in a chance of sleep disturbance of less than 5 percent and, therefore, used 65 dBA SEL as a significance threshold. The appropriate dBA SEL standard for the BDCP Draft EIR/EIS needs to be considered in light of the surrounding ambient noise levels and other appropriate circumstances.

Given that truck hauling may occurring during noise-sensitive evening or early morning hours and many haul routes pass in close proximity to residences and other noise-sensitive receptors, we recommend that an SEL analysis be included in the EIR/EIR and all necessary mitigation be required to minimize related impacts, especially sleep disruption at residences during noise-sensitive nighttime hours.

The pulsating nature of pile driving noise is not addressed.

Many noise impact analyses, such as DWR's *Monterey Plus EIR* (DWR 2007:7.12-7), evaluate noise sources with an impulsive or periodic character such as pile driving with a more stringent standard than other noise sources. This is because these types of noise sources are more likely to result in annoyance or disturbance to receptors. In the *Monterey Plus EIR*, DWR's analysis applied the Kern County General Plan noise standards, which apply a 5 dBA reduction to the standards applicable to non-pulsating sources of noise. Given that pile driving would be performed during project construction, it would be appropriate to use a similar adjustment in determining the significance conclusion.

The threshold used in analyzing project-related traffic noise is inappropriate.

The analysis considers traffic noise increases that would occur during the 9-year construction phase to be significant if they exceed 12 dBA, which, as stated on page 23-24 (lines 16 through 20), is what Caltrans

considers to be a substantial increase in the *Traffic Noise Analysis Protocol* (Caltrans 2011). However, the 12 dBA increase standard is not suitable to the analysis of additional traffic being added to existing traffic volumes on an existing roadway. Instead, as stated on page 23-13, the Caltrans *Traffic Noise Analysis Protocol* specifies the practices to be used for “new construction or reconstruction of federal-aid highway projects” (lines 16 through 20). In fact the full title of Caltrans’ guidance document is the *Traffic Noise Analysis Protocol for New Highway Construction, Reconstruction, and Retrofit Barrier Projects* (Caltrans 2011). As evidenced by the full title, this guidance is intended to help agencies evaluate traffic noise levels that are exposed to receptors for the first time or to traffic noise from reconstructed, widened, or realigned roadways. This is not the same as a project that ads new traffic to existing roadways.

When analyzing traffic noise increases on existing roadways from additional trips generated by proposed projects lead agencies typically apply an incremental increase threshold of 1.5, 3, and/or 5 dBA, depending on the existing ambient noise level. This approach has been used in many environmental reviews including the *Perris Dam Remediation Program EIR*. More specifically, the approach used in the *Perris Dam EIR* applied threshold criteria established by the Federal Interagency Committee on Noise, which is presented in Table 3.94 of that EIR as follows (DWR 2010: 3.9-6 through 3.9-9):

Thresholds of Significance for Noise Exposure	
Ambient Noise Level Without Project (L _{dn})	Significant Impact Assumed to Occur if the Project Increases Ambient Noise Levels By:
<60 dB	+ 5.0 dB or more
60-65 dB	+ 3.0 dB or more
>65 dB	+ 1.5 dB or more

SOURCE: Federal Interagency Committee on Noise (FICON) 1992, as cited in DWR 2010:3.9-11.

This tiered approach is also consistent with guidance and noise criteria of multiple local jurisdictions in California, including Fresno County (Fresno County 2014:2-180) and Merced County (Merced County 2013:HS-13).

Given that a 10 dBA increase is considered to be a doubling in loudness, as stated on page 23-3 of the Draft EIR/EIS (line 35), a 12 dBA increase threshold is not as protective of public health.

This comment is not only relevant to the determination of whether a traffic noise increase would be significant; It is also directly relates to the reduction needed to be achieved by Mitigation Measure NOI-1a in order to reduce a traffic noise impact to a less-than-significant level.

Insufficient mitigation is required to reduce traffic noise levels that would be significant.

The traffic noise modeling conducted for Impact NOI-1 determined that traffic noise increases would be a significant impact along some of the haul routes that would be used during the 9-year construction period. As stated in the Draft EIR/EIS, “the increase in noise levels would exceed the project threshold for traffic noise and would be considered adverse. Mitigation Measures NOI-1a and NOI-1b are available to address this effect (page 23-38, lines 9 and 10).” However, these mitigation measures contain very few measures to reduce traffic noise exposure.

Mitigation Measure 1a includes only one measure that addresses traffic noise impacts, which is to select haul routes that affect the fewest number of people. This measure lacks detail. It’s not clear whether alternative haul routes exist. It’s also not clear whether a route that affects fewer people is a reduction in the

impact. What if one route passes within 60 feet of 50 residences at travel speeds of 40 mph and another route passes within 100 feet of 35 residences at travel speeds of 55 mph?

Additional mitigation should be implemented to reduce traffic noise impacts, such as temporary sound barriers, reduced travel speeds, specifically limiting the times of day when haul trucks travel on their routes, specifications requiring lower-noise trucks, signs that prohibit engine braking near intersections or near receptors, coordinating with farmers or other land owners to use private routes that cross their lands, or using conveyors to move material rather than public roadways.

Mitigation Measure 1b contains no measures that pertain to traffic noise. It's not clear how making the construction schedule available to residents and establishing a complaint coordinator would reduce traffic noise impacts. Specific recourse that results in actual reduction of noise needs to be part of any such mitigation.

Also, these mitigation measures should aim to reduce traffic noise levels such that they meet the traffic noise increase standards presented in the previous comment. For instance, the Table 23-20 of the EIR/EIS indicates that the segment of Courtland Road between State Route 84 and River Road would experience a traffic noise increase of 18 dBA from 48 dBA to 66 dBA. All feasible mitigation should be implemented to reduce the increase to 5 dBA, or a resultant noise level of 53 dBA in order to reduce the impact to a less-than-significant level.

The tables of modeled traffic noise levels do not indicate the noise level at the nearby sensitive receptors.

Modeled existing traffic noise levels are presented in Table 23-20 and traffic noise levels with the added traffic from the alternatives are provided in Tables 23-14, 23-37, 23-63, and 23-82, . All of these tables show the modeled traffic noise level at a distance of 100 feet from the centerline of the modeled roadway segment. In many cases, however, the residences or other noise-sensitive receptors located along these roadways are closer than 100 feet. In order for readers of the analysis to understand the degree to which they will be impacted the analysis should present both existing and existing-plus-project noise levels at their specific locations.

Noise from new substations is not addressed.

The analysis does not address noise that would be generated by new substations associated with the transmission lines that would supply power to the water intake facilities and other pump facilities, and whether this noise could adversely affect nearby noise-sensitive receptors.

Corona noise from transmission lines.

The analysis does not address whether the transmission lines would produce corona noise that could adversely affect nearby noise-sensitive receptors.

Nighttime construction of transmission lines.

The building of new transmission lines typically involves the construction of new towers as well as the "stringing" of new power lines. In locations where these lines cross public roadways, the construction activity is often performed at night in order to minimize traffic delays. The noise impact analysis should identify such locations and determine whether this nighttime construction activity would impact nearby noise-sensitive receptors.

The noise levels generated at the offsite borrow/spoil areas may be underestimated.

Analysis of noise generated at the offsite borrow/spoil areas, as provided on page 23-39, is based on the combined noise level of the three loudest pieces of equipment that would operate at these locations simultaneously (an excavator, a truck, and a bulldozer). We ask DWR and its consultants to review this assumption. Given the quantity of material that would be hauled to and from these locations and the duration of time in which that hauling would occur we suspect it would be necessary to have multiple sets of these equipment operating simultaneously, which would result in higher noise levels than evaluated under Impact NOI-1.

The potential for structural damage caused by ground vibration is not assessed.

Table 23-3 on page 23-5 indicates that ground vibration could result in structural damage to structures made of engineered concrete and masonry if they are exposed to a peak particle velocity (PPV) of 0.3 inches/second (in/sec) or more. In the analysis, Table 23-23 on page 23-43 shows that structures within 50 feet of impact pile driving would be exposed to a PPV greater than 0.3 in/sec. However, the analysis does not present whether pile driving would occur within 50 feet of any structures resulting in the potential for structural damage.

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ATTACHMENT 6



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January 24, 2013

VIA E-MAIL ONLY

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Re: Comments on October 2012 Draft Discussion Paper on Agricultural Mitigation

Dear Katy:

This letter responds to your request for comments regarding the October 15, 2012 working draft document entitled "Discussion Paper—BDCP and Delta Farmland."

Consistent with your request, these comments are offered to constructively guide additional work on the Discussion Paper. These comments do not represent a formal County position on matters embraced by the Discussion Paper. That said, however, my understanding is that a public review draft of the Discussion Paper will be released in the near future, and I expect any County position on the public draft will be generally consistent with the comments set forth herein.

I. Concepts That Align With County Policy Objectives.

In my judgment, the following concepts included in the Discussion Paper align with County policy objectives and are likely to be well-received.

A. Coordination With Counties.

The County has consistently sought close coordination between BDCP and affected jurisdictions, including coordination on the implementation of mitigation for the loss of farmland and related economic effects. The Discussion Paper appears to embrace this approach. [Discussion Paper at p. 2.] As I understand it, affected jurisdictions will be consulted on a project-by-project basis to determine their interest in either a "conventional mitigation approach" or an "optional agricultural land stewardship approach," the details of which are presented conceptually in the Discussion Paper. Generally, this is the very type of close coordination with affected jurisdictions that the County would like to see integrated into the BDCP and its implementation.

B. Emphasis on Impact Avoidance.

The Discussion Paper places considerable weight on planning projects in a manner that avoids farmland conversions, particularly “highest quality” farmland (a term that is undefined). [Discussion Paper at pp. 5-6.] This is a basic but very important component of the overall approach reflected in the Discussion Paper, and it is consistent with the County’s longstanding policies regarding activities affecting farmland.

C. Commitment to a Neutral (or Better) Economic Outcome.

Generally, the Discussion Paper’s focus on maintaining the economic viability of Delta agriculture is appropriate given the potential magnitude of the changes that BDCP and related initiatives may introduce. [Discussion Paper at p. 3.] If DWR is truly willing to commit to implement BDCP in a manner that has at least a neutral economic effect on Delta agriculture [Discussion Paper at p. 1], this is very significant and should open the door to a meaningful conversation with the County (and perhaps other affected jurisdictions) about how to achieve this outcome. I encourage you to highlight this commitment in future drafts of the Discussion Paper.

D. Creative Approach to Addressing Economic Effects.

The draft Discussion Paper describes an “optional agricultural land stewardship approach” that includes various strategies for addressing the environmental and economic effects of the conversion of farmland. [Discussion Paper at pp. 8-13.] In concept, many of these strategies—particularly those described in subsections A, B, F, H-P, and R—appear to have merit and are worthy of further exploration in developing a comprehensive mitigation program. This portion of the draft Discussion Paper reflects a creative and thoughtful approach to mitigation strategies.

II. Concepts That Raise Concerns.

There are many elements of the Discussion Paper that do not align with County policy objectives or, more importantly, the requirements of our Agricultural Conservation Easement Program. To be candid, I expect the County will oppose the strategy reflected in the Discussion Paper if the following issues are not addressed.

A. The Discussion Paper Creates a False Dilemma.

The Discussion Paper explains that the conversion of farmland will have both environmental and economic effects. The County agrees, and it has consistently argued that the BDCP should fully mitigate both types of effects in coordination with affected jurisdictions. However, while the Discussion Paper includes references to achieving a “neutral” economic effect on Delta agriculture, it seems that the overall strategy may result in a compromise that neither assures a “neutral” economic effect on agriculture or adequate mitigation under CEQA for the conversion of farmland.

Confronted with the choice of conventional mitigation or the optional agricultural land stewardship strategy, affected jurisdictions will thus have a dilemma: accept mitigation for the loss of agricultural resources (the conventional approach); or accept mitigation primarily directed at the direct and indirect economic effects of such conversions (the optional strategy). This is not likely to be well received by many jurisdictions, and it

will not be well received by the County. Affected jurisdictions will want to be "made whole" on both sides of the ledger. Many jurisdictions will place no value on having a choice between the conventional mitigation approach and the optional strategy.

At bottom, this is a leading concern with the Discussion Paper--it appears to enshrine a false dilemma by creating a choice that affected jurisdictions should not have to make. Environmental and economic mitigation should be provided in coordination with affected jurisdictions, not merely one or the other (or, at best, a bit of both). If cost presents an obstacle to achieving fairness for affected jurisdictions, the problem is not with the solution (full mitigation) but rather with the financial integrity of the program (BDCP) creating the impacts that require mitigation. This is a fundamental issue to address in future drafts of the Discussion Paper .

B. The Discussion Paper Needs to Include Performance Measures.

The discussion of both the conventional approach to mitigation and the optional strategy should be expanded to include clear performance measures or other metrics that define mitigation objectives. It is not clear, for example, whether the conventional approach to mitigation will consist of 1:1 (or higher) mitigation by preserving farmland of comparable quality to that converted. Similarly, while the Discussion Paper states that a "critical objective" of the optional strategy is to achieve a neutral economic effect, it is not clear whether (or how) this objective will serve as a performance measure that defines the extent of mitigation. For the sake of clarity, these matters should be addressed in the public review draft.

C. The Discussion Paper Should Describe Benefits of Conventional Mitigation.

The Discussion Paper states that conventional mitigation "does little to help the individual farmer whose land was converted or otherwise impacted by the project." This may be true, but it is important to also present the perceived benefits of a conventional mitigation approach. For example, many jurisdictions use conservation easements to mitigate the loss of farmland because they have determined that protecting comparable farmland from conversion will constrain future development and help preserve a sustainable agricultural base. Also, I observe that a similar approach to mitigation is common--and has been embraced and utilized by various state agencies--for the permanent loss of other irreplaceable resources, such as foraging habitat for the Swainson's hawk and other threatened and endangered species.

D. The Definition of "Agricultural Land" Should Be Expanded.

The Discussion Paper defines "Agricultural Land" for purposes of mitigation generally as "prime farmland, farmland of statewide importance, or unique farmland." [Discussion Paper at p. 5.] This is in accord with Appendix G of the CEQA Guidelines, which focuses the analysis of impacts on agricultural resources in environmental documents on these categories of farmland. Importantly, however, local governments in the Delta have rejected this narrow focus on "prime farmland, farmland of statewide importance, or unique farmland" in developing their own agricultural land preservation strategies, favoring a broader view of "farmland" that includes farmland of local importance, grazing land, and other lands suitable for agriculture which do not meet these definitions.

The County is among these jurisdictions. Its Agricultural Land Easement Program requires mitigation for the conversion of any land suitable for agriculture, including grazing land. The County could not accept an

agricultural mitigation strategy in BDCP that depends, in part, on whether the land at issue constitutes land worthy of mitigation under the constrained approach set forth in the CEQA Guidelines. Other affected local governments are likely to have similar sentiments to the extent that the Discussion Paper proposed mitigation for a more narrow range of farmland than is designated for conservation and mitigation by local general plans and ordinances. As discussed below, this aspect of the overall mitigation strategy should therefore be aligned with the approach taken in local mitigation programs.

E. The Classification "Important Farmland" Should Be Removed.

The Discussion Paper states that of the "Agricultural Land" affected by a project, the only land that may require mitigation is "Important Farmland." This term is defined as including only the acreage that "is currently farmed and 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 project." [Discussion Paper at p. 6.] This highly restrictive approach is unlikely to be acceptable to the County or other affected jurisdictions. Some of the problems it presents are as follows:

- Limiting mitigation to land that "is currently farmed" indirectly encourages the cessation of agriculture to lower the cost of conversions to habitat or other uses associated with BDCP. Additionally, this approach would preclude mitigation for land removed from agriculture for temporary periods due to landowner decisions having nothing to do with the underlying value of the land and its suitability for agriculture.
- Evaluating whether land "can continue to be farmed economically and on a sustainable basis for an indefinite period of time" will be difficult or impossible in at least some instances. For example, forecasting the potential effects of climate change is speculative and its impact on a given parcel depends on a range of factors, including whether levees will be improved to neutralize its effects.

Consequently, in all but extraordinary circumstances, lands capable of being farmed should be considered likely to be farmed in the future, and conversions of such lands should require full mitigation.

F. The Concept of Working Landscapes is Misapplied.

As defined in the Discussion Paper (see footnote 3 on p. 2), a "working landscape" is a place where agriculture or other economic endeavors are pursued in a manner that integrates the consideration of ecological values and ecosystem needs. In places, the Discussion Paper seems to articulate a role for "working landscapes" that is consistent with this definition, with agriculture remaining the predominant land use. [Discussion Paper at p. 7.] In other places, however, the Discussion Paper seems to treat almost any sort of land management activity as consistent with the concept of "working landscapes," including managing restored habitat as if such an activity is equivalent to the production of agricultural commodities. [Discussion Paper at p. 9.]

This may be interesting to contemplate in the abstract, but it is not logically sound. The permanent conversion of agricultural resources to another use--whether it be homes or habitat--results in the loss of a resource, period, and it cannot be squared with the concept of working landscapes. Nor does it matter that farmers can potentially be reemployed as managers of restored habitats. [Discussion Paper at pp. 9-10.] They can just as

easily be hired to grade land for urban development and maintain parks, but that has no bearing on whether farmland has been converted (or the adequacy of related mitigation).

Certainly, the concept of working landscapes has a place in the development and implementation of BDCP. It may even be a viable strategy for limiting the conversion of farmland--for example, if in lieu of directly converting land to habitat landowners are encouraged to undertake modest changes in agricultural practices to provide an incremental benefit for covered species. While such an approach may require more acres to achieve a desired environmental outcome (as compared with projects that covert land to habitat), it is far more likely to gain acceptance among affected jurisdictions than the overly broad concept of working landscapes apparently endorsed by the Discussion Paper.

G. Other Issues.

The Discussion Paper appears to place considerable weight on the potential reemployment of farmers as habitat managers. [Discussion Paper at p. 9.] This is fine to consider but it has value only to the extent it contributes to economic mitigation, as it does not mitigate for the loss of agricultural resources. It is thus distinct from, and not a true alternative to, "conventional mitigation" for the loss of agricultural resources as indicated on p. 7 of the Discussion Paper (where it states that hiring farmers may "eliminate or reduce a potential conventional mitigation requirement"). The same goes for other elements of the proposed optional strategy that are economic in nature (e.g., the strategies described in subsections B and D of Section IV).

Separately, the Discussion Paper indicates that coordinating agricultural and terrestrial species mitigation may reduce or eliminate the need for stand-alone agricultural conservation strategies (including easements). [Discussion Paper at pp. 5-6.] There may be limited instances where this strategy will be viable. In some circumstances, however, maintaining lands for terrestrial species will limit crop types and will severely diminish the residual agricultural value of the conserved lands. For this reason, the County generally does not allow the "stacking" of habitat and agricultural conservation easements. The Discussion Paper should recognize this issue and place appropriate limits on easement stacking to ensure the long-term sustainability of agriculture on the conserved lands.

III. Additional Suggestions.

As the foregoing comments are intended to reflect, the County would object to many elements of the overall approach presented in the Discussion Paper unless changes are made in the draft released for public review. Suggested changes and issues for consideration are included in the comments above. Many of those changes would likely be addressed by a shift in strategy that includes the following key elements:

A. Eliminate the False Dilemma.

Do not ask jurisdictions to choose between conventional mitigation and the optional strategy. Instead, make a commitment to mitigate the conversion of farmland in line with the conventional approach, as reflected in any local ordinances or general plan policies (as discussed below). Separately, make a commitment to a neutral (or better) economic outcome for affected jurisdictions. This seems to be defined as a "critical objective" in the opening paragraphs of the Discussion Paper, yet it is unclear whether it is true commitment or how its achievement will be measured.

B. Follow Local Agricultural Mitigation Requirements.

Some jurisdictions, including the County, have established local agricultural mitigation programs that contain specific mitigation ratios and other standards for agricultural mitigation. These programs (typically reflected either in ordinances or general plan policies) reflect legal and policy choices made carefully by local elected officials, often with substantial input from local farm bureaus and other stakeholders. The BDCP should be implemented in a manner that respects these local programs, particularly if such programs require a higher level of conservation than would be required under any mitigation measure included in the BDCP EIR/EIS.

C. Develop a Robust Economic Mitigation Program.

Certainly, many of the strategies identified in the Discussion Paper could help address the adverse economic effects of BDCP. The Discussion Paper appears to contemplate that affected jurisdictions will be given a leading role in developing local programs to address such effects, and this should be emphasized even more strongly in the public review draft.

The Discussion Paper should also directly encourage the development of additional strategies for addressing economic effects. For example, additional strategies could include grower assistance programs intended to provide compensation for occasional impacts affecting agricultural viability (e.g., annual compensation for any losses attributable to seasonal habitat management) as a means of ensuring that such lands stay in agriculture. It is important to describe the strategies in the paper as only an initial list of approaches for consideration.

Lastly, the Discussion Paper should recognize that no matter how carefully an economic mitigation program is prepared, it will not eliminate the risk of adverse economic effects. This factor, together with the Delta Reform Act's dictate that the "coequal goals" be achieved in a manner "that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place," supports the creation of locally administered economic development programs capable of addressing any unanticipated adverse economic effects. Each such program should be supported by an endowment that provides an ongoing stream of revenue sufficient to achieve program objectives (and assure that local tax and assessment revenues are paid in full).

* * *

The County appreciates the opportunity to comment on the Discussion Paper. Please contact Phil Pogledich, Senior Deputy County Counsel, with any questions at (530) 666-8275.

Very truly yours,

Robyn Truitt Drivon
County Counsel


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