



County of Yolo

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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/>.

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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.

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

Very truly yours,

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County Counsel


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