



# COUNTY OF YOLO

## Board of Supervisors

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County Administrator, **Patrick S. Blacklock**  
 Deputy Clerk of the Board, **Julie Dachtler**

October 30, 2015

VIA ELECTRONIC MAIL ONLY

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

Sent electronically to:  
[BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

Re: Yolo County Comments on RDEIR/SDEIS Documents

Dear Secretary Jewell and Secretary Laird.

The County of Yolo submits this letter to comment on the Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement ("RDEIR") for the Bay Delta Conservation Plan ("BDCP") and California WaterFix. Additional comments are included in a table enclosed with this letter (**Attachment A**), which is incorporated herein by this reference.

Generally, the County's review of the RDEIR indicates that the vast majority of comments included in its July 29, 2014 letter addressing the original Public Draft EIR/EIS for the BDCP (**Attachment B**) remain relevant, both with respect to the original project and its alternatives as well as the new alternatives—such as Alternative 4A, the California WaterFix—included in the RDEIR. Accordingly, the County reiterates its prior comments on the Public Draft EIR/EIS in their entirety. The County also reserves the right to provide additional comments on Alternative 4A (or other proposed alternatives) and the RDEIR prior to project approval.

Of the County's prior comments on the Public Draft EIR/EIS, the following major issues remain inadequately unaddressed:

- **Misuse of programmatic environmental review.** The RDEIR generally makes few substantive changes to the prior text analyzing Conservation Measures 2-22 (now, Conservation Measures 2-21) at a programmatic level, deferring a detailed discussion of

project-level details and related effects to future environmental documents. This is unnecessary in some instances—particularly in the context of floodplain habitat restoration in the Yolo Bypass—and inconsistent with applicable legal requirements of the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act (“NEPA”).

- **Reliance on an unclear, outdated, and flawed “baseline” for evaluating impacts.** Released in 2015, the RDEIR generally appears to maintain a highly dated baseline tied to the February 13, 2009 publication of a “Notice of Preparation” of a CEQA/NEPA document for the BDCP. While there are exceptions to this approach (including the supplemental modeling and information included in Appendices B-F), those exceptions appear to be grounded in the need for better information to support state and federal permit applications. No comprehensive effort appears to have been made to shore up key deficiencies in the data and information supporting the environmental effects analysis under CEQA and NEPA, as would be reasonable—and the County contends, is legally required—given the use of an outdated baseline.
- **Lack of consistency with the Delta Reform Act (and with respect to the Water Fix, the Delta Plan).** As the Public Draft EIR/EIS and RDEIR make clear, the Delta and its communities will be greatly affected by implementation of the BDCP or WaterFix. It remains difficult to determine how the implementation of either program could proceed in a manner consistent with the Delta Reform Act’s mandate 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.” (Water Code § 85054.) The same can be said for consistency with the Delta Plan, addressed in cursory fashion in Appendix G to the RDEIR.
- **Inclusion of Environmentally Destructive “West Alignment” Alternatives.** Though unlikely to ever become reality, the various “west alignment” alternatives in the Public Draft EIR/EIS remain in the RDEIR even though their environmental impacts are far greater than the preferred alternative (Alternative 4/4A) and many other alternatives. These alternatives should be deleted, as they have no environmental, fiscal, or public policy merit and thus cannot reasonably receive further consideration.
- **Improper characterization of community noise impacts.** The County’s July 29, 2014 comment letter incorporated a memorandum from Ascent Environmental on the noise analysis in the Public Draft EIR/EIS. The County acknowledges some minor changes to the noise analysis in the RDEIR, but many of the issues raised in that memorandum and in other County comments remain of concern. Noise will be a major issue in Clarksburg (and similar areas in other counties affected by construction impacts) and it should receive additional consideration and analysis.
- **Incomplete analyses of community and agricultural groundwater impacts.** The County suggested some practical (indeed, relatively straightforward) ways to improve the analysis of groundwater impacts in its July 29, 2014 letter. These suggestions appear to have been ignored in the RDEIR, which relies on the same faulty assumptions—chiefly,

the assumption that groundwater impacts will spread uniformly outward from dewatering sites—that compromised the analysis in the Public Draft EIR/EIS.

- **Inadequate local traffic and road impact analyses and mitigation measures.** As with noise impacts, the Public Draft EIR/EIS and the RDEIR each make clear that West Sacramento and Clarksburg will be heavily affected by construction traffic for many years. These impacts are severe in some locations, with road segments potentially operating at “unacceptable” levels for 10+ hours daily during the 14-year construction timeframe of the new conveyance facilities. Despite this, the RDEIR retains the same mitigation measures that routinely appear in environmental documents for minor projects: a commitment to pay only a “fair share” toward road repairs and improvements, and only if affected communities can contribute any additional amounts needed for their own “share” of projects that would be altogether unnecessary but for the BDCP/WaterFix.

The foregoing examples represent only a partial list of the deficiencies of greatest concern to the County. On this basis, the County’s comments on the RDEIR necessarily conclude in the same manner as its comments on the Public Draft EIR/EIS more than a year ago: with a request for recirculation of the document after its many deficiencies are corrected.

The County appreciates the opportunity to comment on the RDEIR and looks forward to continued opportunities to provide input into the WaterFix and related efforts. As noted above, the County reserves the right to provide additional comments on Alternative 4A (or other proposed alternatives) and the RDEIR prior to project approval.

Sincerely,



Matt Rexroad

Chair, Yolo County Board of Supervisors

cc: Rep. Doris Matsui  
Rep. John Garamendi  
Senator Dianne Feinstein  
Senator Barbara Boxer  
Senator Lois Wolk  
Senator Richard Pan  
Assemblymember Bill Dodd  
Assemblymember Kevin McCarty

**ATTACHMENT A**

Comments of Yolo County  
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2015 CALIFORNIA WATER FIX RDEIR/SDEIS: TERRESTRIAL SPECIES		
CHAPTER-PAGE	ISSUE AREA	COMMENTS
4.3.8-12	Tidal freshwater emergent wetland impacts	<p>Please provide a map to show the general area of tidal freshwater emergent wetland community in the Yolo Bypass. Excerpt from plan: "During the construction phase of Alternative 4A, the project would affect the tidal freshwater emergent wetland natural community through water conveyance facilities construction losses (3 acres permanent and 15 acres temporary). These losses would occur in the central Delta from construction of barge unloading facilities and transmission lines on the fringes of Venice, Bacon and Woodward Islands, and in various locations within the Yolo Bypass and the tidal restoration ROAs. An undetermined acreage would also be affected through channel margin habitat creation (Environmental Commitment 6) along the major Delta waterways. The construction losses of this special-status natural community would represent an adverse effect if they were not offset by avoidance and minimization measures and restoration actions associated with Alternative 4A environmental commitments. Loss of tidal freshwater emergent wetland natural community would be considered both a loss in acreage of a sensitive natural community and a loss of wetland as defined by Section 404 of the CWA. However, the creation of 59 acres of tidal wetland as part of Environmental Commitment during the construction phase of Alternative 4A would more than offset this loss, avoiding any adverse effect. Typical project-level mitigation ratios (1:1 for restoration) would indicate that 18 acres of restoration would be needed to offset (i.e., mitigate) the 18 acres of loss (the total permanent and temporary near-term effects listed in Table 12-4A-2)." Yolo County reserves the right to offer comments on this impact once the location of wetland impacts in the Bypass are disclosed. Presumably, if an acreage estimate is available, some efforts have been made to identify the</p>

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		location of the affected acreage.
4.3.8-362	Overlap with Habitat Conservation Plans	<p>More discussion is needed with the Yolo Habitat Conservancy, lead agency for the Yolo HCP/NCCP, to ensure consistency with the preferred alternative as described: "The environmental commitments associated with Alternative 4A would remove relatively small acreages of primarily cultivated land in all six of the overlapping plan areas (Yolo, Solano, South 11 Sacramento, East Contra Costa, East Alameda and San Joaquin County HCP/NCCPs). The consistency analysis below indicates that the degree to which the competition for conservation lands would impact the conservation goals of other plans is limited. Alternative 4A would have much less risk from competition for conservation lands. In most cases, because of the flexibility for acquisition targets incorporated into Alternative 4A and other plans, the potential conflict would be manageable, and significant conflicts with the implementation of overlapping plans could be avoided. In certain cases, especially pertaining to similar restoration objectives perceived conflicts may also represent opportunities for collaboration to jointly achieve similar conservation goals. Because implementing Alternative 4A would not result in a conflict with the provisions of an adopted HCP, NCCP or other approved local, regional or state habitat conservation plan, there would be a less-than-significant impact." This is simply far too conclusory to constitute a meaningful analysis of potential conflicts, particularly given the need for habitat conservation under Alternative 4A within the Plan Area (Yolo County) for the Yolo HCP/NCCP. Additional comments on this general topic are included below.</p>
4.3.8-25	Nontidal perennial aquatic community impacts	Yolo County would appreciate more information about the proposed Yolo Bypass restoration for

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		nontidal perennial aquatic community impacts in the RDEIR. Except from RDEIR: "Implementation of Alternative 4A would result in relatively minor (6%) losses of nontidal perennial aquatic community in the study area. These losses (59 acres of permanent and 9 acres of temporary loss) would be largely associated with construction of the water conveyance facilities. By the end of project construction, a total of 832 acres of nontidal marsh would be restored. The restoration would occur over a wide region of the study area, including within the Cosumnes/Mokelumne, Yolo Bypass, South Delta and East Delta ROAs (see Figure 12-1 in the Draft EIR/EIS)." Yolo County reserves the right to offer comments on this impact once the location of wetland impacts in the Bypass are disclosed.
4.3.8-100	Methylmercury	Yolo County finds it interesting that the RDEIR/SDEIS does not propose giant garter snake habitat restoration in the Yolo Bypass as a result of the high methylmercury concentrations, since the Yolo HCP/NCCP is prioritizing habitat conservation in the Bypass with the encouragement of the USFWS and the CDFW. Excerpt from RDEIR: "Yolo Basin is where some of the highest concentrations of mercury and methylmercury have been documented (Foe et al. 2008); however, there would be no construction or restoration in this area. Effects from exposure to methylmercury may include decreased predator avoidance, reduced success in prey capture, difficulty in shedding, and reduced ability to move between shelter and foraging or thermoregulation areas (Wylie et al. 2009). The 20 potential mobilization or creation of methylmercury within the study area varies with site-specific 21 conditions and would need to be assessed at the project level."
4.3.8-328	Tidal freshwater emergent wetland impacts	Table 12-4A-65 refers to habitat loss from Yolo Bypass fisheries enhancements. Is this still a

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		component of Alternative 4A? Such enhancements are clearly within the scope of Alternative 4 but the RDEIR does not clearly explain that the enhancements are also part of Alternative 4A (and in fact, appears to say just the opposite in numerous places). Excerpt from RDEIR: "Table 12-4A-65. Tidal freshwater emergent wetland — Habitat loss from construction of water conveyance facilities, tidal habitat restoration, Yolo Bypass fisheries enhancements, and floodplain restoration."
4.3.8-354	Transmission lines and wildlife corridors	Figure 12-2 of the Draft EIR/EIS shows that the Yolo Bypass-Stone Lake ECA is an "Essential Connectivity Area." In addition, this area is an important area for sandhill cranes and other migratory waterfowl. Although the RDEIR says the following action will have a less-than-significant effect on wildlife corridors, Yolo County suggests mortality monitoring for an appropriate number of years to ensure this is the case. Excerpt from RDEIR: "The addition of temporary transmission lines within the Stone Lake-Yolo Bypass ECA, which would be in place for approximately 7 years, could adversely affect birds during periods of low visibility..." Another excerpt: "Greater sandhill cranes are susceptible to collision with power lines and other structures during 20 periods of inclement weather and low visibility (Avian Power Line Interaction Committee 1994, 21 Brown and Drewien 1995, Manville 2005). There are extensive existing transmission and 22 distribution lines in the sandhill crane winter use area. These include a network of distribution lines 23 that are between 11- and 22-kV. In addition, there are two 115-kV lines that cross the study area, 24 one that overlaps with the greater sandhill crane winter use area between Antioch and I-5 east of 25 Hood, and one that crosses the northern tip of the crane winter use area north of Clarksburg."



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4.3.8-170	Swainson's hawk patch size	The RDEIR proposes a Swainson's hawk minimum patch size of 40 acres. The Yolo HCP/NCCP proposes a minimum patch size of 80 acres. To be consistent with the Yolo HCP/NCCP, the Resources Restoration and Performance Principles SH1 should contain a minimum patch size of 80 acres for Swainson's hawk.
4.3.8-174	Swainson's hawk foraging habitat mitigation	Yolo County would appreciate more information about the potential location of the over 6,000 acres of Swainson's hawk mitigation, especially given that Yolo County has Swainson's hawk habitat in the Clarksburg area that meets the criteria of both high-value foraging habitat and 1 foot above sea level. Excerpt from RDEIR: "Project proponents would commit to conserving 1 acre of Swainson's hawk foraging habitat for every acre of lost foraging habitat (Resource Restoration and Performance Principle SH1). These acres of cultivated lands and grasslands would be located above 1 foot above sea level, and at least 50% would be in very high-value production (Resource Restoration and Performance Principle SH2). This information is particularly relevant to a comprehensive analysis of potential conflicts with the Yolo HCP/NCCP and its acquisition objectives.
12-62 (Appendix A)	Methylmercury	Yolo County notes that the RDEIR includes a more aggressive approach to evaluating methylmercury impacts. According to the Suisun Marsh Plan EIR/EIS (Bureau of Reclamation et al. 2010, pg. 5.2-18), marsh creation may generate less methylmercury than is currently being generated by managed wetlands.
12-247 (Appendix A)	Methylmercury	The RDEIR should clearly describe that no conservation is planned for the Yolo Bypass. This does not need to be part of the methylmercury discussion, but should be included somewhere for the sake of clarity.

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15-12 (Appendix A)	Clarksburg Boat Launch	Yolo County requests additional information about the extent of geotechnical exploration that would occur along the tunnel corridor to the east of Clarksburg Boat Launch for up to 2.5 years, but appreciates the mitigation measure to help enhance the fishing access site. Maintenance funding would be appreciated as well during this time, as well as funding to educate users about the availability of access.
4.3.11-2	Clarksburg Boat Launch	The Clarksburg Boat Launch is on the west bank of the Sacramento River across the river from the site of Intake 3. Although access to the boat launch would be maintained during the construction period, noise generated during construction and geotechnical testing could adversely affect use of the public access areas near the boat launch for fishing or other activities. This impact should be considered in a more detailed fashion in the EIR/EIS, including the potential for additional use of other recreational facilities in areas unaffected (or less affected) by BDCP or WaterFix activities.

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16-14 and 16-50 (Appendix A)	Yolo Bypass	Yolo County appreciates the removal of the \$1.5 million estimate for revenue losses from Fremont Weir flooding and the more accurate description of potential losses based on timing and duration of inundation.
16-41 (Appendix A) and 4.3.12-4	Mitigation measures for effects to community character	Yolo County appreciates the inclusion of mitigation measures for effects on the community character of the Delta, but questions their potential efficacy. Specific comments on individual measures are included in the County's prior comments on the Draft EIR/EIS
4.3.12-3	Clarksburg impacts	The RDEIR is unclear about the location of facilities near Clarksburg. On this page, it states: "This could result in the closure of agriculture-dependent businesses or those catering to agricultural workers, particularly in areas where conversion of agricultural land would be most concentrated, including near the intakes in the vicinity of Clarksburg and Hood and the expanded Clifton Court Forebay east of Byron." Does this refer to facilities on the east side of the river, across from Clarksburg? The text should be revised for clarity on this point.
4.3.12-3 and -4	Clarksburg impacts	<p>Yolo County remains seriously concerned about the impacts—including socioeconomic effects—on the Clarksburg community from noise, traffic, and other construction impacts associated with Alternative 4A and related proposals (including Alternative 4) in the RDEIR/EIS. For instance, the text states:</p> <p>"Construction activities associated with water conveyance facilities would be anticipated to result in changes to the rural qualities of these communities during the construction period (characterized by predominantly agricultural land uses, relatively low population densities, and low levels of associated noise and vehicular traffic), particularly for those</p>

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		<p>communities in proximity to water conveyance structures, including Clarksburg, Hood, and Walnut Grove. Effects associated with construction activities could also result in changes to community cohesion if they were to restrict mobility, reduce opportunities for maintaining face-to-face relationships, or disrupt the functions of community organizations or community gathering places (such as schools, libraries, places of worship, and recreational facilities). Under Alternative 4A, several gathering places that lie in the vicinity of construction areas could be indirectly affected by noise and traffic associated with construction activities, including Delta High School, the Clarksburg Library, Clarksburg Community Church, Resurrection Life Community Church, Citizen Land Alliance, Discovery Bay Chamber of Commerce..."</p> <p>Despite this, the analysis concludes that such effects will be "reduced" by environmental commitments and mitigation measures. There is no supporting explanation for this conclusion. Particularly in light of the duration of the effects mentioned in the text, this conclusion lacks credibility in the absence of detailed supporting rationale.</p>

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Appendix A, Chapter 19 page 19-112	Long-term construction vehicle traffic impacts.	<p>Table 19-25 identifies a significant increase in vehicle traffic on State Route 84 from the West Sacramento city limits to Courtland Road for Alternative 4A. The current volume of traffic on this roadway is identified as 40 to 169 vehicles per hour with the peak volumes expecting to increase by 25 vehicles per hour with cumulative growth in the region. However, with implementation of the preferred project, the vehicle traffic is expected to range from 666 to 814 vehicles per hour. This hourly volume of traffic is expected to occur over 13 hours per day, or between 6:00 am and 7:00 pm. At its peak, this represents one vehicle every 4.4 seconds on a road that typically experiences less than one vehicle per minute. At its average, this represents 9,620 vehicles on this roadway per day, which is an increase in typical traffic volumes of over 600 percent. Based on the identified threshold of 200 vehicles per hour for this roadway, this represents a staggering increase in hourly traffic volumes on this rural highway.</p> <p>This increase will dramatically alter access and travel times for residences and businesses within the region. Emergency vehicle access will be severely restricted, which could be life threatening for residents experiencing health emergencies or during periods when emergency evacuation is necessary (e.g., during flood events). It will also reduce the ability of farmers in the region to deliver their goods to market during peak harvest periods and will disrupt school bus pickup schedules. This level of community disruption will clearly be inconsistent with the coequal goals, which are required by Water Code Section 85054 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 Final EIR/EIS needs to fully address how the anticipated construction traffic impacts will affect the long-term cultural and economic viability of local Delta</p>

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		communities particularly as they relate to the legislative mandate to protect and enhance the Delta as an evolving place.
Appendix A, Chapter 19, page 19-106	Long-term construction vehicle traffic impacts.	The description of the project's construction traffic impacts in the 2013 Public Draft EIR/EIS has been revised in the Recirculated Draft EIR/EIS to indicate that the impacts are temporary (last paragraph, page 19-106). However, this revision is clearly unjustified considering the project's construction period is expected to extend over nearly a generation (i.e., 14-year construction timeframe, as referenced on page 4.3.8-3 et al.). The temporal extent of the anticipated construction traffic impacts needs to be clearly identified in the Final EIR/EIS for each of the roadways affected and physical roadway improvements need to be identified to offset these impacts.
Appendix A, Chapter 19, page 19-106	Intersection impact analysis and traffic hazards for residents.	<p>Table 19-25 includes a detailed description of the project's impacts on specific roadways but no analysis is provided regarding construction traffic impacts on specific intersections. With the volume of construction traffic anticipated with the preferred project, deficient intersection operations would be expected along all of the roadways used by construction vehicles. Without any analysis, the traffic analysis included in the Recirculated Draft EIR/EIS is deficient.</p> <p>An additional concern is the difficulty some residents may experience trying to exit their driveways onto roads used by multiple, large construction vehicles, particularly if they have short site distances. The traffic safety hazards for Yolo County residents needs to be further described and analyzed in the Final EIR/EIS.</p>
Appendix A, Chapter 19, page 19-119	Long-term construction vehicle traffic impacts.	Significant increases in traffic volumes are also expected in the City of West Sacramento on Industrial Boulevard/Lake Washington Boulevard and Jefferson

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		Boulevard, and in unincorporated Yolo County on River Road and Courtland Road. The identified traffic volumes on these roadways have been revised substantially higher than identified in the 2013 Public Draft EIR/EIS. For example, on Jefferson Boulevard between Southport Parkway and the West Sacramento city limits, the 2013 Public Draft EIR/EIS concluded that the preferred project would exceed the traffic threshold during six hours. However, the Recirculated Draft EIR/EIS concludes that this same roadway would exceed the traffic threshold during 12 of the 13 hours evaluated (i.e., 7:00 am to 7:00 pm) (Table 19-25). The Final EIR/EIS needs to clearly articulate the cause of this increase and provide additional mitigation to specifically address the impact's incremental degradation.
Appendix A, Chapter 19, page 19-122	Long-term construction vehicle traffic mitigation measures.	Mitigation Measure TRANS-1a states that the Congestion Management Plan will include provisions stipulating that haulers are to pull over in the event of an emergency and that appropriate maneuvers will be conducted by the construction vehicles on narrow two-way roadways to allow continual access for emergency vehicles at the time of an emergency. However, the mitigation measure provides no further details defining an appropriate maneuver on a narrow, two-way levee road with a deficient pavement condition (Table 19-26), such as River Road. Because vehicle traffic on this roadway is projected to increase from a current range of 25 to 63 vehicles per hour to a range of 651 to 698 vehicles per hour with implementation of the preferred project (Table 19-25), or about one vehicle every 5 seconds, it is difficult to envision how construction vehicles will implement appropriate maneuvers that could accommodate emergency vehicles. At these levels of vehicle trips, any delays in traffic flows will result in substantial queuing on the County's narrow roadways that will completely block emergency vehicles trying to access rural residences and businesses. This issue

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		needs to be more thoroughly evaluated in the Final EIR/EIS and detailed mitigation measures need to be developed to ensure the health and safety of residents in Yolo County are not adversely affected by project implementation.
Appendix A, Chapter 19, page 19-124	Long-term construction vehicle traffic mitigation measures.	Mitigation Measure TRANS-1b states that construction activity will be limited to fit within available roadway reserve capacity or will be shifted to hours with more reserve capacity so as to achieve acceptable LOS conditions. However, the impacts on Yolo County roadway segments, including State Route 84 and Jefferson Boulevard, are anticipated to occur throughout the entire day (i.e., 6:00 am to 7:00 pm for State Route 84 and 7:00 am to 7:00 pm for Jefferson Boulevard). Because the traffic volumes substantially exceed the roadway thresholds throughout the day, there is no ability to shift construction traffic to periods with more reserve capacity. If construction activities are limited in response to this mitigation measure, the very long construction period would likely be further extended, thus extending the duration of the impacts. Therefore, this mitigation measure is woefully deficient in minimizing the identified impact.
Appendix A, Chapter 19, page 19-133	Long-term construction vehicle traffic mitigation measures.	Mitigation Measure TRANS-2a states that the project proponent will prohibit or limit construction traffic on already physically deficient roadway segments to the extent feasible as well as improve the condition of affected roadway segments following construction. Roads identified as deficient in Yolo County (Table 19-26) include State Route 84, Jefferson Boulevard, River Road, and Courtland Road. Based on the substantial construction traffic identified as using these roadways and the lack of viable alternative routes, this mitigation measure is clearly unachievable and should be revised to directly address the impact.



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Appendix A, Chapter 23, page 23-13	Construction traffic noise significance thresholds.	<p>In the Determination of Effects discussion of truck trips and worker commute trips, the Recirculated Draft EIR/EIS concludes that trips on local roadways are considered to result in an adverse traffic noise impact if the increase in volume would result in a substantial increase in noise levels. For the purposes of the analysis, the document concludes that a substantial increase is defined as 5 dB, which is defined as a discernible increase by FHWA. However, the document modifies this conclusion for Future with Project conditions. Under these conditions, a substantial increase in noise levels is only defined as a 5 dB increase when the loudest-hour traffic noise level is predicted to be 60 dBA Leq or greater at a residential location. Therefore, an increase of 10 dB at the nearest residence would be considered less than significant if the ambient noise level is below 60 dB, which is the case along many of the rural roads in Yolo County. An example of this in the noise analysis occurs on Franklin Road, which experiences a 10 dB increase in noise levels, from 48 dB to 58 dB, but the document concludes this impact would be less than significant (Table 23-63, page 23-56). Another example occurs along Race Track Road, which would experience a less-than-significant increase of 11 dB.</p> <p>Because noise is measured on a logarithmic scale, a 3 dB increase represents a doubling of noise levels and a 10 dB change represents a ten-fold increase in noise levels. Within the rural areas of Yolo County affected by construction traffic noise, the anticipated increases in ambient noise levels would substantially alter the existing rural noise environment. These noise level increases will be significant, regardless of whether the baseline noise levels are below or above 60 dB, and appropriate mitigation needs to be identified to reducing the severity of these noise impacts to less-than-significant levels rather than concluding that they are significant and unavoidable.</p>

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Appendix A, Chapter 23, page 23-51	Construction equipment noise impacts.	Table 23-61 identifies the land uses affected by equipment noise from construction of the intakes. In the 2013 Public Draft EIR/EIS, this table concluded that 7 residential parcels would experience an exceedance of the daytime noise threshold of 60 dB in Yolo County. However, in the Recirculated Draft EIR/EIS, this table identifies a total of 27 residential parcels that would experience an exceedance of the daytime noise threshold. No explanation is provided as to why the number of affected residential parcels has increased. The Final EIR/EIS needs to clearly articulate why more residential parcels would be affected by the preferred project than previously anticipated and must identify feasible and implementable mitigation measures to reduce these impacts to less-than-significant levels.
Appendix A, Chapter 23, page 23-52	Construction traffic noise impacts.	As discussed above, noise levels are measured on a logarithmic scale and a 10 dB change represents a ten-fold increase in noise levels while a 20 dB change represents a 100-fold increase in noise levels. As identified in Table 23-63, the construction traffic noise levels on both River Road and Courtland Road are projected to increase by 18 dB, from 48 dB to 66 dB. This represents a staggeringly-high noise level increase in a rural area, considering noise levels of 66 dB are commonly associated with busy freeways that would typically require the installation of sound walls. Although outside of Yolo County, noise levels along a section of Lambert Road are projected to increase by 22 dB due to project construction traffic. These noise level increases are anticipated to occur over much of the construction life of the preferred project (14 years) and will clearly be inconsistent with the coequal goals, which are required by Water Code Section 85054 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 Final EIR/EIS needs to fully address how the anticipated

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		construction traffic noise impacts will affect the long-term cultural and economic viability of local Delta communities particularly as they relate to the legislative mandate to protect and enhance the Delta as an evolving place.
Appendix A, Chapter 23, page 23-52	Construction traffic noise impacts.	The analysis of construction traffic noise impacts uses a reference distance of 100 feet in determining the significance of noise increases. Therefore, the noise level increases identified in Table 23-63 all assume residences are at least 100 feet from the affected roadway. However, it is not uncommon for residences to be located within 20 to 50 feet from rural roadways in Yolo County. In such cases, the traffic noise experienced by these residences would be substantially higher than predicted in Table 23-63. As identified in Table 23-63A, a total of 628 parcels that would be affected by construction traffic noise have been identified in Yolo County alone. The Final EIR/EIS needs to specifically identify projected traffic noise levels for any residences closer than 100 feet to affected roadways in order to accurately convey the preferred project's anticipated impacts.

**ATTACHMENT B**



# COUNTY OF YOLO

## Board of Supervisors

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County Administrator, Patrick S. Blacklock  
 Deputy Clerk of the Board, Julie Dachtler

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

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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.”<sup>1</sup> 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].”<sup>2</sup> 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.<sup>3</sup> 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).

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

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

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

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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

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release date is not appropriate. As expressed in Save our Peninsula Committee v. Monterey County Board of Supervisors, 87 Cal. App. 4<sup>th</sup> 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. 4<sup>th</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>4</sup> "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. 4<sup>th</sup> at 128; see also Sierra Club v. State Board of Forestry, 7 Cal.4<sup>th</sup> 1215, 1236 (1994); Fall River Wild Trout Foundation v. County of Shasta, 70 Cal. App. 4<sup>th</sup> 482, 492 (1999); County of Amador v. El Dorado County Water Agency, 76 Cal. App. 4<sup>th</sup> 931, 954 (1999); Public Resources Code § 21005(a).

<sup>5</sup> 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.



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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

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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

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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

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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

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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).

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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.

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**(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.”<sup>6</sup>

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

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

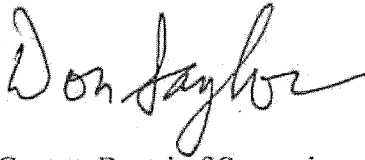
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precedent for misapplication of laws intended to protect endangered, rare, and threatened species. Development projects and related infrastructure, particularly of the scale of CM1, are simply not conservation measures that will mitigate and minimize 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**

Draft EIR/EIS for the Bay Delta Conservation Plan  
Comment Table—Yolo County  
July 29, 2014

## 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>

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		<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."
<b><i>Chapter 4—Approach to the Environmental Analysis</i></b>		
General	Geographic Scope of the Study Area	<p>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 <a href="http://deltacouncil.ca.gov/sites/default/files/documents/files/Attachment-1-Final-BDCP-comments.pdf">http://deltacouncil.ca.gov/sites/default/files/documents/files/Attachment-1-Final-BDCP-comments.pdf</a>) 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</p>

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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. 4<sup>th</sup> 1184 (2004); <i>County Sanitation Dist. No. 2 v. Kern County</i>, 127 Cal. App. 4<sup>th</sup> 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. 4<sup>th</sup> 1341 (1999)).</p>
<b>Chapter 6—Surface Water</b>		
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.
<b>Chapter 7—Groundwater</b>		
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"> <li>There is no evidence to support that 2% increase would not be substantial and that increase needs to be</li> </ul>

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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"> <li>• 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</li> <li>• 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</li> </ul>
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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		* This comment applies to all Alternatives that result in significant and unavoidable impacts to agricultural drainage and/or that incorporate Mitigation Measure GW-5.
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 <u>shall</u> will-be monitored....For wells affected by degradation in groundwater quality, water of a <u>quantity and</u> quality comparable to pre-project conditions <u>shall</u> will-be provided. Options for replacing the water supply could include drilling ....<del>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.)</del></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)	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.
Generally	Mitigation	The potential for unmodeled effects in the Clarksburg area under all of the Alternatives underscores the need for a

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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"> <li>• 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.</li> <li>• 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).</li> </ul> <p>The County requests consideration of revised mitigation measures to incorporate these suggestions.</p>
<b>Chapter 8—Water Quality</b>		
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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		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).
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.
<b><i>Chapter 12—Terrestrial Biological Resources</i></b>		
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> <ol style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ol> <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)	<p>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</p>

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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>
<b>Chapter 14—Agricultural Resources</b>		
14-7 and 14-8 (Table 14-2); 14-26	Use of County Ag Economic Data	<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>
14-14 and 14-15; 14-26	Crop water table tolerances	<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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		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.
14-15 and 14-16	Crop salinity tolerances	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.
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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		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.
14-38 (Table 14-9)	Intermittent effects	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?
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"> <li>• 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.</li> <li>• 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.</li> <li>• 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 subsiding areas and creation of GHG/methylmercury sinks.</li> <li>• Requiring compliance with Gov. Code Sections 51290-</li> </ul>

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		<p>95 is not mitigation (in context of WA), but is legally required.</p> <ul style="list-style-type: none"> <li>• 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?</li> <li>• 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.</li> <li>• 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</li> </ul>

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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>
14-48 through 14-50 (Impact AG-2)	Other effects on agriculture due to building/operating the conveyance facility	<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>
14-51 (Impact AG-3)	Farmland conversions due to CM 2-11, etc.	<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"> <li>• The Yolo Bypass expansion will require the acquisition of <b><u>25,500 acres</u></b>;</li> <li>• Agriculture on <b><u>6,500 acres</u></b> of the land acquired for the Yolo Bypass expansion will be “developed for environmental conservation.” Presumably, this means agricultural production will cease. The remaining <b><u>19,000 acres</u></b> will be “leased back to farmers for environmentally friendly agricultural practices such as planting of corn, rice, and other grains.”</li> <li>• In the regions that include Yolo County (Lower Sacramento and Delta North), an additional <b><u>10,000 to 20,000 acres</u></b> will be acquired for agricultural conservation easements;</li> <li>• Based on a GIS analysis of specific proposed levee locations, the following new levees will be built to</li> </ul>

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		<p>facilitate the Yolo Bypass expansion:</p> <ul style="list-style-type: none"> <li>• Yolo Bypass near Fremont Weir, Left Bank (2.5 miles)</li> <li>• Yolo Bypass upstream of Putah Creek, Right Bank (16.5 miles)</li> <li>• Yolo Bypass downstream of Putah Creek and near Rio Vista, Right Bank (18.5 miles)</li> </ul> <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>
<b><i>Chapter 15--Recreation</i></b>		
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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		"[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.
Generally	Recreational spending	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.
Generally	Flows and river levels	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.
Generally (e.g., pp. 15-87 and 15-88)	Baseline	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.
Generally (e.g., p. 15-76)	Impact REC-2	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



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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.
<b><i>Chapter 16--Socioeconomics</i></b>		
<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>
<b>Chapter 19--Transportation</b>		
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"> <li>• What are the grounds upon which to assume that there may not be full funding for one or more improvements?</li> <li>• Won't all mitigation measures in Mitigation Measure TRANS-1a be required pursuant to the MMRP?</li> </ul>
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 <b>CEQA Conclusion</b> 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 <b>CEQA Conclusion</b> 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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	<p>Transportation (Alternative 2B, Impact TRANS-1)</p> <p>Transportation (Alternative 2C, Impact TRANS-1)</p> <p>Transportation (Alternative 3, Impact TRANS-1)</p> <p>Transportation (Alternative 4, Impact TRANS-1)</p>	<p>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 <b>CEQA Conclusion</b> that even with mitigation, Impact TRANS-1 cannot be reduced to less than significant.</p> <p>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.</p> <p>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.)</p>
19-52 and related text	Transportation (Alternative 1A, Mitigation Measure TRANS-1a)	<p>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</p>



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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 <b>CEQA Conclusion</b> 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 <b>CEQA Conclusion</b> 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)	<p>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.</p> <p>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.</p> <p>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.</p>
19-70 and related	Transportation	The statement raising the possibility that mitigation

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text	<p>(Alternative 1A, Impact TRANS-3)</p> <p>Transportation (Alternative 1C, Impact TRANS-3)</p> <p>Transportation (Alternative 2B, Impact TRANS-3)</p> <p>Transportation (Alternative 4, Impact TRANS-3)</p>	<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 <b>CEQA Conclusion</b> 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 <b>CEQA Conclusion</b> 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 <b>CEQA Conclusion</b> 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 <b>CEQA Conclusion</b> 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 <b>CEQA Conclusion</b> 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> <ul style="list-style-type: none"> <li>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.</li> <li>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</li> </ul>

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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>
<b><i>Chapter 20—Public Services and Utilities</i></b>		
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><b>Chapter 23--Noise</b></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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 Comment Table—Yolo County  
 July 29, 2014

CHAPTER-PAGE	ISSUE AREA	COMMENTS
	(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

## Office of the County Counsel

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COUNTY COUNSEL

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

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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.<sup>1</sup> 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

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<sup>1</sup> 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.

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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.<sup>2</sup>

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.<sup>3</sup>

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.

<sup>2</sup> 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).

<sup>3</sup> 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.

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**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.<sup>4</sup> 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

<sup>4</sup> 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,

Robyn Truitt Drivon  
County Counsel



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