RLO048 Yolo Co

County of Yolo

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ROBYN TRUITT DRIVON
COUNTY COUNSEL

Philip J. Pogledich, Senior Deputy

January 14, 2013

Phil Isenberg, Chairman, and Council Members
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Comments of Yolo County—Recirculated Draft Program Environmental Impact Report

Dear Chair Isenberg and Council Members:

This letter sets forth the County of Yolo's ("County") comments on the Recirculated Draft Delta Plan Program Environmental Impact Report (the "Recirculated Draft PEIR"). RLO048-1

Overall, the Recirculated Draft PEIR focuses on evaluating differences between the Final Draft Delta Plan (the "Revised Project") and the Fifth Staff Draft Delta Plan (the "Proposed Project"). Major differences between the Revised Project and Proposed Project are explained—quite helpfully—in Chapter 2 of the Recirculated Draft PEIR. The balance of the document then borrows heavily from the Draft PEIR in analyzing each potential impact and describing related mitigation measures for the Revised Project. Generally, it does not appear that the Recirculated Draft PEIR includes changes that address comments made on the Draft Delta Plan Program EIR ("Draft PEIR"), nor does it incorporate new or revised mitigation measures. Altogether, in terms of its analytical content and related mitigation, the Recirculated Draft PEIR is virtually identical to the Draft PEIR except in that it considers the Revised Project. RLO048-2

In light of this, the following discussion revisits the County's February 2, 2012 comments on the Draft PEIR (enclosed for ease of reference) and identifies issues that remain of concern in the context of the Recirculated Draft PEIR.

A. Issues Raised in the County's February 2, 2012 Cover Letter.

The cover letter accompanying the County's "specific comments" on the Draft PEIR identified five issues that the County believed required further analysis. These issues and their relevance to the Recirculated Draft PEIR are as follows: RLO048-3

1. Certain Delta Plan Policies Require a More Detailed Analysis.

The County's February 2, 2012 cover letter explained that the Proposed Project included several elements that were not "programmatic" in nature, but were instead specific enough to require a more rigorous level of

Response to comment RLO048-1

Comment noted.

Response to comment RLO048-2

Comment noted.

Response to comment RLO048-3

Please see the responses to the commenter's prior letter, LO222.

environmental review. This discussion specifically identified Polices ER P2, ER P3, and RR P3[1] as examples of matters requiring more detailed review. The County observes, however, that the Revised Project includes substantial changes to each of these policies. While the County's original concerns remain relevant and should be considered in evaluating the adequacy of the Draft PEIR and the Recirculated Draft PEIR, these changes significantly reduce the County's concerns on both a policy and legal level. RLO048-3

2. Potential Habitat Restoration Within the Yolo Bypass Should be Described and Analyzed in Greater Detail.

As a general comment on many chapters in the Draft PEIR, the County originally urged a more detailed description and analysis of potential habitat restoration within the Yolo Bypass (encouraged by Delta Plan Recommendation ER R1 in both the Proposed and Revised Projects). Despite some minor changes to ER R1, this concern remains relevant in the context of the Recirculated Draft PEIR because any significant habitat restoration in the Yolo Bypass remains likely to include at least some elements of the proposals described in the County's February 2, 2012 letter. Accordingly, the County reiterates its prior comments on this issue in their entirety. RLO048-4

3. The EIR Should Describe and Analyze a Broader Range of Potential Conflicts Between Ecosystem Restoration and Agriculture.

The County's cover letter on the Draft PEIR indicated the need for a much more detailed analysis of potential conflicts between ecosystem restoration and agriculture. These comments apply with equal force to the Recirculated Draft PEIR. RLO048-5

4. Land Use Conflicts and Local General Plans and Zoning Require Additional Attention.

The County's cover letter on the Draft PEIR identified three significant deficiencies in the document's analysis of potential land use conflicts and conflicts with local general plans and zoning. With respect to these issues in the context of the Recirculated Draft PEIR:

- The first issue, relating to the failure to identify and discuss local general plans and zoning ordinances, remains relevant.
- The second issue, relating to conflicts between land uses (as opposed to merely conflicts with general plans and zoning), also remains relevant. Changes to certain policies in the Revised Project, however, reduce the County's overall level of concern due to the elimination of language that originally held the potential to shift uses best suited for rural areas to the Legacy Towns and urban areas.
- The third issue concerned internal inconsistencies in portions of the discussion in the Draft PEIR, most of which are now irrelevant due to changes in ER P3. RLO048-6

[1] Please note the RR P3 was initially mislabled as RR P2 in the County's February 2, 2012 comment letter (see p. 2 thereof).

Response to comment RLO048-4

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-5

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-6

Please see the responses to the commenter's prior letter, LO222.

5. The Analysis of Climate Change and Greenhouse Gas Emissions is Incomplete.

In its cover letter on the Draft PEIR, the County discussed two major deficiencies in the analysis of climate change and greenhouse gas ("GHG") emissions: (i) the lack of discussion of local climate action plans, (ii) and the lack of information regarding the potential for projects, plans, and programs encouraged by the Delta Plan to contribute to climate change and GHG emissions. Both of these concerns apply with equal force to the Recirculated Draft PEIR. RLO048-7

B. Issues Raised in the Specific Comments Document Enclosed With the County's February 2, 2012 Letter.

The following issues raised in the County's "specific comments" enclosure on the Draft PEIR are also relevant to the adequacy of the Recirculated Draft PEIR. Each of the sections below begins with a restatement of the heading used in the County's "specific comments" on the Draft PEIR, followed in some instances by a listing of the relevant comments (identified by the page/line number references used in that document) and any additional remarks pertinent to the Recirculated Draft PEIR's treatment of related issues. RLO048-8

1. Comments on the Proposed Project and Alternatives (Section 2A/2 of the Draft/Recirculated Draft PEIR).

The following comments are of continued relevance to the Revised Project and the Recirculated Draft PEIR:

Original Page/Line Reference(s)	Summary of Original Comment	Additional Remarks	
2A-2:5-11 2A-26:30-37	Request for more particular analysis of policies that will function similar to zoning ordinances.	This comment remains valid, as discussed above, but changes to relevant policies diminish its significance to a degree.	RLO048-9
2A-4:5-13	Request for additional analysis of impacts of treating actions to implement local HCP/NCCPs as covered actions.	This comment remains pertinent and applies equally to the Recirculated Draft PEIR.	RLO048-10
2A-25:7-14 and 30-31 2A-26:38-41 2A-35:21-43	Request for integration of available detail regarding potential habitat restoration projects in the Yolo Bypass, together with an analysis of related environmental issues.	This comment remains valid despite minor changes to the text of Delta Plan Recommendation ER R1, as discussed earlier in this letter.	RLO048-11
2A-26:29-30	Request for discussion of potential for establishment of riparian vegetation on lands currently managed for agriculture, and related flood effects.	This comment remains valid.	RLO048-12

Response to comment RLO048-7

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-8

Comment noted.

Response to comment RLO048-9

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-10

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-11

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-12

Please see the responses to the commenter's prior letter, LO222.

2. Comments on Section 2B—Introduction to Resource Sections.

Changes to relevant policies and recommendations in the Revised Project significantly diminish the continued relevance of the County's original comment regarding the analysis in Section 2B of the Draft PEIR. RLO048-13

3. Comments on Section 4—Biological Resources.

All of the County's comments on deficiencies in Section 4 of the Draft PEIR apply equally to the Recirculated Draft PEIR. The highly general nature of the discussion of potential impacts to biological resources in both documents is troubling, and it is difficult to understand how this discussion will facilitate the reasoned consideration of environmental impacts intended by CEQA. RLO048-14

4. Comments on Section 5—Delta Flood Management.

The County's original comment on Section 5 of the Draft PEIR raised the same concern expressed in Section 2A of that document with respect to the potential establishment of vegetation on lands following the cessation of agriculture. This comment is also relevant to the Revised Project and the Recirculated Draft PEIR. RLO048-15

5. Comments on Section 6—Land Use and Planning.

Initially, the County notes that changes to Policy ER P3 in the Revised Project significantly diminished the County's original concerns with that policy and the continued relevance of its comments about the adequacy of the analysis of Policy ER P3 at pages 6-52 and 6-53 of the Draft EIR. The following comments, however, are of continued relevance to the Revised Project and the Recirculated Draft PEIR: RLO048-16

Original Page/Line Reference(s)	Summary of Original Comment	Additional Remarks	
Generally	The EIR should discuss the Land Use and Resource Management Plan of the Delta Protection Commission.	As stated originally, this issue should be analyzed in Section 6 in the same level of detail as consistency with local general plans and zoning.	RLO048-17
6:10 and 6:11	To properly analyze related conflicts, the EIR should attempt to identify a complete range of local general plan policies and ordinances that may be affected by implementation of the Delta Plan.	The Recirculated Draft PEIR appears to retain the same "regulatory setting" and thus does not diminish the County's original concerns.	RLO048-18
6-48, 6-51	The EIR erroneously states that construction will not conflict with local general plans or zoning because it is temporary in nature.	The comment remains valid in the context of the Revised Project and the Recirculated Draft PEIR, which essentially repeats the analysis that gave rise to the County's original comment.	RLO048-19

Response to comment RLO048-13

Comment noted.

Response to comment RLO048-14

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-15

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-16

Comment noted.

Response to comment RLO048-17

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-18

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-19

Please see the responses to the commenter's prior letter, LO222.

6-49 6-53:19-20 6-60:28-29 6-62:25-26	Generally, these comment related to inconsistencies in the Draft PEIR's discussion of the potential significance of conflicts between various types of projects and local land use plans and zoning.	The observed inconsistencies do not appear in the Recirculated Draft PEIR, though the discussion of related issues is unclear in parts and generally deficient for the reasons noted in the County's other comments, above, on the adequacy of portions of Section 6.	RLO048-20
6-63:27-31	This comment critiqued the content of Mitigation Measure 6-2, relating to mitigation for the conversion of farmland. It also suggested that this measure be aligned with Mitigation Measure 7-1, which addresses essentially the same impact (conversion of farmland).	These comments remain valid. Additionally, the County recommends that this measure and Mitigation Measures 6-2 and 7-1 be revised to mirror the approach reflected in Mitigation Measure 4-5 (relating to biological resources) to ensure that mitigation occurs in a manner consistent with all requirements of local ordinances that protect farmland. A proposed edit to this effect was included in the County's original comments on Mitigation Measure 7-1.	RLO048-21

6. Comments on Section 7—Agriculture and Forestry Resources.

Without exception, the County's comments on this Section of the Draft PEIR are applicable to the Revised Draft PEIR. In particular, the County strongly encourages the Delta Stewardship Council to consider its original comments proposing changes to Mitigation Measure 7-1. These comments include proposed language that would require compliance with any local programs or ordinances that include similar or more stringent standards for mitigation for the loss of farmland.

RLO048-22

Also, the County believes that the analysis of potential conflicts with Williamson Act contracts is legally deficient in that it assumes—incorrectly—that such conflicts can be ignored. The legal reality is that Williamson Act contracts typically restrict land to agricultural and compatible uses, which do not include restoration to habitat and other uses contemplated in the Delta Plan. In some circumstances, a local government has legal authority to modify such contracts to allow habitat restoration to proceed. The County is willing to consider using this authority on a case-by-case basis if full mitigation for farmland conversions is provided in accordance with its local mitigation program (generally, 1:1 mitigation for any type of farmland conversion, though this ratio may rise in the future).

7. Comments on Sections 11 (Geology and Soils), 14 (Hazards and Hazardous Materials), 18 (Recreation), 21 (Climate Change and Greenhouse Gas Emissions, and 23 (Bay Delta Conservation Plan).

After carefully reviewing its original comments on the above-referenced sections of the Draft PEIR and the content of these sections in the Recirculated Draft PEIR, the County is unable to discern any significant differences between the analytical content of the draft environmental documents and related elements of the RLO048-23

Response to comment RLO048-20

Please see the responses to comments RLO048-16 to RLO048-19 above, which reference responses to the commenter's prior letter, LO222.

Response to comment RLO048-21

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-22

Please see the responses to the commenter's prior letter, LO222.

Response to comment RLO048-23

Please see the responses to the commenter's prior letter, LO222.

Revised Project. Consequently, all of its original comments on these sections apply equally to the Revised Project and the Recirculated Draft EIR. RLO048-23

* * *

The County appreciates the opportunity to comment on the Revised Draft PEIR. Please contact Phil Pogledich, Senior Deputy County Counsel, with any questions at (530) 666-8275. RLO048-24

Very truly yours,

Robyn Truitt Drivon
County Counsel

Philip J. Pogledich
Senior Deputy County Counsel

Enclosures

Response to comment RLO048-24

Comment noted.

COUNTY OF YOLO

Board of Supervisors

District 1, **Michael H. McGowan**
District 2, **Don Saylor**
District 3, **Matt Rexroad**
District 4, **Jim Provenza**
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County Administrator, **Patrick S. Blacklock**
Deputy Clerk of the Board, **Julie Dachtler**

February 2, 2012

EIR Comments
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Comments of Yolo County—Draft EIR for the Delta Plan

Dear Delta Stewardship Council Members:

This letter describes the County of Yolo's ("County") principal concerns with the Draft Environmental Impact Report ("Draft EIR") for the Delta Plan. A separate document, enclosed herewith, includes additional comments on the Draft EIR.

As a preliminary matter, the County full considered the "programmatic" nature of the Draft EIR in developing its comments. The County is aware, for example, that "[a]n evaluation of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible." (CEQA Guidelines § 15151.) The County is also aware that "[w]here future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences." (*Kings County Farm Bureau v. City of Hanford,* 221 Cal. App. 3d 692, 738 (1990).) These and other principles necessarily inform the review of a programmatic EIR, which by its nature "must be appropriate tailored to the current . . . stage of the planning process" (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings,* 43 Cal.4th 1143, 1172 (2008)), and may defer the analysis of activities that are not, among other things, "a reasonably foreseeable consequence" of the project described in the EIR (*Rio Vista Farm Bureau Center v. County of Solano,* 5 Cal. App. 4th 351, 372 (1992).

Even bearing these principles in mind, however, the County believes that the Draft EIR for the Delta Plan is legally inadequate in a number of respects. Many of the problems noted by the County are quite minor and can easily be addressed. At least a handful of issues, however, will require further analysis and—in all likelihood—substantial revisions to the Draft EIR. These issues are the focus of the following discussion.

1. Certain Delta Plan Policies Require a More Detailed Analysis.

The Draft EIR fails to distinguish between the truly "programmatic" elements of the Delta Plan and a handful of issues that—to varying degrees—are defined specifically enough to require a

No comments

- n/a -

more rigorous level of environmental review. Policies ER P2, ER P3, and RR P2 all fall into this category, with each establishing the following restrictions:

- Policy ER P2: Requires habitat restoration projects to be consistent with the elevation map in Figure 5-2 (and related accompanying text) of the Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone, recently published by the California Department of Fish and Game.

- Policy ER P3: Requires all actions other than habitat restoration to "demonstrate that they have, in consultation with the Department of Fish and Game, avoided or mitigated within the Delta the adverse impacts to the opportunity for habitat restoration at the elevations shown in Figure 5-2." This policy does not apply within certain areas, including within the Clarksburg Growth Boundary.

- Policy RR P2 requires all "covered actions" in the Delta to be consistent with Table 7-1 in the Delta Plan. Table 7-1 restricts new development if adequate flood protection—defined in a manner that varies with the project type—is lacking.

These policies function much like zoning ordinances by restricting a wide range of future projects and activities in locations throughout much of the Delta and Suisun Marsh. Consequently, they should reviewed under CEQA in the same manner as zoning ordinances.

In the County's judgment, this would require an evaluation of the potential environmental effects of "shifting" or displacing projects potentially covered by these policies to other locations generally outside of the Delta.[1] Such an analysis is required because the demand for local wineries, agricultural processing and storage facilities, recreational facilities, and other covered activities will continue following the approval of the Delta Plan. Consequently, reducing the available supply of land within the Delta for such activities necessarily means that at least some will proceed in other locations. More conventional issues, such as the potential environmental effects of precluding new or reconstructed roads, bridges, utilities, and other public infrastructure in areas lacking specified levels of flood protection (i.e., PL 84-99 and higher) should also be evaluated in connection with Policies ER P3 and RR P2.[2] Finally, the existing analysis of Policy ER P3 must be substantially revised to address certain internal inconsistencies (particularly at pp. 6-52 and 6-53 of the Draft EIR) that are described in the enclosure.

[1] Such effects could include (a) air quality and greenhouse gas emission impacts associated with additional vehicle miles traveled (for example, to transport commodities to processing facilities), (b) increased use of certain highways and roads, causing a decline in the level of service and other impacts, (c) land use conflicts arising from additional development of agricultural-commercial and agricultural-industrial facilities outside of the Delta, (d) biological resources effects arising from a reduction or elimination of the ability to conserve suitable lands for special-status species and their habitats, and (e) recreational facility impacts. These effects should also be evaluated cumulatively in Section 22 of the Delta Plan EIR. Potential indirect environmental effects (i.e., urban blight and related impacts) of economic changes resulting from implementation of these policies also deserve consideration.

[2] This should include an analysis of issues (a) and (b) in footnote 1, above, and potentially consideration of effects on agriculture (e.g., by inhibiting access to farmland) and recreational facilities. Of course, many such projects will not rise to the level of a "covered action," and the Draft EIR could so state for the purpose of placing these issues in context.

No comments

- n/a -

2. Potential Habitat Restoration Within the Yolo Bypass Should be Described and Analyzed in Greater Detail.

The Draft EIR is replete with references to potential future habitat restoration within the Yolo Bypass. Such restoration is directly encouraged by the Delta Plan, which recommends "the prioritization and implementation" of "[p]rojects in the planning stage [that] include fish passage improvements, and various approaches, such as notching the Fremont Weir, to increase the frequency and duration of inundation during times of the year critical for spawning and rearing of native fish." (Delta Plan Recommendation ER R1.) For some reason, however, the Draft EIR does not describe the components of any "[p]rojects in the planning stage." Even more troubling from a County perspective, the Draft EIR declines to specifically consider the impacts of habitat restoration within the Yolo Bypass on the apparent basis that such analysis would be improperly speculative, as no discrete projects have yet been defined.

The County believes that this approach is legally inadequate in light of currently available information. The Draft EIR should be revised to include an expanded description and analysis of the reasonably foreseeable elements of ecosystem restoration projects that are currently "in the planning stage." The Bay Delta Conservation Plan ("BDCP") effort, together with the Delta Habitat Conservation and Conveyance Program ("DHCCP") led by the Department of Water Resources, are two prominent sources of information regarding such projects. In particular, the November 18, 2010 Steering Committee Draft of the BDCP contains a detailed conservation measure that describes a suite of potential fish passage and habitat restoration projects within the Yolo Bypass.[3] Finally, the Biological and Conference Opinion of the National Marine Fisheries Service (addressing certain salmonids and other aquatic species) includes various recommendations for fish passage and habitat restoration in the Yolo Bypass and is cited as a "major source of information" for Section 4 of the Draft EIR.

All of these sources of information are relevant to the Draft EIR and its evaluation of the potential environmental effects of the implementation of Recommendation ER R1. These sources provide similar descriptions of the potential timing, duration, and footprint of floodplain habitat restoration in the Yolo Bypass. The DHCCP has also produced detailed models that identify the approximate location of such floodplain habitat under a range of different scenarios. All of this information could easily be distilled into a basic project description that would, in turn, enable a proper analysis of Yolo Bypass habitat restoration in the Draft EIR at a level of detail that is "tailored to the current stage of the planning process." In the County's view, this requires a significantly greater degree of description and analysis than presently exists in various sections of the Draft EIR (including but not limited to Sections 2A, 4, 6, 7, 18, and 21).

3. The Draft EIR Should Describe and Analyze a Broader Range of Potential Conflicts Between Ecosystem Restoration and Agriculture.

Section 7 of the Draft EIR states that "[i]n analyzing the impacts of ecosystem restoration projects, it is important to consider the synergies, benefits, and potential for coexistence of ecosystems and agriculture." The County agrees and believes that opportunities to integrate ecosystem restoration and agriculture—as has occurred within the Yolo Bypass Wildlife Area—

[3] More recently, the Natural Resources Agency convened the "Yolo Bypass Fisheries Enhancement Working Group" to refine the draft conservation measure. The BDCP website includes documents reflecting the progress of that effort and, most importantly, detail regarding potential changes (as yet, mostly minor in nature) to the draft conservation measure.

No comments

- n/a -

should be pursued and preserved once they become established. In fact, one of the County's main concerns with potential habitat restoration in the Yolo Bypass is its potential to disrupt the *existing* scheme of integrated agricultural uses and wildlife habitat that is central to the success of the Yolo Bypass Wildlife Area.

That said, however, it is well known that such opportunities for coexistence are limited. The range of potential conflicts between ecosystem restoration and agriculture is quite broad, and this issue deserves much more attention in the Draft EIR. While the Draft EIR focuses on the potential conversion of farmland to habitat, it does not include a comprehensive discussion of other, less direct conflicts between ecosystem restoration and agriculture. The County recognizes that such conflicts have not been entirely ignored, as reflected in the discussion of invasive species, construction-related impacts, and access constraints (all at pp. 7-34 and 7-35), as well as the discussion of "nuisance water" in Section 11 of the Draft EIR. But the Draft EIR should also identify and discuss in Section 7 (and elsewhere, as appropriate) other potential conflicts that are reasonably foreseeable.[4]

As part of this discussion, the Draft EIR should address the potential for an incremental decline in agricultural viability and crop values as a consequence of the plans, programs, and projects supported by the Delta Plan. This would include consideration of the direct and indirect environmental effects of lost opportunities to grow the common crops. To use one example, the potential decline of rice cultivation in the Yolo Bypass[5] due to ecosystem restoration could lead to a "tipping point"—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. The potential for such effects is critical to consider in evaluating both the policy wisdom and environmental effects of the Delta Plan. A broader range of mitigation should also be evaluated, potentially including programs intended to sustain agriculture on lands affected (but not converted) by ecosystem restoration projects. Landowner compensation for such effects, as proposed in Mitigation Measure 7-1, is useful to consider but, in reality, it does not mitigate effects on agriculture or ensure that farming will continue on indirectly affected lands.

4. Land Use Conflicts and Local General Plans and Zoning are not Properly Considered in the Draft EIR.

As reflected in the enclosed comments, the County has a number of serious concerns with Section 6 (Land Use and Planning). The following three issues are of particular importance.

First, while Section 6 purports to study potential conflicts with local general plans and zoning, it does not do so in any meaningful way. Little effort is made to identify and discuss relevant provisions of local general plans. Much more striking, however, is that Section 6 entirely ignores the content of local zoning ordinances. It is not even clear that local zoning ordinances were reviewed in the course of its preparation. For example, the only discussion of local zoning

[4] Among other things, this could include: impaired drainage of both flood and irrigation water; farming delays and related crop losses; increased maintenance of farming equipment and infrastructure (and related public infrastructure, such as roads); curtailment of certain common agricultural practices, such as aerial spraying; and crop depredation.

[5] The County is currently completing an agricultural impacts analysis that examines the likelihood of such a decline under a variety of scenarios. We will forward this analysis to the Delta Stewardship Council when it is complete (likely this Spring).

No comments

- n/a -

consists of a handful of generalizations that are largely erroneous, such as the assumption that agricultural zoning precludes all commercial and industrial development (pp. 2B-4 and 6-53). Further, no local zoning ordinances are included among the "references" listed at the end of Section 6. Even taking the programmatic nature of the Draft EIR into account, this approach falls far short of what CEQA requires.

Second, in addition to evaluating potential conflicts with local general plans and zoning, Section 6 should more fully describe and analyze potential conflicts between land *uses*. This is an important issue (as acknowledged on p. 22-6) but receives scant attention in Section 6. It includes an array of potential environmental effects that are not likely to be fully addressed in analyzing conflicts with local general plans and zoning. This could include, among other things, the aesthetic, noise, and odor effects of shifting wineries and other agricultural processing facilities into the Legacy Towns (a potential consequence of various Delta Plan policies and recommendations, including Policy ER P3) and other lands proximate to residential areas.

Third and finally, Section 6 suffers from numerous internal inconsistencies that compromise its value as an informational tool. Many of these inconsistencies are detailed in the accompanying enclosure. Of those, the County is particularly concerned by the conflict between various significance determinations (e.g., at pp. 6-49, 6-51, 6-53, 6-60, and 6-62) and the discussion preceding each determination. Further, as already discussed above, the discussion of Policy ER P3 is difficult to follow and appears to seriously misstate the substance of local agricultural zoning ordinances. These are among the many inconsistencies in Section 6 that require substantial attention and revisions to the Draft EIR.

5. The Analysis of Climate Change and Greenhouse Gas Emissions is Incomplete.

In many respects, the discussion of climate change and greenhouse gas ("GHG") emissions in the Draft EIR (Section 21) fails to adequately describe and analyze this category of potential environmental effects. Two significant shortcomings include the treatment (or lack thereof) of local climate action plans and the general omission of information regarding the ways in which projects, plans, and programs encouraged by the Delta Plan could contribute to climate change and GHG emissions. Each of these shortcomings is briefly discussed in turn.

Like a number of other local governments, the County recently (on March 15, 2011) adopted a Climate Action Plan ("Yolo CAP").[6] Section 21 of the Draft EIR mentions such local plans and, in various places, states that projects, plans, and programs encouraged by the Delta Plan are "expected" to comply with local plans. This expectation is reasonable for projects that are subject to local permitting authority. As to all other projects, however, this is merely an assumption due to the absence of a Delta Plan policy (or similar legal authority) requiring compliance with local plans. As such, it is not a proper basis for the analysis in Section 21 relating to consistency with local plans and, more importantly, it cannot support the conclusion (at pp. 21-13, 21-17, 21-22, and 21-28) that any inconsistencies with local plans will be "less than significant." This issue therefore requires expanded reconsideration in the Draft EIR.

In addition, the Draft EIR contains a very poor discussion of the mechanisms by which ecosystem restoration could contribute to climate change and GHG emissions. The Yolo CAP,

[6] The full plan is available at http://www.yolocounty.org/Index.aspx?page=2004.

No comments

- n/a -

by contrast, contains a detailed discussion of this issue that reflects the current state of science on ecosystem restoration, GHG emissions, and climate change, as well as a solid discussion of the role of methane and other compounds in such processes. (E.g., Yolo CAP at pp. 14 and A-10 and11.) In addition, Appendix B and other provisions of the Yolo CAP identify various actions—some mandatory, some not—that could enhance the role of agriculture and ecosystem restoration in reducing GHG emissions and otherwise combating climate change. Much the same type of information should be considered in Section 21 the Draft EIR and evaluated in connection with the list of proposed mitigation measures set forth therein.

* * *

The County appreciates the opportunity to comment on the Draft EIR for the Delta Plan. While the concerns set forth above (and in the enclosure) are significant and will likely require recirculation of the Draft EIR, the County also observed that the Draft EIR contains a thoughtful, comprehensive analysis of many issues. The County looks forward to continuing to participate in the Delta Plan environmental review process.

Sincerely,

Jim Provenza, Chair
Yolo County Board of Supervisors

Enclosure

No comments

- n/a -

Specific Comments of Yolo County—Delta Plan Draft EIR
February 2, 2012

Together with the accompanying cover letter, the following comments constitute the response of Yolo County to the Draft EIR for the Delta Plan. The County also incorporates by reference herein the February 2, 2012 comments of the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan Joint Powers Agency. The County reserves the right to supplement these comments at any point prior to the certification of the Delta Plan EIR.

As expressed in the accompanying letter, the County appreciates the opportunity to participate in the environmental review process for the Delta Plan.

Comments on the Executive Summary

Page: Line	
ES-2, fn. 4	Footnote 4 states that where the Delta Plan "encourages" specific projects, including ecosystem restoration within the Yolo Bypass, those projects are evaluated in the EIR. This is inaccurate. There is little or no meaningful analysis of specific projects recommended in the Delta Plan—and certainly, not at the "project" level of environmental review as this statement implies. This statement should be revised to conform to language describing the programmatic nature of the Draft EIR in Chapter 1, p. 13, at lines 36-40. In addition, however, the County believes that a more detailed environmental analysis of the specific aspects of the Delta Plan, as detailed in the letter accompanying these comments and in places below, is legally necessary and appropriate.
ES-3	The discussion of "Areas of Known Controversy" is incomplete, as it refers only briefly (and indirectly) to the controversy over the meaning of the statutory term "covered action." While the Delta Reform Act contains a detailed definition of "covered action," that definition is vague in many respects and will ultimately require clarification by the Legislature, the courts, or both. The resolution of this controversy is central to an understanding and proper evaluation of the regulatory scope and effect of the Delta Plan. It thus deserves a full and direct explanation in the Draft EIR.

Comments on Section 2A—Proposed Project and Alternatives

Page: Line	
2A-2:5-11	As in many other places in the Draft EIR, this paragraph explains the difficulty of forecasting the effect of many of the policies and recommendations in the Delta Plan. In the County's view, while such statements are appropriate in some contexts, the Draft EIR relies too heavily on such generalizations and improperly dismisses the need for meaningful

No comments

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analysis more frequently than is legally appropriate. This is particularly true for Delta Plan policies that function much like local General Plan policies or zoning ordinance provisions (as described in the accompanying letter), constraining development unless it meets certain location and other requirements. The distinct nature of these "quasi-zoning" policies should be recognized in the Project Description and considered carefully in subsequent chapters of the Draft EIR.

2A-4:5-13

This paragraph explains that while the approval of local HCP/NCCPs is not a "covered action," individual projects that implement such HCP/NCCPs may constitute "covered actions" and require consistency with the Delta Plan. The County shares and incorporates herein by reference the concerns of the California Department of Fish and Game and the United States Wildlife Service, as expressed in a letter by those entities to the Delta Stewardship Council dated October 4, 2011. The potential consequences of subjecting the implementation of HCP/NCCPs (with the exception, of course, of the BDCP) to the Delta Plan consistency requirement—and of course, to specific policies in the Delta Plan—must be evaluated in the Draft EIR. This analysis should include consideration of the potential environmental effects raised in the County's comments on Section 4 of the Draft EIR, below, together with issues raised in the CDFG/USFWS letter.

2A-25:7-14 and 30-31

This text refers to the Yolo Bypass (together with other specific areas) as the likely site of an ecosystem restoration project. Significant information on the potential location, size, and operation of an ecosystem restoration project is the Yolo Bypass has been available for quite some time. The County is baffled as to why the Draft EIR recognizes that the Delta Plan encourages restoration within the Yolo Bypass, indicates generally that the project and others like it may have certain environmental impacts, and then fails to include even a basic description of the foreseeable components of ecosystem restoration in the Yolo Bypass to establish a foundation for the level of analysis of related environmental effects and potential mitigation that is required by CEQA.

The County recognizes that the Delta Plan EIR is a programmatic document. Even in a programmatic document, however, more is required. Just as importantly, more is possible given the widespread availability of information regarding the details of a future Yolo Bypass ecosystem restoration project. Under CEQA, it is not adequate to perform only a cursory analysis of a recommended action if—as is the case here—information as to how that action could be implemented is available for consideration.

As described in the letter that accompanies these comments, such information includes the November 18, 2010 Draft BDCP and the NMFS Biological/Conference Opinion on salmonids and other aquatic species. The Draft EIR analyzes the BDCP generally in Section 23 and, at page 23:12,

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describes some details regarding its proposals for ecosystem restoration within the Yolo Bypass. These and other general details (such as basic information regarding the potential size, timing, and duration of floodplain habitat) should be described generally as part of the "Proposed Project" for the Delta Plan EIR. Even accounting for the Delta Stewardship Council's appellate role with respect to BDCP, there is no sound reason to exclude such information from the Draft EIR.

Similarly, the Biological/Conference Opinion is described as a "major source of information" for the Biological Resources (Section 4) discussion in the Draft EIR. It also contains some general proposals for habitat restoration within the Yolo Bypass that could (and should) augment the description of the "Proposed Project" to enable a proper analysis of such restoration.

2A-26:29-30 This sentence recognizes that ecosystem restoration can be beneficial to reducing Delta flood risk. The opposite is also true; for example, the elimination of agriculture within a floodplain or floodway can result in the establishment of riparian vegetation. This needs to be recognized in the project description and studied in the Draft EIR, as mentioned further below.

2A-26:30-37 This paragraph explains that "it is unclear what types of projects will actually be implemented as a result of the Proposed Project policies and recommendations." The County generally agrees, and this is the basis of its repeated critique of Policy ER P3 and its requirement that all future projects (other than habitat restoration) demonstrate that they have "...avoided or mitigated within the Delta the adverse impacts to the opportunity for habitat restoration at the elevations shown in Figure 5.2" of the ERP Conservation Strategy. (E.g., Yolo County letter dated September 30, 2011, commenting on the Fifth Draft of the Delta Plan.) If the Delta Stewardship Council cannot reasonably anticipate specific ecosystem restoration projects in its Draft EIR, then local agencies should not be required to engage in such guesswork in considering unnamed and as-yet unknown projects within the vast area covered by the map referenced in Policy ER P3.

2A-26:38-41 This paragraph states in part: "The types of projects that may be developed for ecosystem restoration can best be seen by looking at recommendations in ongoing ecosystem restoration projects in the Delta for the Suisun Marsh and Cosumnes-Mokelumne rivers confluence." In the context of evaluating the specific Delta Plan recommendation that supports implementation of an ecosystem restoration project in the Yolo Bypass, however, it makes no sense to utilize these documents in lieu of consulting the proposals for the Yolo Bypass that appear in the November 18, 2010 Draft BDCP (and other more recent documents based on the proposals therein) and the NMFS Biological/Conference Opinion. This oversight, as discussed above, is a basic yet serious flaw in the Project Description and the analytical content of the Draft EIR.

No comments

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2A-35:21-43 These paragraphs purport to describe the general features of an ecosystem restoration project for the Yolo Bypass, stating (among other things) that such restoration could include "establishment of a mosaic of seasonal floodplain, riparian, perennial grasslands, and vernal pool habitats within tidal marsh areas." This text also states that "[i]t is difficult to predict which areas of the Yolo Bypass will become part of an ecosystem restoration program."

The County reiterates its objection to such generalizations with respect to the Delta Plan recommendation for ecosystem restoration in the Yolo Bypass. This recommendation, presumably, has some connection to existing proposals that the Delta Plan EIR can analyze at a programmatic level. Accordingly, the Project Description should be revised to more specifically describe the reasonably foreseeable components of a future restoration project in the Bypass.

Moreover, while these paragraphs refer to the development of an HCP/NCCP for the area by the Lower Yolo Bypass Planning Forum, such an effort has never existed. There are two HCP/NCCPs currently in progress that include the Yolo Bypass: BDCP, and the Yolo Natural Heritage Program. This text should be corrected.

2A-56: 27-32 This paragraph states that the "Finance Plan Framework" chapter of the Delta Plan is not considered in the Draft EIR, apparently because the success or failure of recommendations included in that chapter "would not result in changes in physical conditions in the environment in addition to those that are already discussed and analyzed in this EIR." This conclusion, however, does not apply to all elements of the Finance Plan Framework.

For example, the Finance Plan Framework recommends a reasonable payments-in-lieu-of-taxes program for local governments. It is possible that the Legislature will not act on this recommendation and local government revenues will decline as, among other things, lands are removed from property tax rolls (or assessed values decline) in connection with plans, programs, and projects that are encouraged by the Delta Plan. If a reasonable payments-in-lieu-of-taxes program to stabilize local government revenues is not established, it is reasonable to anticipate that the provision of local emergency response, public infrastructure (i.e., roads, bridges, parks, and other facilities) maintenance, and other services will be detrimentally affected over time. This potential outcome should be analyzed in appropriate sections of the Draft EIR, including Sections 17 (Public Services), 18 (Recreation), and 19 (Transportation, Traffic, and Circulation)

More broadly, beyond the limited context of local government revenues, plans, programs, and projects encouraged by the Delta Plan will have an array of economic consequences as land uses change, agricultural-

No comments

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industrial/commercial development is further precluded, and the short-term economic boost provided by the construction of water supply, ecosystem restoration, and other projects dissipates. Using perhaps the most obvious example, the conversion of many thousands of acres of farmland will undoubtedly have a significant economic effect on Delta industries and communities that depend on regional agriculture. Such effects must be studied in the Draft EIR to the extent that they result in environmental impacts--such as through urban blight--as processing facilities and other agriculture-related businesses close. Our review of the Draft EIR did not disclose any such analysis.

Comments on Section 2B--Introduction to Resource Sections

Page: Line
2B-4:12-19

This paragraph describes Policy ER P3 as a general development restriction affecting "ecosystem restoration opportunity sites." With regard to the potential effect of this policy, the text states:

> Development on those [ecosystem restoration opportunity] sites, however, currently is prohibited by local general plans and/or zoning in many places, so no physical change compared to existing conditions is expected in those places as a result of this aspect of the Delta Plan.

This description of local general plans and zoning is inaccurate. The "ecosystem restoration opportunity sites" referenced by this policy cover virtually all undeveloped land in the Delta. While much of this land is restricted for agriculture and development is constrained by local general plans and zoning (as well as the Land Use and Resource Management Plan of the Delta Protection Commission), it is not "prohibited" altogether.

Rather, limited residential, commercial, and industrial development--typically to support local agricultural production--is permitted by the Yolo County General Plan and zoning code in such areas. The same is likely true in other Delta counties. This misunderstanding needs to be corrected and the analysis in the Delta Plan EIR (including but not limited to Section 6) needs to reflect the potentially significant effect of ER P3 on the types of development that are authorized in such areas.

This paragraph also refers to Policy RR P3, which requires covered actions to be consistent with Table 7-1 in the Delta Plan. The text states that Policy RR P3 is discussed in more detail in Section 5, Delta Flood Risk. No discussion of this policy appears in Section 5, though Policy RR P3 is discussed briefly in Section 6. This cross-reference should be corrected.

No comments

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No comments

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Comments on Section 4—Biological Resources

Page: Line	
4-2:16-17	As noted above, the NMFS Biological/Conference Opinion on salmonids and other aquatic species is listed as a "major source of information" for Section 4. Despite this, the Draft EIR omits any discussion of the Opinion's contents relating to potential future habitat restoration projects in the Yolo Bypass. As recognized later in Section 4, "regional conservation plans . . . provide guidance for the conservation and restoration of wetland and agricultural habitats in the Central Valley, including the Delta and Suisun Marsh." (p. 4-25, lines 36-38.) In many respects, the Biological/Conference Opinion provides similar guidance regarding potential restoration within the Yolo Bypass (though of course, it does not mandate restoration in that location). The County believes that such information should be included and evaluated in the Draft EIR to support ER R1 (recommending habitat restoration within the Yolo Bypass). In addition, the County is surprised that the November 18, 2010 draft of BDCP is not listed as a "major source of information" for Section 4 (or for that matter, identified elsewhere in the Draft EIR as a source of information on many relevant topics aside from Section 23). The Draft BDCP includes relevant information concerning habitat restoration proposals focused on the Yolo Bypass. It is difficult to understand how the Draft EIR can adequately analyze ER R1 when it intentionally omits even basic details of the restoration proposed for that location as part of the BDCP and the Biological/Conference Opinion.
4-59:27-33	The threshold of significance relating to effects on natural communities should be expanded to include agricultural communities, which the Section notes (at pp. 4-37 to 4-39) provide important wildlife habitat for a wide range of special status species, including the giant garter snake, Swainson's hawk, and tri-colored blackbird.
4-69/4-70	These pages analyze the potential for ecosystem restoration projects to have "substantial adverse effects on special status species." Even in a programmatic document, however, the vague and general analysis of the potential for such adverse effects is inadequate. For example, the following statement is representative of the superficial level of analysis included in this discussion: > While impacts to special-status species resulting from Delta restoration actions would likely be minimal, the conversion of land (e.g., agricultural land) might adversely affect special status species associated with those land types. For example, habitat could be reduced for Swainson's hawks that are associated with agricultural

lands in the Delta. (p. 4-69:43-46.)

Similarly, the discussion of this topic concludes by stating:

> Operation of restored areas would likely benefit special-status species over the long term, as would changes in flow and water quality requirements encouraged by the Proposed Project. However, actions to restore wetlands and other habitats could result in the permanent conversion of agricultural land that provides habitat for special status species. Therefore, this potential impact is considered **significant**. (p. 4-70:31-34.)

These statements are unaccompanied by any meaningful analysis. It is unclear why impacts to special-status species "would likely be minimal," or how the restored areas "would likely benefit special-status species over the long term." The former statement, in particular, is difficult to accept in the absence of supporting information. Certainly, some species will be affected more than others—particularly those that rely heavily on agricultural land for habitat, such as the Swainson's hawk and giant garter snake. Yet aside from the brief reference to the Swainson's hawk, the Draft EIR provides no information regarding which species will be affected adversely, to what extent, and generally how such adverse effects will occur (i.e., through the loss of foraging habitat, refugia, etc.). Such information should be developed and included in the Delta Plan EIR (perhaps in table format, similar to the other tables included at the end of Section 4).

4-71:36-38 This discussion includes a sentence that reads: "Actions that restore habitat within these five areas [including the Yolo Bypass] would not occur within the incorporated cities and their spheres of influence and, therefore, would not conflict with local policies and ordinances that protect biological resources." Presumably, those involved in preparation of the Delta Plan EIR are aware that counties—not just cities—have authority under the California constitution and various statutory provisions to adopt ordinances and otherwise implement programs to protect biological resources. In Yolo County, the County and all of the incorporated cities (Davis, Woodland, Winters, and West Sacramento) implement a Swainson's hawk mitigation program in coordination with the Yolo Natural Heritage Program. The program generally requires 1:1 in-County mitigation (achieved through conservation easements) for the conversion of Swainson's hawk foraging habitat. This program should be considered in the Delta Plan EIR. Additional information about this program is available through Maria Wong, Executive Director of the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan Joint Powers Agency, who can be reached at (530) 408-4885.

Separately, the discussion in this section concludes by stating that the

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potential conflict between ecosystem restoration projects and local policies and ordinances that protect biological resources is "significant." To say the least, this is difficult to understand because the discussion (as noted above) does not identify any such policies or ordinances. The discussion of this issue needs to be augmented to include substantial evidence supporting this significance determination.

Generally

Section 4 should include a discussion of the potential for Delta Plan policies and recommendations, including ER P2 and ER P3, to shift the implementation of conservation requirements in local HCP/NCCPs to areas outside of the Delta. Such shifting could occur if, for example, suitable habitat for one or more covered species exists within the Delta but an easement or other preservation mechanism is deemed inconsistent with one or both of those Delta Plan policies.

The possibility of such a result is addressed in the somewhat similar context of conflicts betwen local HCP/NCCPs and the BDCP in Section 23 (at p. 23-30). Specifically, the text describes potential conflicts between BDCP and local HCP/NCCPs where the same lands are targeted for different restoration and preservation objectives. Presumably, in such a circumstance, the BDCP will control provided it has been incorporated into the Delta Plan. Policies ER P2 and ER P3, read together, also create the possibility of the same type of conflict between local HCP/NCCPs and the ERP Conservation Strategy to the extent the policies preclude any habitat restoration or preservation that is in conflict with the Figure 5.2 of the Strategy.

The result is that conservation will occur elsewhere, potentially at a higher cost and over a longer timeframe, or such local plans will eventually fail. Even in the absence of a local HCP/NCCP, the same basic shifting issue could arise with respect to the local habitat mitigation policies, programs, and ordinances discussed in the preceding comment. This issue deserves careful study in the Delta Plan EIR, together with other issues raised in the comment letter from the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan Joint Powers Agency (incorporated herein by reference, as noted on p. 1, above.).

Comments on Section 5—Delta Flood Management

Page: Line

Generally

Section 5 does not appear to address (aside from a handful of passing references) the potential establishment of vegetation within ecosystem restoration areas that could adversely affect flood protection facilities (including the Yolo Bypass and its levees) and the conveyance of floodwaters. This could occur if, for example, agriculture (which currently maintains vegetation in the Yolo Bypass) is eliminated in certain areas and an

No comments

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adequate vegetation management plan is not implemented. This issue needs to be addressed in the Delta Plan EIR because it is a reasonably foreseeable consequence of ecosystem restoration and other projects, plans, and programs that are encouraged by the Delta Plan.

Comments on Section 6—Land Use and Planning

Page: Line	
Generally	The Delta Plan EIR briefly describes but does not substantively discuss the Land Use and Resource Management Plan ("LURMP") of the Delta Protection Commission. Despite this, the interaction between the LURMP and the Delta Plan is a significant issue—particularly for local jurisdictions responsible for ensuring that project approvals are consistent with both plans. This general consistency issue should be analyzed in Section 6 in the same level of detail as consistency with local general plans and zoning.
6-10 and 6-11	These pages describe the Yolo County General Plan but (as with other Delta counties and cities) omit any reference to a wide range of relevant policies. While the County does not necessarily believe a full recitation of relevant policies from its General Plan is required, the Draft EIR should expand its discussion of relevant policies and note that the included list is not exhaustive. Both the Land Use and Agriculture/Economic Development Elements contain numerous policies that are relevant to the focus of Section 6 and should be included or referenced in the text. In addition, these pages fail to include a summary or other discussion of local zoning. In fact, as noted in our cover letter, nothing in Section 6 or the references cited at the end of the Section indicates that local zoning ordinances were reviewed in connection with its preparation. This oversight is striking and must be addressed to ensure that Section 6 does what it says—i.e., analyzes, among other things, potential conflicts between local zoning ordinances and the projects, programs, and policies supported by the Delta Plan. The importance of properly analyzing potential inconsistencies between the Delta Plan and local zoning ordinances (as well as other local plans, policies, and regulations) is fundamental to the integrity of the Delta Plan EIR. This is presumably why such inconsistencies are the basis of a threshold of significance in Section 6 relating to plans, policies, and regulations "adopted for the purpose of avoiding or mitigating an environmental effect." As indicated in various places in the Draft EIR (e.g., p. 22-6), this includes general plan policies as well as zoning ordinances that zone specific lands for agricultural, open space, and similar uses to preserve their existing and/or natural character.

No comments

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In Yolo County's zoning code, in addition to general zoning provisions relating to Agricultural General, Agricultural Preserve, and Agricultural Exclusive Zones, the following should also be evaluated: the Agricultural Conservation Easement Program (Yolo County Code Section 8-2.2416); and the Agricultural Clustering Ordinance (Yolo County Code Section 8-2.2419) (not yet available online). The implementation of programs associated with the Clarksburg Agricultural District (established by the Board of Supervisors by resolution on January 29, 2008) should also be evaluated. The County is happy to provide documents associated with these ordinances and programs upon request.

Lastly, potential conflicts with the adopted California Department of Fish and Game management plan for the Yolo Bypass Wildlife Area should also be evaluated.

6-29 and 6-30 — The description of "agricultural lands" and "developed lands" on these pages appear to overlap, creating an internal consistency with respect to the categorization of agricultural-industrial and agricultural-commercial development such as wineries, dairies, and processing facilities. Clarification regarding the treatment of agricultural-industrial and agricultural-commercial development is necessary.

6-45:14-18 — This paragraph generally discusses mitigation measures but, at line 15, also specifically refers to "noise impacts." This reference is presumably an error, but it creates uncertainty regarding the intent of this paragraph and must be corrected or further explained.

6-48, 6-51 — The analysis of potential construction-related conflicts with local zoning and general plan policies erroneously concludes that such conflicts will not occur because construction is, by its nature, a temporary activity. This does not necessarily mean that lands zoned for agricultural and other uses can be used as construction staging areas and other related activities. This consistency discussion needs to be substantially revised to include a more thorough discussion of potential construction-related activities and impacts (similar to what appears at pp. 7-19 and 20 of the Draft EIR), together with related general plan and zoning consistency issues.

6-49: 1-13 — These paragraphs express that water supply reliability projects encouraged by the Delta Plan are "likely" to have less-than-significant impacts with local land use plans, policies, regulations, or restrictions adopted for the purpose of avoiding or mitigating an environmental effect. Despite this, the discussion concludes by stating that "based on the potential effects of project construction and project operation discussed above, this impact is considered "significant." The County has at least two concerns with this discussion.

No comments

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First, the projects addressed in this discussion include water intakes, conveyance facilities, reservoirs, and water transfers (p. 6-46). It is hard to understand how the Draft EIR could conclude that such projects are "likely" to have less-than-significant impacts. The County understands, of course, that this conclusion arises from a review of environmental analyses prepared for three projects cited on p. 6-46. But it requires little imagination to envision a scenario where water supply reliability projects may significantly conflict with local land use plans, polices, regulations, or restrictions. In fact, the Draft EIR even alludes to a scenario involving "new water supply facilities...constructed on lands designated for exclusive agricultural use in Yolo or San Joaquin counties" and then, on this basis, concludes that the potential for conflicts in the course of project operations is actually "significant" after all. [The County notes that later in the Draft EIR, at p. 6-57, the Yolo County project is identified as the North Bay Aqueduct Alternative Intake Project.] This illogical and confusing discussion should be revised substantially for the sake of clarity, at the very least.

Second, the final "conclusion" expressed in this discussion is that "based on the potential effects of project construction and project operation discussed above, this impact is considered significant." The County accepts this conclusion as it relates to operational impacts (despite its misgivings about the supporting analysis, as expressed above), but this conclusion directly conflicts with the analysis relating to construction impacts. On p. 6-48, construction impacts were determined--in a single sentence without any supporting analysis--to present no conflict with land use plans and zoning ordinances. This discussion is therefore internally inconsistent and must be revised. Other portions of Section 6, referenced below, also suffer from the same type of internal inconsistency.

6-51:29-30 The conclusion regarding impacts is inconsistent with the preceding discussion of construction impacts and is not supported by substantial evidence.

6-51 and 6-52 The discussion of potential conflicts between ecosystem restoration projects and local general plans, zoning, and regulations is far too conclusory. For example, in reference to the Delta Plan's specific encouragement of ecosystem restoration in the Yolo Bypass and other locations, the Draft EIR states simply that "[i]t is not known at this time what specific activities would occur that could affect land use." Elsewhere in the Draft EIR, however, some of the anticipated objectives of ecosystem restoration in the Yolo Bypass as expressed in brief but meaningful detail (i.e., at p. 23:12 in relation to the BDCP) that is useful for at least the limited purpose of evaluating potential land use conflicts. The County also reiterates its prior comments regarding the Draft BDCP and NMFS Conference/Biological Opinion as available sources of relevant information on this subject.

No comments

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6-52 and 6-53 The County appreciates the discussion of Policy ER P3 and its potential to conflict with local land use plans. This potential conflict is one of the County's principal remaining concerns with the Delta Plan, as expressed in its comment letters and the cover letter accompanying these comments on the Delta Plan EIR. The County disagrees, however, with the analysis of the potential environmental effects of Policy ER P3 in the Draft EIR.

To place the County's critiques in context, it is important to begin by quoting relevant text from the Draft EIR:

> ER P3 would not necessarily prevent land use changes. However, this restriction may limit the types of land uses that could be implemented in certain areas of the Delta. For example, a covered action that would result in construction of agricultural related facilities or infrastructure (e.g., warehouse for storing produce), even if it is in compliance with local regulation, could interfere with the possibility of future ecosystem restoration if it is located within the restoration opportunity areas designated in Figure 2-1. If this interference could not be mitigated, then the covered action would conflict with the Delta Plan and could not be approved.

Three points from this excerpt are worth noting. First, that ER P3 will (as the County has mentioned previously) function similar to a zoning ordinance by "limit[ing] the types of land uses that could be implemented in certain areas of the Delta." Under CEQA, it must therefore be analyzed in the same level of detail as a proposed zoning ordinance. The "programmatic" approach to environmental review is not appropriate for ER P3. Second, it is also important to note the Draft EIR's explanation that agricultural related facilities or infrastructure--even something as basic as a produce storage facility--are subject to Policy ER P-3. This underscores the first point, above, while also highlighting the broad reach of ER P3 and its potential effect on Delta agriculture and related support industries (as well as the Legacy Towns that depend heavily on agriculture). Third, the reference to Figure 2-1 and "restoration opportunity areas" does not align with the actual text of ER P3, which relates to Figure 5.2 in the ERP Conservation Strategy. To the County's knowledge, these are two very different things and the erroneous reference to Delta Plan Figure 2-1 in the Draft EIR appears to compromise the entire analysis of ER P3 by greatly understating the geographic area to which it applies.

In the paragraph following this discussion, however, the Draft EIR embarks on a confusing and deeply flawed explanation of the potential conflict between Policy ER P3 and local general plans, zoning, and similar regulations. In pertinent part, it states:

> Most of this area [i.e., the area affected by ER P3] is designated as

No comments

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> agricultural, parks and recreation, natural preserve, public, and water. These existing land use designations do not support major residential subdivisions, commercial or institutional developments, or industrial facilities. The remaining areas include residential areas outside of Tracy; the existing Legacy Towns of Hood, Courtland, and Walnut Grove; the existing town of Thornton, commercial areas primarily in Thornton and Terminous; and industrial areas (primarily in Blythe, Cochrane, Thornton, Walnut Grove, Vorden, Collinsville, and Montezuma). These areas are designed in county general plans to accommodate future growth . . . . The affected areas occupy less than 1 percent of the approximately 704,000 acres in the Delta outside of the incorporated areas, associated spheres of influence, the Clarksburg growth boundary, the Contra Costa ULL, and the Mountain House General Plan community boundary. This impact would be less than significant for the Delta as a region.

This discussion underscores an issue raised in one of the County's earlier comments: the inconsistent treatment of agricultural-commercial and agricultural-industrial development in the Draft EIR. In the first paragraph on Policy ER P3 that is quoted above, agricultural-commercial and agricultural-industrial development is clearly described as subject to Policy ER P3, as in the example of the produce storage facility. In this paragraph, however, lands designated for agricultural use are described as not supporting commercial or industrial facilities. Hence, the analysis concludes that Policy ER P3 will not affect such lands.

It is possible that this conclusion reflects a nuanced interpretation of ER P3 that the County has not taken into account—specifically, that ER P3 does not apply to commercial and industrial facilities that support agriculture. This County would strongly prefer this sensible approach to a broader application of Policy ER P3. Nonetheless, it is far from clear that this is the intended interpretation of Policy ER P3 (particularly since Draft EIR uses the example of a produce storage facility to demonstrate the type of projects that Policy ER P3 discourages). Substantial changes to this discussion are necessary to clarify the intended operation of Policy ER P3 and to properly evaluate its effects on local general plans, zoning ordinances, and similar mechanisms.

Finally, the County disagrees with the conclusion in this paragraph (i.e., that Policy ER P3 will have a less than significant impact on "the Delta as a region". This conclusion appears to be premised upon a serious misunderstanding of how and where Policy ER P3 will apply, as is clear in the excerpted Draft EIR text quoted above. The County simply cannot understand how Policy ER P3 will affect "less than 1 percent of the approximately 704,000 acres in the Delta" that are unincorporated and generally undeveloped. By its terms, Policy ER P3 applies to a much larger area—the area shown on Figure 5.2 in the ERP Conservation Strategy

No comments

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document, which covers much of the Delta. This is another serious flaw in the analysis of Policy ER P3 that must be addressed.

6-53:19-20 The conclusion regarding impacts is inconsistent with the preceding discussion of construction impacts and is not supported by substantial evidence. It also ignores the "less than significant impact" conclusion regarding Policy ER P3, as discussed above, and creates an internal inconsistency with that text.

6-59 and 6-60 The discussion of RR P3 at these pages is highly inadequate. In addition to the issues noted in the County's cover letter, the Draft EIR should analyze the inconsistency between RR P3 and local "clustering" programs (encouraged also by the LURMP) that are intended to concentrate housing in discrete portions of rural areas and minimize impacts on agriculture and other environmental effects of dispersed residential development. Many such programs, including the program adopted by Yolo County (mentioned on p. 10 of these comments, above) allow for limited subdivisions to facilitate "clustering." These programs would be precluded by RR P3, resulting in the very type of dispersed residential development and correspondingly greater environmental effects that agricultural clustering ordinances are intended to curb.

In addition, for the same reasons discussed with respect to ER P3, the discussion of RR P3 inaccurately describes the content of local zoning ordinances and, for this reason, understates the potential impact of RR P3. Substantial edits to this discussion are necessary.

6-60:28-29 The conclusion regarding impacts is inconsistent with the preceding discussion of construction impacts and is not supported by substantial evidence.

6-62:25-26 The conclusion regarding impacts is inconsistent with the preceding discussion of construction impacts and is not supported by substantial evidence.

6-63:27-31 The County generally supports Mitigation Measure 6-2, which (among other things) calls for mitigation for the conversion of farmland. As drafted, however, Mitigation Measure 6-2 has at least two serious shortcomings.

First, it refers to "deed restrictions" rather than conservation easements. In the context of farmland and habitat mitigation, conservation easements are much more commonly used than deed restrictions. There are many policy reasons for this, including the monitoring and enforcement provisions of conservation easements that, together with related endowments to cover associated costs in perpetuity, greatly enhance the likelihood that affected lands will remain available for agricultural use.

No comments

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Second, a recommended minimum mitigation ratio of 1:1 (or higher, where appropriate or where required by local ordinance) should be included in Mitigation Measure 6-2. Without a mitigation ratio, Mitigation Measure 6-2 lacks the level of specificity required by CEQA.

The County notes that Mitigation Measure 7-1 (p. 7-53) includes both of these elements. Accordingly, the County recommends that Mitigation Measure 6-2 be revised to conform to Mitigation Measure 7-1 insofar as it relates to these issues.

Comments on Section 7--Agriculture and Forestry Resources

Page: Line	
7-20:19-25	With respect to water supply reliability projects, this text states that "[a]pplicable agricultural land protection, conversion and mitigation requirements in the Delta would include those of the cities and counties." The text should also note that, unless such requirements are incorporated into the Delta Plan (as the County has encouraged), they are likely inapplicable to projects undertaken by the state. The limited relevance of such local requirements is important to accurately describe in this Section, among other things, it helps demonstrate the need for a robust farmland mitigation requirement in the Delta Plan along the lines of what is set forth in the Mitigation Measures for Section 7.
7-28:34-35	This sentence summarizes the preceding text, stating that "[i]n analyzing the impacts of ecosystem restoration projects, it is important to consider the synergies, benefits, and potential for coexistence of ecosystems and agriculture." The County strongly agrees with this point. However, it is also important to consider potential conflicts between ecosystem restoration and agriculture. Such conflicts extend beyond the direct conversion of farmland to habitat and the Delta Plan EIR should describe the wide array of potential direct and indirect effects of habitat restoration on farmland and agricultural activities. While this topic is addressed summarily in the discussion of Impact 7-5b, as discussed below, expanded consideration of this topic is both necessary and appropriate.
7-30 and 7-31 (Impact 7-1b)	This discussion explains that various types of habitat restoration projects will permanently convert farmland. It is important to elaborate on the ways in which such conversions may occur. For example, while this discussion seems to limit such conversions to areas directly affected by a habitat project (i.e., areas within its footprint), there are other ways in which habitat restoration can indirectly result in a loss of agricultural productivity or even the cessation of agriculture on other farmland outside of the immediate footprint of a project. This could include the conflicts specifically identified in the

No comments

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accompanying cover letter.

In addition, this discussion also references ecosystem restoration within the Yolo Bypass (and other specific locations where restoration is recommended by the Delta Plan) and states that "[i]t is not known at this time what specific activities would occur that could affect agricultural resources." The County has previously objected to such uninformed generalizations and reiterates those objections here. Consideration of the potential timing and duration of increased inundation, for example, would support a discussion of reasonably foreseeable impacts on agricultural practices—including rice cultivation—as well as inform the consideration of mitigation measures.

7-31 and 7-32 (Impact 7-2b)

In various places, the discussion of potential conflicts with Williamson Act contracts assumes that—even if such conflicts exist—ecosystem restoration projects will proceed and farmland will be converted. This is not accurate. 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.

The conclusion of this discussion (p. 7-32) is also confusing. It states that "significant and unavoidable impacts on agricultural resources could occur" in some instances. This conclusion is largely irrelevant, however, to the issue that is the focus of this section: agricultural zoning and Williamson Act contracts. The final sentence of the conclusion recognizes this and properly addresses conflicts with agricultural zoning and Williamson Act contracts. The shifting focus of this paragraph nonetheless creates an internal inconsistency that should be addressed.

7-34 and 7-35 (Impact 7-5b)

Overall, the discussion in this section—purportedly focused on "other changes" to farmland caused directly or indirectly by ecosystem restoration projects—is far too general to be legally adequate. As noted above, this is an appropriate place to discuss the wide array of potential conflicts between ecosystem restoration and agriculture, particularly on agricultural lands that are not directly converted by a habitat project. The discussion, however, references only "the spread of invasive species to new areas, negatively affecting the health or viability of surrounding agricultural or forest uses," and alludes to a handful of other impacts (e.g., noise, dust, and access constraints) that are studied in other sections of the Draft EIR. Much more information should be provided to ensure that potential conflicts, both direct and indirect, have been appropriately described and analyzed in the Delta Plan EIR.

7-53 (Mitigation

Generally, the County supports Mitigation Measure 7-1. Requiring 1:1

No comments

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Measure 7-1)	mitigation for the loss of farmland through the purchase of a conservation easement (or a suitable contribution to a land trust for the same purpose) is a key part of effectively addressing the permanent conversion of farmland. Also, the County supports requiring "nonproject areas" to be large enough to allow for commercial agricultural production. And finally, the County also supports the language requiring project proponents to minimize their effects on nearby properties and, if such impacts cannot be avoided, to purchase an easement or otherwise compensate the affected landowner(s) for such effects. On the latter issue, however, it is important to recognize that such mitigation would not address the incremental decline in agricultural viability that results from such conflicts. The potential environmental effects of a decline in agricultural viability and crop values, as noted above and in the accompanying cover letter, require further consideration in the Delta Plan EIR. Finally, the County also recommends that Mitigation Measure 7-1 be revised to include the following: (1) A requirement that the farmland preserved through a conservation easement be of <u>like or better quality</u> to the farmland affected by the project. This is a standard component of local farmland mitigation programs. (2) A requirement of consultation with the local agricultural commissioner in connection with determining whether the "nonproject areas" are large enough for commercial agricultural production. (3) A requirement of compliance with any local programs or ordinances that include similar or more stringent standards for mitigation.
7-54 (Mitigation Measure 7-2)	Mitigation Measure 7-2 relates to potential conflicts with agricultural zoning and Williamson Act contracts. While the measure is generally sound, the supporting discussion states that "[i]n cases where substantial areas of incompatibility would exist, *and lands would still be converted from an agricultural use*, these related impacts would be significant." The italicized language proposes something that is legally impossible in the context of Williamson Act contracts. No such conversions will occur unless the applicable contract(s) are cancelled.

Comments on Section 11—Geology and Soils

<u>Page: Line</u>	
11-51, 11-52, and 11-76	The discussion at these pages relates to the potential problem of "nuisance water," defined generally as the subsurface migration of water from ecosystem restoration projects (and potentially, other activities such as water

No comments

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supply projects) to areas underlying other nearby properties. The County appreciates the discussion of this potential impact in the Draft EIR. The potential for such an impact is among the County's concerns with various ecosystem restoration proposals, particularly insofar as nuisance water could affect nearby agricultural operations in the manner detailed in the discussion of Impact 11-6b. This is an example of how, in some circumstances, ecosystem restoration could create a substantial land use conflict that impacts the agricultural viability of adjacent lands. It also warrants specific consideration in Section 7 (Agricultural and Forestry Resources).

Mitigation Measure 11-6 is proposed at page 11-76 in connection with the nuisance water problem. As it relates to Impact 11-6b, the measure includes the requirement of a baseline study, a monitoring plan, and the implementation of "seepage control measures if adjacent land is not useable, such as installing subsurface agricultural drainage systems to avoid raising water levels into crop root zones." The County supports the first two elements of Mitigation Measure 11-6 (as it relates to Impact 11-6b), but requiring the implementation of control measures only if "adjacent land is not useable" is insufficient. Consistent with the treatment of land use conflicts in Mitigation Measure 7-1, control measures should be implemented whenever necessary to avoid potentially significant impacts on adjacent land or, alternatively, compensation should be paid to address the detrimental impact of nuisance water on agriculture. Even if the latter approach is feasible, however, the incremental decline in agricultural viability and/or crop values will nonetheless require further evaluation in the Draft EIR (as discussed with respect to Mitigation Measure 7-1 in the County's comments on Section 7, above).

Comments on Section 14—Hazards and Hazardous Materials

Page: Line	
14-24:15-42	In the context of ecosystem restoration projects, this discussion generally outlines the potential for creation of vector habitat and related public health risks. The discussion concludes by determining this to be a significant impact. The County urges specific consideration of this issue in the context of proposed ecosystem restoration within the Yolo Bypass. As discussed above, information on the timing of increased inundation in the Yolo Bypass is described in NMFS Conference/Biological Opinion and the Draft BDCP. This timing—particularly to the extent inundation may increase in late fall—is directly relevant to the analysis of the potential for vector habitat creation in connection with ecosystem restoration in the Yolo Bypass.
14-38:15-32 Mitigation Measure 14-3	This mitigation measure includes ways to reduce the impact of the potential creation of vector habitat, including but not limited to vector habitat that occurs in connection with ecosystem restoration projects. For some reason,

No comments

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however, it does not include coordination with local mosquito and vector control districts (such as the Sacramento-Yolo Mosquito and Vector Control District) or require compliance with their best management practices (BMPs). These are both practical and feasible approaches to mitigating this potential impact and should be included in Mitigation Measure 14-3.

Comments on Section 18--Recreation

Page: Line	
Generally	Section 18 notes that the Yolo Bypass Wildlife Area has 30,000 annual visitors, far more than any other wildlife area in the Delta and Suisun Marsh. Of course, as mentioned repeatedly, the Yolo Bypass is also the focus of a specific recommendation (RR R1) in the Delta Plan relating to ecosystem restoration. Unfortunately, the Draft EIR does not fully analyze potential conflicts between the hunting, hiking, wildlife viewing, and other recreational opportunities afforded by the Yolo Bypass (including but not limited to the Wildlife Area) and the potential for significant ecosystem restoration. In fact, the only specific analysis in Section 18 is a single sentence that appears in two places (pp. 18-36 and 18-42) noting only that reduced access to hunting and wildlife viewing could result from longer periods of inundation than under current conditions. As already mentioned, there presently exists sufficient information (e.g., the Draft BDCP, NMFS Conference/Biological Opinion, etc.) to evaluate the potential environmental effects of reasonably foreseeable ecosystem restoration in the Yolo Bypass. The Delta Plan EIR should fully and properly evaluate such effects on recreational resources in the Yolo Bypass, including the Yolo Bypass Wildlife Area. For example, the general conclusion that access to hunting and wildlife viewing areas within the Yolo Bypass might be reduced could easily be augmented with information about how, when, and to what extent longer periods of inundation (among other things) could cause the types of impacts studied in Section 18. In turn, this would enable a more meaningful evaluation of potential mitigation for such impacts. All of this is presently missing from the Draft EIR.
18-46 (Mitigation Measure 18-1)	This Mitigation Measure identifies several approaches to reducing or avoiding impacts on existing recreational resources. The County supports the approaches identified in Mitigation Measure 18-1, particularly insofar as they would require the relocation of recreational facilities within the "local area," together with maintenance funding, when impacts cannot be avoided. More generally, in Section 18, the County strongly encourages consideration not just of "facilities" impacts, but also of impacts to the habitat quality and other features of a recreational area that serve to draw visitors. The degradation of these features could impact recreational resources in the same

No comments

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way as the closure of physical facilities. A recreational resource is more than just physical facilities; it is also the habitat, wildlife, and aesthetic values that create an attraction for visitors in the first instance. The potential for a decline in such values to act as a catalyst for the impacts studied in Section 18 should thus be examined in the Draft EIR.

Comments on Section 21--Climate Change and Greenhouse Gas Emissions

Page: Line	
21-1 and 21-1 (Regulatory Framework)	As noted in the accompanying cover letter, the County is concerned that Section 21 devotes scant attention to local climate action plans. In particular, conflicts with local plans needs to be evaluated in light of the Delta Plan EIR's use of a threshold of significance that makes consistency with existing plans, policies and regulations a focus of the analysis. A link to the Yolo CAP is included in our cover letter. As part of this analysis, the County strongly encourages the drafters of the Delta Plan EIR to allow local CAPs—often prepared just recently at great expense and in close coordination with the California Attorney General's office—to exclusively control issues of GHG emissions and climate change in connection with the consideration of "covered actions" by such jurisdictions. There is no need for a jurisdiction with an adopted CAP to separately consider and potentially apply the mitigation measures proposed in the Draft EIR in approving a "covered action." There will, of course, be instances where a covered action or other activity supported by the Delta Plan is not subject to local approval (as in the case of a state project). Hence, for this and other reasons, such an approach does not eliminate the need to more comprehensively evaluate consistency issues in the Draft EIR. Lastly, the County disagrees with the significance conclusions expressed in the Draft EIR in connection with the issue of local plan consistency. The conclusions are likely in error and, in any event, are not supported by substantial evidence because there is no indication any local plans were actually reviewed in the preparation of Section 21.
21-12:11-30	This discussion proposes project-specific plans relating to GHG emissions. Where local CAPs apply to a project, their provisions should control the issue of how GHG emissions are handled and there is no need for a separate approach in connection with the Delta Plan. However, where local CAPs do not apply to a Delta Plan-related activity, local CAPs should still be consulted with respect to mitigation measures and project design in connection with the preparation of project-specific plans on GHG emissions.
21-15 through 21-17	As noted in the County's cover letter, the discussion of ecosystem restoration (in particular, wetlands) and GHG emissions is relatively weak and does not

No comments

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adequately inform the Delta Stewardship Council or the public on relevant issues. Suggestions for improvement are included in our cover letter. In light of the cursory nature of this discussion, the County also believes that related significance conclusions lack substantial evidence.

Comments on Section 23—Bay Delta Conservation Plan

Page: Line	
23-8:34-42	These paragraphs indicate that information regarding the BDCP has been gleaned from various sources, but it is not clear whether the November 18, 2010 "Working Draft" of the BDCP was consulted in connection with this Section (or any other section) of the Draft EIR. The references listed at the end of Section 23 refer only to the cover memorandum attached to the Draft BDCP, and not to the draft plan itself. This should be clarified.
23-12 and 23-13	The discussion on these pages references, among other things, the scope of certain ecosystem restoration proposals for the Yolo Bypass that have been developed through the BDCP Process. This underscores a point made repeatedly by the County in these comments—the Draft BDCP should be considered a source of information regarding the potential parameters of an ecosystem restoration project within the Yolo Bypass. It is not enough to simply consider the BDCP in the cumulative effects section of the Draft EIR (Section 22). Further supporting this point, various comments in Section 23 indicate that BDCP's ecosystem restoration proposals are substantially similar in some respects to those embraced by the Delta Plan (particularly in ER R1, relating to the Yolo Bypass and other specific locations). For example, at p. 23-24, the Draft EIR recognizes that the "Proposed Project address[es] concepts similar to BDCPs" with respect to ER R1 and other policies and recommendations. To the extent that BDCP provides details regarding how such "concepts" could be implemented, it is relevant to the Delta Plan and should be evaluated in the EIR. BDCP impacts are not purely "cumulative" insofar as the Yolo Bypass is concerned, and the overlap between BDCP and Delta Plan provisions on Yolo Bypass restoration should thus be the subject of further study in the Delta Plan EIR.

No comments

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