



Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency

YOLO NATURAL HERITAGE PROGRAM

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Member Agencies

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University of California, Davis*

July 29, 2014

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

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

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

Dear Secretary Jewell and Secretary Laird:

This letter communicates comments from the Yolo County HCP/NCCP Joint Powers Agency (JPA) on the public draft of the Bay Delta Conservation Plan (BDCP) and the associated EIR/EIS. The JPA appreciates the support of the state and federal government in development of the Yolo HCP/NCCP over the years and believes there is potential to collaborate with BDCP on terrestrial species habitat conservation efforts in the future. The JPA has significant concerns about integration of the BDCP and the Yolo HCP/NCCP, however, which the JPA first documented in the May 2013 paper entitled, "Interface with the Bay Delta Conservation Plan: Background, Summary, and Remaining Issues" (Exhibit A). California Department of Fish and Wildlife staff involved with the BDCP reviewed and edited this paper. The JPA will need to work with the BDCP to resolve the issues outlined in this letter in the next year to ensure implementation of the Yolo HCP/NCCP is feasible.

The JPA believes there is significant potential for conflict between the BDCP and the Yolo HCP/NCCP for two reasons: 1) there is significant overlap between the BDCP Plan Area and the Yolo HCP/NCCP Plan Area, as well as biological objectives; and 2) the BDCP significantly understates the potential terrestrial species impacts of Conservation Measure 2, the proposal to increase the frequency and duration of inundation in the Yolo Bypass to benefit covered fish species.

The JPA's comments on specific text in the public draft of BDCP should be read to apply to all substantially similar text appearing in the document. The JPA also reserves the right to provide additional comments on BDCP--including detailed legal and technical comments--as work on the BDCP continues. In addition, the JPA understands the BDCP has set aside funding to directly coordinate with local HCP/NCCPs that overlap the BDCP's Plan Area. The JPA has met once

with BDCP consultants to discuss overlap issues and hopes to increase the pace of discussions in the fall of 2014.

Background

The Yolo County HCP/NCCP Joint Powers Agency (JPA) is currently working on the Second Administrative Draft of the Yolo HCP/NCCP, which covers 11 terrestrial species. The JPA is striving for release of the Second Administrative Draft by March 2015 and final permits in March 2017. The JPA is significantly changing the proposed conservation strategy for the Yolo HCP/NCCP relative to the First Administrative Draft released in June 2013.

Conservation related to cultivated lands represents the most significant potential for conflict between the Yolo HCP/NCCP and the BDCP, especially with regard to Swainson’s hawk, giant garter snake, burrowing owl, and tri-colored blackbird conservation. Approximately 111,400 acres of the Yolo HCP/NCCP’s 653,000-acre Plan Area is within the BDCP Plan Area, or a total of 17% of the Yolo HCP/NCCP’s Plan Area. According to personal communication with BDCP consultants, BDCP may propose to conserve as much as 10,000 acres for these species in the Yolo HCP/NCCP Plan Area or approximately 20% of all BDCP cultivated land acquisition. (This estimate is higher than estimates for conservation in the EIR/EIS, as discussed later in this letter.) Given the Yolo HCP/NCCP will likely propose less than 30,000 acres of conservation easement acquisition over a 50-year permit term, the BDCP proposal also represents as much as 1/3 of the acreage needed for the Yolo HCP/NCCP.

BDCP Conservation Zones 1, 2, and 3 are entirely or partially in the Yolo HCP/NCCP Plan Area, including the Yolo Bypass, and comprise the 111,400 acres within the BDCP Plan Area. A number of the BDCP’s biological objectives (compliance with which is mandatory to meet the requirements of BDCP’s 50-year permit) focus specifically on these Conservation Zones, as follows. (The table does not include a complete list of objectives specific to the Conservation Zones in the Yolo HCP/NCCP Plan Area.)

Table 1: Biological Objectives Relevant to the Yolo HCP/NCCP Plan Area

BDCP Biological Objective Number	BDCP Biological Objective Text
Objective GNC1.1	Protect 8,000 acres of grassland with at least 2,000 acres in Conservation Zone 1, at least 1,000 acres protected in Conservation Zone 2, at least 2,000 acres protected in Conservation Zone 11, and the remainder distributed among Conservation Zones 1,2,4,5,7,8, and 11.
Objective SH1.2	Within the 48,625 acres of protected cultivated lands, protect at least 43,325 acres of Swainson’s hawk foraging habitat with at least 50% in very high-value habitat production in Conservation Zones 1,2,3,4,7,8, and 9.
Objective ASWNC1.2	Restore or create alkali seasonal wetlands in Conservation Zones 1,8, and/or 11 to achieve no net loss of wetted acres (up to 72 acres of alkali seasonal wetland complex restoration, assuming all anticipated impacts occur).
Objective VPNC1.1	Protect 600 acres of existing vernal pool complex

	in Conservation Zones 1,8, and 11, primarily in core vernal pool recovery areas identified in <i>Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon</i> (U.S. Fish and Wildlife Service 2005).
Objective ASWNC1.1	Protect 150 acres of alkali seasonal wetland in Conservation Zones 1,8 and/or 11 among a mosaic of protected grasslands and vernal pool complex.
Objective TRBL1.3	Within the 48,625 acres of protected cultivated lands, protect at least 11,050 acres of high to very high value breeding-foraging habitat within 5 miles of occupied or recently occupied (within the last 15 years) tricolored blackbird nesting habitat in Conservation Zones 1,2,3,4,7,8, or 11.
Objective WCO1.1	Of the 48,625 acres of cultivated land protected under objective CNLC1.1, protect at least 1,000 acres in Conservation Zone 1 and 11 that support high-value burrowing owl habitat and are within .5 mile of high-value grassland habitat or occupied low-value habitat.
Objective GGS2.1	Of the 1,200 acres of nontidal marsh habitat created under Objective NFEW/NPANC1.1, create at least 600 acres of connect aquatic giant garter snake habitat outside the Yolo Bypass in Conservation Zone 2.
Objective GGS2.2	Of the 8,000 acres of grasslands protected under Objective GNC1.1 and the 2,000 acres restored under Objective GNC1.2, create or protect at least 200 acres of high-value upland habitat adjacent to the at least 600 acres of nontidal marsh habitat created in Conservation Zone 2 outside of the Yolo Bypass (Objective GGS2.1)
Objective GGS3.1	Protect, restore, and/or create 2,740 acres of rice land or equivalent value habitat (e.g., perennial wetland) for the giant garter snake in Conservation Zones 1,2,4, or 5...up to 1,700 acres may consist of rice in the Yolo Bypass, if this portion meets the criteria specified in <i>CM3 Natural Communities Projection and Restoration, (Section 3.4.3.3.2, Siting and Reserve Design, Reserve Design Requirements by Species)</i> . Any remaining acreage will consist of rice land or equivalent-value habitat outside the Yolo Bypass.

In addition to the specific mention of the Conservation Zones in the Yolo HCP/NCCP Plan Area, the biological objectives also express a preference for high-elevation lands and lands connected to other conservation lands. Conservation Zones 1,2 and 3 have some of the highest elevation

lands in the BDCP Plan Area, as well as significant acreage of lands that are already protected by conservation easements or owned by the state and federal government for conservation purposes. As a result of the significant emphasis on cultivated lands in the Yolo HCP/NCCP Plan Area, the JPA expects significant conflict with BDCP if steps are not taken to resolve potential issues during the planning process.

General Comments on the Public Draft and EIR/EIS

I. Update references to the Yolo HCP/NCCP

Since the Yolo HCP/NCCP has changed significantly since BDCP released the public draft, the information about the Yolo HCP/NCCP in the BDCP needs to be updated. This includes the following:

- Use “Yolo HCP/NCCP” to refer to the plan. Rather than using the term Yolo Natural Heritage Program, please refer to the plan as the Yolo HCP/NCCP.
- When referring to the agency in charge of developing and implementing the Yolo HCP/NCCP, please use “Yolo County HCP/NCCP Joint Powers Agency.” Please change references to “Yolo County HCP/NCCP Joint Powers Authority.”
- Change the number of covered species from 32 to 11. The 2nd Administrative Draft of the Yolo HCP/NCCP only covers 11 species.
- Please reference the Yolo Local Conservation Strategy when discussing overlapping planning efforts. The Yolo Local Conservation Strategy is not part of the Yolo HCP/NCCP, but will also further habitat conservation in Yolo County. The JPA will coordinate implementation of the Yolo HCP/NCCP and the Yolo Local Conservation Strategy.
- Change the date the JPA started work on the Yolo HCP/NCCP from March 2007 to November 2004 (date of planning agreement with the California Department of Fish and Wildlife and U.S. Fish and Wildlife Service).

Specific Comments on the Public Draft

II. Need an MOU to guide integration of Yolo HCP/NCCP and BDCP

As discussed in the background section of this letter, there is significant potential for conflict between the Yolo HCP/NCCP and the BDCP. If both the Yolo HCP/NCCP and BDCP are acquiring conservation easements on cultivated and other lands in the overlap area during the 50-year permit term, it is unclear how the two plans will work together and whether easements acquired by willing sellers will count towards the conservation targets of both plans. The JPA is concerned the significant cultivated land acquisition proposed by the BDCP will negatively impact the ability of the JPA to meet the permit requirements of the Yolo HCP/NCCP. It is further unclear whether there are sufficient cultivated lands in the overlap area to support both the conservation targets of the BDCP and the Yolo HCP/NCCP, since acquisition of easements is appropriately based on willing sellers. An MOU is necessary to create a structure to ensure the JPA can successfully implement the Yolo HCP/NCCP.

III. Minimize impacts on terrestrial species from CM2

The JPA encourages close coordination between the Yolo HCP/NCCP and the BDCP in the months ahead to ensure the impacts to terrestrial species of CM2 are minimized for two reasons: 1) Yolo Bypass terrestrial species habitat, including wetlands, is important to implementation of the Yolo HCP/NCCP; and 2) the BDCP significantly underestimates impacts on terrestrial species, such as tri-colored blackbird and giant garter snake, from implementation of CM2.

The EIR/EIS describes the following impacts of CM2 to Yolo HCP/NCCP covered species:

Table 2. Estimated Terrestrial Species Impact from CM2

Number	Species	Estimated Habitat Impact (acres)	Page
Impact BIO-35 (Construction)	Valley Elderberry Longhorn Beetle	295 ^b	12-2088
Impact BIO-37 (Inundation)	Valley Elderberry Longhorn Beetle	161-325 ^c	12-2093
Impact BIO-46 (construction)	California Tiger Salamander	42 ^a	12-2124
Impact BIO-48 (Inundation)	California Tiger Salamander	191-639 ^d	12-2130
Impact BIO-49 (construction)	Giant Garter Snake	541 ^b	12-2134
Impact BIO-51 (Inundation)	Giant Garter Snake	582-1,402 ^d	12-2144
Impact BIO-52 (construction)	Western Pond Turtle	309 ^b	12-2148
Impact BIO-54 (Inundation)	Western Pond Turtle	283-798 ^d	12-2156
Impact BIO-75 (Construction)	Least Bell's Vireo & Yellow Warbler	171 ^b	12-2235
Impact BIO-83 (Construction)	Swainson's Hawk	133 nesting/ 1,500 foraging ^b	12-2258
Impact BIO-86 (Inundation)	Swainson's Hawk	3,066-6,706 ^e	12-2270
Impact BIO-87 (Construction)	Tricolored Blackbird	909 breeding/ 62 nonbreeding ^b	12-2273
Impact BIO-90 (Inundation)	Tricolored Blackbird	2,447-4,312 breeding/ 263-1,252 nonbreeding ^f	12-2287
Impact BIO-91 (Construction)	Western Burrowing Owl	1,127 high value/ 242 low value ^b	12-2290
Impact BIO-94 (Inundation)	Western Burrowing Owl	1390-3,303 high value/ 1,522-2927 low value ^e	12-2300
Impact BIO-95 (Construction)	Western Yellow- Billed Cuckoo	31 breeding/ 140 migratory ^b	12-2302
Impact BIO-99 (Inundation)	Western Yellow- Billed Cuckoo	11-20 breeding/ 37-64 migratory ^c	12-2310
Impact BIO-146 (Construction)	Bank Swallow	-	12-2447
Impact BIO-170 (Construction)	Palmate-bracted Bird's Beak	-	12-2532

The estimated habitat impact descriptions vary by impact number: ^a permanent removal; ^b permanent and temporary removal; ^c periodically affect; ^d could affect; ^e would increase the frequency and duration of inundation on approximately; ^f would inundate.

As the table makes clear, CM2 will have significant potential impacts to species covered by the Yolo HCP/NCCP. While the JPA understands that BDCP will, in many cases, undertake conservation actions to reduce or eliminate these impacts, it is unclear whether the BDCP will implement these conservation actions within Yolo County or elsewhere in the BDCP Plan Area. Any actions taken outside of Yolo County could hinder the ability of the JPA to implement the Yolo HCP/NCCP.

The Yolo Bypass is particularly important to the Yolo HCP/NCCP for giant garter snake and tri-colored blackbird conservation. During development of the Second Administrative Draft of the Yolo HCP/NCCP, the USFWS indicated a desire to preserve habitat for the giant garter snake in the Yolo Bypass. The JPA had previously considered excluding the Yolo Bypass from the Yolo HCP/NCCP conservation strategy, but now expects the Yolo Bypass will be a focus for both giant garter snake and tri-colored blackbird conservation because of the significant presence of both of these species in the Yolo Bypass. The BDCP specifically states giant garter snake conservation is intended as 1:1 mitigation for the impacts of covered activities, including “the loss of rice land in the Yolo Bypass as a result of prolonged flooding from *CM2 Yolo Bypass Fisheries Enhancement*.” (p. 3.3-286.) Rice lands and wetlands in the Yolo Bypass (including the Yolo Wildlife Area) provide significant habitat for the giant garter snake (p. 2A.28-5). As other comments in this letter suggest, the presence of such significant habitat supports the need to minimize terrestrial species impacts from CM2.

Furthermore, the JPA believes the BDCP significantly underestimates the terrestrial species impacts of CM2, a point further discussed in the comments provided in this letter on the EIR/EIS. BDCP consultants used the MIKE-21 model to develop the hypothetical footprint for CM2. Yolo County has pointed out in previous comment letters that the MIKE-21 model is no longer the best available model to evaluate Yolo Bypass inundation footprints, as the U.S. Bureau of Reclamation and the California Department of Water Resources have developed a TU-FLOW model that is currently under review by the University of California, Davis. In addition, the impacts analysis relies on an assumption that CM2 flooding will only occur in 30% of years, which is a gross underestimate of potential CM2 inundation.

IV. Reconsider 50% alfalfa requirement for cultivated lands easements

The BDCP currently contains a requirement to conserve “at least 43,325 acres of Swainson’s hawk foraging habitat with at least 50% in very high-value habitat production.” High-value habitat production is defined as alfalfa in Table 3.4.3-3 (p.3.4-92). No other crop types are allowed to count as “high value habitat production.” The JPA is opposed to this requirement in the BDCP and will not adopt this requirement for the developing conservation strategy for the Yolo HCP/NCCP. The JPA has received feedback from many landowners that they are not interested in selling easements that restrict landowners in perpetuity to one crop type, even if the requirement is only 50% of the years. The JPA understands the BDCP’s requirement is not specific to individual parcels, but requires maintenance of the 50% alfalfa requirement across the 43,325 acres. The JPA is also aware the BDCP has not yet developed a structure to achieve this objective. Given the JPA is opposed to adopting this requirement for the Yolo HCP/NCCP, the JPA encourages the BDCP to reconsider this requirement. Such a restriction is unenforceable if the market changes (i.e. alfalfa is no longer grown at current levels in Yolo County or in the Delta), similar to the demise of the sugar beet industry in Yolo County.

V. Need to address issues identified in the waterfowl impacts analysis

On page 3.4-239 of the BDCP, the text identifies key uncertainties it will address from the *Effects Analysis of BDCP Covered Activities on Waterfowl and Shorebirds in the Yolo, Delta, and Suisun Basins* (Ducks Unlimited 2012). The BDCP should also address issues raised by the *Waterfowl Impacts of Proposed Conservation Measure 2 for the Yolo Bypass – An Effects Analysis Tool* (Ducks Unlimited 2012). These issues include the decline in potential food production on existing wetlands from increased inundation.

Specific Comments on EIR/EIS

As discussed above, there is significant potential for conflict between the BDCP and the Yolo HCP/NCCP, especially with regard to acquisition of land to meet natural community requirements for cultivated lands, grasslands, riparian, tidal, and wetlands. The JPA is concerned about conflict with all of these natural communities, but addresses specific examples of the conflict for cultivated lands and wetlands.

VI. Avoid conflict with cultivated land natural community

The EIR/EIS states the total acreage lost in the overlap area to BDCP covered activities is 6,158 acres and the estimated BDCP preservation need in the overlap area is between 2,540 and 4,458 acres (Table 12-21, p. 12-3256).¹ The JPA assumes that the majority of this loss is cultivated lands. The EIR/EIS further states that CM2 alone will result in the loss of 629 acres of cultivated lands (p. 12-2075). Since the Yolo HCP/NCCP will rely almost exclusively on acquisition of easements on cultivated lands to fulfill the permit terms, the JPA agrees with the assessment in the EIR/EIS regarding the potential cultivated land conflict between the BDCP and the Yolo HCP/NCCP:

This acquisition and preservation has the greatest potential for conflict with overlapping conservation plans that have substantial needs for acquisition of cultivated lands to satisfy their own conservation requirements. Acquisition by BDCP of cultivated land reduces the amount of such land available for overlapping plans (page 12-3253).

The JPA further believes this conflict is understated in the BDCP for three reasons: 1) the EIS/EIR underestimated the impact of conservation measures on cultivated lands in the overlap area; 2) the Yolo HCP/NCCP's conservation strategy is not yet fully developed, although it will rely primarily on cultivated land acquisition; and 3) the EIR/EIS underestimates the amount of cultivated land preservation in the overlap area. Given the relatively affordable price of cultivated lands in Yolo County, the high elevation of these lands, and the significance of these lands to BDCP covered species, the JPA believes the estimate of BDCP preservation need in the overlap area is low and therefore the potential for conflict is greater than documented in the EIR/EIS. (As discussed previously, personal communication with BDCP consultants put the number of acres needed by BDCP in the overlap area at closer to 10,000 acres.) The MOU mentioned earlier in this letter should create a process for addressing the potential for conflict related to cultivated land easement acquisition.

VII. Avoid conflict with wetlands natural community

¹ Tables 12-18 to 12-21 list specific alternatives in their titles, but none of the tables specifically list preferred

According to the EIR/EIS, there are 11,501 acres of wetlands in the Yolo HCP/NCCP Plan Area, of which 10,932 are in the overlap area. In other words, 95% of the wetlands in the Yolo HCP/NCCP Plan Area are also in the BDCP Plan Area.

The EIR/EIS recognizes the challenge this causes in its analysis of the Yolo HCP/NCCP:

“Based on a simple analysis of the major natural community types for the intersecting area of the two plans (Table 12-17), there is significant overlap between tidal and wetland land cover types. In other words, most conservation targets for these land cover types in the YNHP would need to be addressed within the overlap area. However, the overlap area has more than 10,000 acres of mapped wetland available for acquisition or restoration and almost 5,000 acres of tidal land cover type” (p. 12-3269).

Furthermore, the EIR/EIS identifies the following impacts on wetlands from CM2:

Table 3. Impacts of CM2 on Wetlands

Number	Type of Wetland	Permanent Removal (acres)	Page
Impact BIO-7 (Inundation)	Tidal Freshwater Emergent Wetland	24-58	12-2008
Impact BIO-15 (Construction)	Nontidal Freshwater Perennial Emergent Wetland	25	12-2031
Impact BIO-16 (Inundation)	Nontidal Freshwater Perennial Emergent Wetland	6-8	12-2034
Impact BIO-18 (Construction)	Alkali Seasonal Wetland Complex	45	12-2039
Impact BIO-19 (Inundation)	Alkali Seasonal Wetland Complex	264-744	12-2042
Impact BIO-24 (Construction)	Managed Wetland	24	12-2054
Impact BIO-25 (Inundation)	Managed Wetland	931-2,612	12-2057

There are two problems with the EIR/EIS analysis of wetlands impacts: 1) some of the estimates rely on the assumption of CM2 flows of 1,000 cfs to 4,000 cfs (p. 12-2008) and others rely on an 8,000 cfs assumption, when CM2 assumes flows will reach a maximum of 6,000 cfs; and 2) it relies on the flawed assumption that plan-related increases in flow through the Fremont Weir would be expected in only 30% of years.

The EIR/EIS further draws erroneous conclusions from this flawed analysis, such as “the modification of periodic inundation events would not adversely affect the ecological function of tidal freshwater emergent wetlands habitats and would not substantially modify its value for special-status or common terrestrial species” (p. 12-2008) and findings of less-than-significant impact or no impact on these communities in the BDCP Plan Area. The finding for managed wetland is especially egregious, as it states, “the managed wetland community would not be significantly impacted because periodic inundation is already experienced by most of the land that would be affected” (p. 12-2058). For CM2, this is countered by the study *Waterfowl Impacts of Proposed Conservation Measure 2 for the Yolo Bypass – An Effects Analysis Tool* (Ducks Unlimited 2012). Furthermore, it is impossible to draw these conclusions from the existing information available for CM2.

While there may not be significant impacts to wetlands in the BDCP Plan Area, there could be significant impacts in the Yolo HCP/NCCP Plan Area -- especially if wetland restoration and protection activities take place elsewhere in the BDCP Plan Area or efforts to mitigate these

impacts in the Yolo HCP/NCCP Plan Area result in other terrestrial species habitat impacts. As a result of both the flawed analysis of CM2 and the competition for wetlands acres in the overlap area, BDCP could potentially significantly hinder the ability of the Yolo HCP/NCCP to protect wetlands in the Plan Area important to terrestrial species. The Yolo HCP/NCCP would therefore potentially be unable to meet permit requirements related to wetlands impacts. This issue should also be a focus of the MOU.

VIII. Define cultivated lands as a natural community and analyze impacts

The EIR/EIS and the BDCP are inconsistent in their treatment of cultivated lands as a natural community. On page 12-2075, the EIR/EIS states “because cultivated lands is not a natural community and because effects of its loss are captured in the individual species analyses, there is no separate analysis of this land cover type presented here.” On p. 12-3253, however, agriculture is listed on a table entitled “Overlap by Major Natural Community Type for Yolo Natural Heritage Program.” On page 3.4-83 of the BDCP, cultivated lands is listed in as one of the natural communities in Table 3.4.3-1, “Natural Community Siting and Reserve Design Requirements.” The BDCP and the EIR/EIS should consistently label cultivated lands as a natural community and the EIR/EIS should provide the same analysis of cultivated lands as it does for other natural communities.

IX. Clarify statement re Yolo HCP/NCCP giant garter snake strategy

The following is a confusing statement related to the Yolo HCP/NCCP giant garter snake conservation strategy and needs to be clarified:

“The BDCP targets 600 acres nontidal marsh restoration (crosswalked to “wetlands” in this analysis), 200 acres of grassland protection or restoration, and 700 acres of cultivated lands protection within or adjacent to habitat occupied by the giant garter snake Yolo/Willow Slough subpopulation in CZ 2, entirely within Yolo County. The YNHP also has conservation targets for giant garter snakes in this subpopulation, but it is focused in the YNHP Willow Slough Basin Planning Unit, only a small portion of which overlaps with the BDCP Plan Area. The two plans could work together to jointly achieve conservation for giant garter snake in the Yolo/Willow Slough subpopulation.” (page 12-3269).

The Yolo HCP/NCCP will focus on the Yolo Bypass for giant garter snake conservation, which is entirely within the BDCP Plan Area. There is therefore potential for significant conflict between the BDCP and the Yolo HCP/NCCP with regard to giant garter snake conservation. It is unclear how the two plans could work together to achieve giant garter snake conservation unless there are sufficient willing landowners interested in selling giant garter snake easements in the overlap area. This issue should also be further discussed through the MOU process.

X. Source of 1,000 acres of cultivated land acquisition for Swainson’s hawk foraging habitat unclear

On page 12-3270, the EIR/EIS states a target of only 1,000 acres of cultivated land easement acquisition for Swainson’s hawk foraging habitat in the overlap area. This is inconsistent with other estimates provided by BDCP consultants and in other tables. The other numbers in this same paragraph need to be double-checked as well, as they do not appear accurate.

The JPA looks forward to working with the U.S. Department of the Interior and the California Natural Resources Agency to address the issues outlined in this letter. Please contact the JPA's Executive Director, Petrea Marchand, if you have any questions about these comments.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Chris Ledesma', with a long horizontal line extending to the right.

Chris Ledesma
Chair, Yolo County HCP/NCCP Joint Powers Agency

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

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

Background

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

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

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

Summary of BDCP Actions

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

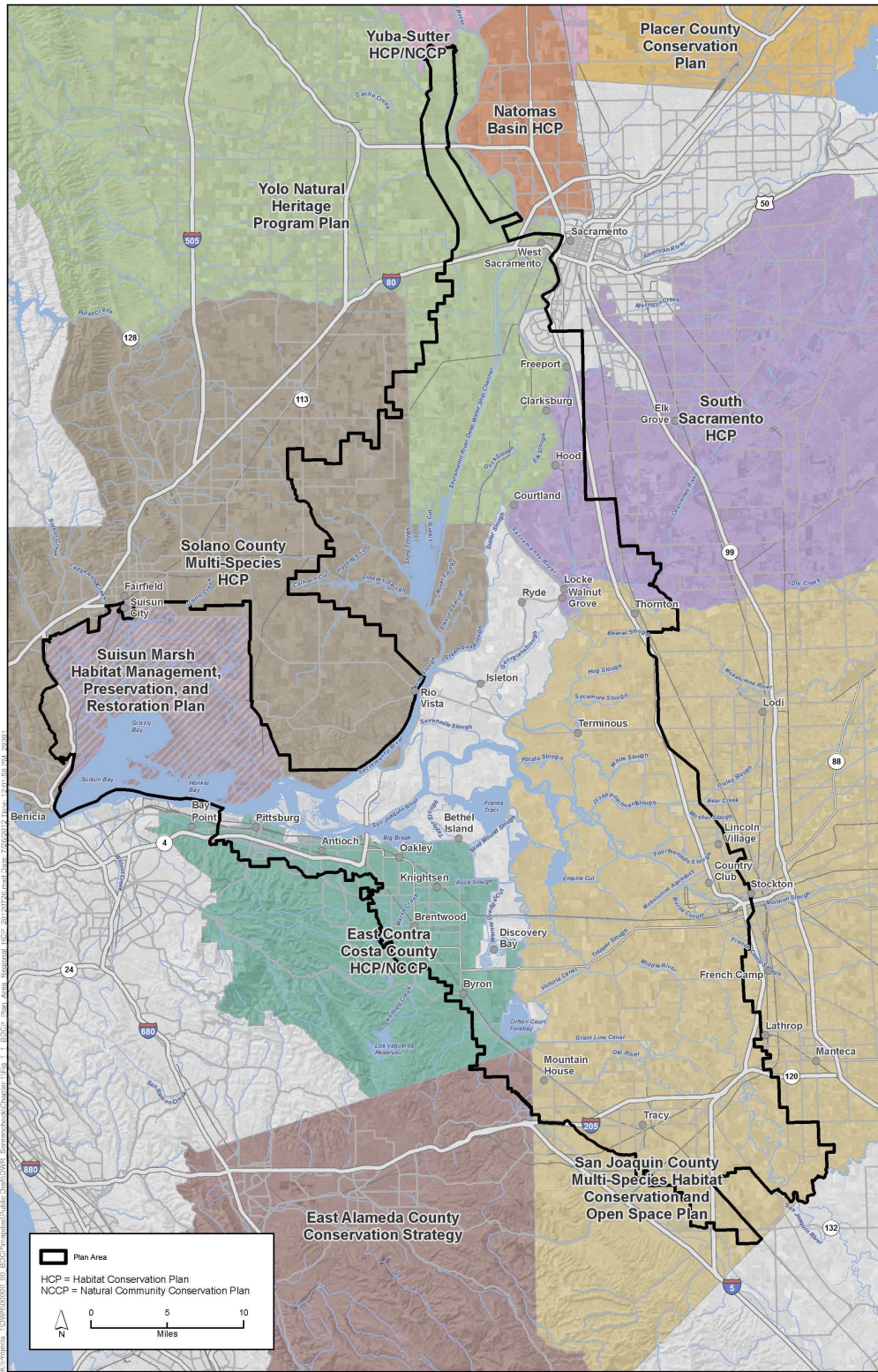


Figure 1-2
BDCP Plan Area in Relation to Neighboring Conservation Plan Boundaries

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

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

- Restoration of over 5,000 acres of tidal habitat in the Cache Slough/lower Yolo Bypass area, some of which could be implemented in Planning Unit 18. This habitat is primarily focused on restoring habitat for covered fish species, but will also provide benefits for many terrestrial covered species. (Based on conversations with BDCP staff, it is expected that approximately 1,400 acres of this tidal marsh restoration will occur in Yolo County on the Yolo Ranch. The rest is expected to occur in Solano County.)
- Restoration of at least 5,000 acres of riparian habitat, some of which could be implemented in the Planning Units 15, 17, 18, and 21. At least 3,000 acres of the restored riparian habitat will occur on restored floodplains in the south or east Delta. The remaining acreage can be distributed throughout the BDCP plan area, a portion of which is likely to occur as a component of the tidal habitat restoration in the Cache Slough/lower Yolo Bypass area.
- Restoration of at least 600 acres of nontidal wetland in Planning Units 17, 18, or 11.¹
- Protection and enhancement of 5,000 acres of managed wetland, some of which could be implemented in Planning Units 17 and 18. It is likely that protection and enhancement of managed wetland will be focused in Solano County to meet the needs of species that occur in Suisun Marsh.

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

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

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

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

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

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

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

Issues

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

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

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

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

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

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

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

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

DRAFT

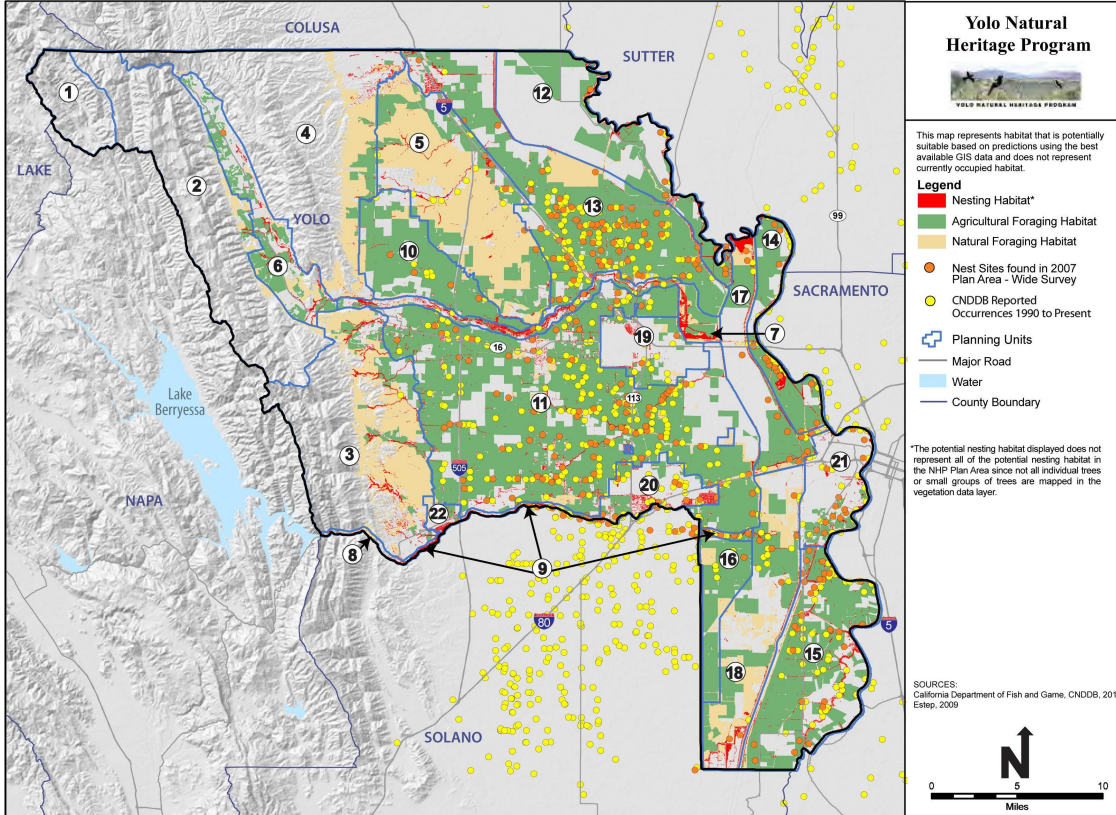


Figure A-21. Swainson's Hawk Modeled Habitat and Nest Sites

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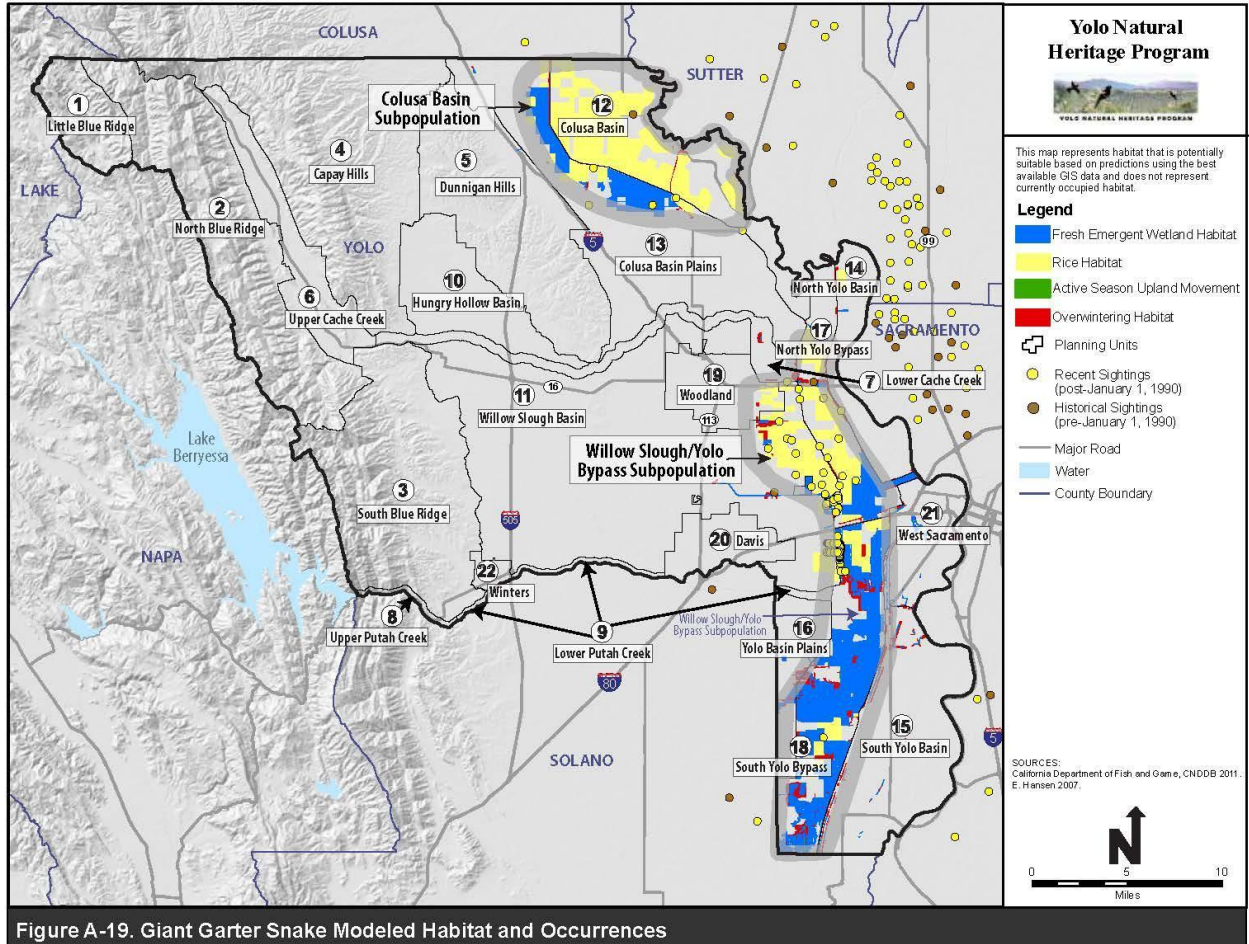


Figure A-19. Giant Garter Snake Modeled Habitat and Occurrences