Errata to Appendix O

Please add the following pages to the Appendix O file. Comments and Responses IN15, Gus Margarite and Michael Kleary, Rising Wings Duck Club

Comment Letter IN15, Gus Margarite and Michael Kleary, Rising Wings Duck Club

Comment IN15-1

Comment

As owners of the Rising Wings Duck Club we oppose the proposed State and federal Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project as being reasonable and prudent to significantly increase the populations of the four species of endangered fish. We have reviewed the environmental documents and attended the public meetings, and have the following comments.

Response

Responses have been provided to all detailed comments in the submitted comment letter.

Comment IN15-2

Comment

The Rising Wings Duck Club is located 12 miles south of Hwy 80 directly adjacent to the Toe Drain in the Yolo Bypass. Based on hydrograph records between 1997 and 2012, the Department of Water Resources (DWR) developed charts projecting non-emergency flood related inundation by property in the Yolo Bypass for this project. In all six of the proposed project alternatives our property would be negatively affected and could be rendered useless for its sole beneficial use of waterfowl hunting for up to 12 weeks of the 14-week waterfowl season, and make our property inaccessible by vehicle from November 1st through March 15th or later.

It was repeatedly stated in the public meetings that this project going forward is dependent on willing landowners. Rising Wings Duck Club adamantly opposes this project and therefore expects that it will not continue to move forward.

Response

November 1st through March 15th is the window in which we would be able to operate the new headworks structure. Actual project operations will be much more condensed than that date

range and is solely dependent on river stage. Also see Master Response 4: Impacts to Landowners and Other Uses of Land.

Comment IN15-3

Comment

The proposed project fails to address landowner compensation or mitigation plans up front for the loss that we would incur as a duck club. In addition, the lead agencies have stated in the public meetings that in order for this project to proceed, there must be willing landowners, and while the opposition in the meetings indicates otherwise, this project has continued to move forward since its inception. The lead agencies have failed to schedule meetings with all of the potentially affected landowners individually or as a group on the impact of this project to their land, regardless of the exclusion of eminent domain in the Reasonable and Prudent Action language.

Response

See Master Response 4: Impacts to Landowners and Other Uses of Land. To the extent appropriate, discussions related to compensation to landowners or users of land would occur outside of the NEPA/CEQA process.

Comment IN15-4

Comment

Under the proposed project the endangered species would be raised on our property. The project fails to address that once thousands of salmonid young are living on landowner property they cannot in any way be harassed or harmed (see the Federal Endangered Species Act of 1973 definition below) which places many different types of property landowners at risk of violating federal and/or State law. In our case, should we be able to access our property for its sole beneficial use of hunting waterfowl during the time the endangered species are present, it would put us at risk of violating the law.

a) Harass - An intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns (e.g., breeding, feeding, or sheltering). 16 U.S.C., §1532 (20); 50 C.F.R. § 17.3

Or

b) Harm - An act which actually kills or injures wildlife. May include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavior patterns. 16 U.S.C., §1532 (20); 50 C.F.R. § 17.3.

Response

See Response to Comment IN02-2.

Comment IN15-5

Comment

There has been no disclosure of funding source, development, or ongoing maintenance cost for this project, or where the funding would come from to compensate landowners in perpetuity for the loss of their land.

Response

CEQA and NEPA do not require disclosure of a project funding source. Funding for the project would be from the State and Federal Water Contractors, Federal power customers, and/or Federal appropriations. See also Master Response 4: Impacts to Landowners and Other Uses of Land.

Comment IN15-6

Comment

The proposed project contains numerous uncertainties related to the potential benefits versus the risks to the endangered species at the expense of landowner use and property values. The uncertainties include, but are not limited to the following:

a) That a beneficial number (not identified) of salmonid young will actually be drawn from the Sacramento River during high-river flow migration into the Yolo Bypass floodplain to grow larger in size.

Response

See Master Response 1: Fish Benefits.

Comment IN15-7

Comment

b) That well known documented predators such as striped bass and other predator fish won't also be drawn into the Yolo Bypass floodplain, enabling them to feed on a captive salmonid audience.

Response

See Response to Comments IN05-2.

Comment IN15-8

Comment

c) That avian and mammal predation won't increase on the floodplain where it potentially becomes the new home to thousands of salmonid young.

Response

See Response to Comments IN05-2.

Comment IN15-9

Comment

d) That the temperature of the water won't become uninhabitable during unseasonably warm winter and spring seasons potentially devastating the endangered salmonid young population on the floodplain.

Response

According to Appendix G4 (Yolo Bypass Salmon Benefits Model): The water temperature rule is based on daily water temperature data collected by the California Department of Water Resources (DWR) Aquatic Ecology Section RST site located in the Toe Drain near the north-east tip of Little Holland Tract for years 1998-2011. Because both growth rates and smoltification (ATPase activity) of juvenile Chinook salmon have been shown to decrease at water temperatures above 20oC (Marine 1997; Marine and Cech 2004), the first day that average water temperatures exceeded 20oC was set as a maximum date that fish would rear on the floodplain. The Toe Drain water temperature data indicated that June was the first month that average daily water temperatures consistently exceeded the 20oC threshold across nearly every year. Thus, June 1st was set as the date when rearing fish would stop rearing and continue migrating through the Canal Complex. Also see Response to Comment LA03-83.

Comment IN15-10

Comment

e) That a large number of salmonid young won't get stranded and die on the floodplain during periods of lower than expected levels of inundation.

Response

During conditions when water is not overtopping the Fremont Weir and sufficient water is flowing through the intake facilities and transport channel(s), the Project alternatives would reduce the potential for temporary or permanent juvenile and adult stranding in the upper region of Yolo Bypass relative to existing conditions. See also Master Response 1: Fish Benefits.

Comment IN15-11

Comment

f) That salmonid young returning from the floodplain as juveniles won't be subject to significant predation in the Toe Drain where the waters are more confined than the Sacramento River and heavily populated with well-known striped bass and other predators.

Response

See Response to Comment IN05-2.

Comment IN15-12

Comment

g) That enough of the salmonid juveniles will survive the journey to the ocean and return as spawning adults to a level that can remove them from the endangered species list.

Response

The need for action is to address decreased habitat quality in the Sacramento River and an inadequate ability to access higher quality habitat, which has led to a decline in abundance, spatial distribution, and life history diversity for native ESA-listed and CESA-listed fish species. The purpose of the project is not to remove these species from the endangered species list. The purpose of the project is to enhance floodplain rearing habitat and fish passage in the Yolo Bypass and/or other suitable areas of the lower Sacramento River basin by implementing RPA action I.6.1 and, in part, RPA action I.7, as described in the National Marine Fisheries Service Biological Opinion (NMFS BO), to avoid jeopardy to these species from the long-term operation of the Central Valley Project and State Water Project. See Sections 1.3.1 and 1.3.2 for additional information on the Purpose and Need and Project Objectives.

Comment IN15-13

Comment

h) That spawning adults returning to the waters where they were reared (Toe Drain) won't be stranded below the Fremont Weir.

Response

Juvenile salmonids tend to return to their natal streams where they emerged from the gravel. See also Master Response 1: Fish Benefits.

Comment IN15-14

Comment

The proposed project fails to address the negative impact on Riparian Water Right users who need to pump water in the spring from the Toe Drain for waterfowl habitat management, where thousands of the endangered salmonid juveniles under the proposed project will be directed when the water recedes.

Response

See Response to Comment IN02-2.

Comment IN15-15

Comment

If the salmonid young survive their migration from where they were spawned in the upper Sacramento River system through well-known documented heavily populated striped bass, including adults in excess of 30 pounds and other known predation, reach Sacramento and get diverted into the Yolo Bypass, this project proposes to grow them larger in the floodplain, suggesting as juveniles their chances of reaching the ocean will increase. However, in an independent study created by Cramer Fish Sciences called Modeling the Benefits of Yolo Bypass Restoration Actions on Chinook Salmon (August 2, 2017) and used by the DWR and the Bureau of Reclamation for the EIS/EIR, under the heading of Rearing Survival on page 16, it states that "Floodplain rearing reduces the probability that a juvenile fish reaches the ocean, but the increased size from floodplain rearing increases the probability of surviving during ocean residence".

a) The lead agencies dismiss this finding by Cramer Fish Sciences as having a less than beneficial effect on rearing salmonid young in the Yolo Bypass, and ignores the heavy population of striped bass, including adults that prey on salmonid young, as well as full-grown adult fish such as steelhead, between the floodplain and the ocean.

Response

The SBM output is intended to be used for comparative purposes under the alternatives relative to existing conditions, and all model alternatives are evaluated using the same parameters. Thereby, the SBM does not draw conclusions, rather provides comparisons of alternative performance based on those standardized inputs. The survival metrics for fish in the Yolo Bypass and fish remaining in the Sacramento River were input by the modeling team based on the most accurate available data. This team aimed to use reach-specific survival for in-river fish, and due to limited availability of reach-specific survival data, distinct and different datasets were used (i.e., datasets that do not contain Yolo Bypass data). The proportion of flow approach was used to simulate entrainment in the SBM, and the proportion of flow entrainment approach provides a consistent methodology to apply to all Alternatives. For NEPA/CEQA purposes, it was important to have a tool that could consistently evaluate all alternatives using the same parameters. Please also see Master Response 1: Fish Benefits, Master Response 2: Science Review Panel, and Response to Comment IN05-2.

Comment IN15-16

Comment

b) There has been no scientific means of measurement identified to determine the number or percentage of juveniles that may reach the ocean and return to spawn as adults under this project.

Response

See Response to Comment IN05-2.

Comment IN15-17

Comment

Striped bass have been well documented for decades as being a major predator of salmonid young and are located throughout the Sacramento River system. Regardless of the potential benefits of rearing salmonid young on the floodplain, this predator exists above and below the Freemont Weir along the Sacramento River, in the Toe Drain and the Delta, and will still exist in large numbers to feed on these endangered species, despite a “larger” size.

Response

Larger fish are more adept at surviving the ocean environment. The proposed Project has the ancillary benefit of routing juvenile salmonids away from striped bass “hot spots” in the Sacramento River, as well as providing them with a migratory pathway that avoids the Central Delta, the site of significant predation and potentially harmful pumps. Alternative migratory pathways serve as a portfolio effect for juvenile salmonids as a “bet-hedging” strategy by offering variation in ocean entry, increasing the odds that at least a portion of the population will arrive coincident with favorable ocean conditions. Section 8.1.3.3.2 and Section 8.1.4.6 describes

predation considerations, including predation by Striped bass in the Sacramento River, Yolo Bypass, and Delta. See also Response to Comment IN05-2.

Comment IN15-18

Comment

Our property location is heavily influenced by tidal changes to the Toe Drain. The hydrograph records used by DWR were based on flooding conditions from 1997 to 2012 and do not reflect the detailed impact of climate change to our property based on the rising sea levels. This expected change to sea levels will further aggravate the impact of flooding to our property.

Response

The hydrologic analysis conducted for this EIS/EIR used CalSim II models with 2030 and 2070 conditions from the California Water Commission Climate Change Water Supply Improvement Project modeling to approximate system-wide changes in storage, flow, salinity, and reservoir system reoperation associated with the alternatives. Reclamation's CalSim II modeling of Existing Conditions and the comparable level of development alternatives assumes 2030 conditions. Future conditions in the CalSim II modeling for the No Action Alternative and future conditions-level of development alternatives assume 2070 conditions, including estimates of climate change and sea level rise. Selected CalSim studies performed in the previous analysis have been updated to reflect December 2018 revisions to the Coordinated Operations Agreement (COA). See Chapter 5 and Appendix E for more information.

Comment IN15-19

Comment

According to the Ducks Unlimited analysis that was prepared for the DWR dated October 20, 2017 on page 34 under the heading Discussion, it states that "Most of the hunting opportunity in the Yolo Basin is likely provided by managed seasonal wetlands. Moreover, approximately two thirds of these wetlands are privately owned and managed as duck clubs. Alternatives that increase deep flooding of these managed wetlands compared to Existing Conditions will further reduce hunting opportunities on these wetlands regardless of any relationship between duck population energy demand and food energy supply. Moreover, alternatives that reverse the supply curve as described earlier may further reduce hunting opportunities by discouraging bird use in the Yolo Basin. Perhaps most importantly, alternatives that discourage private duck clubs from continuing to invest in wetland management because of declining hunting opportunities may, in the long term, seriously erode the waterfowl carrying capacity of the Yolo Basin".

Under each of the six alternatives, continuous inundation of non-emergency flood waters will negatively affect our ability as a duck club in a conservation easement to manage our seasonal wetlands for waterfowl, and therefore will most definitely discourage us from investing in any future wetlands management projects.

Response

This comment contains an accurate excerpt from the Ducks Unlimited Waterfowl Impacts Report (2017). Comment does not address the adequacy or accuracy of the EIS/EIR; therefore, no additional response is warranted. See Master Response 4: Impacts to Landowners and Other Uses of Land.

Comment IN15-20

Comment

Given all the uncertainties and issues associated with this project, it would seem more reasonable and prudent to enhance the existing hatchery(s) or create a new facility to grow salmonids to the juvenile stage, then releasing an abundance of them into the Sacramento River system where enough may survive their downstream migration to the ocean through the gauntlet of heavy predation by the well documented striped bass throughout the system to make a difference in the population of these endangered species.

Response

Comment does not address the adequacy or accuracy of the EIS/EIR; therefore, no additional response is warranted. See Master Response 1: Fish Benefits, on the value of this Project regarding increasing salmonid numbers in the Sacramento River System. The project is intended to benefit wild fish and further reduce the reliance on hatchery fish to sustain salmon stocks.

Comment IN15-21

Comment

Again, we strongly oppose this proposed project on the basis that there are too many uncertainties that put this project at great risk of failing at the expense of the endangered species, landowners, water users and citizens of California. As mentioned, it was repeatedly stated in the public meetings that this project going forward is dependent on willing landowners. For the record, we are not willing landowners, oppose this project, and expect that it will not continue to move forward.

Response

Comment does not address the adequacy or accuracy of the EIS/EIR; therefore, no additional response is warranted. See Master Response 4: Impacts to Landowners and Other Users of Land. To the extent appropriate, discussions related to compensation to landowners or users of land would occur outside of the NEPA/CEQA process.

Comment IN15-22

Comment

As owners of the Rising Wings Duck Club, we adamantly oppose the proposed State and federal Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project and are asking you to help us protect our land from non-emergency flood related inundation for the purpose of rearing salmonid young in the Yolo Bypass.

Response

See Response to Comments IN15-1 and IN15-2.

Comment IN15-23

Comment

Our property is located at 46755 County Road 155 in Dixon, California, 12 miles south of Hwy 80 directly adjacent to the Toe Drain in the Yolo Bypass. Based on hydrograph records between 1997 and 2012, the Department of Water Resources (DWR) developed charts projecting non-emergency flood related inundation by property in the Yolo Bypass. In all six of the proposed project alternatives our property would be negatively affected and could be rendered useless for its sole beneficial use of waterfowl hunting for up to 12 weeks of the 14-week waterfowl season, and make our property inaccessible by vehicle from November 1st through March 15th or later.

Response

See Response to Comment IN15-2.

Comment IN15-24

Comment

Furthermore, our property location is heavily influenced by tidal changes to the Toe Drain. The hydrograph records used by DWR do not reflect the detailed impact of climate change to our property based on rising sea levels. This expected change to sea levels has been ignored by DWR and will further aggravate the impact of flooding to our property. If rendered useless for waterfowl hunting, our property will have little to no resale value as it is in a Conservation easement and cannot be grazed or built upon.

Response

See Response to Comments IN15-2, IN15-18, and IN15-19

Comment IN15-25

Comment

The DWR and U.S. Bureau of Reclamation (Reclamation) have failed to address landowner compensation and mitigation plans up front for those losses we would incur should this project be implemented stating they don't know at this time or are working on it, appearing to place the burden on each landowner to prove their loss. In addition, they have not disclosed the project funding source, development cost, and ongoing maintenance cost.

Response

See Response to Comments IN15-3 and IN15-5.

Comment IN15-26

Comment

We disagree with the logic used in the draft Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) released in December 2017 that supports this project as being reasonable and prudent. The project contains numerous uncertainties that put it at great risk of failing. The uncertainties include, but are not limited to the following:

Response

See Response to Comment IN15-6.

Comment IN15-27

Comment

-That a beneficial number (not identified) of salmonid young will actually be drawn from the Sacramento River during high-river flow migration into the Yolo Bypass floodplain.

Response

See Response to Comment IN15-6.

Comment IN15-28

Comment

-That well-known documented predators such as striped bass and other predator fish won't also be drawn into the Yolo Bypass floodplain, enabling them to feed on a captive salmonid audience.

Response

See Response to Comment IN15-7.

Comment IN15-29

Comment

That avian and mammal predation won't increase on the floodplain where it potentially becomes the new home to thousands of salmonid young.

Response

See Response to Comment IN15-8.

Comment IN15-30

Comment

-That the temperature of the water won't become uninhabitable during unseasonably warm winter and spring seasons potentially devastating the endangered salmonid young population on the floodplain.

Response

See Response to Comment IN15-9.

Comment IN15-31

Comment

-That a large number of salmonid young won't get stranded and die on the floodplain during periods of lower than expected levels of inundation.

Response

See Response to Comment IN15-10.

Comment IN15-32

Comment

-That salmonid young returning from the floodplain as juveniles won't be subject to significant predation in the Toe Drain where the waters are more confined than the Sacramento River and heavily populated with well-known striped bass and other predators.

Response

See Response to Comment IN15-11.

Comment IN15-33

Comment

-That enough of the salmonid juveniles will survive the journey to the ocean and return as spawning adults to a level that remove them from the endangered species list.

Response

See Response to Comment IN15-12.

Comment IN15-34

Comment

-That spawning adults returning to the water where they were reared (Toe Drain) won't be stranded below the Fremont Weir.

Response

See Response to Comment IN15-13.

Comment IN15-35

Comment

The proposed project also fails to address the negative impact on Riparian Water Right users such as ourselves, who need to pump water in late spring form the Toe Drain for waterfowl habitat management, where thousands of endangered fish under the proposed project will be directed when the water recedes placing us at risk of "harassing" or "harming", and therefore violating federal and/or State endangered species act law.

Response

See Response to Comments IN15-4 and IN15-14.

Comment IN15-36

Comment

According to the Ducks Unlimited analysis that was prepared for the DWR dated October 20, 2017 on page 34 under the heading Discussion, they indicate that most of the hunting opportunity in the Yolo Basin is provided by managed seasonal wetlands, such as ours. Deep flooding from this project will have a negative effect on waterfowl habitat, thus reducing hunting opportunity, discouraging private clubs from investing in wetlands management, and in the long term seriously erode the waterfowl carrying capacity of the Yolo Basin, which will ultimately have a negative impact on the hunting economy.

Response

See Response to Comment IN15-19.

Comment IN15-37

Comment

It is important for the DWR and Reclamation to act responsibly. Regardless of the funding source, the DWR has a fiscal responsibility to landowners when using public resources on private lands and to demonstrate to the people that the benefits of such a project outweighs the risks.

In public meetings we attended it was repeatedly stated that this project moving forward is dependent on willing landowners. However, while the opposition in the meetings indicates otherwise, the DWR and Reclamation continue to move forward on the project. Again, we adamantly oppose this proposed project on the basis that there are too many uncertainties that put this project at great risk of failing at the expense of the endangered species, landowners, water users, and citizens of California.

Response

See Response to Comments IN15-2 and IN15-21.