

# Errata to Appendix N

Please add the following pages to the Appendix N file. Comment Letter IN15, Gus Margarite and Michael Kleary, Rising Wings Duck Club.

# Comments for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project

IN15

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.

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## Comment 1

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.

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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.

## Comment 2

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.

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## Comment 3

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.

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## Comments for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project

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.

### Comment 4

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.

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### Comment 5

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:

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

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

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### Comment 6

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.

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### Comment 7

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".

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- 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.
- 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.

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### Comment 8

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 Fremont Weir along the Sacramento River, in the Toe Drain and the Delta,

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and will still exist in large numbers to feed on these endangered species, despite a “larger” size.

### Comment 9

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.

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### Comment 10

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”.

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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.

### Comment 11

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.

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## **Comments for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project**

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.

We look forward to receiving written responses to our comments.

Sincerely,

Gus Margarite – Owner, Rising Wings Duck Club

Michael Kleary - Owner, Rising Wings Duck Club

**Rising Wings Duck Club  
46755 County Road 155  
Dixon, California 95620  
(916) 719-3917 or gmargari@comcast.net**

Dear County Supervisor Provenza,

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.

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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.

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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 the rising sea levels. This expected change to sea levels has been ignored by the 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.

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The DWR and U.S. Bureau of Reclamation (Reclamation) have failed to address landowner compensation and mitigation plans up front for the 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.

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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:

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- 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.

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- 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.

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

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- 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.

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Rising Wings Duck Club  
46755 County Road 155  
Dixon, California 95620

- 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.

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- 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.

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- 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.

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

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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 from the Toe Drain for waterfowl habitat management, where thousands of the 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.

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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.

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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 outweigh 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.

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Sincerely,



Gus Margarite



Michael Kieary

Attachment – Comments submitted to the U.S. Bureau of Reclamation (Ben Nelson) on the proposed project.