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BDCP Steering Committee  
c/o Karen Scarborough  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

Re: Comments on Figure 1.1 BDCP Planning Area Location and Need to Avoid Impacts on Public Lands

Dear Steering Committee Members:

Together, the Stone Lakes National Wildlife Area (Stone Lakes) and the Yolo Bypass Wildlife Area (also known as the Vic Fazio Yolo Wildlife Area) provide needed habitat to internationally important migratory birds and a host of other terrestrial and aquatic species. Given the significant public and private investment in these wildlife areas, and the potential wide-ranging impacts of the Bay Delta Conservation Plan (BDCP), we are following the BDCP process closely. Stone Lakes appreciates the opportunity to meet with BDCP staff earlier this month regarding the all-tunnel conveyance option; it appears this option would better avoid impacts on Stone Lakes as compared to the above ground canal.

#### Comments on Figure 1.1 BDCP Planning Area Location

We have reviewed the map handed out at the December 3rd, Steering Committee meeting (Figure 1.1 BDCP Planning Area Location, attached) and have the following comments. While we were pleased to see Stone Lakes and the Cosumnes River Reserve denoted on the map, we are concerned that no other parks within the project area are denoted. As the planning process progresses, it is important that impacts on parks be avoided. We have attached a preliminary list of parks that we believe are within the BDCP planning area. All parks should be denoted on the BDCP Planning Area Location map.

#### BDCP Must Avoid Impacts on Public Lands

Also at the December 3rd, Steering Committee meeting, a presentation was given regarding Chapter 8 Implementation Costs. The presenter and the slides note that the cost assumes no acquisition costs for state and federal lands. We question the basis for the assumption, given that depending upon the land type involved, both the state and federal

government have specific processes applicable to acquisition of various property interests. Please explain the basis for this assumption and the lack of avoidance and mitigation strategy associated with parks.

Even if it is correct to assume no cost for acquisition of state and federal lands, strong public policy reasons dictate against unnecessary use and bisection of public lands for infrastructure and other projects where those projects undermine existing public and wildlife uses. For example, under the 4(f) rule, the Federal Highways Administration and other Department of Transportation agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the following conditions apply: (1) there is no feasible and prudent alternative to the use of land, and (2) the action includes all possible planning to minimize harm to the property resulting from use. (See 49 U.S.C., § 1653, subd. (f); see also 23 U.S.C., § 138.) While the 4(f) rule relates specifically to highways, the same public policy should be applied to other types of infrastructure, such as canals, pipelines and permanent changes in habitat types. (See also *City of Syracuse v. Onondaga County* (2nd Cir. 2006) 464 F.3d 297, 317 (explaining that Prior Public Use Doctrine bars condemnation of property already acquired or devoted for a public use except under certain circumstances); accord Cal. Code Civ. Proc., § 1240.670, subd. (a) (applying policy to public lands dedicated to the preservation of plants and animals).)

In addition, the refuges have invested significant resources over many years to develop planning and management programs. In many instances, the BDCP will directly or indirectly interfere with implementation of these plans and programs. We urge BDCP Steering Committee to develop a project planning approach that avoids impacts on public lands and is respectful of the public investments that have already been made to make these areas possible.

\* \* \*

Thank you for considering these comments. We are available to confer further should you have any questions about the information provided in this letter.

Sincerely,



Liz Zainashef  
President  
Stone Lakes National Wildlife Refuge  
Association

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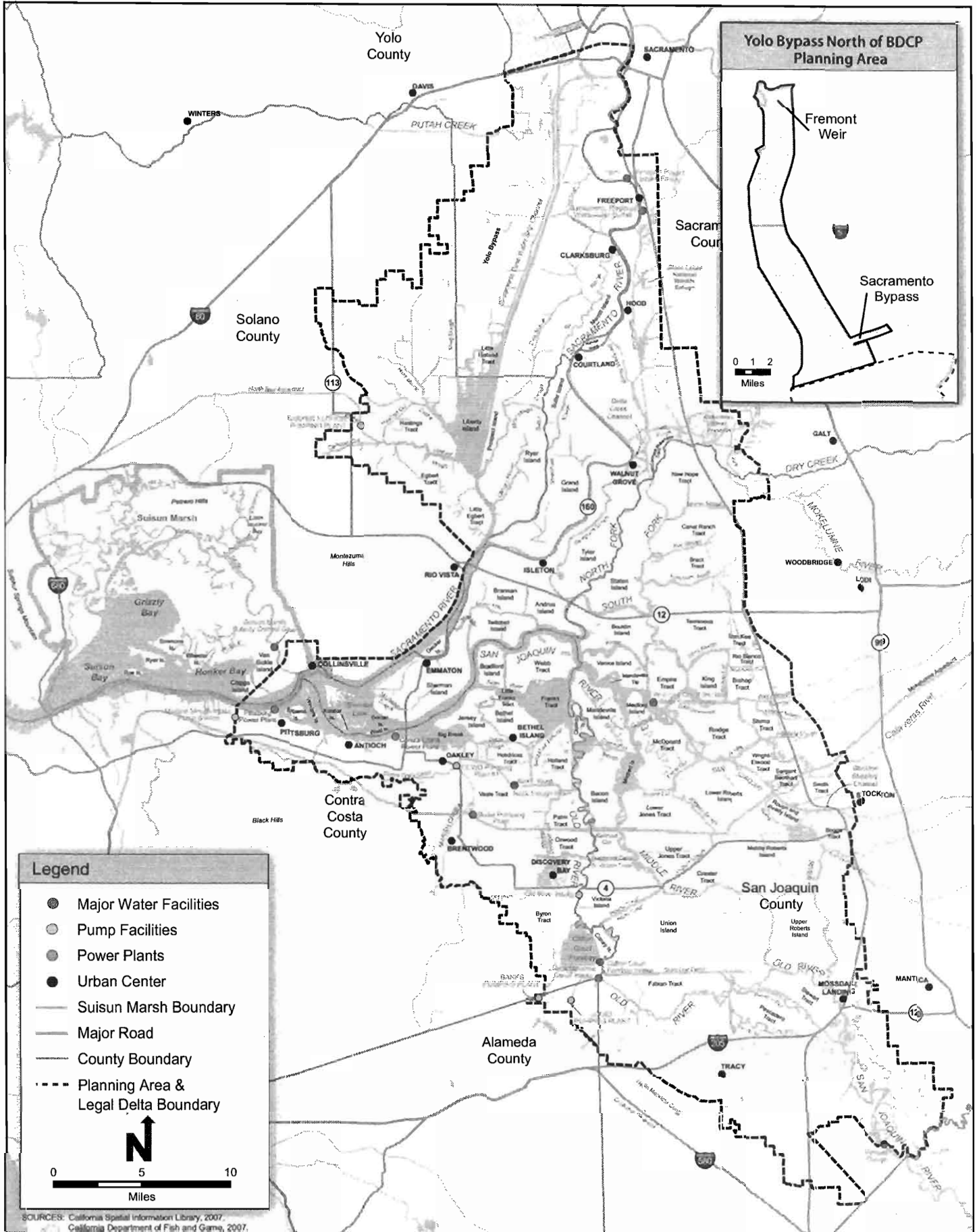


Figure 1.1 BDCP Planning Area Location

**Preliminary list of parks potentially affected by alignments and other projects under consideration in the BDCP:**

State and Federal

Fremont Weir  
Yolo Bypass Wildlife Area/Vic Fazio Yolo Wildlife Area  
Stone Lakes National Wildlife Refuge  
Delta Meadows  
Brannon Island State Recreation Area  
Franks Tract State Recreation Area

Yolo County

Grasslands Park  
Clarksburg Boat Launch  
Elkhorn Regional Park

Sacramento County

Discovery Park  
Elkhorn Boat Launch  
Cliffhouse Fishing Access  
Cosumnes River Preserve  
Hogback Island Access  
Sherman Island Public Access Facility

San Joaquin County

Dos Reis Regional Park  
Westgate Landing Regional Park  
Mossdale Crossing Regional Park  
Stillman Magee Regional Park  
Woodbridge Wilderness Area