



YUBA-SUTTER FARM BUREAU

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October 9, 2014

Public Comments Processing
Attn: FWS-R8-ES-2013-0011
U.S. Fish and Wildlife Service Headquarters
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

RE: USFWS Proposed Rule to Designate Critical Habitat for the Western Yellow-billed Cuckoo

To Whom It May Concern,

The Yuba-Sutter Farm Bureau (YSFB) appreciates the opportunity to review and comment on the U.S. Fish and Wildlife Service (USFWS) proposed rule to designate critical habitat for the western distinct population segment of the yellow billed cuckoo (western yellow-billed cuckoo) under the Endangered Species Act (Docket No. FWS-R8-ES-2013-0011).

YSFB is a non-governmental, non-profit, voluntary membership California Corporation whose purpose is to protect and promote agricultural interests throughout Yuba and Sutter counties and to find solutions to problems of the farm, the farm home and the rural community. YSFB represents more than 1,200 agricultural, associate and collegiate members in Yuba and Sutter counties.

YSFB is deeply interested in protecting the long-term viability of agricultural areas and rural communities located in our region as the stability of the local agricultural industry plays an integral role not only within our rural communities and counties, but regionally, nationally and internationally. Given our geographic location and the sensitivity to flood issues and events, these same communities and residents are constantly in need of protection from catastrophic flood events.

Regional Background Information

Demographics and Agriculture

According to 2013 population estimates, Sutter County is home to approximately 95,851 people, making it the 37th largest of California's 58 counties. There are two incorporated cities, Yuba City with a population of 65,841 (2013), and Live Oak with 8,341 (2013) residents. The remaining residents live within the small communities of Tierra Buena, Meridian, Rio Oso, Trowbridge, Sutter, Pleasant Grove, Nicolaus, East Nicolaus, Robbins, or reside in the vast rural, agricultural areas which make up Sutter County.

The availability of water, plus long sunny growing seasons, make Sutter County an outstanding fertile area for agriculture. With over 77% of the County's total acreage classified as "important farmland," with 43.5% considered prime, coupled with the high value of agricultural production, Sutter County is one of the most intensively farmed counties in California. Agricultural products grown in Sutter County are exported throughout the world.

According to the 2013 Sutter County Crop Report, the gross agricultural production value totaled \$599,292,000 with rice, walnuts, dried plums (prunes), peaches (processing), nursery products, and tomatoes (processing) as the leading agricultural commodities. Strong demand also drove returns up for almonds, corn (field), and sunflower seed, exceeding \$15 million each. Agriculture continues to be an integral part of Sutter County's economic base. Industries such as banking, labor, marketing, transportation, and other services directly or indirectly tied to agriculture benefited appreciably as the agricultural industry returned over \$2.44 Billion to our economy in 2013.

Sutter Bypass

The Sutter Bypass was built with the purpose of providing a flood control system for the Sacramento River as part of the Lower Sacramento Valley Flood Control System. The creation and operation of this system is to protect the public from flood events. The points made below identify why a designation of critical habitat is inconsistent and contrary to the primary purpose and intent of the Sutter Bypass, and justify YSFB's request to have the Sutter Bypass Unit excluded from critical habitat designation consideration.

The comments we provide, although made specifically in reference to the regions surrounding Unit 3: CA-3 Sutter Bypass in Sutter County, California, are vital to ensuring the interests of agricultural areas and rural communities like ours are considered in your final determination. However, these same comments will have significance and relevance to neighboring units.

As we share our comments below, some of those comments will be comparing the management considerations of the proposed rule to the Final USFWS Comprehensive Conservation Plan (CCP) and Environmental Assessment for Sacramento, Delevan, Colusa, and Sutter NWRs which was completed in March, 2009. This 15 year plan identifies issues, goals, objectives, and strategies for refuge management. In 1997, the National Wildlife Refuge System Improvement Act directed USFWS to prepare a CCP for every national wildlife refuge within the Refuge System. The Service's planning policy and planning goals outline a collaborative approach involving communities, neighbors, agencies, conservation organizations, and many others. YSFB will identify our concerns in relation to sections found in the proposed rule.

Proposed Rule: Vegetation Density

Multiple references are made in the proposed rule to the requirement of the density of vegetation in this Unit as important parameters of western yellow-billed cuckoo breeding and feeding habitat.

YSFB Concern:

Should the density of vegetation be a priority, it will contradict the CCP management objective to prevent excessive accumulation of woody vegetation that may impact flood water conveyance capabilities.

Proposed Rule: Stream Flow

References are made to the flowing rivers and streams as essential physical and biological features of western yellow-billed cuckoo.

YSFB Concern:

Waterways in Unit 3 are used by USFWS for management of wetlands in order to support a diversity of migratory and resident wetland dependent wildlife species, including the western yellow-billed cuckoo. Adjacent agricultural operations are dependent on seasonal draws from waterways for irrigation purposes. Maintaining flowing rivers and streams, elevated subsurface groundwater tables and high humidity for the sole purpose of benefitting the western yellow-billed cuckoo's habitat will contradict CCP management objectives and preclude agricultural irrigation diversions.

Each year, the Department of Water Resources (DWR) is under great pressure from state and federal resource agencies and environmental non-government organizations (NGOs) to maintain flows from existing dams throughout California for a variety of aquatic species. This regulation of flows requires a constant balancing act to consider senior and junior water rights holders, municipalities, and agricultural water districts. Again, mimicking the natural hydrology to support

habitat for the western yellow-billed cuckoo, as proposed in the rule, will compromise the ability to deliver water supplies to existing users.

Proposed Rule: Reduction of bank stabilization features

USFWS identifies reducing levees and other structures to promote maturation of native riparian vegetation. To this end, the proposed rule includes management considerations to avoid clearing of channels for flood flow conveyance or plowing of floodplains.

YSFB Concern

The suggestion to alter the intended purpose and maintenance capabilities of flood conveyance projects is counter-productive to regional flood management plans being developed throughout Northern California and US Army Corps of Engineers requirements of operation, and will further jeopardize public safety in these flood prone regions. A two dimensional hydraulic model of the Sutter Bypass, commissioned by the Central Valley Flood Protection Plan (CVFPP), represented the current state-of-practice for vegetation management. This model indicated that vegetation management of the Sutter National Wildlife Refuge adversely affects the movement of water flow, elevations and performance issues.

Proposed Rule: Special management considerations or protection

USFWS states the proposed areas to be designated as critical habitat will require some level of management or protection, or both, to address the conservation of the species. Areas in need of management include not only currently suitable locations, but also areas that may become suitable in the future.

YSFB Concern:

The impacts to areas surrounding the currently proposed areas will have multiple impacts to agriculture and flood management activities. As stated in the proposed rule, USFWS is predicting and planning for the expansion of suitable habitat. This expansion will further compound the restrictions and area of impact to farming operations and flood management.

Proposed Rule: Threat of loss of riparian habitat from development and extractive uses

USFWS states that clearing of riparian habitat for agriculture, industrial and residential development, and road building and maintenance is detrimental to the species.

YSFB Concern:

Per the CCP, Refuge staff will evaluate the vegetative species composition and design and develop appropriate prescriptive practices for removal in order to suppress regrowth of trees, shrubs and vines. This management strategy is essential to addressing the impedance of floodwater flows within the Sutter Bypass. Limiting these management strategies will undermine the structural integrity of the levee system within the Sutter Bypass, putting residents, communities and infrastructure at great risk.

Proposed Rule: Threat of reduction of prey insect abundance by the application of pesticides

USFWS states the need to avoid the application of pesticides that have the potential to limit the abundance of insects on or in the vicinity of riparian areas.

YSFB Concern:

Farming occurs within the Sutter Bypass and adjacent lands to the Bypass. The strictly enforced and regulated practice of pesticide application is critical to ensuring crop success. Farmers carefully monitor insect pest populations and apply pesticides only when necessary. Limiting or eliminating this practice of applying pesticides further jeopardizes the ability of the family farm to maintain their economic viability.

Proposed Rule: Threat of degradation of riparian habitat as a result of expansion of nonnative vegetation

USFWS states removal of nonnative species may be required. In addition, the management consideration includes active restoration plantings may be required to speed up the recovery process of nonnative species removal.

YSFB Concern:

Active plantings have the potential of extending outward from the proposed area. That expansion will further compromise flood flow capacities and is in direct contradiction with the CCP Sutter Bypass Management Objectives. In addition, an expansion of the critical habitat area into the adjacent private farming properties within the Bypass will adversely affect those farming operations.

Additional YSFB Concerns:

For reference purposes, on January 2, 1997, a catastrophic levee failure occurred on the nearby Feather River that claimed the lives of three people while inundating 25 square miles and forcing 32,000 from their homes. Agriculture in the affected area was also devastated. The necessary levee repairs that could have prevented the levee failure were delayed due to the presence of habitat for the Valley Elderberry Longhorn Beetle, a species listed per the Endangered Species Act (ESA). Despite a warning from the US Army Corps of Engineers in 1990, over six years passed before Reclamation District 784 was allowed to start the repair process, due to construction delays and hundreds of thousands of dollars in costs as a result of VELB habitat mitigation.

It is the concern of YSFB that levee repairs, improvements, and Flood Fight staging areas for the Sutter Bypass would also be affected should the area be designated as critical habitat for the western yellow-billed cuckoo. Additional permitting and mitigation that will be required should a designation occur will make timely repairs impossible and increase the costs of those repairs as a result of additional permitting. As shown in the referenced example below, as well as many other projects impacted by the ESA, costs and timelines for permitting, mitigation and projects are elevated and delayed in order to comply with additional ESA requirements. Delisting of species and critical habitat rarely occur and the impacts to public safety and elevated economic costs to such listings and designations must be considered.

Existing CCPs and Habitat Conservation Plans (HCPs)

USFWS should recognize and analyze current CCPs and HCPs for their references, advanced mitigation strategies and multi-benefit projects that address the western yellow-billed cuckoo.

Sacramento, Delevan, Colusa and Sutter NWR CCP/EA
DWR FESSRO Lower Feather River Corridor Management Plan
Sacramento NWR CCP
Yuba and Sutter County HCP/NCCP

For example, it is important to note the Sacramento, Delevan, Colusa and Sutter NWR Sutter Management Strategies 1.5.1 include:

- Working closely with Department of Water Resources (DWR), Sutter County and Central Valley Flood Protection Board on floodplain management issues;
- Working cooperatively with DWR and others to implement the “Tree Reduction Operations Plan - Tract 1 Sutter National Wildlife Refuge in an effort to improve flood flows through the Northwest Grove; and
- Maintaining the forests on the east and west borrow channels as habitat for migratory birds, including western yellow-billed cuckoos, and to not allow the forests to expand to adjacent wetlands.

In conclusion, YSFB strongly opposes the inclusion of the Sutter Bypass and Sacramento River Units in the proposed rule based on:

- The impacts to farming operations near designated areas;
- Increased costs to county budgets by delaying existing roadway and floodplain management projects in order to survey and meet new mitigation measures;
- The required mitigation measures would be in conflict with existing conservation practices in the area;
- Planned and future infrastructure improvement activities that require state or federal permits would face additional permitting restrictions and costs due to the proposed critical habitat;
- Management considerations detailed in the proposed rule have the potential for compromising the integrity of the flood way function of the Sutter Bypass;
- The potential to jeopardize public safety and for loss of human life in the event of flood events as a result of compromised flood way infrastructure; and
- The adverse consequences to farming operations as a result of proposed rule management considerations.

We ask the USFWS bear in mind existing conservation practices that are underway and how those could benefit the yellow-billed cuckoo and other species. A thorough inventory of all conservation, restoration, mitigation activities and unintended consequences that will affect and impact not only the Sutter Bypass region, but the entire proposed area should be completed before a final decision is made.

Thank you for the opportunity to provide these comments which express our full opposition to the inclusion of the Sutter Bypass and Sacramento River Units in the proposed rule. If you have any questions in relation to this letter, please do not hesitate to contact me directly.



Jon Munger
President