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2011 OCT -4 PM 12:47



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Chairman Isenberg
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Comments on the Fifth Staff Draft Delta Plan

Dear Chairman Isenberg and Council:

The Department of Fish & Game (DFG) and the United States Fish & Wildlife Service (USFWS) appreciate the opportunity to jointly comment on the fifth staff draft of the Delta Plan (Delta Plan). Both agencies also plan to submit individual comments but together want to inform the Delta Stewardship Council (Council) that certain elements of the current Delta Plan as written could hinder or even prevent permitting and/or implementing Habitat Conservation Plans (HCP) and Natural Community Conservation Plans (NCCP).

Landscape level, multi-species HCPs and NCCPs are authorized and permitted pursuant to the Endangered Species Act, the California Endangered Species Act, and the Natural Community Conservation Planning Act. NCCPs and HCPs take a broad-based ecosystem approach to planning for the protection and perpetuation of biological diversity while allowing for compatible economic activity. Generally, local agencies oversee the numerous activities that compose the development of a HCP/NCCP in cooperation with landowners, environmental organizations, and other interested parties. A key factor attracting local agencies to the HCP/NCCP process, is the ability of DFG and USFWS to provide regulatory assurances. In essence, permittees agree to measures that translate to a higher level of species conservation in exchange for an assurance from the permitting agencies that additional measures will not be imposed over the term of the plan.

There are currently five Delta county HCPs and/or NCCPs approved or in the planning process that aim to provide for the conservation of at-risk species that reside in the Delta and contribute to the long-term ecological sustainability of the region. DFG and USFWS are concerned that the consistency determination process, as described in the Delta Plan, could subject local agencies preparing or implementing these plans to additional measures or requirements beyond what is contained in the plans. DFG and USFWS believe such additional measures, particularly as they relate to the ecosystem restoration goals of the Delta Plan, are unnecessary because the Delta County HCP and/or NCCPs cannot legally be approved unless they contain certain components very similar to the core principles articulated in the Delta Plan. These elements include a formal adaptive management and monitoring process informed by the best available science, an open

and transparent governance process and a guaranteed financing mechanism to ensure implementation of required measures. In addition, outcomes from the Council imposing these additional measures could frustrate the ability of the agencies to offer meaningful assurances to plan participants effectively abolishing a key incentive that encourages HCP/NCCP participation and completion. For these reasons, and in the interest of reducing duplicative regulatory oversight, DFG and USFWS request that the Council determine that activities covered under HCP/NCCPs and HCP/2081s are exempt from the ecosystem restoration policy portion of the Delta Plan

Additionally, USFWS and DFG request that the Delta Plan make clear that obtaining a consistency determination from the Council does not constitute compliance with other laws or regulations that may apply to a project such as the Endangered Species Act or Fish and Wildlife Coordination Act. Although the draft Delta Plan includes a provision in Policy G P1 (Page 61, lines 8-9) that "[a]ll covered action proponents shall certify that the covered action shall comply at all times with existing applicable law," USFWS and DFG feel that more clarification on this point is needed. Given that the Council proposes to only review and approve projects for consistency if the consistency determination is appealed, proponents may incorrectly assume they are consistent with the plan and in compliance with all applicable laws. Therefore, USFWS and DFG request that the Council include clarification that a Delta Plan consistency determination is a separate and additional requirement from other applicable laws or regulations.

A meaningful resolution of this issue is important for DFG and USFWS, local Delta agencies engaged in HCP/NCCPs and the future of HCP/NCCP planning in the Delta. DFG and USFWS look forward to working with the Council on this issue. If DFG and USFWS can assist the Council in any way, please contact DFG's Scott Cantrell, Acting Water Branch Chief at 916-445-1272 or USFWS's Mike Chotkowski, Bay Delta Fish and Wildlife Field Supervisor at 916-930-5603.

Sincerely,



Director, California Department
of Fish and Game



Pacific Southwest Regional Director
U.S. Fish and Wildlife Service