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DEPARTMENT OF FISH AND GAME  
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EDMUND G. BROWN, Jr., Governor  
CHARLTON H. BONHAM, Director



*February 6,*  
~~January 27,~~ 2012

Joe Grindstaff  
Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Subject: Submission of Comments on the Draft Delta Plan Program Environmental Impact Report

Dear Mr. Grindstaff:

The Department of Fish and Game (DFG) appreciates the opportunity to review and comment on the Delta Stewardship Council's Draft Delta Plan Program Environmental Impact Report (DEIR).

DFG recognizes the profound challenges associated with managing the Delta to achieve the co-equal goals of ecosystem protection and water supply reliability as mandated by the Sacramento-San Joaquin Delta Reform Act of 2009. DFG appreciates the tremendous commitment of resources you and your staff have put into developing this important plan and the associated environmental document. We look forward to being a vital partner throughout this important and challenging process.

Our comments are included in the attached table. If you have any questions or require clarification, please contact Dr. David S. Zezulak at (916) 445-3960, or email him at [dzezulak@dfg.ca.gov](mailto:dzezulak@dfg.ca.gov). Thank you for considering our comments.

Sincerely,

Charlton H. Bonham  
Director

Enclosure

cc: Department of Fish and Game

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	Section	Page	Line(s)	Comment
	general			An general comment made by the Department staff and other agencies (DFG/USFWS Letter to DSC, 9-29-2011) is the need to clarify the process for making consistency determinations on covered actions when it involves authorized and permitted HCPs/NCCPs with the consistency determinations and definition of "covered action" called for in the Delta Plan. The process to integrate existing local, state, and federal programs into the Delta Plan is an important issue to be resolved.
	general			The analysis of alternatives is necessarily a programmatic level qualitative analysis; however, we recommend that you try to quantify the magnitude of differences between Alternatives and the Proposed Project.
	general			Section 5 discusses Emergency Planning. There is extensive discussion that addresses all the required mandates for each of the responsible entities however; it is not clear how this strategy would be implemented.
	general			Double-check all references for most recent citations. Include more recent pertinent documents, such as the Hill Slough EIR.
	general			We recommend you incorporate recent information that is being developed for the San Francisco Estuary Institute Historical Ecology Study for the Sacramento-San Joaquin Delta ( <a href="http://www.sfei.org/he">www.sfei.org/he</a> ). This information would be useful for Section 4 and Appendix F
	2A	25	13	CDFG Stage Two Actions for Invasive Species is part of the Draft ERP Conservation Strategy and is incorporated as ER-R6 of the Delta Plan.
	2A	34	2-5	From the ERP-CS re: Cache Slough restoration. "Restore a mosaic of deep open water, shallow subtidal, tidal marsh, riparian, perennial grasslands, and vernal pool habitats." Add: "deep open water, shallow subtidal, perennial grasslands, and vernal pool habitats" to text.
	2A	34	19-22	The ERP-CS recommends creating a mosaic of seasonal floodplain, riparian, shallow subtidal, and tidal marsh areas at the Consumnes-Mokelumne Confluence. Add: "shallow subtidal" to text.
	2A	34	42-45	The ERP-CS re: Lower San Joaquin restoration. "Create a mosaic of seasonal floodplain, riparian, shallow subtidal, and tidal marsh areas." Add: "seasonal floodplain and shallow subtidal areas" to text.

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	2A	35	12-16	The ERP-CS does not include a discussion of Suisun Marsh. A better reference is the Suisun Marsh Habitat Management, Preservation, and Restoration Plan Final EIS/EIR, which concentrates on tidal marsh and managed marsh. DFG finalized and certified the Suisun Marsh EIR in December 2011.
	2A	35	36-39	The ERP-CS re: Yolo Bypass restoration. "Restore a mosaic of seasonal floodplain, riparian, perennial grasslands, and vernal pool habitats." Add: "riparian, perennial grasslands, and vernal pool habitats" to the text.
	2A	39	35	Regarding the language, "change limit", use one word or the other, not both.
	3	6	19	The term "conjunctive management" is first referred to in this sentence but it is not defined until page 3-35. Move the definition and discussion of this concept up in the document to define it first before using it again.
	3	18	15	The term "runoff" is used in a very general sense throughout this section. The type of runoff makes a difference in the development of resource management strategies.
	3	24	16	Correct typographical error: the name of the Irrigation District is Modesto, not Madera.
	3	25	21	The geographic scope of the Surface Water Quality section (3.3.4.2.2) differs from the preceding Surface Water Hydrology section (3.3.4.2.1). The water quality section leaves out the Stanislaus, Tuolumne, and Merced rivers. The US EPA added the lower portions of these three rivers to the list of impaired water bodies that will require a TMDL for temperature under the CWA 303(d) list as of November 2011. Add at least a brief mention of these three tributaries and their temperature issues in the water quality section.
	3	36	1	This section should mention the Old Tulare Basin restoration efforts currently in progress (Tulare Basin Wildlife Partners/Tulare Basin Regional Conservation Plan).
	3	77	11,26	It is unclear why this impact is described as limited to water supply availability to water users OUTSIDE the Delta watershed. Later in the document, the analysis addresses potential impacts to water supply for Users within and outside the Delta (Sections 3.4.3.2.3, page 3-84). We recommend more inclusive wording for this impact. It is also unclear why

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				hydroelectric facilities are included in a list of projects that could improve water supply reliability. It is the three features listed in line 25 that could improve reliability of water supply. Hydroelectric power is definitely a beneficial use and is non-consumptive. It does not “hurt” the water supply but neither does it “help” water supply reliability, unless the consideration here is that the generated power could be used to move water through conveyance facilities?
	3	79	20-28	Adequate mitigation for “temporary” changes in flow and water quality constituents in the Delta tributaries will need to include a timing component. The end of the paragraph notes water transfers will achieve mitigation during “drier” periods (line 28). We recommend adding “warmer” periods as well, and perhaps “vulnerable life history stages for aquatic resources.” As background, migration of adult salmon as well as subsequent egg viability can be affected if adults returning to spawn in tributaries are exposed to excessive water temperatures, meaning even a temporary increase in temperature could be a significant impact if it occurs during a critical life history stage. If the water transfer occurs at the wrong time (e.g. too late), this does not equal “mitigation.” There is a temporal component to the impact for which the mitigation may not be linked in time.
	3	86	3	Note on page 86, line 3, conveyance facilities=pipelines and pumping plants. We recommend either clarify the conveyance role of hydroelectric power or drop it from the list of examples.
	3	88	15-29	This comment also applies to Section 5. Preservation, restoration of wetlands (including maintaining functionality) should be included as a Flood Risk Reduction Measure. Also, it must be acknowledged that dredging spoils placed along the Delta act as sources and spread for nonnative <b>and</b> sometimes noxious plants. Weed-management of spoil piles in the Delta should be included as a mitigation measure for dredging and maintenance.
	3	101	28	We recommend adding the following reference: U.S. Environmental Protection Agency. 2011. Transmittal of Final List of Water Bodies Added by the EPA to California’s 2009-2010 List of Water Quality Limited Segments Pursuant to Clean Water Act 303(d). Region 9 Water Division, San Francisco, CA 35 pp. Also see the following link to the State Water

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				Resources Control Board's website pertaining to the 2010 Integrated Report (Clean Water Act Section 303(d) List / 305(b) Report). <a href="http://www.swrcb.ca.gov/water_issues/programs/tmdl/integrated2010.shtml">http://www.swrcb.ca.gov/water_issues/programs/tmdl/integrated2010.shtml</a>
	4	7	9-15	The list/impacts of nonnative, invasive, exotic, and noxious plants in the Delta are far more extensive than what is discussed in this section.
	4	10	19-32	Newer papers on sea level rise in the SF Bay Delta should be examined and cited: Stralberg, D., M. Brennan, J.C. Callaway, J.K. Wood, L.M. Schile, D. Jongsomjit, M. Kelly, V.T. Parker, and S. Crooks. 2011. Prospects for tidal marsh sustainability in San Francisco Bay. Spatial habitat scenarios and sensitivity analysis. PLoS ONE 6 (11): e27388.
	4	10	33	"In addition, modeling scenarios predict an increase in California's air. Correct or delete this sentence.
	4	16	12-13	Regarding the statement, "fish that spawn and rear in fresh water": this is an incorrect definition for anadromous fish. We suggest you use the description from: Murphy, B. R., and D. W. Willis, editors. 1996. Fisheries techniques, 2nd edition, American Fisheries Society, Bethesda, Maryland.  Glossary, page 688 Anadromous fishes: Fishes that migrate between marine habitats, where they do most of their growing, and freshwater habitats, where they breed.
	4	16	13	Add a closing parenthesis after the word "water" in definition of anadromous.
	4	17	13-14	Revise the text as: Chinook salmon pass through the Delta as juveniles emigrating to the ocean from the Sacramento and San Joaquin rivers and tributaries where they were born, and again as adults on their return migration to their natal streams to spawn. Juvenile salmon use the Delta, Suisun Marsh, and the Yolo Bypass (when flooded) for rearing to varying degrees, depending on their life stage, size, river flows, and time of year.
	4	17	24	Add: water temperature, instream flow degradation, elimination of

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				spawning gravel recruitment below dams, fish passage issues, and poaching in the list of continued threats.
4	18	13		The date needs to be corrected. It is March 30, 2012 (see <a href="http://www.fws.gov/sfbaydelta/species/longfin_smelt.cfm">http://www.fws.gov/sfbaydelta/species/longfin_smelt.cfm</a> )
4	21	1		Mention that the California black rail is abundant in the brackish tidal marshes in Suisun Bay.
4	21	29		The California clapper rail is also a fully protected species.
4	22	13		Re: least tern, add that there have been breeding colonies documented in Suisun Marsh, near Montezuma Slough.
4	23	39		Re: LSA 2007 Report, bulrush and saltgrass are increasing in salt marshes due to changes in salinity. Harvest mice in Suisun Bay, a brackish marsh, are found in higher densities in mixed vegetation, pickleweed plus bulrush and saltgrass. Ref: Sustaita, D., P.F. Quickert, L. Patterson, L. Barthman-Thompson, S. Estrella. 2011. Salt marsh harvest mouse demography and habitat use in the Suisun Marsh, California. The Journal of Wildlife Management 75: 1498-1507.
4	26	22-41		This list of natural communities does not match the plant community types discussed later in the text (agriculture, developed/disturbed, invasive plants, nonnative grasslands/nonnative herbs, native grassland, inland dune scrub, etc.). We also suggest you include a cross-walk to BDCP natural communities.
4	67	37		DFG's Stage 2 should probably be referred to as ERP's Stage 2 actions throughout the document.
4	68	34-36		The Regional Advance Mitigation Planning (RAMP) process, which is part of the Conservation Framework for the CVFPP, is proposing to implement restoration projects in advance of impacts to reduce temporal losses of habitat. The DEIR should include mention of this process and this type of "advance mitigation", especially for riparian forest habitats that will take decades to restore.
4	71	21		As additional information for the DEIR, the California Essential Habitat Connectivity Project identifies areas of essential wildlife corridors and habitat linkages. It can serve also as a conservation planning tool for larger planning efforts such as the Delta Plan/DSC program.
4	76	29-30		The CVFPP also discusses the creation of a new floodplain in this location

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				which should be described.
	4	84	1-2	See comment for page 68. This comment also applies to this portion of the document.
	4	85	33-34	See comment for page 71. This comment also applies to this portion of the document.
	4	145	Table 4-2	Bryant's Savannah Sparrow ( <i>Passerculus sandwichensis alaudinus</i> ) is known to occur in Suisun Marsh. It was recently added to the CDFG Species of Special Concern list (Shuford and Gardali 2008). It needs to be considered by the DEIR. The species nests along the tidal marsh/upland ecotone and could be affected by activities along the marsh edge. In addition, more attention needs to be paid to preserve and restore this band of habitat for high tide refuge for other tidal marsh species. At present, geographic boundaries of this subspecies are not clear but according to the cited reference, the current known range includes Solano County.
	5	21	1	Line 1 suggests that organic soils are more stable for levee building than plain clay sands. Please include citations as evidence.
	23	1	8	We recommend after NCCP "intended to provide for the conservation and management of covered species." This more accurately conveys the NCCP standard.
	23	1	14-17	We recommend including language that recognizes that the BDCP development process is a collaborative effort that also includes non-governmental organizations, and state and federal agencies
	23	1	25	The NCCP will also provide "take" coverage for species listed under the California Endangered Species Act (Fish and Game Code section 2050 et seq.).
	23	3	29	We recommend replacing the current language with the actual language of the Water Code-"If DFG approves the BDCP as a NCCP" pursuant to NCCPA.
	23	5	22	We recommend after "developed to", add the sentence: "provide for the conservation and management of covered species." This more accurately conveys the NCCP standard.
	23	5	33	The BDCP is not being developed with the intent to meet the CESA standard.
	23	5	35-36	Distinguish between application for a NCCP take permit and other

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				processes, such as that required to obtain a CESA incidental take permit. Non-listed species are not authorized for take under CESA.
	23	5	36	The definitions of “endangered, threatened, rare, etc.” differ for each kind of protected species regulation. They are not the same for the state and federal Endangered Species acts. As an example, note footnote #7; the definition of “take” is that of the federal ESA, not CESA. CESA has a more limited take definition (Fish and Game Code Section 87). It is important to clearly distinguish the types of regulations and definitions between the various regulations. There are differences. Use of the terminology in the DEIR should be precise.
	23	16	31	We recommend clarifying why the Biological Opinion (BO) remands are being referenced. The sentence needs to explain that the BO’s contained modifications to project operations but have been remanded. Thus, some of the modifications are expected to change in the future.
	23	25	12-14	The habitat credit agreement MOA has been finalized. We recommend modifying the proposed project to now encourage implementation.
	23	29	21-24	The explanation for how the analysis in this chapter (as related to potential significant cumulative impacts involving BDCP) relates to the broader cumulative impacts chapter is unclear. This sentence suggests that this is a separate analysis yet it does not analyze whether the Delta Plan impacts (taken with the BDCP impacts) can be considered cumulatively significant. Is this analysis exclusively in the cumulative impacts section? If so, we recommend a better explanation regarding how this section fits in with the cumulative impacts section.
	<b>APPENDICES</b>			
	D			Include with each regulation type, the type of permits that may be required. Include most pertinent regulations for marine, riparian, wetland, and associated upland habitats. This ties into how the DSC intends to integrate the new program into these existing regulatory programs.
	D	2.1.16.1	586	Delete the statement that the Conservation Strategy has evolved into the Delta Regional Ecosystem Restoration Implementation Plan. Also update the reference to the Draft Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and Sacramento and San Joaquin Valley Regions (Draft CDFG 2011a).

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	F		Tables	Usefulness of Tables of Flora and Fauna would be greatly increased by indicating native versus nonnative species.
	F	F4-17	15	The last sentence of the paragraph on line 15 reads, "...listed under the federal and/or ESA and are described below." Insert "California" after and/or so it will read "...listed under the federal and/or California ESA and are described below."
	F	F4-17	33-34	Provide the reference or list the "specifically named impassable dams."
	F	F4-20	24	Change "predation on juvenile salmon..." to predation on juvenile salmonids..." because the paragraph is discussing both salmon and steelhead.
	F	F4-20,21	35,39,9,17,24 (resp.)	Change "salmon" to "salmonids" for consistency.
	F	F4-20,21	8	Section 1.2.4.1.4 Threats. There is no mention of insufficient instream flows as a threat to all life stages of salmonids in natal tributaries. Include a paragraph, with references, on the impacts of insufficient instream flows for salmonid migration, passage, spawning, rearing, and emigration.