Making San Francisco Bay Better

June 13, 2012

Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Via Email: DeltaPlanComment@deltacouncil.ca.gov

SUBJECT: Comments on the Final Staff Draft of the Delta Plan

Dear Chair Isenberg:

Thank you for the opportunity to comment on the Final Staff Draft of the Delta Plan, released on May 14, 2012.

Although the San Francisco Bay Conservation and Development Commission (Commission) has not reviewed the Final Staff Draft Delta Plan, the following staff comments are based on the McAteer-Petris Act, the Suisun Marsh Preservation Act (Marsh Act), the Commission's *San Francisco Bay Plan* (Bay Plan), the *Suisun Marsh Protection Plan* (Marsh Plan), the Commission's federally-approved coastal management program for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA).

Jurisdiction. The Commission's permit jurisdiction includes all tidal areas of the Bay up to the line of mean high tide or, in areas of tidal wetlands, up to five feet above mean sea level, including all areas formerly subject to tidal action that have been filled since September 17, 1965; and the shoreline band that extends 100 feet inland from and parallel to the Commission's Bay jurisdiction. The Commission also has jurisdiction over certain managed wetlands adjacent to the Bay, salt ponds, and certain waterways, and the Suisun Marsh.

Commission permits are required for placement of fill, construction, dredging, and substantial changes in use within its jurisdiction. Permits are issued when the Commission finds proposed activities to be consistent with its laws and policies. In addition, federal actions (including plans), permits, projects, licenses and grants affecting the Commission's coastal jurisdiction are subject to review by the Commission, pursuant to the federal CZMA, for their consistency with the Commission's federally-approved coastal management program for the Bay.

The Marsh Act grants the Commission regulatory authority to issue marsh development permits in the primary management area of the Suisun Marsh, defined as water-covered areas, tidal marshes, diked wetlands, seasonal marshes, and certain lowland grasslands specified on the Marsh Plan Map. The Marsh Act also established a secondary management area composed principally of upland grasslands and cultivated lands, also specified on the Marsh Plan Map, to serve as a buffer between the primary management area and developed lands outside the Marsh. Within the secondary management area, local governments issue marsh development permits pursuant to a local protection program certified by the Commission, and these permits can be appealed to the Commission.

From our review of the Final Staff Draft of the Delta Plan, the staff has identified the following issues within the Commission's jurisdiction: habitat protection and restoration, fresh water inflow, climate change, adaptive management, dredging, water quality, public access and recreation, and mitigation.

Habitat Protection and Restoration. The Final Staff Draft of the Delta Plan encourages prioritization and implementation of habitat restoration projects in five main areas, including the Suisun Marsh. Ecosystem Restoration Recommendation 1 (ER R1) states, in part:

> Restore significant portions of Suisun Marsh to brackish marsh with land-water interactions to support productive, complex food webs to which native species are adapted and to provide space to adapt to rising sea level action.

This recommendation is consistent with the Commission's laws and policies, which call for protecting the diversity of habitats in the Suisun Marsh, restoring tidal habitats, and protecting fish, other aquatic organisms and wildlife, particularly threatened and endangered species and their habitats.

More specifically, the Marsh Plan policies state, in part:

> The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource....
>
> Where feasible, historic marshes should be returned to wetland status, either as tidal marshes or managed wetlands. If, in the future, some of the managed wetlands are no longer needed for private waterfowl hunting, they should be restored to tidal or subtidal habitat, or retained as diked wetland habitat and enhanced and managed for the benefit of multiple species....

Ongoing large-scale efforts to restore Bay wetlands have great potential to benefit the entire estuary, including species of concern, yet these projects could inadvertently be adversely affected if Delta management actions, such as restoring Delta islands, result in the capture of large volumes of sediments that would otherwise flow to the Bay, particularly given recent observations of decreased suspended sediment loading in the estuary and future sea level rise.

Chapter 7 of the Delta Plan, which deals with risk reduction, acknowledges the role of the Delta Dredged Sediment Long-Term Management Strategy in coordinating sediment management. This chapter states, in part, "Approved dredging and dredged material management actions will take place in a manner that protects and enhances Delta water quality, identifies appropriate opportunities for the beneficial reuse of Delta sediments for levee rehabilitation and ecosystem restoration, and establishes safe disposal for materials that cannot be reused."

The Bay Plan's dredging policies encourage the reuse of dredged material in wetland restoration projects, as appropriate, and support efforts to fund the additional costs associated with transporting dredged material to project sites. We suggest that the Delta Plan encourage the coordinated use of dredged material in the Bay and Delta as part of an inter-regional sediment management strategy in order to maximize public benefits of wetland restoration throughout the entire estuary.

Fresh Water Inflow. The Final Staff Draft of the Delta Plan acknowledges the importance of adequate freshwater inflow to the Suisun Marsh and the Bay, i.e., Delta outflow. Chapter 4, Protect, Restore and Enhance the Delta Ecosystem, states, in part:

> Delta outflow transports river-derived organic matter to Suisun Bay (Jassby and Cloern 2000) and controls the location of the salinity gradient (Jassby et al. 1995)....Outflow variability is recognized as a key factor promoting diverse native fish communities (Moyle and Mount 2007; Moyle et al. 2010).

Ecosystem Restoration Policy 1 (ER P1) requires the State Water Resources Control Board to update its flow objectives for the Delta to meet the co-equal goals of ecosystem restoration and water supply reliability by June 4, 2014.

This recommendation is consistent with the Bay Plan and Marsh Plan policies that call for adequate freshwater inflow to the Bay and Suisun Marsh. Bay Plan findings state, in part, that "conserving fish, other aquatic organisms and wildlife depends, among other things, upon availability of ...proper fresh water inflows, temperature, salt content, water quality, and velocity of the water."

The Bay Plan's fresh water inflow policies state, in part:

> Diversions of fresh water should not reduce the inflow into the Bay to the point of damaging the oxygen content of the Bay, the flushing of the Bay, or the ability of the Bay to support existing wildlife....
>
> High priority should be given to the preservation of Suisun Marsh through adequate protective measures including maintenance of freshwater inflows....

Water Supply and Quality Finding 2 in the Marsh Plan states, "Today the most important factor in Marsh water quality is salinity. Slough salinities are presently determined by fresh water inflow, which dilutes the saltwater carried into the Marsh by tidal action from the ocean. The most important source of fresh water inflow to the Suisun Marsh is the outflow from the Sacramento-San Joaquin River Delta."

The Marsh Plan recognizes that the Suisun Marsh, located where salt water and fresh water meet and mix, contains "the unique diversity of fish and wildlife habitats characteristic of a brackish marsh."

Marsh Plan policies state, in part:

> There should be no increase in diversions by State or Federal Governments that would cause violations of existing Delta Decision or Basin Plan standards....
>
> Water quality standards in the Marsh should be met by maintaining adequate inflows from the Delta.

The Commission staff is pleased to see that the Delta Plan now includes a discussion of the need for variable flows that transport sediment and nutrients to the Bay, increase mixing of Bay waters, and create low salinity habitat in Suisun Bay. The staff also supports the Delta Plan's requirement for the State Water Board to update its flow objectives to meet the co-equal goals.

Climate Change. The Commission staff is pleased to see that the Draft Delta Plan now discusses the need to plan for climate change and sea level rise in the Suisun Marsh in collaboration with BCDC, as we requested in our previous comment letter. The staff supports the inclusion of Ecosystem Restoration Recommendation 4 (ER R4) of the Draft Delta Plan, which states:

> The San Francisco Bay Conservation and Development Commission (BCDC) should update the Suisun Marsh Protection Plan and relevant components of the Suisun Marsh Local Protection Program to adapt to sea level rise and ensure consistency with the Suisun Marsh Preservation Act, the Delta Reform Act, and the Delta Plan.

The staff also supports the following findings in the Draft Delta Plan related to adaptation to sea level rise in the Suisun Marsh:

> Suisun Marsh offers unique restoration opportunities because of its position in the Delta ecosystem and the diversity of physical processes it hosts. Suisun Marsh harbors a greater percentage of native fish than the remainder of the Delta in part because its brackish water limits nonnative species. Additionally, the marsh has many diverse tidal sloughs that provide options for food and refuge (Moyle and Bennett 2009).
>
> Also, unlike the deeply subsided Delta, much of the Suisun Marsh is still at elevations suitable to restore intertidal habitat, including tidal marsh and shallow water habitat. This area provides the brackish portion of the estuary with the potential to support productive and complex food webs and with space to adapt to sea level rise. State and local land use policies should reflect the unique role that Suisun Marsh can play.
>
> The San Francisco Bay Conservation and Development Commission (BCDC) is responsible for protecting San Francisco Bay and its shoreline, including Suisun Marsh, through the San Francisco Bay Plan, as described in Chapter 5. It is developing regional strategies to address the impacts of sea level rise and climate change on the Bay. BCDC provides special protection of the Suisun Marsh under the Suisun Marsh Preservation Act through the Suisun Marsh Protection Plan (SMPP).

The staff would like to suggest the following correction to the subsequent text of the Draft Delta Plan:

> BCDC recently ~~approved an amendment to~~ amended the *San Francisco Bay Plan* to address climate change and sea level rise. ~~This amendment's~~ The climate change ~~policy~~ policies, among other things, incorporate~~s~~ sea level rise projection ranges consistent with those developed by the California Ocean Protection Council (2011) and ~~includes~~ call for the development of a long-term regional strategy to address sea level rise and storm activity. The SMPP and the Suisun Marsh Local Protection Program ~~will also need to incorporate the~~ should also be amended to address climate change and sea level rise. ~~policy when they are amended to conform to the San Francisco Bay Plan~~.

Similarly, the problem statement should be corrected as follows:

> The SMPP and the Local Protection Program components of the SMPP do not yet include ~~the~~ climate change provisions~~ consistent with BCDC's San Francisco Bay Plan~~. Without these amendments, it is unclear if and how Suisun Marsh will be managed to adapt to rising sea level.

The Commission staff agrees in principle with the need to update the SMPP and Local Protection Program to address sea level rise, as required by Executive Order S-13-08. However, California state law does not require these plans to be consistent with the Bay Plan. In fact, the SMPP states:

> The Suisun Marsh Protection Plan is intended to be a more specific application of the general, regional policies of the San Francisco Bay Plan and to supplement those policies where appropriate because of the unique characteristics of the Suisun Marsh. Therefore the policies of both the Bay Plan and the Suisun Marsh Protection Plan apply in the area covered by the latter, except where the two may conflict. In that case, the more specific policies of the Suisun Marsh Protection Plan control.

Therefore, we recommend changing the language in the Delta Plan to remove that inaccuracy.

The Bay Plan requires the design and evaluation of any ecosystem restoration project to include an analysis of how the system's adaptive capacity can be enhanced so that it is resilient to sea level rise and climate change. The Delta Plan should include incorporate this requirement as an ecosystem restoration policy for the entire Delta, not just the Suisun Marsh.

Adaptive Management. The Commission staff is pleased to see that the Final Staff Draft of the Delta Plan now requires adaptive management in ecosystem restoration projects, as requested in our previous comment letter. The Draft Delta Plan states that the Council has adopted a three-phase adaptive management framework for the purposes of developing, implementing, and updating the Delta Plan, and also for use in ecosystem restoration and water management covered actions. G P1, Detailed Findings to Establish Consistency with the Delta Plan, states, in part:

> Ecosystem restoration and water management covered actions must include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management. This requirement shall be satisfied through:
>
> - An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix A, and
> - Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

This requirement mirrors the approach in the Bay Plan, which requires an adaptive management approach for ecosystem restoration projects in the Bay.

The Commission staff also appreciates that the Draft Delta Plan has been revised to refer to the adaptive management required by the Suisun Marsh Habitat Management, Preservation, and Restoration Plan. ER R1 states, in part:

> Use information from adaptive management processes during the Suisun Marsh Habitat Management, Preservation, and Restoration Plan's implementation to guide future habitat restoration projects and to inform future tidal marsh management.

The Commission staff supports the performance measures and metrics that have been developed to guide adaptive management of ecosystem restoration, including the following:

- Progress toward restoring in-Delta flows to more natural functional flow patterns to support a healthy estuary. Metrics: results from hydrological monitoring and hydrodynamic modeling. (ER P1)
- Progress toward decreasing annual trends in both the number of new and existing aquatic and terrestrial nonnative species and the abundance and distribution of existing aquatic and terrestrial nonnative species in the Delta over the next decade. These trends will be derived from long-term animal and plant monitoring surveys conducted by the Interagency Ecological Program agencies, the California Department of Boating and Waterways, the U.S. Department of Agriculture, the San Francisco Estuary Institute, and others. (ER P5)
- Progress toward the documented occurrence and use of protected and restored habitats and migratory corridors by native resident and migratory Delta species. Trends in occurrence, use, and performance of native species in protected and restored habitats and corridors will be upward over the next decade. These trends will be derived from animal and plant monitoring surveys that are conducted as part of adaptive management strategies for the protection and restoration of these areas. (ER R1)
- Progress toward achieving the State and federal "doubling goal" for wild Central Valley salmonids relative to 1995 levels. Trends will be derived from long-term salmonid monitoring surveys conducted by the NMFS, USFWS, and others. (ER R1)

Dredging. The Suisun Marsh Habitat Management, Preservation, and Restoration Plan (SMP), if approved, would include a significant increase in dredging from sloughs in the Suisun Marsh, compared with the past decade. The Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the SMP, issued by the U.S. Reclamation Bureau and U.S. Fish and Wildlife Service in November, 2011, states that dredging from sloughs in the Suisun Marsh to maintain managed wetland levees is currently restricted to protect threatened and endangered species, and evaluates a range of dredging practices that minimize impacts on listed species, with remaining impacts to be offset by habitat restoration.

The Commission's Bay Plan dredging policies state, in part, that dredging should be authorized when the Commission can find that "dredging is needed to serve a water-oriented use or other important public purpose, such as navigational safety" and "the siting and design of the project will result in the minimum dredging volume necessary for the project." The

Commission's laws and policies also require that dredging and dredged material disposal be conducted in an environmentally and economically sound manner and that projects be designed to minimize and, if feasible, avoid any harmful impacts on fish, other aquatic organisms, wildlife and aquatic plants.

The Commission certified the Suisun Resource Conservation District's component of the Suisun Marsh Local Protection Program (LPP) in the 1980s. The SRCD's LPP component states that "no dredging of a water area, or portion thereof, which is currently subject to unimpeded natural tidal action shall be undertaken except as a source of material for levee maintenance or to keep open access channels to water inlet and outlet structures. Any dredging shall be performed in accordance with the provisions of a certified individual ownership management plan, or with the permission of the appropriate permitting authorities." More generally, the SRCD LPP states, "Diking, flooding, draining, filling and dredging activities shall be conducted so as to minimize any adverse effects on desirable plant and wildlife communities and to minimize the potential for erosion and sedimentation." The Commission staff intends to work with SRCD in the coming year to update its LPP component to require practices that minimize impacts of dredging on listed species, as described in the SMP.

The Delta Plan should reference the proposed dredging program that will be included in the SMP, noting that the Commission must consult with the state and federal resource agencies, and not authorize any dredging resulting in the "taking" of a listed species unless the appropriate authorization has been issued by the resource agencies. The Commission is also authorized to require mitigation for adverse impacts of dredging that cannot be avoided or minimized. (See comments on mitigation below.) With respect to contaminant testing, the Delta Plan should note that dredging in the Suisun Marsh within 200 feet of storm drain outfall and urban discharge locations will likely require the testing specified by the Dredged Material Management Office (DMMO), and project sponsors should consult with the DMMO for the need for evaluation and determination of suitability for placement on levees or other sites. The DMMO is operated by the agencies of the Long Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region.

Water Quality. The Final Staff Draft of the Delta Plan acknowledges the Commission's role in protecting water quality in San Francisco Bay. The Draft Delta Plan states:

> Water quality in the Delta is also regulated by the San Francisco Bay Conservation and Development Commission (BCDC), which has jurisdiction on all tidal areas of the Bay, including Suisun Bay and Suisun Marsh. BCDC policies regarding water quality are intended to prevent the release of pollution into Bay waters to the greatest extent feasible. The BCDC makes decisions regarding water quality impacts based on evaluation by and the advice of the San Francisco Bay RWQCB. The BCDC reviews State and federal actions, permits, projects, licenses, and grants affecting the Bay, including Suisun Marsh, pursuant to the federal Coastal Zone Management Act.

The Commission staff notes that the Draft Delta Plan contains no regulatory policies related to water quality. The staff supports the following water quality recommendations in the Plan:

- **WQ R2 Identify Covered Action Impacts.** Covered actions should identify any significant impacts to water quality.

- **WQ R3 Special Water Quality Protections for the Delta.** The State Water Resources Control Board or regional water quality control board should evaluate and, if appropriate, propose special water quality protections for priority habitat restoration areas identified in recommendation ER R1 [including the Suisun Marsh] or other areas of the Delta where new or increased discharges of pollutants could adversely impact beneficial uses.

- **WQ R12 Manage Dissolved Oxygen in Suisun Marsh.** The State Water Resources Control Board and the San Francisco Bay Regional Water Quality Control Board should complete the Total Maximum Daily Load and Basin Plan Amendment for dissolved oxygen in Suisun Marsh Wetlands by January 1, 2014.

Public Access and Recreation. The Commission's laws and policies call for providing a wide range of public access and recreational opportunities, consistent with public safety and the protection of natural resources in San Francisco Bay, including the Suisun Marsh. More specifically, the Recreation and Access Policies of the Marsh Act call for encouraging continued recreational use of privately-owned managed wetlands, i.e., duck hunting, as well as acquisition of land to provide for increased public recreational use, including fishing and nature study. The policies state that these areas should be located primarily on the outer portions of the Marsh near the population centers and easily accessible from existing roads. The policies further state that public agencies acquiring land in the Marsh for public access and recreational use should provide for a balance of recreational needs by expanding and diversifying opportunities for activities such as bird watching, picnicking, hiking, and nature study.

The Commission staff supports the following Delta Plan recommendations that would increase and diversify recreational opportunities in the Marsh:

- **DP R11 Provide New and Protect Existing Recreation Opportunities.** Water management and ecosystem restoration agencies should provide recreation opportunities, including visitor-serving business opportunities, at new facilities and habitat areas whenever feasible, and existing recreation facilities should be protected, using *California State Parks' Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh* and Delta Protection Commission's *Economic Sustainability Plan* as guides.

- **DP R12 Encourage Partnerships to Support Recreation and Tourism.** The Delta Protection Commission and Delta Conservancy should encourage partnerships between other state and local agencies, and local landowners and business people to expand recreation, including boating, promote tourism, and minimize adverse impacts to non-recreational landowners.

- **DP R14 Enhance Nature-Based Recreation.** The Department of Fish and Game, in cooperation with other public agencies should collaborate with nonprofits, private landowners, and business partners to expand wildlife viewing, angling, and hunting opportunities.

- **DP R16 Encourage Recreation on Public Lands.** Public agencies owning land should increase opportunities, where feasible, for bank fishing, hunting, levee top trails, and environmental education.

The Draft Delta Plan does not appear to have a policy or recommendation that calls for promoting public access and recreation that is compatible with wildlife protection. The Commission staff suggests adding a policy similar to the Bay Plan's Public Access Policy 13, which states, "Public access should be integrated early in the planning and design of Bay

habitat restoration projects to maximize public access opportunities and to avoid significant adverse effects on wildlife." The Delta Plan could also include a policy similar to the Bay Plan's Public Access Policy 14, which states:

> The Commission should continue to support and encourage expansion of scientific information on the effects of public access on wildlife and the potential of siting, design and management to avoid or minimize impacts. Furthermore, the Commission should, in cooperation with other appropriate agencies and organizations, determine the location of sensitive habitats in San Francisco Bay and use this information in the siting, design and management of public access along the shoreline of San Francisco Bay.

Mitigation. In the event that projects and activities described in the Delta Plan would result in adverse environmental impacts on San Francisco Bay, including the Suisun Marsh, that cannot be avoided, mitigation measures will be required. The Commission's policies regarding mitigation state, in part, that "projects should be designed to avoid adverse environmental impacts to [the] Bay" and, further, that "[w]henever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable....[and] measures to compensate for...impacts should be required."

Thank you for the opportunity to comment on the Final Staff Draft of the Delta Plan. If you have any questions regarding this letter or the Commission's policies, please call me at (415) 352-3660 or email me at jessicad@bcdc.ca.gov.

Sincerely,

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By U.S. Mail and e-mail (DeltaPlanComment@deltacouncil.ca.gov)