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UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southwest Region

650 Capitol Mall, Suite 5-100

Sacramento, CA 95814-4700

MAY 26 2011

Ms. Terry Macaulay, P.E.
Deputy Executive Officer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Dear Ms. Macaulay:

This letter is in response to your request at the March 22nd and April 25th, 2011 Delta Stewardship Council (DSC) Federal Coordination Meetings for comments on the 2nd and 3rd Staff Drafts of the Delta Plan. NOAA's National Marine Fisheries Service (NMFS) appreciates the opportunity to comment on these earlier drafts of the Delta Plan, and affirms our commitment to the co-equal goals that are expressed in California law and identified in many of the proposed policies in the Delta Plan.

The NMFS Protected Resources Division, Central Valley Office, is responsible for the administration of programs, laws, and acts that promote and support conservation, protection, and recovery of anadromous fish resources in the Central Valley of California. Our primary responsibility is administration of the Endangered Species Act (ESA) of 1973, as amended [16 U.S.C. 1531 *et seq.*] with regard to listed salmonids and green sturgeon. Listed anadromous fishes inhabiting the Sacramento-San Joaquin Delta Estuary include the endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern distinct population segment of North American green sturgeon (*Acipenser medirostris*). In addition, we assist in administering the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for essential fish habitat (EFH) for Pacific Saimon. The Sacramento-San Joaquin Delta Estuary and the San Joaquin River (SJR) and its tributaries are designated EFH for Central Valley winter-run/spring-run/fall-run/late fall-run Chinook salmon (*O. tshawytscha*).

As part of its responsibilities, NMFS is mandated to develop and implement recovery plans for these listed species, which is vital to the continued long-term persistence and recovery of these populations. Recovery plans serve as a roadmap or guideline for achieving recovery goals by describing the steps that must be taken to improve the status of the species. Although recovery plans provide guidance, they are not regulatory documents. The success of recovery plans depend upon the cooperation of all stakeholders and regulatory entities to ensure appropriate implementation. A draft recovery plan is currently available for winter-run and spring-run Chinook salmon as well as steelhead, and we recommend the DSC incorporate the relevant priority actions that will affect the Delta into the Delta Plan. We encourage the DSC to continue



to work directly with my staff throughout the development and implementation of the Delta Plan, to ensure recovery measures are addressed.

Following are NMFS comments and recommendations on the draft Delta Plan:

3rd Staff Draft:

Pg.41 lines 4-6: Decisions of the Council will be posted on its website. A public list of policies and plans determined to be consistent and not consistent with the Act shall be maintained on the Council website and included in reports of the Council on its effectiveness in implementing the Act.

NMFS comment: If you anticipate listing Federal policies that are determined to be consistent and inconsistent with the Act, we would like to be included in the process of developing the lists relative to NMFS related Federal policies.

We have observed that many policies and recommendations found in the 2nd Staff Draft are no longer included in the 3rd Staff Draft. We appreciated the support and inclusion of the following policy in the 2nd Staff Draft and recommend it return to the 4th Staff Draft with the following additions:

2nd Staff Draft:

ER P2.

In order to commence protection of key species and habitats as identified in the Delta Plan, State and local agencies conducting covered actions subject to the Biological and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project (NMFS 2009) (specifically the actions contained in *Action Suite I.6: Sacramento River Basin Salmonid Rearing Habitat Improvements*) and the Biological Opinion on the Proposed Coordinated Operations of the Central Valley Project and State Water Project (USFWS 2008) (specifically the actions contained in *Component 4: Habitat Restoration*) shall implement the Reasonable and Prudent Alternative actions (RPAs) contained in those biological opinions unless:

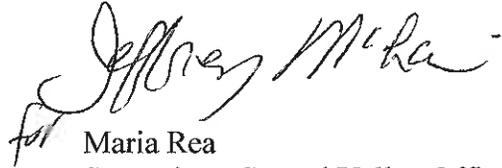
- ◆ U.S. Fish and Wildlife Service and National Marine Fisheries Service agree to alternative measures that provide equal or improved conservation benefits;
- ◆ the RPAs or specific measures are invalidated in a court of law, in which case only those measures that remain in effect would be required; and/or,
- ◆ new biological opinions supersede and replace these opinions, in which case those opinions will replace those named above.

NMFS comment: In addition to adopting the actions in Action Suite I.6, we recommend the Delta Plan adopt the actions from the "Yolo Bypass Actions" document, put together by the Yolo Bypass Interagency Working Group (CDFG/CDWR/NMFS/USFWS) June 2006, as part of the needed actions to restore the Delta (Appendix 2-C of the NMFS OCAP Biological Opinion). Resulting from this group is the plan for Lower Yolo Restoration Project, which should also be referenced, found at:

http://www.swampthing.org/Downloads/Lower-Yolo-NOP-IS_2011-0225.pdf

We want to reiterate our commitment to restoring the Delta and to providing technical assistance in the development of the Delta Plan. We look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey McRea". The signature is written in a cursive style with a horizontal line at the end.

for Maria Rea
Supervisor, Central Valley Office

cc: Copy to file ARN 151422SWR2011SA00255
PRD, Long Beach, CA