



United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay-Delta Fish and Wildlife Office
650 Capitol Mall, Suite 8-300
Sacramento, California 95814



JUN 19 2012

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

Re: Comments on the Sixth Draft Delta Plan

Dear Chairman Isenberg and Delta Stewardship Council:

The U.S. Fish and Wildlife Service (Service) would like to thank you for the opportunity to comment on the sixth draft of the Delta Plan. While it appears much progress has been made in the development of the Delta Plan, the Service has some remaining concerns from the comments we provided on the Fifth Draft Delta Plan. We offer the following general and specific comments on the Delta Plan.

In general, we feel clarification is needed in describing the relationship between the Delta Plan and Federal laws and regulations. In our joint letter with the California Department of Fish and Game (DFG) commenting on the 5th draft of the Delta Plan, we expressed concern that certain elements of the Delta Plan could hinder or even prevent permitting and/or implementing Habitat Conservation Plans (HCP) or Natural Community Conservation Plans (NCCP). 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 HCP/NCCPs. We 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. We reiterate our position that the consistency process under the Delta Plan is duplicative of the HCP/NCCP process and offers no additional benefit to the protection of the ecosystem. Again, we request that all permits issued under the California Endangered Species Act, Natural Communities Conservation Act, and the Federal Endangered Species Act be exempt. In addition, the adoption of an HCP/NCCP by a local jurisdiction and any activities covered under such HCP/NCCPs should also be exempt.

Also in our previous comment letter, we requested that the Delta Plan clarify that obtaining a consistency determination does not constitute compliance with other laws or regulations. Although the Delta Plan is intended to be a comprehensive management plan, we feel that because it would only be enforced through a passive appellate approach it could create a situation where project proponents may incorrectly assume compliance with all applicable laws and regulations. The Delta Stewardship Council (Council) appears to have attempted to address

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this concern by adding the requirement that project proponents whose covered actions are funded or approved by another agency provide “...a certification from that agency that the covered action complies with all applicable laws ... over which that agency has enforcement authority or with which that agency can require compliance.” We do not believe that this is a viable solution. The Service believes this creates a duplicative regulatory process that may burden applicants. We recommend the Council clarify what is expected by the project proponent to demonstrate they have complied with an agency’s laws and regulations when their covered action also includes approval or funding from other agencies.

We understand that once the Delta Plan is adopted, the Council plans to seek approval of the Delta Plan under the Coastal Zone Management Act which would then authorize the state to review certain Federal agency actions and could subject the Delta Plan consistency determination requirement to Federal actions. We are uncertain whether this is possible or necessary; however we appreciate the Council’s intention as stated in the Delta Plan to seek Federal agency input in determining the appropriate process. We look forward to working with the Council on this matter.

Finally, we appreciate that the Council recognizes the Federal government’s role in achieving the coequal goals for the Delta and is seeking Federal participation in the development and implementation of the Delta Plan. We look forward to working with the Council in defining the Federal agency roles in participating in a formal interagency implementation committee.

The following are our specific comments on the plan.

- On page 46 in the last sentence in “Federal Participation” sidebar, the incorrect acronym was used for San Francisco Bay Conservation and Development Commission. It should be BCDC, not BDCP.
- On page 90 within the box titled “Bay Delta Conservation Plan and Water supply Reliability,” the Delta Plan includes the Bureau of Reclamation as a “part(y) seeking permits pursuant to the BDCP...” This is inaccurate. It is our understanding that the Bureau of Reclamation intends to seek Federal Endangered Species Act compliance through the section 7 process with the Service and National Marine Fisheries Service.
- Also on page 90 in the same box and in other areas of the Delta Plan, the Delta Plan refers to the BDCP and related EIS/EIR schedule. This schedule has been updated; please revise accordingly.
- On page 132, in the second paragraph of the text box titled “Bay Delta Conservation plan and Delta Ecosystem Restoration,” the Delta Plan states “...the BDCP is a planning process intended to result in the issuance of permits...” This is likely considered pre-decisional language. Please revise to read: “...the BDCP is a planning process intended to result in a permit decision from DFG.....”

Again, we appreciate the opportunity to comment on the Sixth Draft Delta Plan and look forward

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to working with the Council in resolving these issues. A meaningful resolution of the issues is important to the Service, DFG, local Delta agencies engaged in HCP/NCCPs and the future of HCP/NCCP planning in the Delta. We look forward to working with the Council on these issues. If we can assist the Council in any way, please feel free to contact me at 916-930-5603.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Chotkowski". The signature is written in a cursive, slightly slanted style.

Michael A. Chotkowski
Field Supervisor