



*To promote the economic, social and environmental viability of Northern California by enhancing and preserving the water rights, supplies and water quality of our members.*

April 2, 2008

The Honorable Arnold Schwarzenegger  
Governor of California  
State Capitol Building  
Sacramento, CA 95814

RE: Northern California Water Association's Perspective on the Delta Vision Blue Ribbon Task Force Report

Dear Governor Schwarzenegger:

The Northern California Water Association, or NCWA, is an association of 52 Sacramento Valley water districts and water users. Approximately 60%, or 22 million acre-feet of water flowing into the Delta originates in the Sacramento Valley.

The Sacramento Valley is a rich mosaic of farmlands, cities and rural communities, refuges and managed wetlands for waterfowl and shorebird habitat, and meandering rivers and streams that support numerous fisheries and wildlife, including Chinook salmon and steelhead trout. The Sacramento Valley contains approximately two million acres of family farms that provide the economic engine for the region, provide a working landscape and pastoral setting, and serve as valuable habitat for migratory birds along the Pacific Flyway. In addition, the Sacramento Valley is habitat for half of the listed threatened and endangered species in California, and contains five national wildlife refuges and more than 50 state wildlife areas and other privately managed wetlands.

NCWA recognizes that the Delta faces a crisis on multiple fronts that has caused extreme concern to those who rely on the Delta and its resources. NCWA believes that the Delta Vision Blue Ribbon Task Force is satisfying a key and long-standing need for all of the factors that affect the Delta to be discussed in one public forum. The Task Force's proceedings concerning factors like invasive species, expanding coverage of exotic plants like *Egeria*, increasing concentrations of pollutants like ammonia that affect Delta fish, recent shifts in export pumping from the spring to the fall, in-Delta agricultural discharges and Delta land uses have addressed those factors as the relevant resources experience them – simultaneously and as a whole.

NCWA and its members have demonstrated their willingness to contribute their fair share toward the resolution of the State's water issues. NCWA members have been the primary source

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of water transfers that have helped the State to meet its water needs in prior dry years. NCWA's members overwhelmingly participate in the Sacramento Valley Water Management Agreement, by which Delta watershed interests and Delta export interests avoided the need for an acrimonious Phase 8 Bay-Delta hearing before the State Water Resources Control Board.

While NCWA believes that the Delta Vision Task Force is appropriately examining many factors that may be affecting the Delta's resources, NCWA and its members are increasingly concerned about the Task Force's continuing focus on initiating public trust proceedings concerning water diversions in areas upstream of the Delta. There is an existing and growing disconnect between expert presentations concerning the growing body of knowledge about the effect of in-Delta factors on Delta species and the Task Force's focus on encouraging legal and administrative actions that would target upstream water users for possible reallocation of their water rights and contracts to resource enhancement under the Task Force report's Recommendations 4, 5 and 7. Initiating such proceedings at this time would be a serious mistake, for several reasons.

First, it is unclear how such a proceeding would benefit Delta species whose decline triggered initiation of the Delta Vision process. Both the Delta Vision Ecosystem work group and the Central Valley Regional Water Quality Control Board have identified numerous in-Delta factors that have received relatively little attention – relative to the attention paid to the prospect of reducing upstream water diversions – but may have much more direct impacts on Delta natural resources like Delta smelt. NCWA urges the Delta Vision Task Force, the Delta Vision Committee and the Governor to focus on these factors and address the current emergency in the Delta more rapidly and effectively than a proceeding targeting upstream water users ever could.

Second, such a proceeding would be extremely complicated and lengthy and would consume substantial time, energy and resources that would be better spent elsewhere. As an initial matter, it would be very difficult to even identify and notify all of the "Delta watershed" parties who would have to be given an opportunity to defend their water supplies under basic due process principles. The need to hear, and allow for challenges to, all of the relevant evidence that any agency hearing such proceeding would need to consider would make any such proceeding extremely lengthy and contentious. The demands of such a proceeding would consume the California water community and inevitably overwhelm efforts by interested parties to move forward together to preserve and enhance the Delta. It is indicative that the desire to avoid such a proceeding – a Phase 8 hearing before the State Water Resources Control Board – drove NCWA's members and Delta export interests to negotiate and sign the Sacramento Valley Water Management Agreement.

Third, even if such a proceeding respected water-right priorities, it could present serious financial risks to the State. NCWA's members have held and used their water rights and contracts for decades, and therefore have water-right priority over newer water uses. As Justice Ronald Robie stated in his 2006 opinion in *El Dorado Irrigation District v. State Water Resources Control Board*, "water right priority has long been the central principle in California

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water law.” Any proceeding involving Delta watershed uses must respect water right priorities. To the extent that any such proceeding would seek to depart from such priorities in the name of

the public trust, water users’ impacts on Delta resources would have to be proven with evidence. In its 1981 decision in *State of California v. Superior Court (Fogerty)*, the California Supreme Court stated that public trust resources may be used “for any purposes that are not incompatible with the public trust” and the State must compensate property owners if it forces property owners to abandon improvements that are not incompatible with the public trust. Accordingly, unless it is proven with evidence that Sacramento Valley water uses are incompatible with the public trust, reallocation of water from those uses could present the State with claims for takings compensation that would dwarf those made in the *Paterno* case following the 1986 flood.

NCWA also remains concerned about the lack of attention that the Delta Vision Task Force has paid to area-of-origin concerns that already are reflected in California law. A necessary component of any “Delta conveyance” solution therefore must be adequate area-of-origin protections.

Finally, NCWA’s members also oppose proposals to centralize California’s water management in an agency that would charge water users fees to fund itself and physical water-supply improvements. “Beneficiary pays” is a key principle for the funding of any regulatory agency or any significant improvement through fees. Without proof that Sacramento Valley water users would benefit from a Delta agency’s actions and projects, there would be no basis for that agency to charge upstream water users any fees. Attempting to redirect impacts from Delta operations by imposing additional burdens on upstream water right users is not a solution.

While NCWA commends efforts to address the Delta crisis, NCWA encourages a process that fosters cooperation and discourse among the various interests involved in the development of long-term Delta solutions, versus a course of action that would destabilize such cooperative efforts, and would surely precipitate a return to the strife and divisive gridlock that characterized earlier eras in California’s water history. As it has in the past, NCWA is willing to play a constructive role in achieving collaborative, durable solutions to these issues.

Sincerely,



L. Ryan Broddrick  
Executive Director

Cc: Phil Isenberg, Chairman, Delta Vision Blue Ribbon Task Force  
John Kirlin, Executive Director, Delta Vision Blue Ribbon Task Force