

**Testimony of Phillip L. Isenberg
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**Before the
Subcommittee on Water and Power
Committee on Natural resources**

**Hearing on
“Extinction is Not a Sustainable Water Policy: The Bay-Delta Crisis and the Implications
for California Water Management”**

Good morning Chair and Members of the Subcommittee. My name is Phil Isenberg, and I currently chair the Governor’s Delta Vision Blue Ribbon Task Force. You asked me to discuss the general history of water disputes in California, and the role of the Bay-Delta in those battles. It is a pleasure to be here.

The Sacramento Bay-Delta is a key focal point for any discussion of California water policy. Although the Delta is a unique place, with unique problems, it is the demands placed on the Delta by the rest of California --- for water and for environmental protection --- that drives your hearing today. While your current focus is on the falling number of Delta smelt, a protected species, battles in and about water and the Delta are nothing new.

**A Brief History of Water Development in California: Mining for gold, flood control,
agricultural levees and water exported for use elsewhere.**

When California became a state in 1850, our small population was mostly concentrated in San Francisco and the Sacramento region. Discovery of gold near Sacramento fueled the first of our population spurts, and one of the most important of our water battles.

By the mid-1860s, thousands of miles of privately-developed canals and water ditches had been constructed to assist in the mining of gold. At the same time, residents in Sacramento discovered to their dismay that living at the confluence of the Sacramento and American rivers was a prescription for being flooded. As miners built canals, residents along the Sacramento River started to build levees to protect against floods.

It takes no genius to figure out that building a levee to protect one small community might move the flood threat across the river, or downstream to another, less protected community. The battle of small towns, and individual farmers and property owners to protect their own land, continued for many years.

At the same time mining debris was pouring out of the foothills, and appearing on the board plains of the Sacramento Valley. This debris started to fill parts of the river system, increasing flood threats, and irritating downstream residents.

Add the use of large hydraulic mining equipment to the equation, and you see the parameters of the first major struggle over water in the northern part of California. State government intervention soon occurred, as did the start of federal intervention

To complicate things, individual farmers in and near the Delta began to build their own system of levees, allowing the development of agriculture in the Delta. The legacy of this activity remains today, with many Delta islands far below water level and their levees out of compliance with current safety requirements. Some critics note that government aid to restore breached levees and flooded islands costs more money than the value of the land being protected.

If mining debris, flood threats, and the growth of Delta agriculture was not enough, as early as the 1870's, Californians contemplated plans to move water from the Sacramento River to the San Joaquin Valley. In the early 1900's, several reports and investigations culminated in the first State Water Plan.

You know the history of what would become the Central Valley Project. In 1933 the California Legislature approved the project, but the Great Depression made it impossible to be financed by the state alone. The federal government provided the funds through the Emergency Relief Appropriation Act—the first of many controversies surrounding this project.

The Central Valley Project provided much needed jobs in the Depression Era, and the water it eventually delivered helped to maintain California's status as a prime agricultural producer. Likewise, the State Water Project provides agriculture and urban areas with a significant proportion of their water. The bulk of the urban population that depends on Delta water supplies are in just nine of the State's 58 counties—but they are the most populous counties—representing 25 million of the 36 million people who live here. These counties get anywhere from approximately 20 percent to 50 percent of their water supply from the Delta.

Two other historic battles over water should be noted. The effort of the City of Los Angeles to move water from the Owens Valley has become legend. Most notable, this dispute has festered for almost 100 years, and led to an impressive modern effort to save Mono Lake (in the Owens Valley), limit the amount of water taken by Los Angeles, and ratify the legal principal that environmental protection is one of the foundations of water policy in California.

Another hoary political battle was the effort of the City and County of San Francisco to dam Hetch Hetchy, and transfer much of the water directly to the San Francisco Bay Area. John Muir, America's preeminent symbol of environmental protection, led and lost the battle to save Hetch Hetchy (located near Yosemite, and often called equal in beauty and environmental values).

I mentioned these two regional battles only because they tend to color the water debates in California to this day, and their history is often cited by one interest or another to illustrate various alleged sins and the imperfect solutions that followed.

The dream of endless water supplies meets the reality of environmental protection.

California battles about water have, over many years, led to an array of statutes, both federal and state, and endless court decisions that compose what the California Water Atlas called “Legal Constraints” (see pp 64-66) on water use. Equal in importance to the physical construction of the Central Valley Project and the State Water Project has been the growth of environmental protection as one mark of modern California society.

A simple listing of some of the major environmental laws or court decisions affecting water is instructive:

- Article X, section 2 of the California Constitution of 1878 (requires that all uses of water in California be reasonable and beneficial [1928 amendment])
- Public Trust Doctrine (dates back to ancient Rome; not specifically in statute but recognized by tradition and court cases)
- Area of Origin Laws (in various sections of the California Water Code dating back to 1927)
- Migratory Bird Treaty Act of 1918
- Wild and Scenic Rivers Act of 1968 (federal)
- National Environmental Policy Act of 1969
- Porter-Cologne Water Quality Act of 1969
- California Environmental Water Quality Act of 1970
- California Wild and Scenic Rivers Act (1972)
- Endangered Species Act of 1973 (federal)
- Safe Drinking Water Act of 1974 (amended in 1986 and 1996)
- California Endangered Species Act (1984)
- Natural Community Conservation Planning Act (state) (1991)
- Central Valley Project Improvement Act (1992)
- Delta Protection Act of 1952 and the Delta Protection Act of 1992
- National Audubon Society et. al. vs. Superior Court of Alpine County/Department of Water and Power of the City of Los Angeles (Mono Lake Decision [1983])
- United States vs. State Water Resources Control Board (Racanelli Decision [1986])
- Natural Resources Defense Council vs. Rogers, et. al. (The San Joaquin River Decision regarding Friant Dam [2006])
- State Water Resources Control Board Cases (relates to State Water Resources Control Board’s Decision 1641 regarding Delta water quality [2006])

There are several pending lawsuits in the courts today that may also have a profound impact on water supply and delivery in the State, including a challenge to the State Water Project’s ability to continue pumping water because it may not have permits to legally take fish at the pumps.

As a practical matter, the desire of the American and California public to ‘protect the environment’ inevitably means that water use may be limited or restricted to achieve that goal.

A Question of Supply and Demand: Limited quantities of water; unlimited demands.

For much of our history, California's assumed that water was available in unlimited supply of water, if we could just move it from one place in the state to another. Something about this is ironic, since California is classified as an arid region of the world, and shortage of water is nothing new. Let me outline a few of the basic facts of our water supply.

Our available water supply and the proportion going through the Delta

In California, our major supply of water is from rain and snow that falls north of the Delta, and a relatively small amount is imported from other states. The major demand for water is south of the Delta.

Please remember these numbers: 330, 200 and 145.

These figures represent the total water available in the State in wet, average and dry water years. These are millions of acre feet of water.

The 2005 California Water Plan, our state's ongoing water strategy document, likes to talk about water supply in three categories: wet years (1998 is the example), an average water year (2000 is the example) and a dry water year (2001 was selected).

In a wet year, about 330 million acre-feet of water pours into California from snow, rain and imports from other states and about 15 percent of that amount eventually flows through the Delta.

In an average water year, about 200 million acre-feet comes into California, and roughly 13 percent of that flows through the Delta.

In a dry water year, about 145 million acre-feet of water comes into the State and about 9 percent of that flows through the Delta.

When we discuss the Bay-Delta it is useful to remember the relatively small proportion of total state water that flows into the Delta: 15 percent in a wet year, 13 percent in an average year and 9 percent in a dry year.

The Delta is an important part of the State water supply, but it is not the total amount of the state's total water supply. It is important, especially in a time of crisis, not to overemphasize an aspect of the situation if we are to make wise and useful choices.

For detailed figures see the charts on pages 18 and 19 of the *Status and Trends of Delta-Suisun Services* (2007), published by the Department of Water Resources.

Where does the water that flows to the Delta actually go?

Whether it is a wet, average or dry water year, the water use *in the Delta* remains remarkably the same: about 1.7 million acre-feet.

Astonishing to some, even in average or dry water years, the amount of water exported from the Delta increases over what is exported during wet years. In wet years, about 4.8 million acre-feet of water is exported from the Delta; in average and dry years, water exports are about 6.3 million and 5.1 million, respectively.

After water that comes to the Delta is taken by in-Delta users, or exported to urban and agricultural water interests, some always flows to the San Francisco Bay and the ocean. In wet years that amounts to about 43.4 million acre-feet, in an average year about 18.1 million acre-feet and in a dry year, about 6.9 million acre-feet.

How is water exported from the Delta used?

The simple answer is that we all do, in one form or another. The typical distinction is between urban water uses, agricultural water uses, and environmental water uses. At the present time I can find no current, published data that breaks down how exported water from the Delta is used, but we can look at statewide water use for some insight.

Statewide urban water uses change little regardless of rainfall or snow melt. Urban users receive an average of 7.8 million acre-feet in wet years, 8.9 million acre-feet in average water years and 8.6 million acre-feet in dry years.

Statewide agriculture uses are significantly higher than total urban use. In a wet year, agricultural use is about 27.3 million acre-feet; in an average year it is 34.2 million acre-feet and in a dry year, it is 33.7 million acre-feet. Again, there is relative stability of exported agricultural water in wet, average and dry years.

Statewide environmental water, if you accept the much disputed position that everything left over is for the environment, does not appear to be protection against reductions. Add together instream flows, wild and scenic river flows, Delta outflow and managed wetlands water use and you find the following: In a wet year, the environmental use is 59.4 million acre-feet. In an average year, it is 39.4 million acre-feet; and in a dry year it is 22.5 million acre-feet.

Attached to this presentation is Table 1-1 from the California Water Plan Update, 2005, illustrating these facts. One conclusion seems inescapable: we have developed a water transfer system that fundamentally protects urban and agricultural users in dry years. It is a serious question --- and the Delta smelt dispute illustrates this point --- whether this can continue to occur.

If we don't build dams and water facilities, how do new people and businesses get their water?

California has developed all the best hydrologic resources. There is a dam in almost every location where it is feasible to build one. The sites left for building dams are ones that have very high environmental impacts (like Auburn Dam), or have a very high cost (like off-stream reservoirs). Therefore, in recent years, there have been few major dams or water projects constructed in California. Whatever the cause of not building new water projects, an interesting trend has developed in Southern California. Water interests there say that they have increased their population by 3 million over the past 15 years, but are still using the same amount of exported water from the Delta. Although figures differ, many suggest that conservation, local sources, and water system efficiencies have made this possible.

The Delta Vision. The Governor's Delta Vision Initiative involves far more than our own Delta Vision Task Force. I have attached to this statement a copy of his Executive Order, a list of the members of the Task Force, and our charging document from Resources Secretary Mike Chrisman, and finally, a flow chart of our work, and that of about 14 other entities working on Delta-related issues.

The Task Force is charged to give their independent views regarding a vision for the Delta and we intend to do that. We have two work products: in November of this year we must present a vision—a Delta vision—that takes a long perspective of the Delta and not simply a vision of the operational details. Once the vision proposal is presented to the Delta Vision Committee, chaired by Secretary Chrisman, they present it to the Governor and he will do what he chooses with it. By the end of 2008, the Task Force will develop a strategic plan to implement the vision; after that the Task Force will be out of business.

To accomplish this, the Task Force is working with a 43 member Stakeholder Coordination Group, appointed by Secretary Chrisman, who advises and makes recommendations to us. Our focus is to look at the major subject areas of the Delta:

- the environment, including aquatic and terrestrial functions and biodiversity;
- land use and land use patterns, including agriculture, urbanization, and housing
- transportation, including streets, roads, highways, waterways, and ship channels
- utilities, including aqueducts, pipelines, and gas/electric transmission corridors
- water supply and quality, municipal/industrial discharges and urban and agricultural runoff
- recreation and tourism, including boating, fishing and hunting
- flood risk management, including levee maintenance
- emergency response, and local and state economies

In the short period of time we have been working a few themes are coming into sharper focus.

First, the Delta is an important part of the water puzzle of the State; it is not the entire puzzle. How could it be when less than 20 percent of all the water available to us in any given year flows through the Delta?

Second, water is in limited supply and short of a miracle, or some unanticipated advance of science, that is unlikely to change. Which means that all of us have to live with limits on our use of water.

Third, California seems to view a promise to deliver water as a magically enforceable contract --- even if the water is not available. Reality seems to be catching up with this notion.

Fourth, the Delta is a mess. The ecosystem is deterring, and nothing in the past 30 years has given much hope of rapid improvement.

Fifth, if you add up all the federal and state statutes, water contracts, lawsuits and settlements, you rapidly see that every section of society has been promised or guaranteed whatever they want. Since environment protection has also received protected status, it does not take a genius to figure out that all of these promises for endless supplies of water --- cheap water --- cannot be kept.

The Task Force has been told by every interest that the Delta is in trouble, and there is a growing risk of catastrophic failure to the Delta, whether by earthquake (the most likely threat), global warming, continuing levee failures and land subsidence or urban encroachment. The lessons learned from Hurricane Katrina, and other research, suggests that catastrophic failure would not be good for the Delta ecosystem, the State's economy, or the water exported either.

If we should not continue to promise everything to everyone, then some tough choices have to be made about water use and the Delta. What are the most important statewide interests in the Delta? Can they be identified? And can we avoid the current practice of pretending to honor the 'want list' of every interest group, geographic region and economic group?

Finally, a major problem with the status quo is the almost total lack of trust that all the aging water warriors have with each other. There is nothing new about the lack of trust—the North doesn't trust the South, the South doesn't trust San Diego—and on and on. The absence of trust means it is almost impossible to take an area like the Delta and manage it in a coherent way that tries to answer—whatever the priorities are—the issues or solve the problems because we cannot delegate authority to anyone to do that.

The America tradition of having divided government, and allowing every level of society to 'have a piece of the action', means that as far as the Delta is concerned, everyone is involved; no one is in charge.

The choices that we need to make over the course of this year, next year and the coming decades, are difficult. Many of those choices will be unpopular, and challenge deeply-held convictions about how the world ought to be. If we do not make these difficult choices, then extinction—whether of a species or a way of life—may be the water policy of California.

Thank you again for inviting me to speak today.