

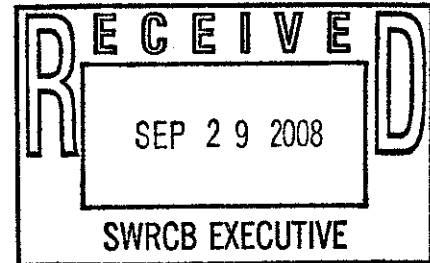


*To promote the economic, social and environmental viability of Northern California by enhancing and preserving the water rights, supplies and water quality of our members.*

September 29, 2008

*Via Email and First-Class Mail*

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 "I" St., 24<sup>th</sup> Floor  
Sacramento, CA 95814  
commentletters@waterboards.ca.gov



**Re: Comments on Request for Written Input on Factual Issues Regarding the Bay-Delta**

Dear Ms. Townsend:

The Northern California Water Association (NCWA) appreciates the opportunity to comment on the State Water Resources Control Board's (SWRCB) Request for Written Input on Factual Issues Regarding the Bay-Delta, dated August 29, 2008 (Request). As the SWRCB knows, NCWA is a non-profit organization representing members that irrigate approximately 900,000 acres of farmland and provide water for wildlife and waterfowl habitat throughout the Sacramento Valley. NCWA's mission is to protect and enhance water rights, water supplies and the environment within the Sacramento Valley.

The letter provides NCWA's initial written input regarding the Request. This input is limited to the significant due process concerns raised by the Request, and NCWA reserves the right to provide more substantive input on relevant factual matters at an appropriate time in the future. As some speakers noted during the SWRCB's September 17, 2008 workshop regarding southern Delta salinity standards and San Joaquin River flow objectives in the 2006 Bay-Delta Plan, the Request raises very serious due process concerns. First, the Request fails to outline the procedures for conducting the evidentiary hearing contemplated by the Request, and the specific issues and decisions that would be the subject of any such proceeding. Instead, the Notice obtusely refers to "an evidentiary hearing beginning in November 2008 on a number of critical factual issues concerning the Delta's ecology." As a practical matter, NCWA members cannot prepare adequately to participate in a November 2008 evidentiary hearing given the vague description of the hearing's scope contained in the Notice. As the SWRCB is well aware, evidentiary hearings of this type are highly technical in nature, and in order to participate meaningfully in such hearings, it is necessary to develop testimony and strategies with the assistance of technical experts. The Notice's reference to "factual issues concerning

the Delta's ecology" is so general that it provides no opportunity for substantive consultation with NCWA's technical experts.

The Request also notes that one element of the SWRCB's Strategic Workplan for the Bay-Delta is a "comprehensive review of the Bay-Delta Plan, water rights, and other requirements to protect fish and wildlife beneficial uses and the public trust." The Request further states that the information and findings from the evidentiary hearing could help guide "changes to the Program of Implementation for the Bay-Delta Plan." Finally, the Request suggests that the evidentiary hearing will consider the "impacts of water pollution and diversions on the Bay-Delta's ecology." Accordingly, it appears that the contemplated evidentiary proceeding will necessarily implicate water rights.

If that is indeed the case, the Request fails to inform water right holders of any intended actions or decisions that would result from the contemplated evidentiary proceedings, which jeopardizes the legitimacy of this entire "fact-finding" process. Similarly, the Request fails to outline the necessary procedural protections that would otherwise apply in a quasi-adjudicatory proceeding, starting with the procedures outlined in the SWRCB's regulations governing such proceedings. (See 23 C.C.R. §§ 648 *et seq.*) Without knowing specifically the decision or determination that would ultimately be the subject of this fact-finding effort, and the procedural protections that will apply in any evidentiary proceeding, it is premature to develop a laundry list of factual issues that the SWRCB may consider in the broad context of the Bay-Delta.

As noted during the above-referenced September 17, 2008 SWRCB workshop, it is also premature to embark on this undefined fact-finding effort, when the SWRCB is presently commencing proceedings for the SWRCB's triennial review of the 2006 Bay-Delta Plan, and a separate review of the southern Delta salinity standards and San Joaquin River flow objectives contained in the Plan. The SWRCB should allow those proceedings to conclude before undertaking on other proceedings that would undoubtedly interrelate, and potentially lead to conflicting or inconsistent results. In addition, it is highly questionable whether the SWRCB has the necessary staff and resources to hold said Bay-Delta Plan proceedings, and some as yet undefined evidentiary proceeding, and conduct those proceedings in an efficient and timely manner.

Based upon the foregoing, NCWA recommends that the SWRCB delay the commencement of the evidentiary hearing referenced in the Notice until such time as the SWRCB has specifically identified the scope and extent of such hearing and only after the SWRCB has concluded its current proceedings on the 2006 Bay-Delta Plan. NCWA appreciates your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Danna", written over a horizontal line.

Steve Danna  
NCWA Chairman