



*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.*

March 12, 2008

Via Email and Hand Delivery

Ms. Diane Riddle  
Staff Environmental Scientist  
Hearings and Special Programs Section  
Division of Water Rights – Records Unit  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95812

**RE: Comments on Workshop to Receive Information on Development of a Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta**

Dear Ms. Riddle:

The Northern California Water Association (NCWA) appreciates the opportunity to comment on the State Water Resources Control Board's proposed development of a Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta (Delta), as described in SWRCB Resolution No. 2007-0079, and in the State Board's February 27, 2008 notice for the above-referenced workshop. As you know, 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.

While NCWA believes that the State Board can and should play a role in the development of long-term solutions for the Delta, NCWA believes that certain elements of the proposed Strategic Plan, if pursued by the State Board, would have disastrous consequences for water users, the environment and the citizens of the State of California. Simply stated, the State Board must decide between a course of action that will continue to foster cooperation and discourse amongst the various interests involved in the development of long-term Delta solutions, versus a course of action that will destabilize such cooperative efforts, and will surely precipitate a return to the strife and divisive gridlock that characterized earlier eras in California's water history.

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Specifically, NCWA strongly objects to the inclusion of item 4 in Attachment B to the Workshop Notice, "Actions to Be Evaluated and Further Defined in the Strategic Workplan." Item 4, if adopted, would have the State Board "consider a proceeding to ... protect public trust resources and balance competing demands for water in and from the Bay-Delta." This item is objectionable on several legal and policy grounds.

First, item 4 is vague and ambiguous; it provides no indication of the scope or direction of the proposed action, the specific nature of the "public trust resources" to be addressed, the type of "proceeding" being considered, or the standards under which competing demands would be "balanced."

Second, to the extent that item 4 contemplates a water right proceeding aimed at shifting the burden of Delta protection to upstream water right holders pursuant to the public trust doctrine, it is contrary to law. It has been and remains NCWA's position that any effort to find long-term solutions for the Delta must, as a matter of law, avoid the redirection of adverse impacts of Delta and export interests to water users within the Sacramento Valley, and that the water right priority system, not the public trust doctrine, is the key mechanism for administration of water rights in the present context.

Third, a public trust proceeding as proposed in item 4 would violate the holding of the Court of Appeal, Third Appellate District, in *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 118-119 ("*Racanelli*"), in which the court held that State Board Decision 1485 was "seriously flawed" due to the State Board's decision to combine its water quality and water rights functions in a single proceeding. A public trust proceeding as described in item 4 would do just that. If the State Board determines that the various regulatory requirements applicable to the Delta must be re-visited, the appropriate starting point is reconsideration of the water quality objectives contained in the current Water Quality Control Plan for the Bay-Delta. Commencement of the proceeding described in item 4 before the State Board has reviewed, and as necessary revised, these water quality objectives would violate the letter and spirit of *Racanelli*.

Finally, a decision to pursue item 4 would run contrary to prior decisions of the State Board adopted to promote settlement of Delta water right controversies. In Order WR 2001-05, the State Board ordered that Phase 8 of the Bay-Delta Water Rights Hearing be stayed "to allow water right holders whose rights might be amended after Phase 8 to negotiate toward a mutual settlement of their responsibilities to meet the flow-dependent objectives in the 1995 Bay-Delta Plan." (WR 2001-05, p. 3). The State Board subsequently dismissed the Phase 8 Hearing based on progress made in achieving a settlement involving upstream water users (including NCWA members) and export water users. The various parties to the Phase 8 settlement are continuing their efforts to implement the settlement. In the meantime, by agreement, the flow-dependent objectives of the water quality control plan for the Bay-Delta are being fully met by the United States Bureau of Reclamation and the California Department of Water Resources. (*Id.*)

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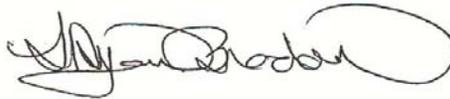
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In summary, unlike the other actions contemplated in Attachments A and B of the Workshop Notice, item 4 would threaten the considerable progress being made toward a long-term Delta solution. Pursuing item 4 would completely unravel and destabilize cooperative efforts like the Phase 8 settlement, the San Joaquin River Agreement, and other on-going processes involving the development of long-term Delta solutions. The State Board should decline to go down the tortuous path that item 4 would lead to, and which would likely require many years if not decades to conclude.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Ryan Broddrick". The signature is fluid and cursive, with a large loop at the end.

L. Ryan Broddrick  
Executive Director