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Committee on Natural Resources

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"The Immediate Federal and State Role in Addressing Uncertain Water Deliveries for California and the Impacts on California Communities"
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Good morning, Chair and Members of the Subcommittee. My name is Richard M. Frank. I am the Executive Director of the California Center for Environmental Law & Policy at the University of California at Berkeley's School of Law. I have been appointed by California Governor Arnold Schwarzenegger to serve as a member of the Governor's Delta Vision Blue Ribbon Task Force. It is in this latter capacity that I appear before you today, on behalf of the Task Force.

You have asked me to discuss the work of the Delta Vision Task Force, particularly as it relates to immediate solutions to bring more water supply certainty to the water crisis currently confronting California. You have also asked me, as a representative of the Task Force, to share my perspective on several issues that pertain to the recent court orders affecting federal and state water project operations in California's Sacramento-San Joaquin Delta. It is a pleasure to be here.

The Sacramento-San Joaquin Delta is a key focal point for any discussion of California water policy. Although the Delta is a unique place, with unique attributes and problems, it is the demands currently placed on the Delta by the rest of California--for both water and environmental protection--that drive your hearing today. The subcommittee's current focus is upon water operations and water supply reliability in and affecting the Delta. However, battles over water and the Delta are nothing new; indeed, they have been ongoing for almost all of California's 152-year history. (Delta Vision Task Force Chair Phillip L. Isenberg discussed that history in some detail when he testified before this Subcommittee in the summer of 2007.)

A Brief History of the Delta Vision Process

In September 2006, Governor Schwarzenegger signed Executive Order S-17-06. That Executive Order recognizes the inherent value of California's Sacramento-San Joaquin Delta—the largest estuary on the West Coast of North and South America--and the formidable risks to the Delta's future. The Executive Order creates the Delta Vision process to "develop a durable vision for sustainable management of the Delta" that can "restore and maintain identified functions and values that are determined to be important to the environmental quality of the Delta and the economic and social well being of the people of the state."

Four distinct but related entities were established under the Executive Order:

- The seven-member, independent Blue Ribbon Task Force, of which I am a member. The Task Force is charged with two discrete tasks: 1) developing a Delta Vision, as described above, consisting of the Task Force's independent "findings and recommendations on the sustainable management of the Delta," by January 1, 2008; and 2) formulating a Strategic Plan to implement the Delta Vision, due by October 31, 2008.
- A 43-member Stakeholder Coordination Group, including local government officials, a diverse set of Delta stakeholders, scientists, engineers, and members of the public, to advise the Delta Vision Task Force.
- A Delta Science Advisory Board, selected from a wide range of scientific disciplines, to provide independent review and advice to the Delta Vision Task Force on technical, scientific and engineering matters.
- A Delta Vision Committee, consisting of California's Secretary for Resources as Chair, and the Secretary for Business, Transportation and Housing; the Secretary for Food and Agriculture; the Secretary of the California Environmental Protection Agency; and President of the California Public Utilities Commission, as members. The Executive Order directs the Task Force to submit its recommended Delta Vision and Strategic Plan to the Delta Vision Committee and to the Governor.

(A copy of Governor Schwarzenegger's September 2006 Executive Order is attached to this testimony, as an appendix to the Delta Vision report, and has been furnished to subcommittee's staff.)

The Governor's Executive Order specifically directs the Delta Vision Task Force to assess and make policy recommendations regarding the following Delta uses and resources:

- 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.

The Governor appointed the members of the Delta Vision Task Force in early 2007, and the Task Force began an ambitious set of public hearings in March 2007 that continued through November 2007. In the course of its deliberations, which developed over 14 days of public meetings, the Task Force received oral testimony and written statements from scores of public officials, water districts, business groups, agricultural interests, environmentalists and private citizens. We also received regular briefings from the Delta Science Advisory Board. Finally, the Task Force heard testimony and received reports from the Stakeholder Coordination Group, a dedicated group of men and women who themselves held 13 days of meetings to develop and refine principles, two emerging visions for the Delta, and a list of proposed near-term actions.

All of this information greatly assisted the Task Force, and substantially informed its deliberations. Much of the information gleaned through this public process is reflected in the Delta Vision adopted by the Task Force late last year (see below). We are confident that this information will be similarly critical to the Task Force's formulation of its Strategic Plan.

As part of this process, the Delta Vision Task Force's staff coordinated with and built upon many of the ongoing Delta planning efforts being carried out by various federal, state and regional agencies. These include the Bay Delta Conservation Plan, the Delta Risk Management Strategy, the Suisun Marsh Plan, and several others. It is my understanding that the Subcommittee will be receiving testimony regarding these other, related processes from other witnesses.

The Task Force's Vision for the California Delta

As noted above, the Task Force was charged with giving its independent views regarding a vision for the Delta. We did that, in the form of a Delta Vision that was adopted by unanimous vote of the Task Force, on November 30, 2007. (A copy of the Task Force's full report, *Our Vision for the California Delta*, is attached to this testimony and has been made available to members of the Subcommittee.)

The Task Force's Delta Vision is intentionally framed in broad terms—in the form of overarching principles that we believe should serve as the foundation for a comprehensive set of solutions to the multifaceted ills currently plaguing the Delta. While the Task Force fully understands the need for more specific policy recommendations to provide California decision-makers, we believe the time to formulate and transmit those details is through the Task Force's second, prescribed task—the strategic planning process—that it will undertake in 2008. (See below.)

Significantly, there is also an important temporal feature of our Delta Vision: we presented our vision in the form of a long perspective and proposed set of long-term solutions to the Delta's problems, rather than simply a series of short-term operational details.

The heart of the Task Force's Delta Vision consists of twelve "integrated and linked" recommendations to California policymakers. We have framed the Vision in this form to

underscore our strong view that picking and choosing among these recommendations is a prescription for failure. Rather, these recommendations must be viewed as a comprehensive set of steps that must all be pursued concurrently to achieve ultimate success.

Space does not permit a full summary of the 12 recommendations set forth in Task Force's Delta Vision. Those recommendations are set forth in full in the Task Force report, *Our Vision for the California Delta*, attached to this testimony. I commend them to the Subcommittee members and staff. Summarized below, however, are some of the key points:

- **There are two co-equal priorities for the State.** The Task Force recommends two co-equal priorities: protecting and improving the Delta ecosystem, and providing a reliable water supply for Californians. We believe this mirrors the views of California citizens (and most water experts) and also represents sound public policy. Conflicts between these goals should be resolved by applying the state constitutional principles of public trust and reasonable use; both are long-standing cornerstones of California water and natural resources law.
- **Conservation and water system efficiency must start now.** We recommend that a major statewide water conservation program should begin now. The only way to develop new water in the short run is to encourage major conservation and system efficiencies, as recognized by California's *State Water Plan Update 2005*. We know all the interest groups will continue to debate vociferously storage and conveyance issues, but 10 to 15-year battles produce not one drop of water in the short term.
- **A revitalized Delta ecosystem will require reduced diversion of water—or, at least, significant changes in the patterns and timing of those diversions--whether upstream, used in the Delta, or by way of exports.** We see no way to improve the Delta ecosystem without eventual reductions in Delta water exports, changes in the pattern and timing of those diversions, or both. This recommendation is premised on the clear view that those who divert water before it reaches the Delta (much of Northern California and the Central Valley), and those who use water in-Delta, must share responsibility for resolving this problem. Environmental problems in the Delta are not caused only by Valley agriculture or exports to Southern California.
- **Dams and water conveyance improvements are needed.** We recommend additional water storage facilities (above or below ground) in California, and further recommend improvements to the Delta water delivery system. While the Task Force did not identify particular sites or facilities as part of its Vision Statement, we have recommended that state officials commence an immediate review of a dual conveyance facility.
- **A new Delta governing body is essential.** The Task Force recommends a new Delta governing authority, with the power to approve, modify or reject spending for improvements in the Delta ecosystem, improvements to Delta water conveyance facilities, etc. We further recommend that this body have the authority to review, approve or limit Delta water exports.
- **New legal status for the Delta is required.** We recommend that the State of California confer new legal status to the Delta. This elevated legal status is designed both to complement the Task Force's other recommendations, and to give a way to help define what the unique environmental resource that is "the Delta" is, or might become, for Californians.

- **Discouraging inappropriate urban development is essential**. The Task Force recommends that the state take concrete steps to discourage inappropriate development in the Delta. We see no way to effectively improve the Delta ecosystem, or to protect the current Delta water export system (or any new water export system), without putting some rational limits on inappropriate urban development. Not taking this step will have the unacceptable consequence of putting new Delta residents in harm's way, without the level of flood protection necessary to guarantee their health and safety.
- **These steps have to start concurrently**. The Delta Vision speaks repeatedly of the need to link all the steps identified above; all members of the Task Force embrace this point strongly.
- **Near-term actions are necessary.** This particular Task Force recommendation is of particular significance to the Subcommittee and this hearing, which are focused on immediate solutions to Delta water supply and related issues. As noted above, most of the recommendations contained in the Delta Vision are long term in nature, and will take many years to implement. At the same time, the Task Force recognizes there are a number of clear and present dangers currently confronting the Delta ecosystem and the water delivery system upon which approximately 23 million Californians depend. Accordingly, the Delta Vision also contains a number of proposed, near-term actions which we recommend California policymakers implement immediately. Specifically, we propose acquiring land for flood control, discouraging development on flood-threatened lands, setting state standards for levees, immediately protecting the current Delta water export system and several, targeted Delta ecosystem improvements. We recommend immediate action as the only way to help move to more controversial steps, and achieve long term results.

Formulating and Adopting a Strategic Plan to Carry Out the Delta Vision

Within the next few days, my Task Force colleagues and I will begin work on the second phase of the assignment contained in Governor Schwarzenegger's Executive Order: to formulate and adopt a Strategic Plan, a comprehensive program for implementation of the Delta Vision summarized above.

To accomplish this objective, the Task Force will continue working the 43-member Stakeholder Coordination Group appointed by Secretary for Resources Mike Chrisman. While we are still finalizing our work plan for this strategic planning process, we have tentatively outlined five "work areas," based upon our adopted Delta Vision document and the Governor's Executive Order. These five work areas are:

- Water for California (including water management, uses, and practices and water quality);
- The Delta ecosystem as an estuary (includes water quality considerations);
- The Delta as a unique and valued place, with increased legal recognition and protection (includes levees, flood protection, land use, recreation, transportation, and emergency management);
- Governance and strategic financing; and
- Other work (as needed to respond to the Governor's Executive Order).

Over the next few months, the Task Force will also be reviewing information assessing how a dual conveyance system, as a preferred direction, can help focus our understanding of the optimal combination of through-Delta and isolated facility improvements. Criteria we are considering include these performance measures:

- Water supply reliability;
- Seismic and flood durability;
- Ecosystem health and resilience;
- Water quality; and
- Projected schedule, cost and funding.

The Task Force may also identify additional performance standards for such a system.

The Task Force has also commenced a process to assemble available information on design features, cost, and performance of alternative conveyance options against specified criteria, in the expectation that this information may allow selection of a preferred alternative by June 2008.

Conclusion

The recommendations the Delta Vision Task Force has adopted to date, and those that it will formulate in 2008 in developing its Strategic Plan, are controversial and will not please everyone. But we believe they are essential if the two, overarching goals of the Task Force are to be achieved: revitalizing the Delta ecosystem and providing a reliable water supply for Californians.

There is one point upon which all Task Force members, and everyone who has to date appeared before us, agree: the status quo for the Sacramento-San Joaquin Delta is unacceptable and unsustainable. Bold action is required, and required now.

On behalf of my Delta Vision Task Force colleagues and myself, thank you for the opportunity to testify before you today.