



Public Comment  
Bay-Delta Fact Finding Issues  
Deadline: 9/29/08 by 5:00 p.m.

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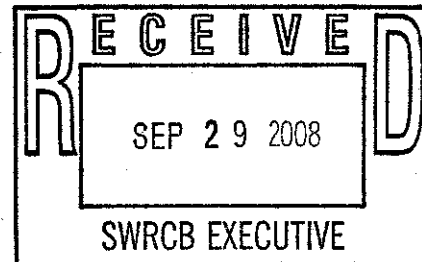
## CENTRAL DELTA WATER AGENCY

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September 29, 2008

**Via First Class U.S. Mail**  
**and Email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



Re: Bay-Delta Fact Finding Issues.

Dear Ms. Townsend:

Additional factual issues concerning the Bay-Delta's ecology which the Central Delta Water Agency requests be considered, and given a high priority, during the SWRCB's information gathering process are the following:

Quantification of the impacts on the Bay-Delta's ecology from the Projects' dams, Delta export pumps and *all* other facilities and operations which directly or indirectly impact the Bay-Delta ecology;

and

Quantification of what is necessary in terms of Bay-Delta flow and water quality requirements and restrictions on the Projects' operations to fully mitigate such impacts.

These issues are critical since the ultimate question the SWRCB will have to embrace is who should be required to take action to protect or restore the Bay-Delta ecology. The inquiry should begin with the forgoing factual issues since Water Code section 11460 and the recent interpretation of that section in State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 754-760, make it abundantly clear that the Projects are prohibited from exporting water from the Delta watershed that is needed to meet the reasonable and beneficial needs within that watershed. Any water that is needed to mitigate the Projects' adverse impacts on the Bay-Delta ecology is by definition water that is needed to meet the reasonable and beneficial needs within the Delta watershed and, hence, is water that cannot legally be exported from that watershed.

While the use of water by other non-Project water right holders within the Delta watershed may also adversely impact the Bay-Delta ecology, such use of Delta watershed water to meet in-Delta watershed users' needs should only be addressed after the Projects fully mitigate their impacts and fulfill their statutory responsibility to refrain from exporting any water from that watershed that is necessary to mitigate such impacts (or that is necessary to meet any other needs of that watershed).

If the Projects' complete cessation of all exports of water from the Delta watershed and use of the formerly exported water to mitigate the Projects' impacts on the Bay-Delta ecology is not sufficient to fully mitigate such impacts, or if it is sufficient to fully mitigate such impacts, but the Bay-Delta ecology still needs additional water to be fully protected or restored, then the SWRCB can cross those bridges if and when it gets there. In light of the well-recognized substantial and far-reaching impacts the Projects' facilities and operations have on the Bay-Delta ecology, it is reasonably foreseeable that the Projects full use of formerly exported water to mitigate those impacts would go a long ways towards protecting and restoring the Bay-Delta ecology, if not bring about its complete protection and restoration.

Accordingly, it is requested and urged that the foregoing factual issues should be included, and given a high priority, in the SWRCB's upcoming information gathering process.

Very truly yours,



Dante John Nomellini, Jr.

DJR/djr