



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.

PROPOSED DELTA RELATED ACTIONS POSE A REAL AND SERIOUS THREAT TO THE WATER RIGHTS OF NCWA MEMBERS

NCWA's position statement asserts that a successful Delta bond or legislation will create changed circumstances that will pose the risk that the Sacramento Valley will lose water. In response, we have been asked *how* we risk the loss of water. The answer to this question is based upon a recognition that corrective measures implemented as a result of these Delta actions will facilitate the diversion and movement of water from the Sacramento River, thereby creating the *means* to take water otherwise relied upon by those within the Sacramento Valley. This will inevitably draw those within the Sacramento Valley more directly into Delta issues, particularly after the Export Pumps are, more or less, isolated from the Delta.

From this base, current State agencies and commission proposals and actions underscore and help define the risk that is posed to Sacramento Valley water rights.

- The Blue Ribbon Task Force, Delta Vision ("Delta Vision") states that: "A revitalized Delta ecosystem will require reduced diversions – or changes in patterns and timing of those diversions upstream [of the Delta] . . . at critical times." (See Delta Vision Recommendation No. 7 at p. 2 of the Executive Summary) Indeed, the Delta Vision, in an unsupported statement, asserts that "[w]ater diversion upstream threatens the Delta ecosystem . . ." (*Id.* at p. 12; see also pp. 33-34.)
- The Delta Vision also asserts a view that the law must be modified (or applied) in a manner that reflects changed societal values. Among the issues raised in the Delta Vision is the reallocation of water rights, including those rights within the Sacramento Valley, through the application of public trust or reasonable use doctrines. (See Recommendation 5; *id.* at p. 5; see also pp. 10-11.)
- The SWRCB has embarked upon a Delta related quest that, among other things, threatens to reallocate Sacramento Valley water and water rights to meet "competing demands" for water in and from the Bay-Delta. It threatens to do this through either the public trust or other methods. (See SWRCB Resolution No. 2007-0079 and Notice of Public Workshop dated February 27, 2008, Attachment B, Proposed Action 4.)
- Environmental plaintiffs have directly implicated and involved Sacramento Valley water rights in litigation associated with the Delta.¹ A successful Delta bond or legislation associated with

¹ (See, e.g., *Natural Resources Defense Council, et al. v. Norton, et al.*, USDC, Eastern District of California, Case No. 1:05-cv-01207 OWW-GSA; *Pacific Coast Federation of Fishermen's Associations, et al. v. Gutierrez, et al.*, USDC,

the Delta will facilitate the type of actions that are proposed by the environmental plaintiffs, thereby clarifying the risk that those actions may cause the loss of water and water rights in the Sacramento Valley.

- The application of the regulatory mechanisms of various environmental laws, facilitated by a successful Delta bond or legislative effort, will allow water not diverted upstream because of environmental limitations to be exported south of the Delta. NCWA members have experienced this once when the Endangered Species Act prohibited diversions in the Sacramento Valley. We cannot afford to have this type of event repeated.