

TESTIMONY OF DANIEL NELSON  
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SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

SUB-COMMITTEE ON WATER AND POWER  
OF THE COMMITTEE ON NATURAL RESOURCES

JULY 21, 2008

Thank you for the opportunity to present testimony on the “Federal Response to the California Drought Emergency”. I will also discuss the impacts to the south of delta federal Central Valley Project ag service contractors from the recent reduction of supplies due to the dry spring and regulatory constraints and efforts to minimize those impacts.

I would like to start by dispelling the notion that the recent crisis is simply the result of drought. The March, April and May precipitation was the lowest on record and triggered major impacts, but it is probably more accurate and constructive if we think of this not as a drought but as a system failure; a system that is overburdened and trying to serve unanticipated supplies for environmental, agriculture and urban needs; a system overloaded with regulation and a system that hasn't seen any major improvements in decades.

2008 Water Supply Status Update

On January 29, 2008 I had the honor to present testimony to this same committee on *The Immediate Federal and State Role in Addressing Uncertain Water Deliveries for California and the Impacts on California Communities*. The issues raised at that hearing and covered in my testimony are still applicable to the issues raised through this hearing so I have included that testimony as an attachment. That testimony reviewed the reductions of water supply to Contractors over the course of the last 15 years resulting from the implementation of a variety of federal statutes including the Endangered Species Act (ESA), the Central Valley Project Improvement Act (CVPIA), and Clean Water Act (CWA). The testimony also summarized the significant proactive actions underway by farmers and local water districts in the San Luis & Delta-Mendota Water Authority region in conservation, transfers, crop shifting, ground water management and land fallowing/retirement. This was in part as background to a new series of reductions which would result from the 2007 Court Order on the Delta Smelt.

We projected at that time that the impacts of the new Court Order would fall in the range of an additional 15-30% in supply reductions to south of the delta CVP Ag Service Contractors. Recall that this was on top of the previous regulation's 30-35% impact on Ag Service Contractors allocations. In summary, with the new 2007 Delta Smelt Court Order on top of prior regulations, the Ag

Service Contractors could anticipate a 35-55% allocation for the water year beginning in March, 2008.

On February 15<sup>th</sup>, 2008 after above normal rainfall in the proceeding months through January, the Bureau of Reclamation (Reclamation) announced a 45% allocation to south of the delta CVP Ag Service Contractors. This was based on a conservative projection of precipitation for the remainder of the year and included all of the regulatory restraints on operations mentioned above and fell within the range of anticipated cutbacks. We then proceeded to have the driest March, April and May on record.

On June 2, 2008 Reclamation announced a 5% allocation reduction to CVP Ag Service and urban contractors and for the first time ever implemented a rationing of water that could be used during the critical summer months of June, July and August. The ration equated to around a 30% reduction in what was projected to be available to support the irrigation needs of the crops already planted. This unprecedented rationing has resulted in severe impacts to the farmers, farm-workers and the rural communities that rely on our irrigated-agriculture based economy.

#### Impacts to CVP S. of Delta Contractors From Additional Cutbacks and Summer Month Rationing

Limitations to summer deliveries applied this late in the season have serious implications. Crops have been planted and irretrievable investments have been made. Farmers are faced with abandoning planted row crops and with it the investment of materials, time, labor, water and other resources that have been put into it up to that point.

Those with permanent crops don't have the luxury of leaving them idle and need to secure enough water to keep the trees and vines alive and if they're fortunate to be able to make a crop.

In an analysis on the Economic Impacts of Rationing Dave Sunding and David Mitchell, Berkeley Economic Consulting, have projected an additional 46,000 to 52,000 acres will be abandoned; farm income will be reduced by 30 to 38 million dollars; 650 to 800 jobs will be lost reducing labor income by 22 to 27 million dollars, and regional economic output to be impacted by 76 to 95 million dollars.

These figures are related to the most recent rationing related cutbacks exclusively and do not include the significant and cumulative financial impacts to the region by other regulations that were already in place (refer to attached Jan 29 testimony). The estimates do not include the impacts that are known to be occurring but yet to be quantified in the San Benito and Santa Clara counties ag sector, which is also served by south of Delta CVP ag service supplies. Additionally, long-term impacts on dynamic considerations such as the

consequences of groundwater overdraft and deficit irrigation of permanent crops are not gauged but are anticipated.

These impacts are layered upon prior impacts to a region that has some of the highest poverty and unemployment rates in the entire United States and a region that has already seen over 150,000 acres idled annually over the last several years to address prior regulations.

We thank Congressman Costa on organizing a Congressional Briefing held on June 2, 2008 in Los Banos regarding the need for additional cutbacks to the 2008/09 annual CVP ag service water allocation (from 45 to 40%) and more significant to review the need for an unprecedented summer rationing of that allocation. At that briefing USBR outlined its rationing program and announced the reduction from 45 to 40% to a packed auditorium filled primarily with concerned farmers, farmworkers, bankers, insurance agents, and local community and government officials.

We also thank State Assemblyman Juan Arambula for organizing a field hearing held July 8<sup>th</sup> on the impacts of the shortages. The hearing focused on impacts to farm workers and rural communities. Arambula concluded "that if agriculture thrives, farmers, farmworkers and Valley communities thrive". A necessary component of that in California is water.

#### Governor Schwarzenegger's June 4 Executive Order and the June 12 State Of Emergency Proclamation and Subsequent Actions

We commend Governor Schwarzenegger's June 4 Executive Order and June 12 Emergency Proclamation to address urgent water needs in California. The Governor acknowledges that the combination of regulatory restrictions to State Water Project (SWP) and CVP diversions and below normal rainfall in 2007 and 2008 including the driest March, April and May on record is harming urban and rural economies and the state's overall economic prosperity.

The Governor identified that the proclamation was "based in part on an assessment of the full impact that additional, unexpected cuts recently made by federal water officials to San Joaquin Valley farmers have had in the middle of the growing season."

The governor directs among other things, the Department of Water Resources (DWR) to coordinate with other state and federal agencies and departments to assist water suppliers, identify risks to water supply and help farmers suffering losses.

Again, we commend the governor for the Executive Order and Emergency Proclamation. Both actions resulted in highlighting the severity of the immediate problems water users, farmers, farm workers and rural communities are having and served to focus state, federal and local agencies on timely remedies.

In a subsequent forum convened by DWR Director Lester Snow with federal, state, and local water agencies a list of potential actions was developed that could assist in minimizing the summer shortfall of deliveries to the s. of delta CVP contractors and the resulting serious social and economic impacts. The list for immediate actions to get us through the summer rationing crisis and minimize impacts included:

- Groundwater Pump-ins to the San Luis Canal and the Delta-Mendota Canal;
- Transfers and Exchanges which would result in additional water availability in the critical summer months;
- Source shifting where water users shift to sources other than San Luis Reservoir freeing up the reservoir water to increase s. of delta CVP deliveries during the critical summer months;
- Honing of demand projections for state and federal projects which would result in more water being made available in the critical summer rationing period;
- Flexible and collaborative operations between the State and Federal projects to maximize efficiencies in dealing with the crisis.

We commend the actions of Reclamation, DWR, state and federal contractors in their efforts to implement the tools listed above. This has resulted in a supplement of close to 100,000 acre feet for CVP south of delta ag service contractors in the critical summer months reducing some of the impacts.

#### Federal Actions Needed

The federal government has been an important partner in the development of California's water infrastructure and policies. Continued federal commitment to engage and provide appropriate resources is important to the success of the implementation of balanced comprehensive solutions.

Federal actions need to address short term as well as long term issues.

Administrative Actions:

Immediate

- Operational Flexibility. USBR to work with DWR, other appropriate state and federal agencies and contractors to reduce/minimize the rationing on CVP contractors south of the delta, including implementing the measures listed above;
- Transfers. USBR to provide clear policies and quick review/approval of transfers. Transfer policies should error on the side of accommodating the movement of water when possible to minimize impacts of shortages;
- Carryover Storage / Rescheduling. USBR to immediately work with contractors to develop a clear San Luis Reservoir storage carryover / rescheduling policy. Contractors need to know as soon as possible for planning purposes for next year;

- Financial Assistance. Department of Agriculture to administer programs under its authority to assist farmers, farm workers and rural communities;

#### Mid-term

- Biological Opinions. Encourage the Fish & Wildlife Service and National Oceanic and Atmospheric Administration (NOAA) to closely coordinate the development of new Biological Opinions for the delta smelt and winter run salmon, in collaboration with Reclamation, to ensure consistency in the consultations and timely issuance of the opinions. While these steps are critical toward stabilizing water supply, the Fish Agencies must expand their historical approach to look beyond just operations of the state and federal projects if the species they aim to protect are to be recovered.
- Fish Protection Gates. State and federal agencies have been collaborating over the last year to analyze and develop operable gates that could be installed in strategic locations in the Delta to minimize the entrainment of fish while improving water supply and south Delta water quality. As these efforts near fruition, timely implementation will be incumbent upon the adequate participation by Reclamation, the Army Corps of Engineers, and the federal fish agencies, all of whom are staff and resource challenged. Congressional support and provision of resources would ensure implementation of these promising solutions within a critical timeframe.
- Bay Delta Conservation Plan (BDCP). Reclamation and the federal Fish Agencies have committed to participate in the development of the Bay Delta Conservation Plan (BDCP). The BDCP is a conservation plan focused upon the California Bay-Delta being developed under the Federal Endangered Species Act and the California Natural Community Conservation Planning Act. The planning process is led by a 20-member Steering Committee comprised of a wide range of water and environmental interests who share a commitment to the Delta and to the success of this long-term conservation planning endeavor. While to date the federal agencies have been able to participate at an adequate level, the current expansion of the effort to include environmental analyses required under both state and federal law will necessitate an increased level of commitment.

#### Long term:

- Delta conveyance. USBR to work with DWR and other appropriate state and federal agencies and contractors on the planning, design and environmental documentation of a delta conveyance solution;
- Delta Vision, USBR to work with the Delta Vision Task Force, appropriate state and federal agencies and stakeholders in the development and implementation of a comprehensive delta plan;

#### Legislature:

The legislature needs to provide nonpartisan leadership in the resolution of California water issues. This includes a commitment of resources for appropriate participation by the appropriate federal agencies for consistent and long term engagement;

#### Conclusion

The summer of 2008 water situation has brought an exclamation point to the notion that California's water system is broke. A dry spring has revealed the weaknesses of an outdated system through unprecedented cutbacks and social and economic impacts.

Notwithstanding an emergency declaration by the governor and significant efforts by federal, state and local agencies, there are significant impacts to farmers, farm workers and rural communities on the westside of the San Joaquin Valley from cutbacks in water allocations.

Federal, state and local government must work together and with other stakeholders to develop immediate, short-term and long term fixes to California's water supply, quality and fishery problems.

The federal government has a necessary and important role. Success will require leadership and significant commitment.

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SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

*The Immediate Federal and State Role in Addressing Uncertain Water Deliveries for  
California and the Impacts on California Communities*

Presented to the  
Subcommittee on Water and Power  
U.S. House of Representatives  
Committee on Resources

January 29, 2008

Madam Chairwoman, members of the Committee: Good morning. I am Dan Nelson, Executive Director of the San Luis & Delta-Mendota Water Authority, and I appreciate the opportunity to appear before you today.

I would like to express our appreciation for your decision to conduct this hearing Madam Chairwoman. Another wake-up call on the adequacy of California's aging water infrastructure, and the institutions and regulations intended to govern it, has been given in the recent court order regarding the Delta Smelt. Focus on the court ordered impacts and the Bay Delta Conservation Plan and Delta Vision processes is warranted and timely.

#### The San Luis & Delta-Mendota Water Authority

The San Luis & Delta-Mendota Water Authority is a joint powers authority organized under California Law. Its 32 member agencies are water and irrigation districts that contract with the Bureau of Reclamation for the receipt of water from the Central Valley Project. These member agencies provide water for irrigation to approximately 1,100,000 acres of land within the western San Joaquin Valley, San Benito County, and Santa Clara County and water for municipal and industrial use throughout the same area. We also deliver water to approximately 100,000 acres of publically and privately managed wetlands within the region that are a crucial link in the Pacific Flyway.

The agricultural area served by the Authority's member agencies is among the most fertile, productive and diversified in the nation. Rich soil, a good climate, and innovative farming techniques have helped to place the area served by these agencies among the most productive farming regions in the nation. Farmers in this region produce over 50 different commercial fiber and food crops sold for the fresh, dry, canned or frozen food markets, domestic and export, with an average farm gate value of over \$2 billion dollars annually. Project water appropriated in the North and conveyed through the Delta supports California's vital and irreplaceable agricultural production, which supplies 50% of the nation's fruits and vegetables and 25% of it dairy products.

In addition, the Authority serves the Santa Clara Valley Water District, which is responsible for providing water to 1.8 million people and to the vital high-tech computer industry known as "Silicon Valley". This multi-billion dollar industry is critical to the economic health of California and the nation. Water conveyed to the wetlands supports the habitat needs of countless migratory waterfowl and boosts local economies through the recreational activities they provide.

The recent court order on 2008 operations of the federal Central Valley Project (CVP) and State Water Project (SWP) was yet another major blow to the water supply of our members and the state and rural economies that depends on that water. Our agricultural, municipal, industrial, and environmental endeavors all depend on adequate, reliable supplies of exported water. Our CVP water supply has never been in worse shape and consequently the activities it supports have never been at more risk.



### Reductions Over the Last 15 Years Leading Up to the Court Order

To put the recent court order in historical perspective, it is necessary to point out that until 1991 deliveries to the Authority's member agencies were highly reliable. For a period of nearly forty years, from the early 1950s to 1991, water supplies for south-of-Delta CVP Ag service contractors were reduced only two times due to naturally occurring drought: in 1977, the driest year on record in California, and in 1990, the fourth year of the "Great California Drought". However, in 1991 a new era of Project operations began.

- 1991- The Sacramento River winter-run Chinook salmon was listed as a threatened species under the federal Endangered Species Act (ESA);
- 1992- The Delta Smelt was listed as a threatened species under the federal Endangered Species Act;
- 1992- The Central Valley Project Improvement Act (CVPIA) was passed by Congress and signed into law by former President George H. Bush. In part, CVPIA dedicated water for: 1) wildlife refuges; 2) fish and wildlife purposes; and 3) the Trinity River. The reallocation of this water has disproportionately impacted south-of-Delta CVP agricultural contractors;
- 1994- The Bay Delta Accord was reached. At the time, the Accord was hailed as a revolutionary agreement that would provide for the immediate protection and restoration of the Bay-Delta ecosystem and water supply reliability for water agencies that relied on exports from the Delta. As part of the Accord, south-of-Delta CVP Ag service contractors voluntarily committed up to 500,000 acre-feet of water for restoration of the Bay-Delta ecosystem. Under the Accord standards, south-of-Delta CVP Ag contractors were to expect that on average they would receive 75-80 percent of their existing contract amounts;
- 1997- Decision on Implementation of CVPIA section 3406(b)(2);
- 2000- Trinity River Record of Decision. Prescribed new flow criteria for Trinity River.

As the dust settled on the implementation of the ESA, CVPIA and the Clean Water Act, we found that approximately 3.5 million acre-feet of CVP water had been reprioritized for environmental purposes. Modeling of the regulatory impact showed that the CVP south-of-Delta Ag contractors could now only expect to receive 65-70 percent of their existing contract amounts under "normal" hydrologic conditions. To illustrate the magnitude of this rapid change, in the 40 years leading up to the first regulatory constraints our region experienced only 2 years of water supply shortage; in the 15 years since we have only had 3 years of full contract supply.

### 2007 Court Order on Delta Smelt

The recent court order, which narrowly focused on hypothesizes regarding the affects of the State and Federal Projects on Delta Smelt, imposed new and additional constraints on our abilities to operate. Initial modeling of the court order indicates an additional 15-30 percent reduction; this is on top of the 30-35 percent reductions already impacting south-of-Delta CVP Ag contractors.

The Delta Smelt court order is a big blow to all of our members, who have been proactive and visionary in their response to evolving water supply cutbacks since 1991. The court order has completely disrupted the precarious equilibrium that had been established and hits our farmers

particularly hard as they have pretty much exhausted their water management tools in dealing with prior regulatory cutbacks.

### We've Done What We've Been Asked to Do, And More

The farmers within the Authority region have proven to be incredibly proactive and adaptive. They have met the challenges of reduced water supply head on and are a model of efficient, productive agriculture. To meet the ongoing challenges of water supply cutbacks farmers, districts and the authority have quietly and methodically implemented several tools and strategies that have made this region arguably the most efficient farming region in the world.

**Conservation** – Tens of millions of dollars have been invested to conserve water so that it can be spread to as many acres as possible. Drip irrigation for permanent crops is standard and is also being implemented on a broad scale for row crops. At a district level, canals and ditches have been lined to reduce losses through seepage, low interest revolving loan programs have been implemented to encourage investment in conservation, and infrastructure improvements have been constructed to increase reuse.

**Transfers** – The California water market is alive and well within the Authority. Transfers among member districts and transfers from outside the authority area have become common place. Transfers are active at the farm, district and Authority regional level and the market has become fairly sophisticated. However, intra-regional water transfers do not increase regional water supply; rather, they maximize the efficient use of water spatially and temporally. Inter-region transfers are contingent upon Delta export pumping capacity, which has been virtually eliminated by the court order.

**Crops** – In order to be able to afford the investments in conservation and to be able to compete in the water market farmers have had to convert to high value vegetable and permanent crops. Trends over the last 15 years have shown a gradual and consistent conversion.

**Groundwater** – Unfortunately, groundwater in the region is generally spotty in both availability and quality. Monitoring programs have been implemented to track groundwater levels, drawdown, recovery rates and subsidence to determine sustainable yield and to maximize sustainable use.

**Land Fallowing/Retirement** – Unfortunately, even after aggressively implementing conservation, transfers, and groundwater programs there hasn't been enough water available to irrigate all of the 1.1 million acres within the Authority member agency boundaries. Around 150,000 to 200,000 acres each year have been idled either by farmers consolidating their supplies or through district programs. Land fallowing is what impacts the rural economy the hardest. Reduction in spending on agricultural staples such as labor, fuel, fertilizer, seed, materials and farm equipment ripple through these agriculturally based economies and cause hardship to the rural communities.

In 2008, under the court order for Delta Smelt additional lands will be fallowed. This is at a time when the rural economies are already depressed and existing unemployment in the region ranks with some of the highest in the nation.

### Efforts to Address the Delta

The Authority has been involved in a wide variety of statewide forums and efforts to address Delta fishery, water quality and water supply issues going back to the late 1980's. Our experience began in the "three way discussions" in the late 80's and early 90's between

representatives of the agricultural, urban and environmental communities. We were signatories to the Bay-Delta Accord in 1994 and were active participants in the development of the resulting CALFED ROD in 1999. We are currently active in the Bay Delta Conservation Plan (BDCP) and the Delta Vision processes.

We are looking at the Bay Delta Conservation Plan and Delta Vision processes as being critical to the long term Delta fishery, water quality and water supply issues. While the Delta Vision Process is a broad effort with a scope that includes an array of issues such as levees, land use policies, transportation infrastructure, etc; the BDCP is more focused on the long term ESA compliance issues in the Delta. We anticipate that the more detailed work under the Bay Delta Conservation Plan will compliment the implementation of the Delta Vision strategic approach as the two efforts gradually converge through 2008.

#### Federal and State Agency Roles

We face many challenges in addressing the needs of the Delta, both in the short-term and the long-term. The most immediate of these is for the Fish & Wildlife Service to complete preparation of a new biological opinion by the court ordered deadline of September 15, 2008. In order to ensure this deadline is met, the administration must commit to providing the financial and human resources necessary to prepare a quality opinion in a deliberate and timely manner.

With respect to the BDCP, state and federal engagement needs to increase to keep up with the accelerating pace of the plan's development. While state and federal participation in this process has been adequate to date, improved coordination and cooperation between agencies will be critical to the successful development of the plan. Without their close and consistent participation in this effort, the agencies will be ill prepared to timely make the necessary and informed decisions to implement the plan thereby risking its potential.

A glaring shortfall in the processes and regulations that are intended to address the Delta is the disproportionate attention and resources focused on the operations of the CVP and SWP. There is growing awareness that the decline of Delta native species is the result of many factors of which the declining population levels of individual native species are merely a symptom. However, even as evidence and acknowledgement builds that there are other complex factors driving the decline of the fish, the regulatory response has not expanded accordingly. Problems of invasive species, food deprivation, contaminants, predation, and unscreened in-Delta diversions are indisputable examples of stressors on the fish that have all but been ignored by the federal Fish & Wildlife Service, the State Department of Fish & Game and other state and federal agencies. Without addressing the full range of stressors impacting the ecosystem we will never make the desired meaningful progress towards recovering these native Delta species.

There is a lot of work to be done by the federal and state agencies in a timely manner. This effort will require a combination of local, state, and federal funding to accomplish. Congress needs to ensure that federal participation is adequately supported.

#### Conclusion

In conclusion, the recent Delta Smelt court order is the latest in a series of regulatory water supply cutbacks to the CVP over the last 15 years. Its impacts to the rural economies are already

being experienced. South-of-Delta CVP agricultural contractors have proactively responded and have become the most efficient food producers in the world. Notwithstanding these efforts large blocks of land will be idled and economic impacts will ripple through the already depressed rural communities and state economies.

In a world of common disagreement, there is now consensus that the status quo with respect to our approaches and management of the Delta and the water supplies that rely upon it are unsustainable. This understanding brings with it a unique and powerful opportunity to develop solutions that have otherwise been elusive in the past. In order to be successful, we need full engagement by federal, state, and local agencies. The decisions before us will be complex and difficult and the time for clear political leadership is now.