

BLUE RIBBON TASK FORCE

# DELTA VISION



*Our Vision for  
the California Delta*

## **Saving the Sacramento-San Joaquin Delta: An Ecosystem and Water Delivery System in Crisis**

*Litigating Takings & Other Legal  
Challenges to Land Use &  
Environmental Regulation*

*Stanford University*

*November 2008*

*Richard Frank*

*Executive Director*

*California Center for Environmental  
Law & Policy*

*Member, Delta Vision Blue Ribbon  
Task Force*



# Beginnings of Delta Vision

- ❑ Established by Governor's Executive Order on September 17, 2006
- ❑ Charged with developing a durable vision for sustainable management of the Delta over the long term
- ❑ Restore and maintain identified functions and values important to the Delta's environmental quality and economic and social well-being of the state
- ❑ Seven members appointed to serve by the Governor, who is seeking their "independent recommendations"



# The Adopted Delta Vision (November 2007)

- ❑ An independent approach to the crisis in the Delta resulted in 12 recommendations and 7 near-term actions
- ❑ Recommendations are integrated and linked together – they are not designed to be “cherry picked”



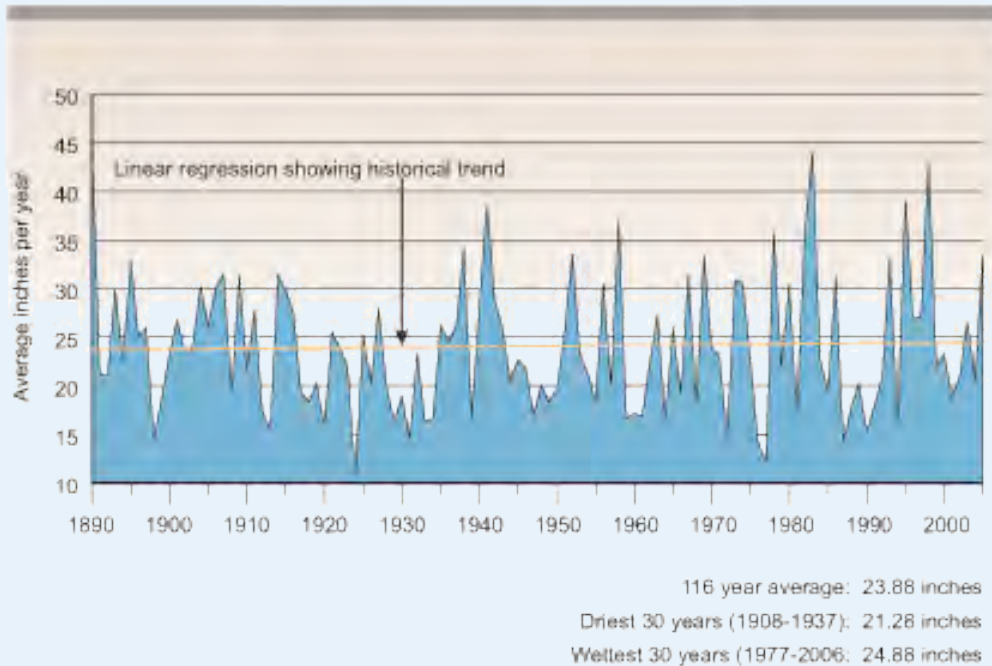
# Recommendation #1

Delta ecosystem and a reliable water supply are the primary, co-equal goals for sustainable management of the Delta.



# Recommendation #4

Figure 5. California Precipitation History



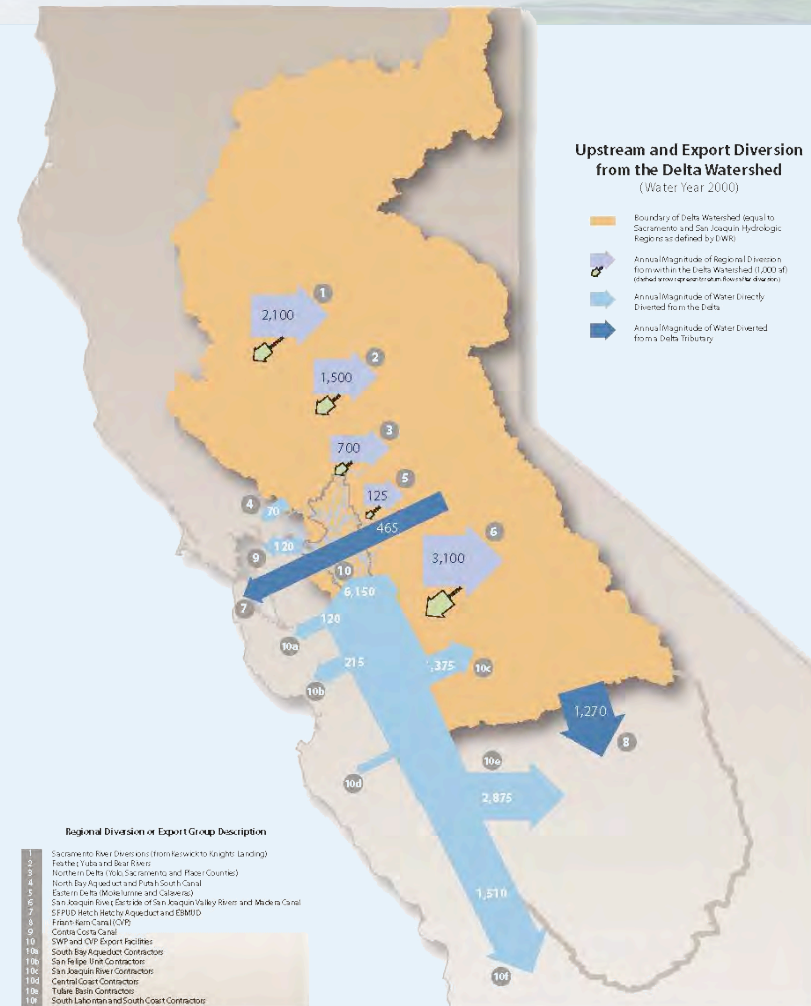
Yearly precipitation calculated from average of 95 stations spread across California. Data collected by Jim Goodridge, State climatologist formerly with DWR.

Source: California Department of Water Resources

California's water supply is limited and must be managed with significantly more efficiency to be adequate for its future population, growing economy and vital environment.

# Recommendation # 5

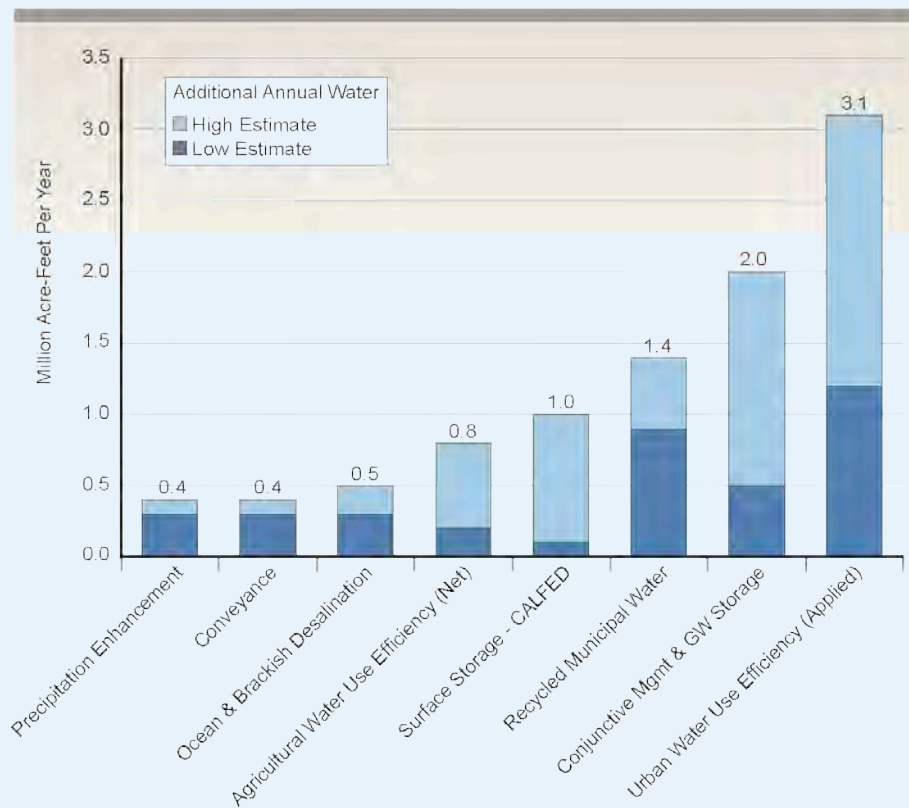
The foundation for policymaking about California water resources must be the longstanding constitutional principles of ‘reasonable use’ and ‘public trust;’ these principles are particularly important and applicable to the Delta.



Source: Greg Young, Tully and Young, Inc.

# Recommendation # 6

Figure 11. Strategies to Reduce Demand for or Increase Supply of Water

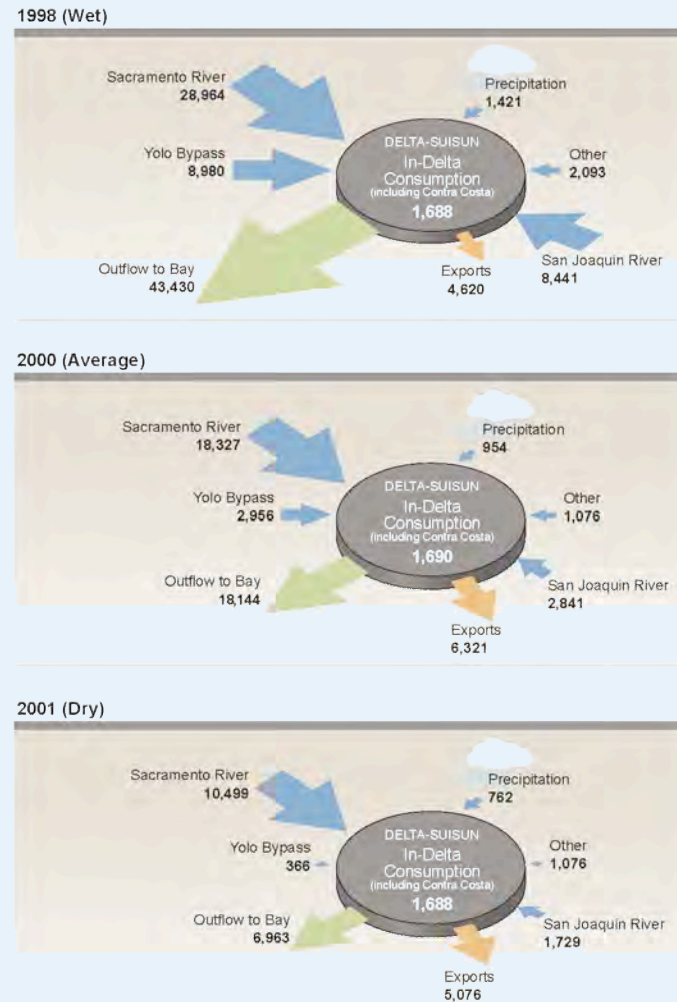


The goals of conservation, efficiency, and sustainable use must drive California water policies.

# Recommendation #7

A revitalized Delta ecosystem will require reduced diversions, or changes in patterns and timing of those diversions, upstream, within the Delta and exported from the Delta at critical times.

Figure 9. Delta Water Balance by Water Year Type



Source: Status and Trends of Delta-Suisun Services, DWR 2007

# Recommendation #8



New facilities for conveyance and storage, and better linkage between the two, are needed to better manage California's water resources, the estuary and exports.

# Recommendation #10

It is essential to have an independent body with authority to achieve the co-equal goals ... while also recognizing the importance of the Delta as a unique and valued area.



# Recommendation #11

Discouraging inappropriate urbanization of the Delta is critical both to preserve the Delta's unique character and to ensure adequate public safety.





**Stage II: Formulating a  
Strategic Plan to Implement  
the Vision  
(October 2008)**






## ***Key Points - Task Force Strategic Plan***

- 1. Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California.**
2. Recognize and enhance the unique cultural, recreational, and agricultural values of the Delta as an evolving place, an action critical to achieving the co-equal goals.
3. Restore the Delta ecosystem as the heart of a healthy estuary.
- 4. Promote statewide water conservation, efficiency, and sustainable use.**



## ***Key Points - Task Force Strategic Plan (continued)***

-  **Build facilities to improve the existing water conveyance system and expand statewide storage, and operate both to achieve the co-equal goals.**
-  **Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.**
-  **Establish a new governance structure with the authority, responsibility, accountability, science support, and secure funding to achieve these goals.**



# Potential Governance Reforms for the Delta

- ❑ Governance to assure attainment of primary goals: California Delta and Ecosystem and Water Council
- ❑ Create Delta Conservancy, Delta Science and Engineering Program, Public Advisory Group
- ❑ Strengthen Delta Protection Commission
- ❑ Legally-binding California Delta Ecosystem and Water Plan
- ❑ Finance through user fees and other tools
- ❑ Improve compliance of diversions and use through all applicable laws, regulations and constitutional principles



# **Delta Vision, Property Rights, Land Use and Water Allocation**



# Reduce Risks to People, Property & State Interests in the Delta [through] Appropriate Land Uses

- Prevent/discourage inappropriate land uses
- Protect public safety (*cf.* Hurricane Katrina)
- Preserve public safety/public land acquisition options



# The Twin Legal Hammers: Inverse Condemnation, Flood Control & Open Space Preservation in California

❑ *Paterno v. State of California* (2004)

123 Cal.App.4<sup>th</sup> 548

– *Cf.* AB 70 (2007)

❑ *Arreola v. County of Monterey* (2002)

99 Cal. App.4<sup>th</sup>



# **Land Use, Governance & the Delta: California's Tradition of Local Control Over Land Use Decisions vs. a Statewide Crisis**

- Population of California's 5 Delta counties will more than double between now & 2050

Source: Public Policy Institute of California

# Water Rights, the Public Trust Doctrine and Reasonable Use Principles

- ❑ The legal principles of public trust and reasonable use have long been applicable to California water rights
  - ✓ *National Audubon v. Superior Court* (1983) 33 Cal.3d 419
  - ✓ *U.S. v. State Water Resources Control Board (“Racanelli”)* (1986) 182 Cal.App.3d 82
- ❑ Delta Vision’s proposals are fully consistent with those principles and would not change water rights law
- ❑ California water law’s equivalent of adaptive management?



# **A Counterpoint: The Area of Origin Doctrine**



# Some Startling Facts from the State Water Resources Control Board:

- ❑ SWRCB has issued water rights permits from the Delta to < 1/3 of those currently diverting
- ❑ The face value of SWRCB-issued water rights permits from Delta watershed is 8.4 times average annual unimpaired flows
- ❑ SWRCB has currently pending > 4 million af in water rights applications from Delta watershed
- ❑ SWRCB lacks comprehensive water use, diversion data
- ❑ SWRCB lacks significant enforcement tools, staff, funds

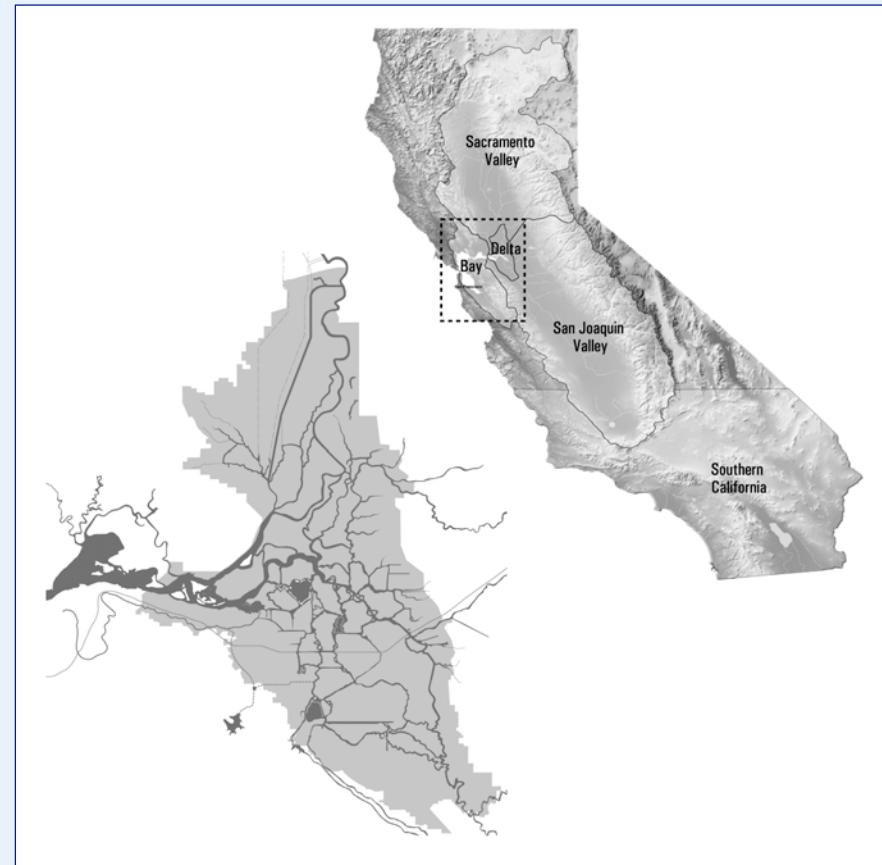
Source: California State Water Resources Control Board



# **Some Predictions on the Future of the Sacramento-San Joaquin Delta— and the Delta Vision Process**

# Other Notable Recommendations: Public Policy Institute of California

- ❑ *Envisioning Futures for the Sacramento-San Joaquin Delta* (February 2007)
- ❑ *Comparing Futures for the Sacramento-San Joaquin Delta* (July 2008)





# **For Further Information:**

Delta Vision: [www.deltavision.ca.gov](http://www.deltavision.ca.gov)

**Richard M. Frank**  
**Executive Director**  
**California Center for Environmental Law and Policy**  
**School of Law**  
**University of California**  
**Berkeley, CA 94720**  
**(510) 642-8305**  
**rfrank@law.berkeley.edu**