

Oral History: Phil Isenberg

Interviewed by Chris Austin

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Part 1

Chris Austin: The Sacramento San Joaquin Delta, at 1,100 square miles, is less than 1 percent of California's land mass, yet this tiny region plays a pivotal role in California's economy and environment. After the state and federal effort to solve the delta's problems, known as the CALFED Bay Delta Authority, failed in 2006, Governor Schwarzenegger issued an executive order establishing the Delta Vision Blue Ribbon Task Force, giving the seven-member panel just two years to develop the vision for the delta and a strategic plan to achieve that vision. The recommendations from the task force would form the basis for the 2009 Delta reform act. Seated at the helm was Phil Isenberg, a savvy veteran politician, former Mayor of Sacramento, the so-called River City, and who once represented a portion of the delta in the state Assembly. This oral history was supported by a grant from the California State Library.

So why is the delta so important for California? Why is it so controversial?

PHIL ISENBERG: It's the last place where people have turned to try to find water. I mean, It's only about 15 percent of the total water available in the State of California, even goes through the delta, but to the extent there is any usable amount of water, that's where people for the last 50 or 70 years have been figuring they'd get it.

AUSTIN: So, why do you think from a policy standpoint, it's been so hard to solve the delta's problems? We've been working at this for years, decades?

ISENBERG: Well, because everybody's selfish. Everybody wants their interest to go first, and water historically has been that way in California. And if you have a pile of very smart, very talented, some very wealthy, people, and interest groups on all sides of the issue, who have different views of what should be done and when, it's damned hard to put it all together.

No society has ever had an education system they liked. No society has ever ended crime. No society has ever abolished illness. None. And we're not going to solve our water problems in California; we're going to redo them and work on them, and get our way through every 30, 40, 50 years.

AUSTIN: How much water is it that's exported from the delta? What percentage is it that's exported from the delta?

ISENBERG: It goes up a larger volume. Well, the Department of Water Resources has a lot of ways of calculating it, but a wet-water year in California, all the precipitation and rain, snow and everything else that comes in, will generate, this is rounded over time, 300 million acre-feet of water. That's a lot. Average

year, 200 million acre-feet of water. A dry year, 100 million acre-feet of water. In dry years, the water... The goal is to import the same amount of water to users to the south, and that means far less for the environment. In an average year and in a really wet-water year, there's enough water for everyone, but not all that water in the state of California is... It runs through... Ever ran through the delta.

AUSTIN: So is water that flows out the delta and out into the bay, is that water wasted to sea?

ISENBERG: Well, that's the rap. It's kind of a 1950s rap, because it's based on the premise that only when a human being uses water for whatever they want to use it is it really available. But of course, if you care about the environment, if you care about fish species, and there's even a beaver in Sacramento in Natomas, in an artificial lake in the middle of a housing development, they're trying to capture him now. If you care about any of that stuff, you've got to leave enough water in the natural system to maintain the fish species you want. And as important, you have to maintain the quality of the water that human beings use. That's the fundamental untested danger, I guess, of a tunnel diversion, diverting water around the delta or under the delta, because it means less fresh water goes into the delta. And what does the water quality look like in the remainder of the delta? Nobody knows that. And that's one of the concerns of the Delta Independent Science Board that the administration hasn't really... They've said, "Oh, if there's a problem, we'll fix it." But man, treating heavily salted water is very expensive. Going back to the old slogan: It's not water you want; it's cheap water. So.

AUSTIN: So, the Delta Vision process came out after the failure of CALFED Bay Delta Authority, and that was a state and federal effort to try and mutually solve the delta's problems that failed. So when you started the Delta Vision process, what were you going to do to ensure that that process was successful and didn't fail as in CALFED?

ISENBERG: It doesn't quite work that way, Chris. The CALFED process was the theory that if you put a whole bunch of money on the table and you brought all the warring parties in to help spend the money, they would come to love each other and in the future, solve all their other problems. Well, the money wasn't quite as... It was a lot of money, but it wasn't quite as big as people expected. And secondly, no matter how much you spend, it doesn't solve everyone's immediate concerns. And so it just kind of tapered off.

AUSTIN: Why did Governor Schwarzenegger put you in charge of the Delta Vision process?

ISENBERG: Well, immediately before that, I had done a two-year stint for the Resources Agency chairing something called the California Marine Life Protection Act. That's ocean waters and really, the prototype for the stewardship council, the involvement of science and all of that, and funding, including funding from the Resources Legacy Fund Foundation, private non-profit, was test run over that two-year period. They liked that. They hadn't been able to get anything done for, gee, six or seven years, and we were able to develop a process which over time kind of exhausted all the ocean warring parties, and they reached an accommodation. We did what the law said we had to do, which is increase protection of offshore waters; that's out to the three-mile limit line for the State of California. And so, we'd gone through the whole thing. A lot of the scientists were similar or at least affiliated with delta-based science. I got along well with Mike Chrisman who was a Resources Secretary at that time, and then later on, when Susan Kennedy became Arnold's chief of staff, I worked with Susan quite well.

AUSTIN: So what was the main task of the Delta Vision Task Force?

ISENBERG: Well, the executive order that Schwarzenegger signed creating the Delta Vision process said somebody got to lay out a vision for a sustainable delta for the future. And that's largely because the water debate in California has gone through stages. You can talk about the early dam-building stages, and the levees and so on, the late-1800s to the mid-1950s. But after that, we've exhausted all the big building projects, pretty much, and it became very clear that water development was really damaging the environment, and something had to be done about that. And so the consequence is, how do you put them together? Now, all the water guys had learned to say, "Oh, yeah, and we're protecting the environment, too," meaning whatever they wanted it to mean, but nobody had done a coherent view or vision or something. And the Schwarzenegger administration people, I believe, hoped that what had happened in ocean waters would eventually come about in state waters and in the delta, and to some extent, it did.

AUSTIN: The Marine Life Protection Act process was about implementing the Marine Life Protection Act, but the Delta Vision was about making recommendations to the Legislature on what they should do. It's a little bit different.

ISENBERG: That's right, because you look at the history of California and all the laws that are around, we've promised water to everybody for everything, whether we have it or not, and I mean, it's an incoherent mess of endless promises, false expectations, and unrealistic demands. So somebody said, "Well, let's straighten it out." Now, most people mean by straightening out a problem that their side wins, and that's not how this works.

AUSTIN: So, what was it like to try and craft a vision for the delta that involves a lot of stakeholders with varying visions of their own and trying to incorporate all that into one?

ISENBERG: Well, the Schwarzenegger executive order created what he called an independent task force. I think independent was mentioned in the executive order two or three, maybe four times. And so, we kind of read that as meaning, "Gosh, I guess we're independent, so we get to make our clear recommendations." Also, I think he made some very smart appointments and some people that were there were just marvelously attentive and willing to deal with the issues at hand. So I brought all those things together. We had a two-year deadline, we met the deadline, we did a vision document first and then we did a strategic plan second, delivered it to the administration. There was a lot of dilly-dallying around, and, of course, at the Legislature, all the water interest and the environmental interest were trying to get another big bond issue or two around so they could spend money for their pet projects, and they kind of tolerated the Delta Vision process and tolerated the early stages of the Delta Stewardship Council, but really, they were interested in the money. I think that's fair to say.

AUSTIN: So, at the time the Delta Vision process was going on, there were a lot of other policy processes going on at the same time. So how did you keep stakeholders engaged with your process while they had a lot of other things to pay attention to?

ISENBERG: Well, we didn't... Well, first of all, we appointed everybody to committees and as the executive order anticipated, we had funding from the Resources Legacy Fund Foundation and the non-profits behind that. We had some matching fund from the State of California, so we had a kind of an independent operation. And because the Schwarzenegger administration was relying on partial non-profit

funding, the political types couldn't run away with the process and try to tell us what to do. We recommended the quasi-memorable phrase, "co-equal goals." The delta and the environmental conditions in the delta are now co-equal to a reliable supply of water for California, not for every listed interest group in the state, but collectively California. And that was a half step beyond the public dialogue with the water fraternity, the environmentalists, water districts and so on, and probably is the most important quasi-step that we took. When the Legislature came around a year later and did the five-bill statutory package, which included the creation of the Delta Stewardship Council, they adopted the co-equal goals.

But second, and maybe as important over time, they established what we call in the trade the reliable reduction... reduced reliance on the delta for the future water supply needs of California. And that's interesting because they put it in there themselves. I mean, we suggested that kind of stuff that you had to do it; we never expected the Legislature to turn right around and put into statute the policy that we're going away from building dams and reservoirs and all that kind of... and tunnels, I guess, we get them going away from that and a mixed portfolio of things. Mostly water conservation, demand reduction, and environmental improvements, is the way of the future. And that's what's actually happening, but the parties don't like to talk what's actually happening; they prefer to have it happen without their implied concurrence. So.

AUSTIN: One thing that John Kirlin told us about was how he was going to the Department of Water Resources and getting data, data on diversions, data going into the delta. And he mentioned that one of the big things that came out of it was that you moved from just talking about pumping in the delta to a watershed approach. He pulled out this map, and he says that people hadn't looked at it that way before.

ISENBERG: Well, and the facts tend to make a lot of people uncomfortable. So, you look in the Delta Vision report and you see what I think is the Kirlin's classic chart, the best one around, took all the available information, and actually said who uses how much water from the delta. And so the in-delta water use, consistently pretty low, the exporters have some... But the big users of water are Northern Californians, us, not Southern Californians, not even valley farmers. We are the biggest and fastest-growing user of water in the delta. We irrigate with it, we let it run off on our streets full of pollutants that goes right back into the streams. And ironically, one of the really interesting parts was how hard we had to fight to get that information in the report, because a whole lot of people who like to blame the problem on someone else didn't want to accept any responsibility of their own. So.

AUSTIN: Right, so once you submitted those recommendations to the Governor, how did it go from there? Was it well-received by the legislature?

ISENBERG: It went to the Resources Agency and Fish and Game Department and so on for their schmoozing on the issue. But the legislature was about to do, consistently for two years, a bond package. And they created a joint forum of senators and Assembly members of both parties who actually, for about four months, had an endless series of private meetings, learning about, talking about, and working on water. I was called over, I don't know, three or four times to talk to them, and it was one of the... The legislature is not notorious for having a long attention span. Gee, I was impressed. There were a lot of legislators who were paying attention, they were getting the facts, they were serious about it, and they stuck with it for a three-month period of time.

Now, that may not sound like much to any average person, but that's a big deal in the legislative world. So they treated the whole thing seriously. Then, of course, when they started to put the bill package together, they had a little bit of Arnold Schwarzenegger's famed 20 percent reduction in water use by 2020, which has its own story. And that was done in response to him getting yelled at by Democrats in the Legislature for doing something in the delta without having their permission first. And that happened, and then the bond issue, which I think at one point, got up to \$14 billion and came down. Well, all the water guys and most of the environmental guys ran off to just spend money they didn't have yet. And the end result was for the serious legislators who authored the legislation, (Darrell) Steinberg and all the others, they had some running room to draft legislation.

Now, is it confused? Yes. Is it not fully explanatory? You bet. But statutes never are. And it turned in to be a remarkably resilient statute. Full of all kinds of confusion, but in the end, trying to create a process where at some point, the folks who propose projects that might impact the environment of the delta have to conform to the Delta Plan.

AUSTIN: Governor Schwarzenegger really wanted that legislation passed. It was having trouble getting through the Legislature, so he said...

ISENBERG: They called a special session, or maybe two...

AUSTIN: He said he wouldn't sign anything until they passed...

ISENBERG: Well, it was... The fight was not much about the Delta Stewardship Council or the Delta Plan; it was mostly about how to divide the pork and the size of the bond issue. And that's the historic argument that everybody gets in. The governor, Governor Schwarzenegger, did want to do it. I wouldn't say that he was... If he had even heard of co-equal goals, I'd be surprised. But he was much like Jerry Brown; he likes to build things. And so this was a way to build things, kind of a modern version of the New Deal, "Let's build our way out of a recession." And at the same time, Darrell Steinberg, the only northern legislator who voted for the entire bill package. None of the other delta legislators voted for the bill package. That's its own particular story. But a lot of their concerns were addressed in the actual legislation, but they couldn't bring themselves to vote for it. Only Darrell voted for it.

AUSTIN: And it passed a special session, late night, early morning. So, how much of the recommendations that came out of the Delta Vision process were incorporated into the legislation?

ISENBERG: A remarkable amount. I was stunned because I had very low expectations of the Legislature's ability to do stuff, and they came through pretty well. Now, it's not perfect. They didn't give the Stewardship Council a clear ability to halt projects until they are consistent to the Delta Plan, but they gave them some leverage that might, over time, lead to that point.

AUSTIN: So, the Delta Stewardship Council came out of the Delta Reform Act. It's another state agency. Why do we need another state agency? Why not the Delta Protection Commission or the...

ISENBERG: Because the Delta Protection Commission is composed of delta residents who, as you well know, Ms. Austin, have their own perspective, which is limited to pretty much the delta itself. And so

therefore, the co-equal goal, as long as their needs are first, just like everybody else's for the co-equal goals... When we adopted the co-equal goals... I'm trying to remember precisely. This is a Delta Vision process. We got a letter within a week from, I believe it was the Kern County Water Agency, a big political player. I could be wrong on which of the agencies. They said, "We fully support the Delta Vision process and the co-equal goals. It's about time the environmentalists should be stopped from letting these projects go ahead." And within a week, without any pause, some environmental groups wrote in and said, "We support the co-equal goals because it's about time that the environment came first." And so everybody hears what they want to hear or shapes their responses to accommodate. That was laugh-out-loud funny; that was really good.

AUSTIN: So, you were appointed chair of the Delta Stewardship Council and now you were tasked with implementing the recommendations of the legislature. So, how difficult of a task was that? How is that going to be different than what you were doing with the Delta Vision?

ISENBERG: A lot different and more difficult. First of all, the legislature had passed a statute with, I don't know, 40 pages of text, 35 pages of text, pretty dense stuff, very complicated, procedurally intricate, and we had to make sense of it. The people who were on the council turned out to be remarkably collaborative, and they represented a variety of interests. But at least for that first period of time, everybody who was appointed appeared to be serious about doing a good job and moving ahead. And that was... That made my job a lot easier. And my job, and John Kirilin, who was the executive director, was to move the process along as fast as we could consistent with the legislation.

AUSTIN: So, you knew the Delta Reform Act well. It's like chapter and verse to you. You had your book with your... the legislation written out. You would periodically read directly from the legislation. You did a lot of education in your first year. So how important was that component?

ISENBERG: Well, I'm not a fair judge of that. But if you have a charging document, as we did, for example, in the old Marine Life Protection Act, that was a governor's executive order, or in the Delta Vision process, that was the governor's executive order, you can get past a lot of the crap by saying, "Guys, look, the executive order said this. I know you don't like it." They said study facilities to export water in the delta, study increased environmental protection. Everybody wants to study one of the things, but not both. But you know, after a while... Most people don't read laws; they just interpret them from what they gather from their friends and all of that. But if you read it, it has some elements, which are clear, precise and obvious. And it helps in the process if you can eliminate a lot of the lesser issues and put them to the side, and it forces the parties to talk about bigger issues.

The Delta Vision process and the Delta Stewardship Council in some ways are the water fraternity's public psychotherapy. It's a place where people come to yell at each other, complain, demand things, and so on. But almost all the people privately and confidentially will tell you they know what the problems are, they know there aren't enough water to do everything, but they can't bring themselves to say that out loud because their constituency groups would not approve.

AUSTIN: So what in the statute did you think was clear and what did you think was unclear?

ISENBERG: Well, as I mentioned before, I think the creation of the co-equal goals and establishing that as statutory policy for the State of California. Not what's called legislative intent, which is foo-foo language,

that's not in a statute, but is part of a piece of legislation. It's a real honest-to-God statute. Secondly, what the Legislature did on its own, the reduced reliance on the delta for future water needs. And third, although a bit muddled, demanding that science be involved in the process from the word "go."

Those three things just kind of jump out at the process, and it's going to take decades to see whether the experiment we engaged in has real impact. It's had some impact already. The fact that Delta Stewardship Council staff stood up to the Brown administration and said, "No, your water fix, your tunnel proposals, are not sufficient to be consistent with the Delta Plan." Now, they told them that in the staff report, the administration withdrew the proposal, for a host of reasons. Like I noticed coming into the hotel this morning that the Delta Financing Authority meeting for the 21st has been canceled because nobody wants to pay for it; they want somebody else to pay for it. It's hysterical.

If there were three things that were a big deal part of Delta Vision and the Stewardship Council, I'd argue to you the co-equal goals, the reduced reliance for full-water needs in the future, and the elevation of scientific interest and involvement in decisions are probably the three most important.

AUSTIN: One I think the most controversial or discussion-generating items in the Delta Plan was this issue of reduced reliance on the delta. Why was that such a sticking point?

ISENBERG: Well, because the meaning is clear: You use less water from the delta for human water needs and more for the environment. We've been going... Since we started building reservoirs and dams and levees and started diverting water in California, as early as the Gold Rush, we have essentially done massive damage to the environment, not just in the delta, but heavily in the delta. And, boy, if you have to pick a place to put a major water conveyance system, you would not put it in the middle of these islands that are, many of them, made out of peat dirt, which vaporizes and sinks. Some of them are 25 feet or more under sea level. And something's got to be done, but you wouldn't make those choices today. On the other hand, what you get is policies that are controlled by the past and all the decisions that we've made. The hardest thing to do is to change any direction. It's not hard to do nothing; it's hard to do even incremental steps, and you have to do them mostly privately, not publicly.

AUSTIN: So, how would an area like Southern California that has over 400 different water agencies, retail water agencies, and layers of wholesalers on top of that, how does a region like Southern California prove that it's reducing its reliance on the delta?

ISENBERG: Well, you get reports like the one I mentioned on who uses water. Well, people in Northern California who divert the water, preventing it from running through the delta, exceed in total water volume significantly the water that's exported to Southern California. And you tell people that enough, and after a while, even if they don't want to believe it, or don't want to hear it being said, it makes them uncomfortable. And if they're uncomfortable, you've got a start of a deal.

Well, but in fairness, Chris, some of the water agencies have been damned serious about reducing demand. Not all of them. It's not consistent. Sometimes it comes and goes and all that, but reducing demand is probably the single easiest... I'm sorry, the single least expensive and most capable of being achieved way to guarantee a reliable water supply. It is politically volatile. Kind of like the old story, "I don't want to drink any sewer water, you can't... No toilet to tap" kind of stuff. But it's changing over time and there are still voices who don't want to do it, but more and more agencies are forced to go there. But they still hold

their dreams in the back of their heads: The endless federal money, the endless state money, the projects that could be built if somebody were sensible and was willing to spend enough money to do it

AUSTIN: So the final... The first Delta Plan had, was it 14 regulatory policies and 70-plus recommendations? Yes.

ISENBERG: Recommendations. Yeah.

AUSTIN: How did you decide what was going to be a regulation and what would be a recommendation?

ISENBERG: Well, we would all like to be able to pass a regulation imposing on the Legislature and the Governor the duty of giving us all the money we think is necessary for a project. But the law doesn't work that way. And so, your first separation is if the action of other independent state agencies is required, including the Legislature, the governor, or the courts, you can make recommendations, but you can't do a mandatory regulation. The regulations are reserved for more clear and obvious things, projects within the delta, particularly within the primary zone of the delta, have to be consistent with the Delta Plan. And we set up a whole elaborate system of how to test that measure, that regulatory action.

AUSTIN: Now, when the Delta Stewardship Council was putting in the recommendations, which were recommendations to other agencies, how confident do you think you were that they were actually going to follow these? I mean, a recommendation doesn't mean they actually have to.

ISENBERG: Well, I was probably the least optimistic in terms of implementation because everybody thinks... All the environmental agencies in the State of California think they should spend more money on environmental purposes. But until they get it, they're not going to divert money from other purposes to adopt a new one. And that attitude is prevalent in America, so.

AUSTIN: So one of the first things you undertook at the council was to develop an appeals process.

ISENBERG: Yeah. The legislation said we had to adopt a... What would they call it? An initial plan, a preliminary plan. I forget their phrase. But they gave us an exemption from the Administrative Procedures Act to adopt emergency regulations relating to the preliminary plan. And that was very important, and it tested our ability to draft regulations, and really laid the groundwork for the later documents that are out there.

AUSTIN: So why did you work on the appeal process first? Why did you set that first?

ISENBERG: Because we had the legal authority to adopt it on our own without doing an Environmental Impact Report. And, arguably, we had to set up a process that would take us through at least five years. We didn't have any idea how long this was going to take, and we wanted to have some rules set. So there are informal rules and there are formal rules. And so for me, the informal rules start with a basic. If you schedule a meeting at 9 o'clock, you start it at precisely 9 o'clock, no matter who's in the audience or whether any other member is there. And, gee, they all... After a while, a week or two, they all show up on time and you can get through an agenda. The formal stuff about submissions in writing, everything posted on the website, available to the public, all that stuff, we had to get... We got that out of the way, mostly, in the early stages. But we were puzzled about why we had to do an... It's called an interim plan. It turned out

to be OK because we did a test run of what we were thinking. But if they were to do the legislation over again, I don't think it would make sense to do an interim plan and then turn right around and do a Delta Plan to do the same thing.

Now, untested in the courts is what happens if they don't, but the interesting part is this whole appeal process, there have been 20 projects that have been... I think it's 20 or 21 as of now, that have been submitted to the Delta Stewardship Council. All of them were approved save for Water Fix, the tunnel proposal, which got pulled back, and then one other project was pulled back when it had some confusion, I think it's probably best to say. So, there's a... The language in the Delta Plan that the Stewardship Council developed is starting to bleed out into local planning efforts. Now, most of the locals would prefer that the council not exist 'cause everybody wants to do whatever they want as long as somebody else pays for it. But that's not the way it's working, hadn't worked that way for years. And the council has a big role to play in trying to make rational the constant quest for money.

AUSTIN: One thing that you focused on in the early stages of the Delta Plan implementation was early actions, a lot of focus on early actions.

ISENBERG: That's because early actions is projects that the proponents believe are so innocent and so obviously needed that we should not wait until all the big problems are solved. We should cut them loose and go ahead. This is the quest for the endless win-win solution where everybody gets what they want but nobody has to pay for it. And we went through the process of trying to identify those things. But of course, in the water world, ask one state agency what their priorities are for spending money, and if you ask them to give you 100 priorities and compare it to 100 priorities, say, the Department of Fish and Wildlife to Department of Water Resources, you'll find most of those 100 things are similar, but the order of priority is dramatically different.

And so people wanted to either do dams and reservoirs or fix the sinking pipes or water pipes in the Central Valley from underground water depletion. They want to do those first. And for them, "God, this is obvious. You should do it." Environmentalists have projects, they want to do those projects first. Well, that comes from a fragmented water system. The state is not in charge of the water systems, and most of the money that's spent for water supplies in California come from local agencies, not the state or the federal government. That famous chart that the Public Policy Institute of California, woman economist named Ellen Hanak, prepared, I watched the faces of new Democratic legislators around 15 years ago when the report came out and I was on a panel at a Democratic legislators retreat talking to them about water. And when she said, "Bring it all together. It's waste-water treatment, it's flood control, and it's water supply." And we spend \$30 billion a year, every single year. And you ask them, "Well, who pays how much?" Well, the feds pay 3 to 4 percent, the state pays 11 to 12 percent, and 84 percent, I believe it rounds out, is local agency money. If that doesn't tell you how complicated and confused our so-called water system is, nothing will.

AUSTIN: Yeah, and we argue most about the state and federal funding, the smallest piece of the pie.

ISENBERG: Right.