

Playing the Odds with Environmental Water

By Tim Strohane

In July 2003, the bucolic Napa Valley hosted the California water industry's current effort to rationalize the water system it so uneasily controls. The industry's new technological consensus is called the Napa Proposition. If implemented, the 11-page plan would enable the water industry to export more water from the Sacramento-San Joaquin River Delta.¹

But that may be just the beginning. Amid Napa's mediterranean splendor, state and federal water contractors and bureaucrats of the State Water Project (SWP) and the federal Central Valley Project (CVP) negotiated toward a future they probably hope will result in merger of the projects into one hydraulic regime; risk-free security for their water deliveries; minimal compliance with the federal Endangered Species Act; and expansion of their canal and reservoir facilities as contemplated in the CalFED Record of Decision (ROD) of August 2000.²

The two projects divert water north and south of the Delta into export pumps near Tracy (see image, page 7). This water is delivered via the Delta-Mendota Canal and the California Aqueduct for agribusiness irrigation and southern California cities (see map, page 9). Together the projects deliver in excess of 5 to 7 million acre-feet of water each year to places in California that normally experience very little rainfall.³ Government estimates put the Proposition's increased deliveries between 200,000 and 1 million acre-feet a year.⁴

Each project has its own set of pumps, each capable of pumping the equivalent of substantial rivers. Maximum capacity for the CVP pumps is 4,600 cubic feet per second (cfs), while the maximum capacity of the SWP pumps is more than twice that, 10,300 cfs. The total for both sets of pumps is nearly 15,000 cfs; but under earlier permits from the U.S. Army Corps of Engineers and a 1995 Delta Water Quality Control Plan, the state's pumps are regulated to pump only a maximum of 6,680 cfs at specific times of the year.

During January 2004, for comparison, average total Delta exports from both sets of pumps were 11,391 cfs, about one-quarter of average Delta outflow in January 2004. Combining the controlled flows of all Central Valley rivers to the Carquinez Straits and the Bay, Delta outflow was 44,487 cfs.⁵

To avoid impacts on endangered fish and Delta water

quality, the two big water projects must come up with a lot of extra water to make things work out for everyone. The increase from the regulated maximum rate of 6,680 cfs to 8,500 cfs at the SWP pumps could occur as early as this fall. The CalFED ROD calls for export pumping at the SWP pumps to top out eventually at 10,300 cfs, an increase of about 66 percent over current pumping rates.⁶

The success of the Napa Proposition turns on whether the water it will need actually exists somewhere in California's fabulously complex rivers and its water rights and hydraulic systems. That's another topic, full of intrigue. Suffice it to say that environmentalists and Delta water interests believe the Napa Proposition will be too much water exported from the Delta too soon, resulting in another ecological crash, especially for endangered fish species there. For them, CalFED's water quality, fisheries, and ecosystem restoration programs move too slowly and are short of funds, and yet these programs were key assurances to environmental interests, bartered as part of the CalFED ROD.⁷

Is Napa CalFED?

Increased exports from the Delta by the SWP and CVP were called for in August 2000 in the CalFED ROD, massing

"The big contractors are just cherry-picking the parts of CalFED that they like," groused Eric Wesselman of the Sierra Club.

the bureaucratic inertia of the CVP and SWP projects behind the Napa Proposition. It's hard to imagine there being a damned thing anyone can do to stop the revving of the Delta export pumps.

Environmentalists maintain that CalFED stands for ecosystem restoration and fisheries protection first, but when one reads CalFED reports and plans it is difficult to sustain that view. CalFED's top priority is to increase California's "water supply reliability." Restoring compromised fisheries and ecosystems is in CalFED's plans an important means to the end of delivering fresh water to the state's growing capitalist economy and largely urban population, but not an end in itself.⁸

Under CalFED, public trust resource protection evolved from a legal theory best embodied in the Mono Lake decision of 1983 (that is, the state is responsible for protect-

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E-mail to the Editor: Monterey Agreement

The following email exchange occurred between November 13 and 17, 2003, between Kellyx Nelson, a graduate student in public policy at the University of California at Berkeley, and Tim Stroshane, editor of *SPILLWAY*. Reprinted with permission of Kellyx Nelson. To understand this interchange new readers may find it helpful to also read *SPILLWAY*, v1n2, Winter 2000 issue about the Monterey Agreement, available at www.spillwaynews.net/BackIssues/index.html.

Dear Editor,

I can't find your phone number anywhere, so I thought I would try emailing you a few questions. I am a graduate student in the school of public policy at Berkeley, working on a research project for a professor in the school of agricultural and resource economics. I've been assisting him with some research on water reliability in California, for which we need to understand some of the very specific implications of legislation pertaining to water supply.

*I wrote a summary for him of my understanding of the agreement, which I have attached here in case you'd like to look at it. He had a few remaining questions, though, one of which pertains directly to your article in Spillway [*SPILLWAY* v1n2, Winter 2000]. Would you take a moment to look at his questions and answer any that you can?*

1) "I read the Spillway piece, but it raised more questions than answers. Why does Stroshane and others think it hurts the people of California?"

2) "Why do they think it shifts the facilities costs from contractors to taxpayers?"

3) "Why does it matter whether DWR [the California Department of Water Resources] or Kern County owns the

assets of the Kern water bank?"

4) "What exactly is the significance of deleting Article 18b?"

5) "What are they getting at when they [say] that the agreement usurps the common good by allowing water districts to profit from selling SWP water?"

6) "Are they saying that DWR should be the one that is selling the water and gaining the profit?"

7) "And, if so, how would that make sense given that DWR has a 40% shortfall in the amount of water that it contracted to sell?"

Tim, I truly appreciate your time. Please feel free to call me if it is any way easier for you, or if you have any questions for me about this research project. Thank you. Take care,

Kellyx Nelson

Editor replies:

Thank you for asking, Kellyx.

1) Well, I think the Monterey Agreement and its associated Amendments hurt the people of California on a number of levels.¹ Politically, the signatories to the Monterey Agreement felt that secrecy was the only way they could accomplish what they wanted - a variety of institutional changes to the SWP intended to facilitate water marketing on a large, interregional scale. It was negotiated in secret, and then DWR and the Central Coast Water Authority of Santa Barbara County were caught applying the California Environmental Quality Act (CEQA) in ways that sought to thwart the full disclosure purposes of the law. Had they their druthers, the signatories to the Monterey Agreement would have kept the whole thing secret, would have avoided anything resembling CEQA if they could.

I worry that it hurts the people of California economically during the next terrible drought, or in the eventuality that we have way more people here than the state's carrying capacity can really handle (almost regardless of how one might define carrying capacity in the ecological, institutional, or perceptual senses of the term): a water market will allocate water from poorer regions of California to wealthier ones, which means from north to south. If the drought is bad enough, how will Californians stop themselves from ruining the north for the sake of capitalist urbanization in the south, by buying up so much water than might be wise ecologically? What is the ethical and political limit to the epigram, "water runs uphill to money"? At what cost to rural regional ecologies and economies do we continue to encourage growth of the sprawling civilization that exists in California?

Legally and politically, I think the Monterey Agreement in its deviousness is an assault on the status of water law and the California constitution. It takes a public asset—the SWP, and nominally localizes it, gives a big chunk of its operational discretion to the Metropolitan Water District of Southern California (MWD) and Kern County interests and some other San Joaquin Valley water contractors (most of whom are thinly disguised agribusiness corporations that are up to their eyeballs in water supply unreliability and high

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SWP mortgage payments). The Monterey Agreement effectively tries to privatize the people's water in its quest to induce agribusinessmen to participate in water marketing. Moreover, the Agreement was undertaken in extreme uncertainty about the state's water supply, as the *SPILLWAY* article notes.

Like it or not, water is a fictitious commodity, not an actual one, because it is not made fresh by human hands but by "nature's services"; fictitious commodities like land, water, labor, must all be regulated to ensure an equitable distribution of the commodity in society, and to protect its quality, for these "commodities" are life, or (put another way) are essential to it. Is it a reasonable and beneficial use of California water to subject it to a water market? We might be able to agree that it is, but I object wholeheartedly to the Monterey Agreement because it was intended to prevent

democratic debate of water policy in a way that might have actually engaged the citizens. Tim Quinn of the Metropolitan Water District so much as says so in the 2000 *SPILLWAY* article. I still recall the 1982 election in which the Peripheral Canal (then Prop 9) was defeated by a nearly 2 to 1 margin. Following that was Prop 13, a water use efficiency and groundwater management initiative that fall, which lost. It was the only time in my life that I recall Californians being

really engaged with the role of water in their lives in an arid state—whatever the outcome—and it was a good thing. Unfortunately, the lesson the water industry and the state's leaders took from it is that it will mostly tell the public the good news about water policy (e.g., ecosystem restoration) and very little of the bad; leave water policy to the behind-the-scenes players. Hence the emphasis now on negotiated agreements—the Colorado River Quantified Settlement Agreement, the Napa Proposition, the San Joaquin River Agreement, the Sacramento River Agreement, etc.

Economists and too many environmentalists—in the same breath, yet!—agree that water needs to have a market price attached to it, that water needs to be mobilized as a (fictitious) commodity in hopes (not a certainty!) that our society will use water more efficiently. Efficient water use, I believe, is in the eye of the beholder. To focus in on narrow definitions of efficiency, as economists and too many environmentalists are prone to doing, is to miss other potential social motives or "values" that can provide reasonable and reasoned criteria for guiding water allocations.

2) Perhaps this is overstated in the 2000 *SPILLWAY* article. Principle 5 ("Restructuring to ensure financial integrity of the SWP") of the Monterey Agreement is really a

challenge to understand when reading its plain language. If I were to characterize it now, I'd speculate that the shifting of various SWP capital operating funds around was intended to reallocate the financial burden somewhat toward MWD and away from the ag contractors, at least on its face. Again, the Monterey Agreement was written largely in a hydraulic system code that really only the signatories understood at the time. There is no explanation in the Monterey Agreement about the origin or legal status of the various funds undergoing reallocation. One would have to research this in the Bulletin 132 series on management of the SWP. I haven't gotten around to that, but it might be an excellent research project for a graduate student! 8^}

That said, would the ag contractors, who act as "willing sellers" in the California water market, really need to have their "mortgage payment" reduced in light of revenue they

might earn to pay their mortgage from selling water? Don't know. Don't know if the question was asked 9 years ago when they were meeting (I think) at Asilomar. Maybe; maybe not. But if it's maybe not, then do proceeds from water transfers accumulate as unencumbered revenue to, say, Semitropic Water Storage District, or Kern Water Bank Authority?

3) DWR is a state agency and is supposed to serve all the people of California through its provision of

water. Unfortunately, I also think that its existence places the state in a conflict of interest, the more so if private interests have too much control over how the SWP is operated. The state must regulate water use and quality (through the State Water Resources Control Board), and yet it has taken up this role as water developer, and purveyor to land speculators and agribusinesses. (See Mark Arax and Rick Wartzman's new book, *The King of California*, about the Boswell cotton empire in the Tulare Lake Basin of Kings County.) It is hard to be both a regulator and a developer without having certain, ahem, difficulties arise in the practice of one or the other. I wrote an article for the *Berkeley Planning Journal* in 1993 that tepidly advocated that the state should administer water banks the way it did in 1991 and 1992 during the last deep drought. I still think that's appropriate. I don't think it's ethical that farmers receive profits off of water rights that were granted them by the state; they didn't make widgets or grow cumquats. Unearned increments can create despicable and conspicuous wealthy classes. Why would we encourage more of that in California, especially if it's based on the control of water? Wasn't the point of welfare reform (albeit for the poor) in 1996 to get people working again?



Photo by Tim Strohshane

San Joaquin River water is diverted at the Central Valley Project's Friant Dam into the Madera Canal, shown here as it passes through the farm of citrus grower Shawn Stephenson northeast of Clovis, to deliver water northwest of Fresno.

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Photo by Tim Strohane

View north in winter along the San Joaquin River near Manteca beyond the west levee of Alex Hildebrand's farm.

E-mail: Monterey Agreement

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Kern County Water Agency received the Kern Water Bank in 1995, but they almost immediately deeded the 20,000 acres over to the Kern Water Bank Authority, a joint powers authority that apparently has a private mutual water company as a major partner in it. It seems the state legislature passed legislation a little earlier that allows private mutual water companies to partner with other agencies in joint powers authorities. Note that many of the coalitions of individual water and irrigation districts are now “authorities.” This little innovation facilitates privatization, something that, again, is an inchoate, secret policy, not one to be debated in full view and with participation from the public.

4) The SWP contractor signatories to the Monterey Agreement wanted Article 18b of the State Water Project water service contracts deleted apparently because by 1992 (25 years after completion of the major reservoirs in the SWP) they were deeply worried about the actuality of permanent drought in California. They were facing enormous sunk costs for committing to pay the “mortgage” on a hydraulic system that it might turn out was vastly overbuilt for the amount of water it could deliver. They were also worried about what’s now referred to as “regulatory drought” or what is also known as “environmental water”—water needed to sustain the carrying capacity of Central Valley watersheds and ecosystems. Article 18b stated that the State may reduce all the SWP contractor “entitlements” in Table A of the SWP contracts proportionately in the event that the State cannot “construct sufficient additional conservation facilities to prevent a reduction in the project yield, or if for any other reason there is a reduction in the minimum project yield...[which] threatens a permanent shortage in the supply of project water to be made available to the contractors...”

Interestingly, 18b would also have reduced the contractors’ financial obligations to the state “in accordance with such reduced entitlements if such reductions [I believe in the “minimum project yield”] have not been strictly proportionate throughout.” This seems quite fair to me; if the state were to recognize its project’s capacity to deliver water was

less than planned and what contract “entitlements” called for, then the size of each contractor’s “mortgage payment” should be—and according to the SWP contract language it would have been—proportionately reduced.

For some reason, though, the contractor signatories to the Monterey Agreement wanted the 18b provision gone—probably because they did not wish the state to admit publicly either that the project could not deliver its promised capacity or that the project’s capacity was about twice the size it needed to be. Agribusiness corporations might have had a hard time explaining the loss of water supply to their investors; might have caused fiduciary problems or something. By banishing it, there could be greater opportunities for money to change hands—at some risk, due to climatic and regulatory uncertainties—by encouraging water transfers.

The significance of deleting Article 18b, in my opinion, and that of others familiar with Monterey stuff, lies in a missed opportunity by the State of California to recognize an ecological limit for the first time in the state’s history, and to start a process by which state leaders could come to terms with the economic and hydrological crisis crashing down on SWP contractors in 1993 and 1994 and to move to right the ship through a public process. But these hydraulic plutocrats, including DWR officials, preferred to keep it all secret since the public wouldn’t presumably understand.

Incidentally, to grasp the Monterey Agreement is tricky because the framers of this dark constitution wanted only to carry out specific actions; they did not wish to provide sufficient narrative to disclose what those actions meant to them, and what they meant for the state’s water system. Only by rereading the original contracts and reasoning through all of the publicly known operational characteristics that SWP observers were aware of did anyone begin to figure out what the Monterey Agreement actually meant.

5) See my answer to question 3 above. It opens the door wide to water privatization on a grand scale in California, and for corruption of the legal notion of “beneficial use” of water. What’s still unclear to me is how the joint powers authority institutional mechanism enables private parties to benefit monetarily from a water transfer. But why would a private mutual water company participate in a JPA, but for hope of some sort of gain? Natural monopolies are not known as philanthropists; they usually have to be regulated to behave well.

6) It makes sense to me for DWR to be the one reaping water revenues for the benefit of all the people of California since the state is supposed to allocate and regulate water in trust for all of us (see CA Water Code section 102). Capitalists hate this idea of the state turning a profit for the People, and yet there are municipalities up and down California who are in the public power business, and whose customers/citizens did much better during the energy crisis of two years ago than those of us contending with PG&E, SoCal Edison, or San Diego Gas & Electric. Given the budget crunch the state faces now, that kind of hydraulic revenue would be welcome at the Resources Agency about now, with layoffs

looming and big budget cuts likely under the new governor. The SWP is a “natural monopoly” that was supposed to benefit all Californians, not just Kern County-as-water-market-switchyard.

7) It would make sense because the water is even scarcer than originally thought, and buyers of water would have a more reliable understanding of how much water actually exists. So—the state could have been charging a higher price, earning more revenue in trust for the people of California, and encouraging more conservation among us as a result. When looked at this way, the Monterey Agreement actually anticipates California’s electricity deregulation experience (also a product of Pete Wilson’s administration). Significant public power supplies—together with widespread investment in decentralized photovoltaics and other passive solar energy systems—would have looked good about 2000 and 2001 to protect California consumers from blackouts and rate hikes. The Kern Water Bank Authority is primed for the next drought to game the system, as is Semitropic Water Storage District which banks water for MWD, Silicon Valley, eastern Alameda County, and at least at one time, the late Marc Reisner’s cherished investment in Vidler Water Company (a subsidiary of insurance company PICO Holdings).

My overall feeling is that there is an awful lot of important stuff that Californians should be arguing about with respect to water transfers and urban sprawl and the potential for profiteering in the next drought. The Monterey Agreement and its associated SWP contract amendments—and now the settlement agreement between the PCL plaintiffs, DWR and Central Coast Water Authority in Santa Barbara County—are an excellent starting point for getting the debate going. Let’s hope the draft revised Monterey Agreement EIR provokes that kind of debate when it comes out eventually. It is supposedly in preparation now.

I hope you’ve found this helpful. If you have questions or want additional clarification from me, just ask. Perhaps you thought you were just asking simple questions about this, but it’s no ordinary issue—it cuts to the heart of the state’s water politics, its speculative real estate, agricultural and hydraulic economies, its chances of recovering democracy in hydraulic affairs, and the state’s future.

Tim Strohane, Editor

ENDNOTES

¹ *The Monterey Agreement may be viewed at <http://www.spillwaynews.net/Arcade/MontereyAgreement.pdf>. It was originally published as Appendix A in Central Coast Water Authority, Draft Environmental Impact Report on Implementation of the Monterey Agreement: Statement of Principles by the State Water Contractors and The State of California Department of Water Resources for Potential Amendments to the State Water Supply Contracts, prepared by Science Applications International Corporation, May 1995.*



Turning Wine to Water

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ing public trust resources using its police power) to a market theory (that is, the government should give private water users financial incentives to protect public resources), deteriorating into a reality in which water project operators and fisheries managers assume all risks of gambling public funds in the water market for the survival of endangered species, while guaranteeing water contractors risk-free, reliable water supplies.

Environmental mainstays at the innumerable CalFED meetings of the 1990s included Environmental Defense, Natural Resources Defense Council, the Bay Institute of San Francisco, Save San Francisco Bay Association, Sierra Club, Natural Heritage Institute, Friends of the River, the League of Women Voters of California, and the Mono Lake Committee. These organizations tried to keep pace with CalFED’s all-out blitz of a planning process between 1995 and 2000⁹. Their technical and lobbying expertise are vital to grassroots environmental protection groups, who haven’t the resources to bird-dog CalFED.

The Napa Proposition’s stated purpose is “to maximize water supplies for the benefit of both CVP and SWP contracts that rely on water delivered from the Bay-Delta in a manner that (1) will not impair in-Delta uses, and (2) will be consistent with fishery, water quality and other flow and operational requirements imposed under the federal Clean Water Act, Endangered Species Act, the Central Valley Project Improvement Act, and the CalFED Record of Decision.”

The proposition calls for the two projects to:

- Continue a wholesome-sounding program called the Environmental Water Account (EWA), including a detailed plan for financing and operating the EWA. More on this below.
- Help each other meet wildlife refuge water needs and Delta water quality requirements.
- Share information, and their reservoirs and pumping plants, “without impeding existing uses of those facilities” in order to accommodate increased water market transfers.
- Share “risk-taking” to “minimize exposure of project contractors to possible loss of water.”

Once undertaken, these “sharing” tenets of Napa would ease the eventual merger of the SWP and the CVP, probably under the State of California’s control.¹⁰

Environmental activists are nonetheless angry about the Napa Proposition, publicly expressing a clichéd populist indignation about CalFED innovations contained in the document—especially the Environmental Water Account, which some among them claim as their idea.

“The process [for the Napa Proposition] stunk,” Tom Graff, regional director of Environmental Defense in Oakland, fumed to the *Bakersfield Californian* in August. “The contractors and the Department of Water Resources and the Bureau of Reclamation got together and divvied up the

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delta's water and decided to jack up exports and didn't bother to include any environmental interests."¹¹ Environmental Defense has advocated for a water transfer market since before the defeat of the Peripheral Canal in 1982.

Barry Nelson, a senior policy analyst with Natural Resources Defense Council (NRDC) and a long-time water warrior who cut his teeth on environmental water politics with Save San Francisco Bay Association, issued an NRDC communiqué charging that the Napa agreement was "a back-room deal" that will result in poorer water quality in the Sacramento-San Joaquin Delta.

"The big contractors are just cherry-picking the parts of CalFED that they like," groused Eric Wesselman of the Sierra Club. "Napa shows a disregard for the standards and obligations outlined in the CalFED Record of Decision and its regulatory underpinnings. This is the biggest, baddest diversion from CalFED yet."¹²

"Their basic premise [of environmental critics] is to oppose improvement of the water supply for the projects, so of course they're going to scream and yell," retorted Tom Clark, General Manager of the Kern County Water Agency (KCWA), the largest state water contractor representing mostly agricultural water users in the San Joaquin Valley. Clark told the *Bakersfield Californian* the parties to the Napa Proposition were merely working out details of the proposal for increased pumping in the Delta that had already been agreed to by environmentalists in the CalFED ROD.¹³ "It looks like the environmentalists no longer want to abide by that agreement," Clark added. KCWA expects to receive an average of 50,000 acre-feet more in deliveries should Napa come to pass.¹⁴

"Frankly," says Tim Quinn, a vice-president for SWP resources with Metropolitan Water District of Southern California (MWD), the state's largest water wholesaler, "it's a difficult question to say what's CalFED and what's Napa. From the perspective of those of us who were involved, Napa is CalFED."¹⁵

Quinn claimed to the *Contra Costa Times* in September 2003 that the Napa agreement represents an environmentally sensitive approach to meeting Southern California's water needs, with neither a peripheral canal nor new dams. It relies on water transfers, increased efficiency and operational flexibility. "That vision [of dams and canals] is completely gone," he said. "The environmentalists won."

CALFED's plans will alter the Delta and its Central Valley watershed by:

- Construction of tidal barriers and fish screens at the export pumps to protect local water quality and water levels in Delta channels for agriculture there. Stabilization and enlargement of existing Delta channels will also help accommodate more water deliveries to the south by making it easier for CVP and SWP export pumps to increase their pumping rates.

- Recharge of groundwater basins in wet years for use as

storage reservoirs so that water may be pumped for later use, especially in dry years (called "water banking" or "conjunctive use" water management);

- Raising existing dams and building new reservoirs to increase water storage in the foothills of the east slope of the Coast Range and the west slope of the Sierra Nevada;

- Establishment of water quality, supply, and ecosystem health criteria by which a final decision on a "isolated conveyance facility" (that is, a newer, smaller peripheral canal) for the Delta would be reached by 2007; and

- Creation of a water transfer market, which will allow cities, farmers, and fish and game regulatory agencies to buy and trade water more easily—including, CalFED officials and Napa Proposition adherents hope, for protection of endangered Delta fishery species via the EWA.

Most flows in water transfers are routed through the Delta to the state's export pumps; increasing their pumping rate is likely to increase the overall size of California's emerging water market.

A Truly New Idea

The EWA represents the institutional and technological breakthrough the water industry needed out of the CalFED planning process to break the impasse over Delta exports and the pumps' impacts on endangered fishes, the one truly new idea that the water industry seized on in five years of meetings to keep CalFED afloat and working for its interests.

The EWA, in CalFED's description of it, is a "cooperative management program, the purpose of which is to provide protection to at-risk native fish species of the Bay-Delta estuary through environmentally beneficial changes in SWP/CVP operations *at no uncompensated water cost* to the Projects' water users. This approach to fish protection involves changing Project operations to benefit fish and the acquisition of alternative sources of project water supply, called the 'EWA assets,' which the EWA agencies use to replace the regular project water supply lost by pumping reductions."¹⁶

EWA comes into play during project operations when, for example, real-time monitoring of the export pumps reveals large schools of, say, endangered Delta smelt congregating around the pumps and which would be killed (the water projects' quasi-Christian euphemism for their mass destruction is "salvaged"; the Endangered Species Act's [ESA] term of art is "take" or "taking"). EWA fisheries managers would swing into action, perhaps ordering the pumps slowed or shut down immediately until the problem fish disperse.

Meanwhile, project operators would keep track of *how much water was not exported* and the EWA would "pay" that amount of water, either out of its own water sources stored underground in a San Joaquin Valley water bank, or from EWA water stored at the San Luis Reservoir near Los Banos northwest of Fresno. In other circumstances, EWA "assets" might be used to provide additional flows to attract migrating fish upstream or to flush juvenile salmon into and out of the Delta beyond the reach of the fish-killing export pumps near Tracy.



Photo courtesy of California Department of Water Resources.

A high-altitude aerial infra-red photograph of Clifton Court Forebay and Bethany Reservoir (lower left). Red lands are farm in cultivation; the brown area to the left are the East Bay hills. Discovery Bay is located at the upper left center of the photo. The canal extending left from the Forebay terminates at the DWR Banks Pumping Plant. The Bureau's Tracy Pumping Plant is at the lower end of a small canal just below the Forebay. Byron-Bethany Highway runs top-to-bottom just left of the Forebay.

“Reclamation, DWR, and their respective contractors support continuation of the Environmental Water Account,” states the Napa Proposition, “for the purposes described in the CalFED [Record of Decision]...and DWR, Reclamation, and their respective contractors propose to develop in cooperation with the management agencies a plan for the continuation of the EWA.” The Napa plan for the EWA is to include “commitments regarding specific assets”—that is, both water and money—for use by the EWA agencies (i.e., state and federal fisheries agencies); and stable financing for EWA. The mainstay groups have long recommended user fees for all Delta exports to fund ecosystem restoration and environmental water purchases (including EWA), but DWR and USBR have been too faint of heart to adopt such fees; their contractors adamantly oppose Delta export user fees.¹⁷

Counting EWA's Cards

But the EWA raises numerous issues that today remain unresolved three years into its four-year experimental period. The Bay Institute of San Francisco studied the EWA's first two years, finding that:

- EWA is “under-endowed” with funds and water, and constrained in its functions.
- The mainstays did not intend their spawn, EWA, to mitigate impacts of additional new export, storage, or conveyance. But that is how it is turning out with the CalFED ROD and Napa.
- The EWA needs “better coordination” with other environmental and non-environmental water initiatives.
- Until the end of 2004, the EWA is an experiment, but one whose results are only poorly studied by the state and federal agencies who intend to make it a permanent part of California's hydraulic regimes. “It is imperative,” wrote Bay

Institute scientist Christina Swanson in 2001, “that the results of its actions be more accurately measured and evaluated.”¹⁸

- The Bay Institute and other mainstays take CalFED's commitments beyond those actually made to the EWA, called “Tier 3” water, as a “promise.” However, CalFED clearly states in its ROD that the Tier 3 commitment depends on its ability to make water available should CalFED's minimum regulatory requirements and the EWA prove inadequate for fish protection at the export pumps. “It is unlikely,” states the ROD, “that assets beyond those...will be needed to meet [Endangered Species Act] requirements.”¹⁹

Complaints about EWA spread beyond the environmentalists' camp, however. Average water prices per acre-foot paid by the EWA range from \$179 in Fiscal Year 2001 to \$144 in 2003.²⁰ Steve Ottemoeller, general manager of the Madera Irrigation District north of Fresno, testified on EWA's environmental reports last August that EWA managers consistently outbid smaller agricultural water districts for scarce, transferable blocs of water on the Central Valley water market. Growers in his district are concerned that EWA will price them out of the water market since it is backed by taxpayer funds.²¹ The market's knack for creative destruction appears to be at work in the world of California water.²²

When to Hold 'Em...

It also appears that water and environmental policy are increasingly created and implemented independent of appropriate political channels (the Legislature, the Governor, or the Courts). CalFED has free rein to initiate water policy, conduct scientific and program experiments on natural river systems, and generally enjoy a freedom from public accountability available only to anointed “stakeholders.” Elevated to a new status as the CalFED Bay-Delta Authority by the Legislature last year, the agency at last faces greater fiscal scrutiny.

“The EWA guarantees that water deliveries to state and federal contractors will not be affected as a result of modifications in water project operations to reduce harmful impacts on endangered fishes,” wrote Christina Swanson in a 2002 review of the EWA. “Risks to contractors of reduced or interrupted water deliveries have been eliminated.”²³

While endangered fish species in the Delta face reduced risks of mass destruction with a robustly-funded and endowed EWA in operation, their risks have hardly been eliminated. Funding for the program shrunk steadily, from \$69 million in Fiscal Year 2001 to \$38.2 million in Fiscal Year 2003.²⁴ Future funding is unlikely to be robust.

Swanson fears that since the EWA's experimental years were “under-endowed,” fishery managers handling EWA duties face a dilemma of whether to spend water and money for water early in the October-to-September water year to protect winter-run chinook salmon in December and January, or whether to harbor their scarce assets for protecting Delta smelt in March and April.

This dilemma is compounded by economics and the

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vagaries of California's hydrology: prices for available water in wet years may be cheaper, but EWA's water buyers will pay with public funds dearly for water in dry years. And when its budget is set each autumn no one knows how much rain and snow will fall in the months ahead. "In effect," wrote Swanson, "[EWA's managers] are forced to gamble with their fish protection tools and, to date, their strategy has been to withhold protection or provide minimal levels of protection, less than would be preferred, in order to husband their finite resources."²⁵

...And When to Fold 'Em

Believing the Delta's Central Valley watershed held surplus waters sufficient for California's post-World War II booming economy and population, state and federal water managers dreamt of vast water exports at the pumping plants adjacent to Clifton Court Forebay at the birth of the great hydraulic regimes in the 1960s and 1970s.²⁶ Drought postponed these dreams in the early 1990s, as did near-extinctions of winter-run Chinook salmon, delta smelt, and, until recently, Sacramento splittail fishes, and because the pumps caused havoc for Delta farmers' water supplies and quality.

EWA holds out the prospect for water contractors of getting around federal ESA take problems at the Delta export pumps *if* enough "assets" can be found.²⁷ And intensive, deity-like surveillance and coordination of real-time fisheries management in water operations, on which EWA is pre-

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mised, creates bureaucratic momentum in the hydraulic regimes for merger of the two hydraulic regimes (the SWP and CVP), as well as the building of additional surface storage sites, including:

- Construction of the SWP's Sites reservoir (off stream) in Glenn County;
- Raising of CVP's Shasta Dam north of Redding;
- Construction of the off-stream Sites Reservoir west of Colusa;
- Expansion of Los Vaqueros Reservoir in eastern Contra Costa County; and
- Either raising of CVP's Friant Dam on the San Joaquin River east of Fresno, or construction of a new dam and reservoir at Temperance Flat, just upstream of Friant Dam.

At its core, the CalFED planning process strived to create

a reliable water supply for California agribusiness and urban development interests; the environmental investments are a means to this end. It was always so with CalFED, which signaled its desire to increase export pumping repeatedly in its deluge of reports and publications. A public debate about whether California as a whole is on the right path of water, urban, rural and agricultural development recedes further from the public's attention.

The Napa Proposition reveals the waning utility of the mainstay environmentalists' "win-win" strategy for real fisheries protection. "Win-win" works best when power differentials among competing interests are balanced, not out of balance as they are now. The water industry appears to have stolen environmentalists' thunder.

The Environmental Water Account weakens enforcement of the federal Endangered Species Act at the Delta pumping plants without legitimate political action by the U.S. Congress. In the EWA's first experimental operations three years ago, about 20,000 Delta smelt were killed at the state's Banks pumping plant.²⁸ According to the Bay Institute, this carnage was 300 percent over the "take limits" set for the pumps by federal fisheries biologists under the ESA.

Given scientific uncertainties of knowing where fish may suddenly turn up, EWA managers must adopt a gambler's mindset. Biologists and hydrologists and engineers study "gaming" scenarios to learn how to work the system given the interests of the house (i.e., the projects' water contractors, and California's mercurial climate). They must learn to, in effect, count cards they and others hold (their "assets and tools") and must learn when to hold 'em, and when to fold 'em.

Kinda puts the "western" back into "western water."

Prudent Buyers and Sellers

Who benefits from the export pumping and, more generally, from the EWA's shouldering of the contractor's hydrologic and hydraulic risks? New underground "water banks" will benefit grandly from this risk-free facet of the "market" for water. Water banks are vast tracts of agricultural land converted to shallow lakes percolating water into porous geological "deposits" pin-pricked with extraction wells and holding huge amounts of groundwater for later "withdrawal" for sale to thirsty farmers or new towns of the Tulare Lake Basin in Kings and Kern counties, state water contractors generally, and corporate agribusiness and urban sprawl developers.²⁹

A recent report by Public Citizen's California office in Oakland disclosed that Paramount Farming, a privately held agricultural corporation headquartered in Beverly Hills, owns a mutual water company possessing a 48 percent share in the Kern Water Bank Authority. Publicly-owned water is already controlled by private interests there, though how much and by whom is costly and difficult to determine.³⁰

Other major landowner-speculators like Tejon Ranch and Newhall Land and Farming Company have stakes in other Tulare Lake Basin water banks formed at the hydraulic interchange of the SWP's California Aqueduct, and the

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1982. At that time, environmentalists held stronger cards in their hands: their threats of litigation to enforce adequate Delta outflows to protect the region's decimated fisheries struck terror into the hearts of drought-battered water agencies. Rather than be accused of obstructionism, and risk the environmental damage of perhaps-decades-long Delta litigation, they anted up with the CalFED process, providing it with a political-ecological legitimacy the water industry then so desperately craved.

And California has added a few million people over the last 10 years.

"Assets" for the Environmental Water Account may exist or may not. We must think not only of assets from California's rivers, streams and aquifers, but of taxpayer funds allocated from state and federal budgets to the EWA, which are as under-endowed and over-appropriated as our grandest rivers. In that light, the strategy of paying for the public trust with taxpayer funds may be neither fiscally realistic nor sustainable. All Californians should be asked to vote on this, but we won't be.

To insulate the EWA from the troubled public fisc, agribusiness and urban water contractors would have to agree to Delta user fees to fund the EWA. As self-interested political and economic actors, will they step out of character long enough to achieve this? If it's important enough, they will.

But governmental responsibility for enforcing the public trust in water resources will continue to erode the longer that a water market takes hold. And it will have happened without the consent of the governed: the people of California who are the original, perpetual owners of water here.

"We believe a long-term EWA is necessary," enthuses Brent Walthall, who oversees the Kern County Water Agency's Bay-Delta Resources Division. "It helps mitigate for take at the pumps [and] can also be used to recover species beyond the ESA's jeopardy level. Paying for it has not scared us away from the table yet."³³

MWD's Tim Quinn told *Western Water* that his agency would continue the practice of investing in environmental mitigation and restoration for the Delta; it benefits MWD in both overall water quality as well as supply. "Exporters are wedded to the proposition that protection has to precede operations," he said. "We do recognize that firm funding for EWA is important."³⁴

Mainstay environmental groups weren't invited to Napa's wine country last July probably because water industry officials felt no need for the mainstays to continue greenwashing the SWP and CVP; they may believe they can handle it themselves now that EWA is in their grasp.

ENDNOTES

¹ Anonymous, Draft Proposition Concerning CVP/SWP Integrated Operations (no date), 11 pages, issued on the Bureau of Reclamation's web site 30 July 2003; it is no longer

posted there, however, as of this writing. The Napa Proposition may be viewed at <http://www.spillwaynews.net/Napa/Proposition>.

² CalFED Bay-Delta Program, Programmatic Record of Decision, August 28, 2000. See especially sections 2.2.6, Conveyance, and 2.2.7, Environmental Water Account, pp. 48 through 57. Hereafter cited as "CalFED ROD." These two sections lay out the physical improvements CalFED Agencies (which include the California Department of Water Resources and the United States Bureau of Reclamation) intended to pursue to increase pumping at the SWP pumps from currently allowed 6,680 cubic feet per second (cfs) to 8,500 cfs. This increment of increase is referred to as "Banks 8500" in the Napa Proposition. Export increases to the full capacity of both CVP (4,600 cfs) and SWP pumping plants (10,300 cfs) were factored into the CalFED Final Programmatic Environmental Impact Statement/Report, July 2000, Attachment A, p. A-15. A timeline for this export increase presented to state water contractors in November 2003 indicates that endangered species compliance reviews and south Delta improvements for Banks 8500 will be completed by the end of June 2004. Export increases are expected to start when the South Delta Improvements Program is completed.

³ An acre-foot is approximately 326,000 gallons of water, an amount used by a typical California household in a year. Millions of acre-feet represents trillions of gallons.

⁴ Gary Pitzer, "The CalFED Plan: Making it Happen," *Western Water* January/February 2004.

⁵ Flow and export data from Delta Outflow Computation table available from U.S. Bureau of Reclamation's Central Valley Project Operations Office web site for water accounting reports, www.usbr.gov/imp/cvo/html/pmdoc. Data obtained 12 February 2004.

⁶ CalFED ROD, op. cit.

⁷ Pitzer, op. cit., p. 11.

⁸ CalFED Bay-Delta Program, Ecosystem Restoration Program Plan: Strategic Plan for Ecosystem Restoration, Final Programmatic EIS/EIR Technical Appendix, July 2000, p. 5, which states: "...[C]onfusion and contention still surround the concept of ecosystem restoration...[T]hat is, the term itself seems to imply that the ecosystem will be restored to its pristine, pre-disturbance condition or some structural and functional configuration defined by a particular historic baseline.... Ecosystem restoration does not entail recreating any particular historical configuration of the Bay-Delta environment; rather, it means re-establishing a balance in ecosystem structure and function to meet the needs of plant, animal, and human communities while maintaining or stimulating the region's diverse and vibrant economy." A similar passage is found in the July 1999 draft of this same report. This is not deep ecology, but it functions as a public secret.

⁹ CalFED's planning process was a meeting marathon for many years. Having created numerous advisory councils, working groups, roundtables, and subcommittees, the state and federal government together have literally hundreds of expert engineers, consultants, biologists, hydrologists, and lawyers who can fan out to meetings with impunity. The same is also true for the Metropolitan Water District of Southern California and other urban water agencies (including the Santa Clara Valley Water District). Agribusiness water districts send high-priced lawyers and engineers on retainer to CalFED meetings. It is obvious that environmentalists,

even the best-paid, most professional, and most foundation-grant-endowed ones, are outgunned and the CalFED process was no exception. The difference, as will become clear, seems that the environmental mainstays somehow cling to the belief that their access to the CalFED process bridged this inequality; with benefit of four years' hindsight and now the Napa Proposition, it probably didn't.

¹⁰ Tom Philp of the Sacramento Bee's editorial board, wrote in his web log on 8 October 2003, "Schwarzenegger's campaign web site had something intriguing to say about water, and the message of course is a little different [than that of the Davis Administration]. Translation: We're adrift because of a lack of leadership, and part of the solution is for the state to own all the key plumbing in the Delta. That means somehow buying the Central Valley Project from the Bush administration. This idea hasn't been on the front burner for years. Maybe its origins trace to a Wilson-era advisor dusting off an old idea. But was this a plant from the Bush administration, perhaps Interior's Bennett Raley [currently Deputy Secretary of the Interior under Gale Norton]? I don't know, but California under Governor Arnold would be the perfect place for the Bush team to launch an agenda to downsize federal ownership of its aging western water projects. Even in a budget crisis, the state could float this purchase if Bush and Congress were willing to sell the Central Valley Project on favorable terms (reasonable price, paid over decades). That way the budget doesn't take a hit, and all the project water users easily absorb the cost through a modest hike in the rates." Posted to the Salmon Coalition listserv on 9 October 2003. If the State owns the CVP eventually it would probably also mean the end of all pretense of acreage limitations on CVP agribusiness beneficiaries.

¹¹ Quoted in Vic Pollard, "Valley boost on tap: plan between state projects to increase water for Kern as much as 50,000 acre-feet," Bakersfield Californian 20 August 2003, p. 1.

¹² Quoted in Cariad Hayes Thronson, "Napa Deal Demystified," Estuary, December 2003, p. 1.

¹³ Quoted in Vic Pollard, "Water deal could increase supplies," Bakersfield Californian 11 December 2003.

¹⁴ Ibid.

¹⁵ Quoted in Mike Taugher, "Most wanted: Delta water," Contra Costa Times 30 September 2003.

¹⁶ The five "EWA agencies" are the Bureau of Reclamation, Fish and Wildlife Service, and National Marine Fisheries Service of the federal government; and the State of California's departments of Water Resources and Fish and Game. Hereafter cited as "EWA Agencies." EWA Agencies, Environmental Water Account Draft Environmental Impact Statement/Report, July 2003, Volume III, Appendix J, "Action Specific Implementation Plan," Section 2.2, "EWA Program Overview," p. 2-3. Emphasis added.

¹⁷ Writes Gary Pitzer in Western Water, op. cit., p. 9: "Using the EWA can be a complicated, expensive process, given the scientific uncertainty that exists with protecting fish and the cost of acquiring water on the open market. The EWA has provided 900,000 acre-feet of additional water [over three years] above the regulatory baseline to protect the environment at a cost of \$120 million, [Chief of DWR Water Transfers Office Jerry] Johns said, adding, 'This is by no means an inexpensive program.'"

¹⁸ Christina Swanson, Ph.D., The First Annual State of the Environmental Water Account Report, San Rafael, CA: The Bay Institute of San Francisco, September 2001, p. 5.

Available from <http://www.bay.org/news.htm>.

¹⁹ CalFED ROD, p. 58.

²⁰ Jerry Johns, Chief Officer of the Water Transfers Office, California Department of Water Resources, "EWA, Development of Operational Criteria and Plan Proposal: Where to From Here," see slide entitled "EWA Budget." Public presentation given to state and federal water contractors, November 25, 2003. Posted on the Internet at <http://www.usbr.gov/mp/cvo/HTML/present.html>.

²¹ Testimony of Stephen Ottemoeller, General Manager of Madera Irrigation District, Fresno public hearing August 28, 2003, on the Draft Environmental Water Account Environmental Impact Statement/Report, contained in the Final Environmental Water Account Environmental Impact Statement/Report, Volume 4, Chapter 4, January 1994.

²² On the market's penchant for "creative destruction," see Joseph Schumpeter, Capitalism, Socialism, and Democracy, 2nd ed., New York, NY: Harper & Brothers, 1947.

²³ Swanson, op. cit., p. 14.

²⁴ Johns, op. cit.

²⁵ Swanson, op. cit., p. 14.

²⁶ Tim Strohane, "Water and Technological Politics in California," Capitalism Nature Socialism 14(2): 34-76, June 2003. Copies available from the author on request via email at editor@spillwaynews.net, or in writing at P.O. Box 8362, Berkeley, CA 94707-8362.

²⁷ Sources for EWA assets may include water purchases subsidized with taxpayer funds (rather than Delta user fees); borrowing of water from SWP and CVP reservoirs; and perhaps water freed up from the Sacramento Valley Water Agreement, executed in November 2001.

²⁸ See Steve Burke, "Diablo Grande: A Signature Experience," and Lynne A. Plambeck, "Water Newhall Ranch on a wish and a prayer," SPILLWAY v1n3&4 Spring and Summer 2001. Available at <http://www.spillwaynews.net/backissues.html>.

²⁹ The Kern Water Bank Authority was created immediately after Kern County Water Agency obtained the Kern Water Bank as part of the Monterey Agreement. See John Gibler, Water Heist: How Corporations Are Cashing In On California's Water, Oakland, CA: Public Citizen, December 2003, 30 pages. This free report is available from the Public Citizen web site at <http://www.citizen.org/california/water/heist/> or by contacting Public Citizen at their California Office, 1615 Broadway, Ninth Floor, Oakland California 94612, 510.663.0888, or via email at california@citizen.org.

³⁰ This unpleasant fact about the EWA's experimental phase goes unacknowledged in Western Water by both Jerry Johns of DWR and writer Gary Pitzer.

³¹ Pitzer, op. cit., p. 9.

³² Quoted in Mike Taugher, "Tapping of Delta waters opposed," Contra Costa Times, 19 August 2003.

³³ Quoted in Pitzer, op. cit.

³⁴ Ibid.

