SIERRA CLUB
CALIFORNIA

January 14, 2008

Delores Brown, Chief
Office of Environmental Compliance
California Department of Water Resources
Email: delores@water.ca.gov
(916) 651-9560

Re: Comments on the Monterey Plus EIR State Clearing House #2003011118

Dear Ms. Brown:

Sierra Club California appreciates with an opportunity to comment on the Draft Monterey Plus EIR (DEIR). This project is of statewide significance to California's water supply and delivery system.

As the DEIR accurately describes, this document was released as a result of litigation and a settlement that set aside the original Monterey EIR. The settlement and Court Order provided that a new EIR be produced that will provide a more complete disclosure of impacts from changes to contracts known as the Monterey Amendments. These changes relate to the manner in which the state water supply from the Sacramento Delta and its delivery system are to be managed. Although the release of this document was in response to a Court Order and Settlement in 2003, the Dept. of Water Resources (DWR) did not release the DEIR to the public until October of 2007. This remarkable delay has allowed the State to continue in a regrettable status quo posture that may be the chief cause of the current crisis surrounding the Delta Smelt. The change in pumping regimes promulgated by this project and proceeding without a certified EIR, allowed extensive increased pumping at a time that would affect Smelt migration. This occurred without the benefit of mitigation measures resulting from a final certified document. Such measures might very well have immediately identified and ameliorated the problem, thus avoiding the current crisis.

The DEIR analysis is not based on an appropriate baseline

It is essential that this environmental document begin by addressing the issues from the starting point of a correct baseline. The baseline included in the DEIR does not provide an accurate basis for comparison of impacts. The baseline does not accurately reflect pre-Monterey contract provisions that set limitations for contractors, and thus does not accurately reflect demands or capacity to accept SWP water under those pre-Monterey contracts.

It is already settled in California case law, that the baseline must accurately represent the conditions present before the initiation of the proposed project. (*Save our Peninsula v. Monterey County*) Although the document discloses delivery scenarios prior to 1995, it doesn't accurately describe the environmental setting. This environmental document seems to begin with a baseline period of the project itself, in or before 2000. The baseline should reflect the conditions present in the Sacramento Delta and other affected areas as of the release of the project proposal in 1995. That information is readily available by

accessing the original documents and comments. We request that the DEIR be changed to reflect these conditions so that appropriate safeguards and mitigation can be incorporated into the final document.

With the proper baseline in place, the DWR must acknowledge that circumstances have changed substantially from the time of the initial project proposal. Increased pumping that has occurred as a result of allowing water to be stored outside of a contractor's service area, thus increasing demand for Article 21 "unscheduled water deliveries" and substantially changing Delta pumping regimes, has caused substantial impacts to endangered species. It has also induced growth in Southern California in areas where such growth otherwise would lack a viable water supply. The DEIR should disclose, mitigate and develop alternatives for avoidance of pumping scenarios that impact endangered Delta fish species issues. Under the current project, such impacts in the Delta will continue to occur. It must include and analyze supply reductions that will occur as a result of the recent court decisions (see below) as an alternative to the proposed project.

Purpose of Project

"Thus to fulfill the intent and purpose of the project, it is essential that all the above objectives [as listed on page 4-1 and 4-2] be achieved."[1] Such a project purpose defeats the purposes of CEQA because it defines the project in such a way that any alternatives will not meet the project objectives and are therefore infeasible.

Sierra Club California does not concur with DWR's assessment that either the settlement agreement or this new environmental document should allow all transfers to stay in place and be final. First, not all transfers, i.e. in particular, the 41,000 AF transfer to the Castaic Lake Water (CLWA) were deemed final by the settlement agreement. The CLWA transfer in particular was ***not*** included on Attachment E of the Monterey Settlement, the list of projects deemed to be final by the Agreement. This transfer is also the largest and potentially the most devastating to the environment, especially due to the growth inducing impacts in the receiving area of Santa Clarita, California. Further, if no changes to the project are intended or can be made, why did the Court order a new environmental report? Certainly, the Court and Plaintiffs envisioned a process that would address the failures and /or inaccuracies of disclosure in the original document. Otherwise, this EIR process is merely a sham meant to paper the subject rather than a good faith effort to actually address and correct the problems. Such a sham is not the intent or the purpose of CEQA compliance. We believe that this statement prejudices the review process and discourages public comment since one must ultimately wonder why he or she would spend time commenting on a lengthy document and participating in a process where no change will occur.

Second, the DWR has itself argued before the Superior Court in the County of Los Angeles (*C-Win v. Castaic Lake Water Agency*) in verified and sworn testimony [2] that it *does* have the right to adjust the Monterey water delivery contracts based on new circumstances. Therefore, this EIR can and should include mitigation and alternatives that address all issues of controversy even though they may be outside the concept of the original project agreement.

To infer that the project must proceed as described prejudices the direction of comments and suggestions that the DWR may receive to improve both the project and the EIR. We therefore believe that this document must be re-circulated with this prejudicial statement deleted.

Project Description

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[1] DEIR at page 4-2

[2] included as separately submitted reference material

Sierra Club California believes that increased water supply and pumping is also a clear goal of the Monterey Amendment and should be so stated. The fact that this increase will occur is clearly noted as impact 10-1-2 "The proposed project will increase pumping in the Sacramento-San Joaquin Delta".[3] This goal is very controversial, and when admitted forthrightly, will probably require disclosure of impacts not currently discussed in the EIR. A clear statement of the project description and objectives is essential to enable the public to make informed comments on the project and for potential impacts to be addressed.

Discussion of Article 53 in section 4.4.2 does not make it clear that the permanent retirement of 45,000AF of water by Kern County was water that they never received anyway. It is a classic example of "paper water" manipulations that appear to make some change, but in reality, don't really exist. In this case, one might be lead to believe that fields were fallowed or other reductions in water usage occurred when in fact nothing occurred other than a reduction in some accounting figures on paper.

Articles 18a and b

The Sierra Club is particularly concerned about the changes to article 18a and b. The DEIR accurately represents that these changes were an area of controversy in the original document and continue to be so. We believe that Article 18a, the elimination of the "Urban Preference" must be re-evaluated in light of new circumstances including the Dec. 17th Federal Court Wanger Decision[4] that substantially curtails Delta pumping in an effort to reduce impacts to the endangered Delta Smelt. Elimination of this preference affects, in particular, large urban users such as the Metropolitan Water District, Antelope Valley East Kern WA and others by reducing the overall ratio of water they will receive and increasing that ratio to Agricultural buyers. This change impacts the ability of these large urban areas to deal with drought or other water supply reduction scenarios (levee breaks, salt water intrusion, water cutbacks due to endangered species issues), by substantially reducing the water they will receive in such events. Although urban areas can institute water conservation measures, in the end we believe that society and government will undoubtedly not cut off water to large urban areas. Therefore, elimination of this article creates a false assurance to farmers, encouraging them to plant long term corps such as orchards rather than annual row crops[5], the loss of which would not be so financially devastating.

We believe that the DEIR should address the question of financial responsibility should DWR not be able to follow through on its commitment in the Monterey Agreement to supply the increased ratio of 50% of the water to farmers, thus destroying orchards. Since DWR may be creating a substantial liability for the people of the state of California by eliminating the "Urban Preference", the DEIR should analyze the potential financial impact of eliminating this preference in the project changes to Article 18a. We understand that CEQA does not require disclosure or evaluation of financial impacts, but given the state's current fiscal emergency just declared by The Governor (Jan 10th, 2008), such an analysis is prudent.

With the elimination of Article 18b, DWR gave up its ability to declare permanent shortages and cut back entitlements accordingly. It appears now that permanent shortages are indeed occurring or will occur in the near future due to pumping reductions to protect endangered species and the impacts of global warming. The easiest way for all stakeholders concerned to understand that there will be less water coming from the Delta is to invoke Article 18b and reduce the contractors' entitlements. This is a clear, unambiguous way of ensuring that local planning authorities understand how much water is available to them and will ensure accurate disclosure for SB 610 and SB 221 Water Planning compliance.

The EIR argues that no growth inducing factors were created by the elimination of this provision. In fact, numerous projects in the Santa Clarita, Antelope Valley and San Bernardino areas have been approved on

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[3] DEIR at ES-54
[4] *ibid., note 2*
[5] Acknowledged by DWR as occurring in "Summary of Impacts" 10.1-3, page ES55

the false expectations that this water will always be available at the entitled amount. Such expectations are apparent in the 2nd Appellate Court case decisions *in SCOPE v. County of Los Angeles,* 2003 (*SCOPE I*) and *California Oak Foundation v. City of Santa Clarita*, as well as the numerous additional legal challenges brought in these areas against local agencies for not recognizing the limitations of the State Water Supply. They continue to be apparent as recently as January 10th 2008 when the Los Angeles County Planning Commission approved another approximately 2000 units based on an over stated supply of State Project Water.[6]

We concur with Planning and Conservation League's statement that "it is reasonable to assume invocation of Article 18 (b) would result in altered demand for SWP water, and in particular Article 21 water. For instance, if the minimum yield of the SWP were to be explicitly reported at 1.9 maf, and if Article 21 (g) (1) were still in place therefore indicating the very unreliable nature of such water, decision makers would have a clear understanding that the minimum yield is reliable, while other deliveries from the SWP are unreliable. In such case, municipal water agencies would be legally and contractually restricted from relying on water in excess of the estimated minimum yield of water for development, as well as for prolonged supplies. "

Overstatement of these supplies in EIRs for housing projects due to the elimination of Article 18b is a serious problem resulting in poor to non-existent local water supply planning. Without a recognition that state water supplies are not available to the extant reflected in the contracted amount, local jurisdictions do not require needed conservation measures, drought tolerant landscaping ordinances or funding for recycled water and protection of local re-charge areas.

DWR argues in the EIR that the "Reliability Report", required by the settlement Agreement, adequately addresses this issue. But that document is not codified into law, is released only every three years, and has not been timely produced in the past. Further, it does not include an analysis of climate change on the California water supply. It is widely believed that the effects of climate change in California will included reduced snowfall in the Sierras and thus reducing and/or changing the timing of water available for distribution by the State Water Project.

We believe that Article 18b must be re-instated in light of the many local project EIRs that rely on this source of information for making their water supply decisions.[7] Additionally, as a required mitigation measure, DWR should promulgate and support legislation to permanently mandate a timely "Water Reliability Report", or mandate that it become a budget line item for DWR and incorporate it as a requirement in their strategic planning and agency guidelines.

Failure to Address Identified Impacts to the Endangered Delta Smelt

In an attempt to protect the Delta Smelt fish species as required by the Endangered Species Act, the recent Federal Court Wanger Decision[8] invalidating the biological opinion for this species has just required a substantial reduction in the allocation of state water supply. This reduction, made in an attempt to avoid species entrainment by the Delta pumps, is a significant constraint for the SWP. Although the DWR cites a 2007 biological report, thus indicating that they must have been aware of these constraints, and DWR's own Chief of Project Operations Planning Branch, John Leahigh submitted sworn testimony[9] asserting this impact, the DEIR fails to incorporate this information. The testimony of Mr. Leahigh stated in

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[6] See attached news article regarding the approval of the first phase of the Newhall Ranch project in addition to the 500 unit Spring Canyon project the same day, and reference water supply as indicated in the Castaic Lake Water Agency Urban Water Management Plan 2005.

[7] See separately submitted reference material containing excerpts from local projects EIRs

[8] *NRDC v. Kempthorne,* Dec. 17th, 2007 attachment to separately submitted material

[9] Declaration of John Leahigh, *NRDC v. Kempthorne,* Aug. 21st, 2007, attachment to separately submitted material

particular that under the interim remedy actions proposed by the United States Fish and Wildlife Service (USFWS), SWP 2008 deliveries would be reduced anywhere between 8% (91,000 AF) to 27% (305,000 AF) from a baseline delivery of 1.15 MAFY in a dry year; and from between 8% (252,000 AF) and 31% (305,000) from a baseline of 3 MAFY in an average year.

The DEIR fails to respond to the requirements of this decision in alternatives analysis or recognize this significant decision in Section 6.3 (Changes in SWP Operations Since 1995 Unrelated to the Proposed Project).

The Delta Smelt Recovery Index and Salvage Tables found in chapter 7.3 all end in 2004. These tables should be updated to indicate the continued recent decline in the species. But even with only the current information, it is obvious that the Smelt population has declined precipitously during this interim implementation of the Monterey Agreement. This interim implementation included 400,000 additional acre-feet pumped into storage in the Kern Water Bank. Such flows previously supported aquatic life.

The DEIR identifies impacts to endangered fish species as being potentially significant, but indicates on page 7.3-72 that the Environmental Water Account will serve as one program that would mitigate this impact. The DEIR should disclose the financial inadequacy of this program to supply needed water to the environment in the past, or a table indicating past shortfalls. It is settled Appellate case law that a program or infrastructure that cannot be funded, may not be offered up as mitigation. The seminal case on the impropriety of relying upon such "wishful" mitigation is *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, finding a violation of CEQA for relying on highly uncertain funding to insure actual implementation of the mitigation.

The Delta Smelt and other pelagic fish species are part of California's wildlife protected for the benefit of all Californians under the Public Trust Doctrine. Failure to provide adequate water supply and water quality for these species or actions that advance extinction by reversal of river flows and entrainment in pumps, constitute a violation of the Public Trust for all Californians. We therefore request that the DEIR address Public Trust rights and obligations in the DEIR. This should include disclosure of any water rights received from the State Water Resources Control Board allowing pumping from the Sacramento and San Joaquin Rivers and any of their tributaries. Permits should indicate permitted quantities of water to be pumped from those rivers and the dates when those permits were issued.

Analysis of Public Trust rights should also include the affects on water temperature (a judicially confirmed water quality parameter) that occur as a result of changes in reservoir management required to support the Monterey Amendments. Such changes may affect pelagic fish species by interrupting their spawning and migration activities, since these activities require an identified range of cold water temperature that may not be present in reservoirs lowered to accommodate altered pumping regimes as envisioned by the Monterey Amendments. These issues must be addressed in the DEIR.

Kern Water Bank

The goal of the State Dept. of Water Resources is to see that all citizens have enough water to drink, dispose of wastes and supply industry and agriculture. In contrast to this goal, the transfer of the Kern Water Bank has resulted in the potential privatization of our water resources. In contrast, large businesses, including agriculture, are legally bound to increase the near term profits of their stockholders. This could mean selling water that was used for irrigation to developers of suburban sprawl; see attached report "Taking Water from Taxpayers".[10].

The Kern County Water Agency should not manage the KWB because the Agency is controlled by large agricultural businesses that could also divert water from irrigation to urban sprawl or their own private

[10] Released by Environmental Working Group, February, 2005

interests. We rely on information provided in a report produced by "Public Citizen" entitled "Water Heist" attached to these comments and also available on their website at www.citizen.org/california . We request that the DEIR address the issue of privatization and loss of public control over water storage areas that has lead, in effect, to ownership of a publicly held resource by private business interests. This report indicates that if the Kern Water Bank were given to the directors of the Kern Water Bank Authority, Paramount Farms would own 48% of the Kern Water Bank and Dennis Mullins of Tejon Ranch Corporation would represent Wheeler Ridge Maricopa Water Storage District which would own 24% of the Kern Water Bank.

As the Kern Water Bank and other facilities are made to store more water, endangered species habitat within them will be reduced. The EIR should discuss how water conservation could minimize this impact. We appreciate the mitigation in Table ES 1, 7.4-3; but they do not address replacing dry land with ponds. Table ES 1, 7.5-3 mentions conversion of 1200 acres of the Kern Fan Element dry land into ponds. I hope the third and last sentence of mitigation measure 7.4-2 of Table ES 1, summary p 27, says that this loss should be mitigated at least by off site habitat for fully protected, endangered and threatened species. Most Habitat Conservation Plans replace one acre of current habitat with three acres of off site mitigation.

The twenty thousand-acre Kern Water Bank (KWB) surrounds the 2800-acre City of Bakersfield Recharge Area. Bakersfield has sprawled to these 22,800 acres. Today's children are deprived of contact with land that approaches its natural state. It is well that the Kern Water Bank Authority allows several supervised walks a year on these lands. If the public owns the KWB, we might find a way for unsupervised kids to explore nature on their own in this area. The EIR should consider the effect such additional opportunity would have on inner city youth. We request that such opportunities be considered as additional mitigation for this project, should it be approved.

Project Alternatives

Although the DEIR purports to take into consideration various documents including the work of the Delta Vision Blue Ribbon Task Force[11], it does not seem to incorporate the ideas from those documents. Recommendation #7 of that document states "A revitalized Delta ecosystem will require reduced diversions, or changes in patterns and timing of diversions, upstream, within the Delta, and exported from the Delta at critical times."

The Task Force further states "The vision's recommendations are designed to be implemented together as an integrated solution and then work together in an interdependent fashion to achieve success."

Since it is obvious that the increased withdrawals from the Delta and the timing of those withdrawals may well be at odds with the requirements of the Delta Vision Task Force solution, we request that this DEIR develop an alternative that would ensure consistency with recommendation #7 of the Delta Vision Task Force.

Additionally, since the operations modeled in the DEIR are not legal under the Federal Court Wanger decision[12], and will alter the way the proposed project can be implemented, an alternative that addresses and incorporates the pumping regime developed by DWR to comply with the Court order should be developed. Further, the interim remedy imposed by the court restricts winter and spring SWP pumping in the Delta. Such restrictions will impact deliveries of Article 21 water, as well as Turnback Pool transfers. Any conclusions included in the DEIR regarding deliveries of Article 21, Turnback Pool water and other water deliveries in the winter and spring are now inaccurate and should be included in a new alternative that addresses this decision.

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[11] Listed as a reference document in DWR meeting handouts. It can be accessed at www.deltavision.ca.gov and is hereby incorporated by reference

[12] Referenced and detailed above

Last, Sierra Club California requests that a "no project" alternative be analyzed that addresses the amount of water and energy saved by substituting water efficiency, conservation, water recycling and additional local recharge projects for the proposed project. An estimate of gains from water conservation is already documented in the Governor's Blue Ribbon Task Force material as well as readily available from other sources. Increased energy usage and costs can be calculated from the additional proposed pumping amounts that would occur from this project or existing costs already incurred by DWR, also information that is readily available.

Conclusion

Sierra Club California believes that this document has serious deficiencies in light of current court decisions, and that additional alternatives and mitigation should be incorporated into a supplemental document for re-circulation.

Sincerely,

Jim Metropulos
Legislative Representative

Attachments:
1. "Planners Approve Landmark's EIR", Parimal M. Rohit, Newhall Signal, 1-10-08
2. "Water Heist", John Gibler, report released by Public Citizen
3. "Taking Water from Taxpayers", released by Environmental Working Group, 2005

The Signal

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Planners Approve Landmark's EIR

Orginally printed on Thursday January 10, 2008

By Parimal M. Rohit
Signal Staff Reporter

LOS ANGELES - The Newhall Ranch development moved forward Wednesday when the final Environmental Impact Report for Landmark Village was unanimously approved by the County Regional Planning Commission, despite protests and testimony from local environmentalists and residents.

With the approval, Newhall Land and Farming Co.'s first phase of the Valencia-sized Newhall Ranch community will now be heard by the county Board of Supervisors.

"This is not the end of this," said Pat Modugno, Regional Planning Commissioner of Supervisorial District 5, which includes the Santa Clarita Valley. "It still goes to the Board of Supervisors. The ultimate decision is reached across the street (by the county Supervisors.)

The consent hearing was the final step for Newhall Land in front of the Regional Planning Commission before shifting its case to the Board of Supervisors. Newhall Ranch is approximately 12,000 acres in size and extends from the Santa Clarita Valley to the Ventura County line. The proposed project includes an elementary school, retail center and housing.

Landmark Village is the first phase of the planned Newhall Ranch project, located just west of Interstate 5 along Highway 126 and adjacent to the Chiquita Canyon Landfill.

At the heart of Wednesday's hearing was the questions of whether there was substantially new evidence for the commission to reconsider approval of the final EIR.

Sam Dea, Supervising Regional Planner with the Department of Regional Planning, presented the consent item to the commission and said there was no substantial change in evidence - since the commission last reviewed the matter - to warrant a denial of the report or a public hearing on the issue.

Opponents of the project disagreed with Dea, stating that there indeed was substantial information justifying removal of the final EIR from the consent agenda.

Lynne Plambeck, president of the Santa Clarita Organization for Planning and the Environment, was the leading voice in opposition.

Specifically, she pointed out that several conditions of the Newhall Ranch Specific Plan were not complied with, especially with respect to water.

"We strongly disagree with Mr. Dea that there is no new substantial information," Plambeck said. "There is no additional water for this project. That is huge."

She requested the commission reconsider approving the final EIR so that all parties may have a study session with water companies in the Santa Clarita Valley to look into how to resolve the water issues.

Conversely, Newhall Land stated it has done all it can to ensure the area will have sufficient water.

"As part of our Newhall Ranch Specific Plan approval, we made sure there was sufficient water for dry times and wet times," Newhall Land spokeswoman Marlee Lauffer said. "The way we are meeting water needs will not require any additional pumping or state water."
Lauffer added that Newhall Land also purchased water from other sources and will be banking the water so it is available for dry years, and will also have an extensive water reclamation and recycling center.
"We have gone through many years of hearings on the specific plan," she added. "On Landmark Village itself, we circulated the EIR for over a year and we had two extensive public hearings in front of the commission already."

In response to the issues brought up by the project's opponents, Lauffer pointed out that many of their concerns were already brought up and addressed in previous public hearings, stating: "There were no new issues. All of their concerns were already addressed previously and they have been thoroughly considered. There already has been extensive discussion about the issues they have brought up."

Another issue was whether members of the public were able to speak at the meeting. Opponents of the project were concerned that their voices would not be heard, due to the fact that the final consideration of the Environmental Impact Report was not a public hearing.

"This is the only opportunity we have to talk to you as individuals," Plambeck said, expressing her concern that the public would not be able to speak at the hearing. In preparation, Plambeck and those with her coordinated a potential protest at the meeting by using blue duct tape to cover their mouths, symbolizing that their voices might not be heard by the commission.

However, the commissioners were quick to point out that while public hearing for the Environmental Impact Report was closed in February 2007, public comment would still be heard and placed on the record. Any public comment would not affect the commission's final decision, though.

"The material presented today is just for public record," said County Counsel Patricia Tegart. "The public comment for this matter is closed and does not affect the commission's decision."
Plambeck was pleased that the public was able to speak, but is not entirely pleased with the commission's decision.

"We have the opportunity to do it the right way, and we are destroying it," she said. "It's discouraging. If we can just work with our environment in a more sustainable manner, it would be great.
"I think everyone was glad that we had the opportunity to speak, but I think the commissioners could not do anything and they were not going to listen."

As the matter moves to the Board of Supervisors for consideration, there is no timeline for when the matter will be heard.

According to Supervisor Michael Antonovich's office, there will be ample public notice when the matter reaches the board and there will also be another opportunity for the public to be heard.

"We're hopeful that we will get board approval," Lauffer said. "We are confident that we are consistent with the Specific Plan for Landmark Village."

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Taking from the Taxpayers

How the Bush Administration Gave Subsidy-Rich California Farmers a $17 Million Christmas Bonus

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Taking from the Taxpayers

For decades taxpayers have provided subsidized water to California farmers at rates far below fair market value. When the amount of cheap water delivered to farmers was reduced during the severe drought of the early '90s to protect two species of endangered fish, a group of San Joaquin Valley water districts representing some of the nation's biggest farming operations sued the government for "taking" what they claimed was their private property.

But an Environmental Working Group (EWG) investigation of state and federal data found that from 1995 to 2003, those same farms received a total of $248 million in federal farm subsidies. And since 2001, the water district representing nearly all of those farms made almost $40 million in profit by selling subsidized water back to the taxpayers at market rates.

Which of the following was the Bush Administration's response to the lawsuit?

(a) The farmers didn't own the water in the first place — it belongs to the public.

(b) Why do rich farmers who already get big taxpayer subsidies deserve even more?

(c) OK, here's another $17 million.

On Dec. 21, 2004, the Administration announced it would settle the lawsuit by paying the water districts $16.7 million for "taking" the water. It was not only a tidy Christmas bonus for a group of farmers that includes the world's biggest cotton grower and a Beverly Hills mail-order tycoon who owns the largest farm operation in the country. The decision, over the objections of California officials from both parties and the Administration's own fisheries management agency, also represented a radical extension of the right-wing "Wise Use" ideology that regards environmental protections as unconstitutional infringements on property rights.

The Tulare Lake case, as it is known, marks the first time that restrictions imposed under the federal Endangered Species Act have been interpreted as a government taking of private property without "just compensation," which is prohibited by the Fifth Amendment. It opens the floodgates for lawsuits involving much larger claims: A similar case seeking $100 million in compensation for farmers in Northern California and Oregon will be heard in federal court Feb. 14, 2005. It also threatens California's ability to balance fairly the competing needs of agriculture, cities and the environment for increasingly scarce and expensive water.

Applying the takings doctrine to the Tulare Lake case requires the suspension of reality, because the water districts sued for the loss of "property" that exists only on paper — cut-rate contracts to buy an unspecified amount of water that fluctuates from year to year, depending on how much is available. The case exposes the political hypocrisy of farmers who rail against environmental protections but are happy to accept government subsidies and government-approved water trading schemes allowing them to profit from selling a public resource they don't own. Finally, it is more evidence that crop and water subsidies, intended to help small family farmers, have become inequitable corporate welfare programs for big agribusinesses.

Under state law, water districts don't have to make public the names of farms they serve. EWG used mapping software and state pesticide use data to identify farms in the districts that sued, and matched the names against our Farm Subsidies Database, which lists recipients of federal crop subsidies from 1995 to 2003. We also accessed publicly available state data on the profits the water districts made from 2001 to 2004, under trading schemes that allow them to sell water they don't use back to the state for fish and wildlife restoration.

The farmers' take from the taxpayers dwarfs the Tulare Lake settlement. Of the farms sharing in the settlement, the top 20 alone took in $121 million in crop subsidies from 1995 to 2003. One company, cotton giant J. G. Boswell Co., got $24 million in federal farm subsidies. The sheer size of these farmers' reliance on subsidies raises loudly the question of who is really doing the taking — the government, which cut water deliveries to protect public resources, or the farmers, who believe they're entitled to crop payments and cheap water?

Boswell, the world's largest cotton producer with about 150,000 acres in the Tulare Lake Basin Water District and 18,000 acres in three other districts, is an extreme example that shows how far the federal farm subsidy system goes to benefit growers of a few favored commodities. Not only did Boswell receive $17.3 million in crop subsidies from 1995 to 2003, but another $6.6 million under a subsidy called Step 2.

Step 2 gives money to companies that, like Boswell, process cotton for export, to help them buy U.S.-grown cotton. This incentive is necessary because American cotton is much more expensive than cotton grown elsewhere around the world. Why? Because of the crop subsidies provided to American cotton farmers, which artificially push the price of U.S. cotton above world market levels.

Boswell's home town of Corcoran, Kings County, is the state's epicenter of rich farms that get huge farm subsidies. Of the 20 Tulare Lake settlement recipients who got the most in crop subsidies, eight are in Corcoran or neighboring Stratford. Collectively they received more than $62.8 million in federal farm subsidies from 1995 to 2003.

TABLE: Top 20 Subsidy Recipients

Farm/Farmer Name	City/State	Total Farm Subsidies Received (1995-2003)
1: J G Boswell Company	Corcoran, CA	$23,919,679
2: Dublin Farms	Corcoran, CA	$11,913,936
3: Hansen Ranches	Corcoran, CA	$8,616,787
4: C.J. Ritchie Farms	Visalia, CA	$8,225,657
5: Buttonwillow Land & Cattle Company	Buttonwillow, CA	$8,135,045
6: Starrh & Starrh Cotton Growers	Shafter, CA	$7,991,530
7: Westfarmers	Visalia, CA	$6,670,547
8: Gilkey 5	Corcoran, CA	$5,588,236
9: Chicca Twin	Buttonwillow, CA	$4,897,759
10: Wheeler Farms	Bakersfield, CA	$3,972,321
11: Torigiani Farms	Buttonwillow, CA	$3,501,218
12: The Phoenix Farming Company	Corcoran, CA	$3,441,472
13: Four B'S Farms	Corcoran, CA	$3,432,123
14: Gilkey Enterprises	Corcoran, CA	$3,121,774
15: Harry Banducci & Sons	Bakersfield, CA	$3,107,042
16: Houchin Brothers	Buttonwillow, CA	$3,074,525
17: Fred Palla Farms	Buttonwillow, CA	$2,928,370
18: Newton Farms	Stratford, CA	$2,789,606
19: Cauzza Brothers	Buttonwillow, CA	$2,735,111
20: Toretta Farms	Buttonwillow, CA	$2,722,339
Total subsidies for top 20 recipients		**$120,785,076**

Source: [34]

The big Corcoran cotton farms are in the Tulare Lake Basin Water District, which resold no excess water for profit from 2001 to 2004. That prize went to the other main plaintiff in the case, the Kern County Water Agency (KCWA), which serves a consortium of 14

smaller water districts around Bakersfield. Of the 20 settlement recipients receiving the most crop subsidies, the dozen served by the Agency received a total of more than $57.9 million from 1995 to 2003. State records show that in those years KCWA also made $36.8 million in profit from reselling subsidized water back to the state for efforts to restore fish and wildlife habitat in the San Francisco Bay-Delta.

Kern County Water Agency has made $38.6 million selling water to the Environmental Water Account

Year	Acre-feet sold	Profit from sales
2001	20,000	$6,317,200
2002	97,400	$12,399,494
2003	125,000	$14,482,500
2004	35,000	$5,418,700
Total:	**277,400**	**$38,617,894**

Source: [38]

A closer look at the KCWA reveals even more layers of schemes and sweetheart deals that let rich farmers sharing in the settlement feed at the public trough.

The KCWA and three of the water districts it serves own part of a huge underground storage facility called the Kern Water Bank. Most of the remaining interest belongs to the Westside Mutual Water Co. a paper company owned by its only customer, Paramount Farming Co., which with its sibling Paramount Citrus comprises the largest farm operation in the country. Paramount is owned by Stewart Resnick, one of the richest people in Los Angeles and owner of the Franklin Mint.

From 1995 to 2003, Paramount received $576,000 in federal crop subsidies. Paramount has acreage in both the State Water Project and the federal government's much larger Central Valley Project (CVP). EWG's December 2004 investigation of the CVP estimated that in 2002 alone, Paramount received federal water subsidies worth more than $1.5 million at the market rate for new agricultural water supplies.

Paramount created Westside to resell part of its SWP contractual allotment — excess water that exists only on paper — to developers who want to turn farmland into planned communities called Tejon Ranch and Newhall Ranch. A top Tejon Ranch executive is a director of the Kern Water Bank, and Newhall's farm operations are served by one of the water districts that owns the bank. From 1995 to 2003, Tejon and Newhall together got more than $1 million in federal crop subsidies.

The complexity of the corporate connections, subsidy systems and trading schemes make it impossible to say just who is getting how much from the Bush Administration takings settlement. But it is clear that it is far from being just compensation for hard-working

farmers whose survival depends on secure water supplies. It is another corporate welfare program for rich agribusinesses who take all they can from the taxpayers and never get enough.

Who Owns The Water

First authorized in 1960, California's State Water Project (SWP) is now the largest state-built agricultural water delivery project in the country, with 660 miles of aqueducts and pipelines carrying water to 23 million residents and 750,000 acres of farmland annually. [1] On average, the Project carries about 2.2 million acre-feet of water each year to 29 long-term contractors, mostly located in Southern California. But as rainfall varies widely from year to year, so do SWP water supplies. Some years the SWP may carry almost twice as much water, while in other years only half as much will flow down the Project's canals. [2]

Municipal water agencies and farmers have long been forced to adjust to these whims of nature. But as California's population continues to grow while its water supplies remain finite, the battles over this increasingly scarce resource have intensified. At the center of this conflict lies the issue of how the state can balance the needs of agriculture, municipalities, and California's fish and wildlife — all of which depend on a steady flow of water for survival. Now, an opinion by the Court of Federal Claims in Washington, D.C., and the acceptance of that opinion by the Bush Administration threatens to take away the state's power to distribute water as it sees fit. Even more ominously, the settlement undermines a basic tenet of California water law: Water is a public good that belongs to the people.

The case, *Tulare Lake Basin Water Storage District v. United States*, involves a set of powerful water districts in California's San Joaquin Valley that sued the federal government after the State Water Project cut their contracted water deliveries during the severe drought of the early 1990s. [3] The two primary plaintiffs in the case, Tulare Lake Basin Water Storage District and Kern County Water Agency, claim that their water supplies were reduced by a total of 58,820 and 319,420 acre-feet, respectively, during the period 1992 through 1994. (An acre-foot is the amount of water needed to cover one acre to a depth of one foot.) The issue was not simply that the water districts were given less water than promised in their contract — the contracts do not guarantee delivery of any specific amount of water. The issue was why the state Department of Water Resources (DWR), the agency that manages the SWP, made the cutbacks: to protect two endangered fish species.

Under the federal Endangered Species Act (ESA), government agencies must ensure that their actions are "not likely to jeopardize the continued existence" of any endangered or threatened species listed under the Act. [4] Beginning in 1992, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service issued several opinions concluding that the operations of the SWP were threatening the survival of two endangered fish species, Delta smelt and Chinook salmon. [5, 50, 51] The agencies

identified a number of major stressors to the fish, including altered water temperature, impaired passage, and decreased spawning and rearing habitat. Since all of these problems stemmed primarily from inadequate stream flows, it was clear that DWR needed to leave more water in the Delta to meet its statutory requirements and protect the endangered fish populations. This meant less water available to irrigate crops.

Several SWP water contractors, representing about 240 farmers in the San Joaquin Valley, cried foul. †1 The farmers claimed that they had a property right to the water, that the federal government had "taken" this property, and they were therefore owed compensation. Their arguments were made under the Fifth Amendment of the U.S. Constitution, which prohibits the government from taking private property without "just compensation". In April 2001, U.S. Court of Federal Claims Judge John P. Wiese ruled in the farmers' favor, marking the first time that a court has said that restrictions imposed under the Endangered Species Act amounted to a Fifth Amendment taking of private property. [6]

The Tulare case involved a challenge to a regulatory action, but the Court broke from federal and state precedent, treating the claim as a physical taking. The Fifth Amendment takings doctrine says that the government must pay for certain limitations or impositions on private property. Takings cases are generally categorized in one of two ways: a physical taking of private property, or a regulatory taking. A physical taking involves a permanent physical occupation or acquisition of real property, and must be compensated in all circumstances. [7] A regulatory taking involves a government action that restricts an owner's use of private property, and is only compensable in certain circumstances. [8] The Tulare court's finding that the Endangered Species Act regulation constituted a physical taking contradicts the Supreme Court's holding that a physical taking does not occur when the government regulates the use of property:

The longstanding distinction between acquisitions of property for the public use, on the one hand, and regulations prohibiting private uses, on the other, makes it inappropriate to treat cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a 'regulatory taking,' and vice versa.[8]

Other federal courts have applied this concept specifically in the context of wildlife regulations. [49] California has followed this precedent, finding that wildlife regulations that curtail use are not constitutional takings: "The federal and state governments may regulate and protect rare species on private lands without, *ipso facto*, triggering a constitutional taking of private property." [9] Overall, says Georgetown University water law expert John Echeverria, "[t]akings claims based on protecting endangered species have failed with a striking consistency." [48]

The Tulare ruling was troubling for a number of reasons. First, all state and federal water contracts contain language protecting the state and federal governments from liability for "any damage, direct or indirect, arising from shortages in the amount of water to be made available for delivery . . . caused by drought . . . or any other cause beyond its control." [10] Clearly, this includes the need to protect a highly threatened fishery from devastation

during a severe drought. This was exactly the reasoning a federal appeals court used in 1995 when it denied a similar claim involving the same two endangered fish species. †2 [11] Judge Wiese decided that although the state was immune from liability because it was party to the contracts, the federal government was not immune because it did not have a contractual relationship.

Another troubling aspect of Judge Wiese's decision was his conclusion that the contracts conferred to the districts "a right to the exclusive use of prescribed quantities of water." The fact is that the SWP and the water districts it serves have signed contracts for more water than is available. Collectively, the existing SWP water supply contracts allocate "entitlements" of more than 4 million acre-feet (maf) of water each year. But almost half of this is "paper water," as a state appeals court said in a 2000 ruling:

The SWP cannot deliver 4.23 maf of water annually. The entitlements represent nothing more than hopes, expectations, water futures or . . . 'paper water.' Actual, reliable water supply from the SWP is more in the vicinity of 2 to 2.5 maf of water annually. . . . Paper water always was an illusion. "Entitlements" is a misnomer, for contractors surely cannot be entitled to water nature refuses to provide . . . Paper water represents the unfulfilled dreams of those who . . . created the expectation that 4.23 maf of water could be delivered by a SWP built to capacity. [12]

The bottom line is that much of the SWP water that districts are "entitled" to by contract is only wishful thinking. Streams and rivers across California would have to go totally dry, and then some, before this much water could be delivered to SWP farmers in all but the wettest of years. Even if all of the contracted water actually existed, the most confounding part of Judge Wiese's ruling is his failure or refusal to realize that under the state Constitution, the water districts and their members could not own it.

Water is a communal resource with an overriding public value. The state claims ownership of all water within its borders on behalf of the people of California. †3 If you own a piece of land you can legally prevent people from entering it. But if the land borders a river, you can't stop people from swimming or traveling down the river. If you have oceanfront property, your property rights stop at the high water line. Below that line, anyone can walk on "your" beach or swim in "your" ocean.

In California, therefore, the water in a river or stream cannot be privately owned. It is held in trust for the common good under the centuries-old "public trust doctrine." In 1983, the California Supreme Court said "the core of the public trust doctrine is the state's authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state and the lands underlying these waters." [13] The Court said the public trust doctrine obligated state agencies and courts to "consider the effect of . . . [water] diversions upon interests protected by the public trust." [14]

"Water rights" do not confer ownership, but the legal right to use a quantity of water. As a California appeals court said in 1986: "Unlike real property rights . . . water rights are limited and uncertain." [15] Under the state Constitution it is illegal to "waste" water, to

put it to an "unreasonable use," or employ an "unreasonable method of diversion of water." [16] What is considered reasonable depends on the circumstances. In 1935, the state Supreme Court said:

What is a beneficial use, of course, depends upon the facts and circumstances of each case. What may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, becomes a waste of water at a later time. [17]

When the State Water Project was approved in 1960, the rights to all water it would carry were explicitly given to the Department of Water Resources. [18] Although the Tulare and Kern water districts asserted that they had a property right to the water specified in their contracts, the fact is that they only had a contractual arrangement for the delivery of some amount of this publicly held, public resource. In the Tulare Lake case, Judge Wiese ignored this fact and ruled that any limitations imposed on the districts' use of the resource must be compensated. He awarded the farmers $23 million in compensation. [19]

With that much money at stake plus the dangerous precedent the ruling sets, you'd think the federal government would appeal the decision to a higher court. But in late 2004, word spread that the Bush Administration planned to settle the case. California officials from both parties urged the White House not to make that mistake.

The state Water Resources Control Board, representing Gov. Arnold Schwarzenegger's administration, sent a letter to Bush Administration officials stating that if allowed to stand, the Tulare Lake decision "could fundamentally change the way that water resources are managed in California, to the serious detriment of California taxpayers and resources users." [20] Senator Diane Feinstein sent a letter to Attorney General John Ashcroft and Interior Secretary Gale Norton, stating that the ruling was a "mistake that will establish a precedent that could require the public to pay tens of millions of dollars to water users in many cases where even a small portion of their anticipated deliveries are needed to protect endangered salmon or other fish." [21] California Attorney General Bill Lockyer also urged the government not to settle, and several officials urged Bush to transfer the case to the California Supreme Court. [22]

Earlier, the Bush Administration's own water-law experts at the National Oceanic and Atmospheric Agency (NOAA), which is responsible for protecting endangered salmon runs, also objected. A March 2004 letter from NOAA's general counsel to the Justice Department, obtained by EWG, said Wiese's ruling was already making it more difficult to enforce the Endangered Species Act. The letter said the lawyers for the water districts, who were also handling other water "takings" cases, were already arguing that the Tulare ruling "now require[s] the United States to compensate federal permit applicants up front for any claimed interests in water or land" affected by enforcement of the Act. They said the failure to appeal Wiese's ruling "immeasurably increased" the likelihood that the other lawsuits would succeed. [23]

Nevertheless, five days before Christmas, the Bush Administration settled with the farmers for $16.7 million. Although the Administration said explicitly that the settlement was not meant to set a precedent, if the reasoning behind Judge Wiese's ruling is accepted by future courts, California's ability to protect its streams, rivers and fisheries will be seriously undermined. That is the clear intent of the real driving force behind the lawsuit: the Washington, D.C. law firm of Marzulla and Marzulla, who represented the water districts.

Roger and Nancie Marzulla are husband and wife, long-time "Wise Use" advocates who have made careers fighting environmental protections. Both worked in the Reagan Justice Department: Roger as assistant attorney general in charge of the Environment and Natural Resources Division, Nancie as a special assistant and litigator in the Civil Rights Division. Roger Marzulla was the chief architect of an executive order signed by President Reagan in 1988 that sought to expand the definition of "takings" by federal agencies. [24, 25] Both were also attorneys with the Mountain States Legal Foundation, a far-right wing group founded by beer baron Joseph Coors and the group's first president, James Watt, Reagan's notoriously anti-environmental Interior secretary. Roger Marzulla succeeded Watt as the second president of Mountain States, while Nancie worked as one of the group's attorneys on takings and other cases.

In 1991, the Marzullas founded Defenders of Property Rights, for which Nancie still serves as president and chief counsel, and Roger as board chairman. Defenders promotes takings laws as a strategy to make laws and regulations protecting the environment prohibitively expensive by requiring payments to private landowners whose property is affected by them [26]. Interior Secretary Gale Norton was legal advisor to Defenders of Property Rights until she was picked to join President Bush's cabinet. (Norton also started out at Mountain States, and her career has frequently been intertwined with the Marzullas.)

In 1998, the Marzullas opened their Washington practice, specializing in property rights and takings cases. In 2001, Marzulla & Marzulla filed a $1 billion takings lawsuit — since reduced to $100 million — against the government in the Court of Federal Claims on behalf of farmers and irrigation districts in the Klamath River Basin in Oregon and Northern California. The suit challenges the Bureau of Reclamation's 2001 restrictions on the release of irrigation water from Klamath Lake — referred to as water banking — to maintain lake levels for the protection of endangered sucker fish and threatened Coho salmon. [25, 27, 28]

In November 2003, while representing the Klamath Basin irrigation districts and irrigators at a public meeting, Roger Marzulla compared the Bureau of Reclamation's tactics to those of Adolf Hitler in persuading the Allies to allow him to invade Czechoslovakia. Asked if it was legal for the Bureau to tell farmers they must give up some of their allotted water, or face getting none at all, Marzulla replied: "I think [the] water bank is a desperate effort by [the Bureau] compared [sic] to Hitler. . . . If you take Czechoslovakia, and say if we give you this, will you go along with it?" [29]

The next hearing in the Klamath case before the Federal Claims Court is scheduled for Feb. 14, 2005. [30] In March, a hearing is scheduled in a $500 million takings lawsuit filed by the Marzullas on behalf of the City of Stockton, San Joaquin County and the Stockton East Water District over the federal government's alleged failure to deliver water from New Melones Reservoir. [31] And the Marzullas are preparing another takings lawsuit, seeking millions in compensation for farmers whose water deliveries were reduced to protect steelhead salmon. [32, 33] In these cases, the Marzullas stand to earn millions of dollars in attorneys' fees from their takings suits. For the Tulare Lake case, the couple took about $2 million from the settlement for their efforts.

Footnotes

†1 — Press reports indicated the water districts represented about 240 farmers. From examining the state pesticide use database, it is clear that many of these farmers operate more than one farm. EWG's figure for the total number of farms served by the Tulare Lake Basin Water Storage District and the Kern County Water Agency is 339 farms. We excluded those farms that had less than 50 acres in either water district.

†2 — The federal water service contract in question in the O'Neil case provides that the government shall not be held liable for "any damage, direct or indirect, arising from a shortage on account of errors in operation, drought, or any other causes."

†3 — See Civil Code 1410, which dates back to 1911.

Federal Farm Subsidies

According to EWG's Farm Subsidies Database, which lists all recipients of all Department of Agriculture (USDA) commodity price supports and other farm aid programs, from 1995 to 2003 taxpayers paid out more than $131 billion to U.S. farmers. That's enough to buy outright one-quarter of all the farms in the 302 leading agricultural counties— land, barns, farmhouses and all. Despite the popular myth that these cash payments go to help struggling family farms, EWG's analyses have shown repeatedly that the great majority of the taxpayers' money actually ends up in the pockets of large agribusiness. [34]

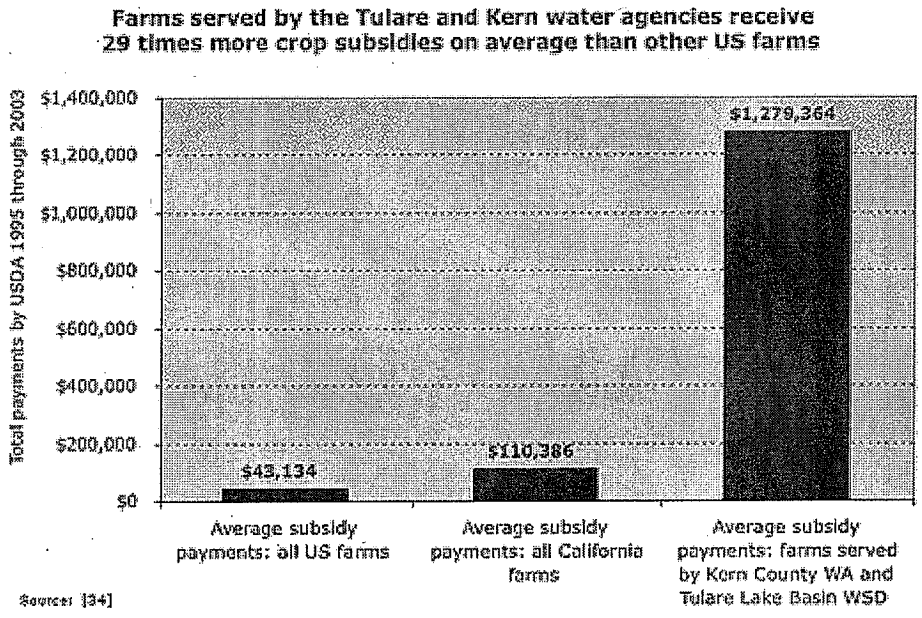
Far fewer farms in California receive these subsidies than in other states — in 2002, one-third of all U.S. farms got some sort of USDA payment, while only 9 percent of California farms did. This discrepancy is largely because most California farmers grow the 'wrong' things: Most subsidies are given to only a handful of staple crops, such as corn and soybeans, which are not grown extensively in California. The farmers served by the Tulare Lake Basin Water Storage District and the Kern County Water Agency, however, are another story.

Although water districts by law don't have to make public their records, EWG extracted the names and addresses of the farms in these two districts from state pesticide use data.

We then matched them with the names and addresses of farms that got cash payments from the USDA. We found that most of the farmers who sued the federal government over minor restrictions on water deliveries have already been getting a huge windfall in federal crop subsidies. From 1995 to 2003, 57 percent of the 339 farms served by the Tulare Lake and Kern County water agencies got some sort of subsidy check, with the total reaching a staggering $248,196,636.

The average payment to those California farms in that period was more than 29 times higher than the national average: $1,279,364 vs. $43,134 per farm. Subsidy checks to California farms tend to be higher than the national average (although fewer California farms receive subsidies), because California farms are bigger. But even when you consider the average payment California farms received, it is striking how much more the farmers in the Tulare and Kern County water agencies are getting.

The 194 farmers in these two water districts are less than half of 1 percent of the total number of California farms receiving crop subsidies, but collectively they received 5 percent of the total USDA payments to farms in the state. The average payment going to the Tulare Lake and Kern County farmers from 1995 and 2003 was almost 12 times higher than the average payment to farms in the rest of the state: $1,279,364 vs. $110,386. The bottom line is that the Tulare Lake and Kern County farmers were already taking much more from the taxpayers than most farmers in California — but the Bush Administration decided they were entitled to another $16.7 million.



Nor were most of these payments going to help struggling family farmers stay on the land. The top subsidy recipient was J.G. Boswell Co. of Corcoran, in Kings County. Boswell is the world's largest cotton grower, a dominant position that $23.9 million in

USDA payments between 1995 and 2003 must help in maintaining. Boswell is an extreme example of how far federal farm programs go to help growers of select commodities: Not only did Boswell receive $17.3 million in crop subsidies, but got another $6.6 million under a subsidy called Step 2.

The Step 2 program gives money to U.S. companies that mill cotton into thread and cloth for export, to help them buy U.S.-grown cotton. This financial incentive is necessary because American cotton is much more expensive than cotton grown elsewhere around the world. Why? Because of the crop subsidies provided to American cotton farmers, which artificially push the price of U.S. cotton above world market levels. As both a cotton grower and a miller, Boswell's farm operation can use its crop subsidies to ensure it makes a profit from growing cotton. Then its milling operation can tap the Step 2 program to lower its cost to buy more raw cotton for milling and export.

TABLE: Top 20 Subsidy Recipients

Farm/Farmer Name	City/State	Total Farm Subsidies Received (1995-2003)
1: J G Boswell Company	Corcoran, CA	$23,919,679
2: Dublin Farms	Corcoran, CA	$11,913,936
3: Hansen Ranches	Corcoran, CA	$8,616,787
4: C.J. Ritchie Farms	Visalia, CA	$8,225,657
5: Buttonwillow Land & Cattle Company	Buttonwillow, CA	$8,135,045
6: Starrh & Starrh Cotton Growers	Shafter, CA	$7,991,530
7: Westfarmers	Visalia, CA	$6,670,547
8: Gilkey 5	Corcoran, CA	$5,588,236
9: Chicca Twin	Buttonwillow, CA	$4,897,759
10: Wheeler Farms	Bakersfield, CA	$3,972,321
11: Torigiani Farms	Buttonwillow, CA	$3,501,218
12: The Phoenix Farming Company	Corcoran, CA	$3,441,472
13: Four B'S Farms	Corcoran, CA	$3,432,123
14: Gilkey Enterprises	Corcoran, CA	$3,121,774
15: Harry Banducci & Sons	Bakersfield, CA	$3,107,042
16: Houchin Brothers	Buttonwillow, CA	$3,074,525
17: Fred Palla Farms	Buttonwillow, CA	$2,928,370
18: Newton Farms	Stratford, CA	$2,789,606
19: Cauzza Brothers	Buttonwillow, CA	$2,735,111
20: Toretta Farms	Buttonwillow, CA	$2,722,339

Total subsidies for top 20 recipients	**$120,785,076**

Source: [34]

The next largest crop subsidy recipient among the farms that sued is Dublin Farms, also of Corcoran. Dublin Farms planted more than 9,000 acres of cotton and wheat in 2002 and got almost $12 million in USDA cash payments from 1995 to 2003. Corcoran, a dusty town of about 15,000, is the Beverly Hills of California farms that get crop subsidies: Other local members of the multimillion-dollar subsidy club are Hansen Ranches ($8.6 million), Gilkey 5 Farms ($5.6 million), Phoenix Farming Co. ($3.4 million), Four Bs Farms ($3.4 million) and Gilkey Enterprises ($3.1 million; exact connection to Gilkey 5 unknown). Each of these farms will share in the Tulare Lake settlement.

Farms in the water districts served by the Kern County Water Agency don't get individual USDA checks quite as large as their Tulare Lake neighbors, but they make it up in numbers. Led by C.J. Ritchie of Lost Hills and the Buttonwillow Land & Cattle Co., each with more than $8 million in crop subsidies from 1995 to 2003, no less than 58 KCWA farms got USDA payments of at least $1 million each.

Overall, 67 farms in the Tulare Lake and Kern County districts — more than one third — received checks totaling more than $1 million during this period. More than 100 farms got payments worth at least $500,000 — roughly $55,500 a year, more than the median household income in California in 2003 ($49,300), and 50 percent more than the median income in Tulare County ($36,343). [35]

Our database of farms sharing the settlement lists 145 farms which received no crop subsidies, but the number is almost certainly lower. We found many instances of names in the Farm Subsidy Database that appeared to match names of the farms we extracted from state pesticide use reports. But if we could not be certain that the farms were identical, we did not include those subsidies in our analysis.

Reselling Subsidized Water

Once the home of a vibrant fishery, today the watershed of the Sacramento and San Joaquin rivers is one of the most artificially controlled hydrological systems in the world: Both rivers have been dammed, as have all but one of their major tributaries. [36] The water from these vast river drainages eventually flows into the West Coast's largest estuarine ecosystem — the San Francisco Bay-Delta Estuary, which has also been extensively altered by human activity.

In the Delta, two massive pumping facilities extract water and funnel it into the largest federally-run water delivery system in the country and the largest state-run delivery system: the federal Central Valley Project (CVP) and the State Water Project (SWP), respectively. At certain times of the year when the SWP and the CVP are exporting high

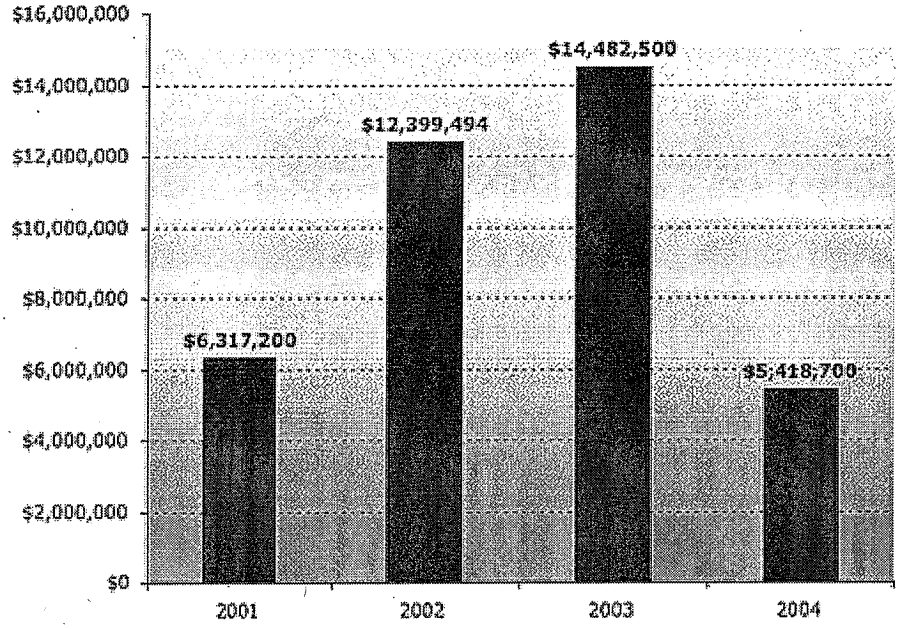
levels of water from the Delta, the San Joaquin River actually reverses its flow between its confluence with the Sacramento River and the pumps. The river actually flows upstream. As if these extreme disruptions of the natural fish and wildlife habitat weren't enough, the pumps themselves kill millions of fish each year. [36]

By the early 1980s, federal scientists realized that fish populations in the Delta and throughout the watershed were crashing — in large part because of the export of millions of acre-feet of water to the SWP and CVP. From 1987 to 1992, a severer drought exacerbated this already dire situation and ultimately forced the California Department of Water Resources to limit its agricultural water deliveries. It was also clear that a much more ambitious plan was needed to restore ecosystem health in the Bay and Delta. A joint state-federal agency known as CALFED was created to develop and implement this plan, which included a controversial program known as the Environmental Water Account (EWA).

The EWA, which has been in operation since 2000, is like a virtual water district where the customers are fish. EWA buys water from willing sellers within the CVP and SWP at market rates to use for environmental purposes, such as improving water quality in a particular section of river or helping to restore threatened fish species such as salmon and smelt. The idea was to provide a mechanism to protect fish without affecting agricultural water supplies. It was also hoped that the prospect of reselling their unused water would encourage conservation by farmers. The success of the EWA in accomplishing this goal is debatable: The program has been hampered by a limited budget and inadequate water supply. [37] One thing is clear: The EWA is a highly effective mechanism for water districts that get cheap irrigation water to make a bundle off of taxpayers.

Kern County Water Agency made $38.6 million in profit selling water back to taxpayers

Annual profit from water sales to California Environmental Water Account



Sources: [38-42]

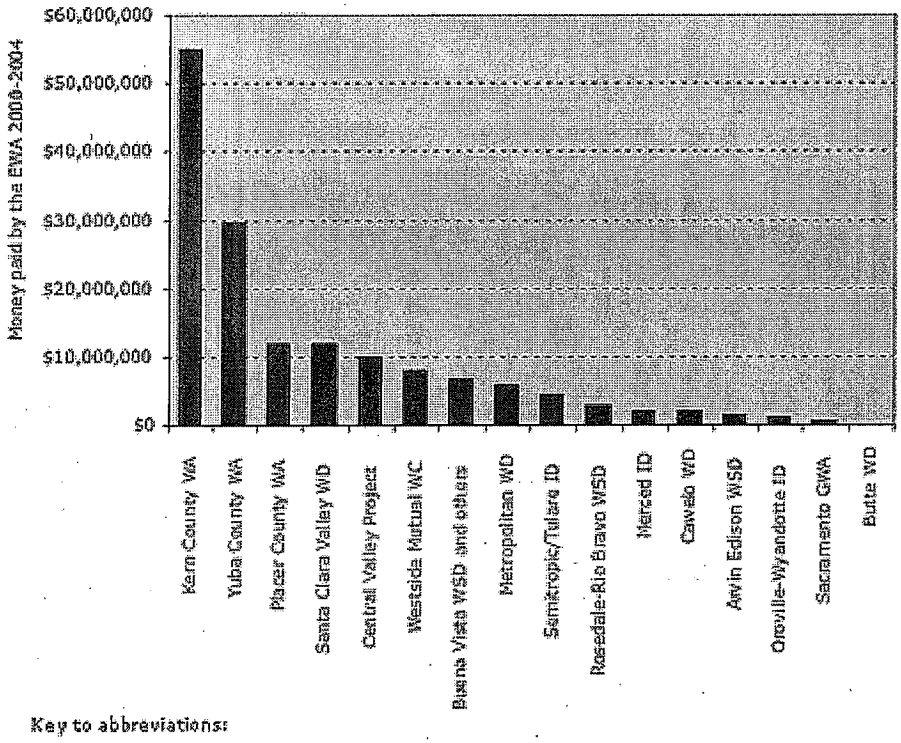
As the EWA is a publicly funded entity, the government is essentially selling SWP and CVP water to farmers at very low prices, then buying it back later at much higher rates to replace water that never left the river in the first place. Since the EWA has been in operation, it has purchased water from 16 different water agencies. But one has profited far more than any other: the Kern County Water Agency. KCWA is the largest agricultural water contractor in the SWP. It serves 14 different water districts †1 within the San Joaquin Valley and receives, on average, 84 percent of the irrigation water delivered by the SWP each year. [38]

Between 2001 and 2004, KCWA paid an average of $63.40 per acre-foot †2 (af) for its SWP water. [38-42] This amounts to a subsidy of at least $100 an acre-foot, given that the California Department of Water Resources and the Federal Bureau of Reclamation recently estimated that if a new dam were built on the upper San Joaquin River, the irrigation water it would deliver would cost a minimum of $170.42 per af †3. [43] But the KCWA is getting an even better deal: It is allowed to sell part of its water back to the taxpayers via the EWA at rates as much as 7 times higher than what it paid.

From 2001-2004, KCWA sold 277,400 af of water to the EWA at an average price of $198 per af, for a total of $54.9 million. The Agency's *profit* was $38.6 million — an average of $9.6 million per year. [38-42] Overall, KCWA has received more than one-third of the total expenditures by the EWA, and by far more money of any other

individual water agency. [38] KCWA has perfected a scam in which taxpayers subsidize its below-market purchase of a public resource (water), then must pay much more to buy the water back in an attempt to restore another public resource (fish). Perhaps the most outrageous part of the scheme is that the Bay-Delta needs restoration largely because of the diversion of subsidized agricultural water and the runoff of pesticides and other toxic agricultural chemicals.

Kern County Water Agency has received more than one-third of all payments from the Environmental Water Account



Key to abbreviations:

GWA Ground Water Authority
ID Irrigation District
WA Water Agency
WC Water Company
WD Water District
WSD Water Storage District

Source: [38]

Besides resales to the EWA, from 1995 to 2004 the Kern County Water Agency sold another 456,092 acre-feet of water to other water districts, and the Tulare Lake Basin district sold 76,941 acre-feet to other districts. Prices and profits for those sales are details hidden from the public by state law, so it is impossible to know how much profit these water agencies made on such transactions. [44] In 2002, The Sacramento Bee estimated that just three water districts that are part of KCWA in recent years had made more than $128 million from sales to municipalities. [45]

But in Kern County there is potentially even more profit to be made from reselling subsidized water — even if that water exists only on paper.

According to a 2003 investigation by the taxpayer watchdog group Public Citizen, the KCWA and three of the water districts it serves own 42 percent of the Kern Water Bank, a huge underground storage facility that can store about 1 million acre-feet of water. [46] The state spent $74 million to develop the water bank, then in 1994 turned it over to the KCWA after secret meetings produced the so-called Monterey Agreement. This was a pact between the state, big farmers and developers based on the hope that someday, by building new dams and reservoirs, the State Water Project will be able to deliver all of the 4.2 million acre-feet specified in its contracts. As noted previously, half of the amount contracted for currently exists only on paper.

Another 48 percent of the water bank is owned by the Westside Mutual Water Co., a paper entity owned, operated and housed in the Bakersfield offices of its only customer, Paramount Farming Co. According to the California Farm Bureau, Paramount Farming and its corporate siblings, Paramount Citrus and Paramount Farming, Inc., comprise the largest farm company in the United States. [46] From 1995 to 2003, Paramount received $576,000 in USDA crop subsidies.

Paramount is part of Roll International Corp., a holding company privately owned by Stewart Resnick of Beverly Hills, one of the richest people in Los Angeles with an estimated net worth of $740 million. [47] Through Roll International, Resnick also owns the Franklin Mint, mail-order marketers of kitschy commemorative memorabilia, and Teleflora, a national floral delivery service.

Public Citizen documented that Westside MWC was created by Paramount Farming in hopes of reselling some of its non-existent SWP allocation to the Los Angeles Department of Water and Power. (Fans of the film Chinatown need no reminder of the LA water department's dark history of water grabs.) However, the labyrinthian connections of corporate interests with ties to the Kern County Water Bank point to other potential customers: Developers who want to turn former and current farmland between Bakersfield and Los Angeles into sprawling new towns called Tejon Ranch and Newhall Ranch.

Dennis Mullins, vice president and general counsel of Tejon Ranch, is on the board of directors both of the Kern County Water Bank and two of the water districts that own it — districts that will share in the Tulare Lake settlement. Another of the water districts that will receive part of the settlement and is a part-owner of the water bank already delivers water to Newhall Land & Farming, developers of Newhall Ranch. And Public Citizen uncovered a water sales contract between Newhall and a company owned by Paramount's corporate parent, Roll International. It doesn't take a conspiracy theorist to guess that an ultimate goal of the water districts that control the water bank is to turn paper water from the SWP into real water they can sell to developers at a profit.

Until then, they have their share of $16.7 million to see them through.

Footnotes

†1 — Berrenda Mesa Water District, Lost Hills Water District, Belridge Water Storage District, Semitropic Water Storage District, Cawelo Water District, Kern County Water Improvement District #4, Rosedale-Rio Bravo Water Storage District, Buena Vista Water Storage District, Kern Delta Water District, Henry Miller Water District, West Kern Water District, Wheeler Ridge-Maricopa Water Storage District, Tehachapi-Cummings County Water District, and Tejon-Castaic Water District.

†2 — An acre-foot is the amount of water needed to cover an acre of land one foot deep, or 325,851 gallons.

†3 — This is a highly conservative cost estimate because it does not include the costs for road construction, relocations of existing facilities, environmental mitigation, land acquisition, reservoir cleaning, or interest.

Full List of Subsidy Recipients

Farms that will share in the "takings" settlement receive millions of dollars in federal farm subsidies

Farm/Farmer	City/State	Total Farm Subsidy Payments 1995-2003
J G Boswell Co.	Corcoran, CA	$23,919,679
Dublin Farms	Corcoran, CA	$11,913,936
Hansen Ranches	Corcoran, CA	$8,616,787
C.J. Ritchie Farms	Lost Hills, CA	$8,225,657
Buttonwillow Land & Cattle Co.	Buttonwillow, CA	$8,135,045
Starrh & Starrh Cotton Growers	Shafter, CA	$7,991,530
Westfarmers	Visalia, CA	$6,670,547
Gilkey 5	Corcoran, CA	$5,588,236
Chicca Twin	Buttonwillow, CA	$4,897,759
Wheeler Farms	Bakersfield, CA	$3,972,321
Torigiani Farms	Buttonwillow, CA	$3,501,218
Phoenix Farming Co., The	Corcoran, CA	$3,441,472
Four B's Farms	Corcoran, CA	$3,432,123
Gilkey Enterprises	Corcoran, CA	$3,121,774
Harry Banducci & Sons	Bakersfield, CA	$3,107,042
Houchin Brothers	Buttonwillow, CA	$3,074,525

Fred Palla Farms	Buttonwillow, CA	$2,928,370
Newton Farms	Stratford, CA	$2,789,606
Cauzza Bros.	Buttonwillow, CA	$2,735,111
Toretta Farms	Buttonwillow, CA	$2,722,339
Palla Rosa Farms	Bakersfield, CA	$2,618,773
Cerro Farms	Bakersfield, CA	$2,579,032
Gardiner Farms	Bakersfield, CA	$2,437,694
John Crump	Bakersfield, CA	$2,419,064
Carmel Partners	Wasco, CA	$2,415,896
Parsons Farms	Buttonwillow, CA	$2,378,740
Joe Fanucchi & Sons - South	Arvin, CA	$2,373,069
Roy & George Fanucchi	Shafter, CA	$2,239,553
Belluomini Farms	Buttonwillow, CA	$2,132,648
John Romanini & Sons	Buttonwillow, CA	$2,099,618
Westlake Farms,inc.	Stratford, CA	$2,087,842
Triple B Farms	Bakersfield, CA	$2,038,721
K. Barnard & Sons	Bakersfield, CA	$2,036,862
R & G Farms	Bakersfield, CA	$2,024,910
Bidart Brothers	Bakersfield, CA	$1,969,727
Elk Grove Ranch	Buttonwillow, CA	$1,949,892
Mario Buoni & Sons	Bakersfield, CA	$1,916,568
Destefani Farms	Bakersfield, CA	$1,890,467
Pierucci Farms	Bakersfield, CA	$1,862,257
Four D Farming	Bakersfield, CA	$1,746,082
Kosareff Farms	Buttonwillow, CA	$1,729,592
Banducci & Son	Buttonwillow, CA	$1,701,794
Costerisan Farms	Bakersfield, CA	$1,699,019
Greenlee Farms	Bakersfield, CA	$1,661,342
Franceschi & Son Farms	Buttonwillow, CA	$1,654,879
Mckittrick Ranches	Bakersfield, CA	$1,643,347
J. D. & K. Farms	Bakersfield, CA	$1,586,447
M & M Farms	Bakersfield, CA	$1,555,196
Houchin Ranch 7	Buttonwillow, CA	$1,404,873
R & B Farms	Shafter, CA	$1,390,184
Vandborg Farms	Lamont, CA	$1,371,686

Stenderup Ag Partners	Bakersfield, CA	$1,365,299
Bel-An Farms	Bakersfield, CA	$1,352,067
Don Schulte Farms	Bakersfield, CA	$1,346,920
J. S. A. Company	Bakersfield, CA	$1,309,070
S & S Farms	Bakersfield, CA	$1,281,286
K. M. Farms	Bakersfield, CA	$1,223,326
Aldo Antongiovanni & Son	Buttonwillow, CA	$1,207,421
Rodney Palla Farms	Bakersfield, CA	$1,158,711
Julian Pierucci & Son	Buttonwillow, CA	$1,152,363
Tillema Farms	Bakersfield, CA	$1,140,038
Walter Delfino	Buttonwillow, CA	$1,133,066
Kootstra Dairy Farm	Bakersfield, CA	$1,132,834
Palla Farms	Bakersfield, CA	$1,107,257
D J Farms	Taft, CA	$1,064,193
SRB Farms	Lost Hills, CA	$1,059,308
Bryan Bone Farms	Bakersfield, CA	$1,009,524
E.w. Suorez Farms, Inc.	Bakersfield, CA	$985,490
A. J. Torrigiani & Sons	Buttonwillow, CA	$962,685
George Borba & Son Dairy	Chino, CA	$956,241
Joseph A. Eyraud & Sons, Inc.	Bakersfield, CA	$946,319
Ralph And Greg Palla	Bakersfield, CA	$939,599
Maple Farms	Bakersfield, CA	$938,451
Don Valpredo Farms	Bakersfield, CA	$928,341
Kophamer & Kophamer	Bakersfield, CA	$925,571
H 3 Ranch	Buttonwillow, CA	$912,029
Progresive Associates Group	Bakersfield, CA	$892,055
Bloemhof Katoen Boerderij	Wasco, CA	$880,413
Baggiani & Isola	Buttonwillow, CA	$809,892
A.J.B. Ranch	Bakersfield, CA	$760,804
H. V. Farms, Inc.	Bakersfield, CA	$744,742
G. and M. Farms	Buttonwillow, CA	$744,448
David Torgiani Farms	Buttonwillow, CA	$717,088
Frank & Daniel Fugitt	Bakersfield, CA	$711,737
Tri-fanucchi Farms, Inc.	Arvin, CA	$708,932
Parker Farms	Bakersfield, CA	$697,886

Albert & Lilly Ghilarducci Frm	Buttonwillow, CA	$666,461
R. M. Mettler (Metco)	Bakersfield, CA	$666,037
Arthur Ghilarducci	Buttonwillow, CA	$657,120
J & W Farming	Bakersfield, CA	$656,033
Wilgenburg Dairy Farm	Bakersfield, CA	$648,230
John A. Miller Farms	Wasco, CA	$635,211
Shaen Magan Family Trust	Bass Lake, CA	$632,237
Roy & Jelsey Romanini Farms	Buttonwillow, CA	$631,052
Rudy Angone	Bakersfield, CA	$626,223
Giannelli Farms	Bakersfield, CA	$617,458
Suburu Farms	Bakersfield, CA	$600,950
V & C Farms	Bakersfield, CA	$596,186
Mettler Ag/David Mettler	Bakersfield, CA	$590,745
Tejon Ranch/Laval Farms	Lebec, CA	$589,180
A. Cattani & Son	Bakersfield, CA	$581,051
Paramount Farming Co.-Eastside	Bakersfield, CA	$576,597
Val-Ridge Farms	Bakersfield, CA	$571,428
4-B Farms	Buttonwillow, CA	$548,543
E. H. A. Farms	Bakersfield, CA	$541,570
R & M Jelmini Farms	Bakersfield, CA	$541,567
Howard Frick Farms	Bakersfield, CA	$534,920
MNA Trust	Bakersfield, CA	$532,446
Riverbend Dairy #2	Tulare, CA	$525,654
V.B. Zaninovich & Sons, Inc.	Richgrove, CA	$503,529
Costamagna Bros	Bakersfield, CA	$493,987
Thomson Land Company	Bakersfield, CA	$493,338
Opal Fry & Son	Bakersfield,, CA	$486,395
Bonanza Farms	Bakersfield, CA	$450,528
Tut Bros. Farms	Watsonville, CA	$440,501
Sierra Victor Ranch Company	Delano, CA	$439,525
Community Recycling	Lamont, CA	$433,937
Bloemhof Ag Ent	Wasco, CA	$430,593
Wm. Bolthouse, Inc.	Bakersfield, CA	$429,176
Jarrard Farms	Bakersfield, CA	$423,897
Nikkel Bros. Farms	Bakersfield, CA	$418,157

R & K Farms	Buttonwillow, CA	$412,156
Gino Buoni	Bakersfield, CA	$411,552
Fanucchi Enterprises	Arvin, CA	$390,274
Munger Farms	Delano, CA	$389,504
Munger Investments	Delano, CA	$389,504
Richard Clasen	Bakersfield, CA	$386,584
H. Spitzer & Sons Inc.	Lamont, CA	$381,161
Jimmie Icardo Farms, Inc.	Bakersfield, CA	$373,932
Del Papa Farms	Bakersfield, CA	$370,950
Cappello Farms, Inc./Oak Flat	Bakersfield, CA	$346,223
Feed Resources LLC	Bakersfield, CA	$327,988
Mitchell Farms	Bakersfield, CA	$324,321
Carlos Gomez	Bakersfield, CA	$320,333
Sam Andrews Sons	Bakersfield, CA	$309,541
Corotto Co., Inc.	Edison, CA	$304,453
Tehachapi Vineyards	Ceres, CA	$300,646
Richline Farms	Bakersfield, CA	$265,268
Kingsburg Citrus Ranch	Mcfarland, CA	$253,253
Royal Farms	Fresno, CA	$244,996
Sunview Vineyards Of CA., Inc.	Mcfarland, CA	$236,025
Wheeler Ridge Farming Co.	Rancho Cucamonga, CA	$233,187
Walker Fry Ranch	Bakersfield, CA	$233,063
Trinity Farms, Inc.	Bakersfield, CA	$232,710
M.A.D. Farms	?, CA	$221,527
Dosanjh Bros. Farm	Bakersfield, CA	$212,655
Sandhill Farms	Arvin, CA	$205,090
Bhogal Farms	Bakersfield, CA	$199,152
Ray-lee Company	Bakersfield, CA	$198,577
Poso Creek Ranch	Delano, CA	$197,440
Gar Mcleod & Sons	Bakersfield, CA	$187,540
Banducci Farms	Bakersfield, CA	$186,025
Norman Shepherd	Buttonwillow, CA	$179,067
Bapu Farming Co. LLC	Madera, CA	$174,583
Paul Coombs & Sons	Bakersfield, CA	$169,611
7 K Ranch	Bakersfield, CA	$165,950

Joel Suburu	Bakersfield, CA	$165,409
San Raphael Fruits, Corp.	Rolling Hills Estate, CA	$157,229
Agriswiss, Inc.	Mcfarland, CA	$135,840
M & E Farms	Bakersfield, CA	$134,303
M. J . B. Farms	Delano, CA	$125,758
Kirschenmann Farms	Lamont, CA	$123,776
Harold Fleishauer & Son	Bakersfield, CA	$119,064
Baroncini Bros.	Bakersfield, CA	$117,089
John S. Antongiovanni Jr.	Bakersfield, CA	$111,133
Larsons Dairyland	Bakersfield, CA	$109,817
I & I Farms Inc., Frank Icardo	Lamont, CA	$107,882
Jack Schweikart	Bakersfield, CA	$105,582
Mc Carthy Family Farms	Corcoran, CA	$99,986
Affentranger & Sons	Bakersfield, CA	$99,902
Anthony Vineyards	Bakersfield, CA	$79,563
California Pistachio	Bakersfield, CA	$78,269
Roden Farms	Shandon, CA	$76,700
Frank Garone, Jr.	Bakersfield, CA	$75,384
Miersma Family Dairy	Chino, CA	$75,278
Rich Mar Farms	Bakersfield, CA	$73,116
Andrewsag Inc.	Bakersfield, CA	$73,072
Norman Etchison	Bakersfield, CA	$54,752
Golden State Vinters, Inc.	Fresno, CA	$46,106
Cal Farm Invest	Bakersfield, CA	$45,065
Mark Johnson	Bakersfield, CA	$43,586
Amaretto Orchards c/o Ag Wise	Bakersfield, CA	$36,318
J.F. & S. Farms	Bakersfield, CA	$35,408
Tom Sandrini	Bakersfield, CA	$33,453
7th Standard Ranch	Shafter, CA	$30,601
King-pak Farms	Lamont, CA	$19,981
Michael Hat	Manteca, CA	$15,232
Louis Riccomini & Sons	Bakersfield, CA	$11,088
Kundert Brothers Farms	Edison, CA	$10,821
Andrew Brancato	Bakersfield, CA	$8,206
Holmes Ag. Management	Fresno, CA	$5,152

Sunset Farms	Bakersfield, CA	$3,299
Bloemhof Land & Farming	Wasco, CA	$1,568
Primex	Fresno, CA	$288
Blackwell Land Co.	Bakersfield, CA	$0
Sun Pacific Farming-mcfarland	Bakersfield, CA	$0
Castle Rock Farming & Transprt	Delano, CA	$0
Sun Pacific Farming - Maricopa	Bakersfield, CA	$0
Badger Farming	Exeter, CA	$0
Castillo Farms	Los Angeles, CA	$0
Malibu Vineyards	Delano, CA	$0
Maricopa Nursery Corp.	Manhattan Beach, CA	$0
Don Cox	Bakersfield, CA	$0
Old West Farming DBA Sunmet 51	Fresno, CA	$0
Maricopa	Ceres, CA	$0
Mid State Lab Test Farm	Bakersfield, CA	$0
S And H Farms	Gonzales, CA	$0
Southlake Ranch	Delano, CA	$0
Paramount Farms-Belridge Ranch	Mckittrick, CA	$0
Bel Lehr Organics	Edison, CA	$0
Foxtail Farms	Bakersfield, CA	$0
Nalbandian	Lamont, CA	$0
Paramount Citrus	Delano, CA	$0
Western Ag Specialists	Sanger, CA	$0
Betty Magan	Bass Lake, CA	$0
Islam Farms	Bakersfield, CA	$0
Romero Farms	Bakersfield, CA	$0
Ron Fanucchi Farming	Bakersfield, CA	$0
Old River Sod	Bakersfield, CA	$0
Twinland	Wasco, CA	$0
Del Monte Fresh Produce	Sanger, CA	$0
Sunshine Farms	Fresno, CA	$0
Willow Ridge Ranch	Shafter, CA	$0
Maricopa Slope Ranch	Delano, CA	$0
Singh, Jagtar	Fresno, CA	$0
Kern Ridge Growers	Arvin, CA	$0

G & G Farms	Bakersfield, CA	$0
Ben Lapadula	Bass Lake, CA	$0
Key Farm	Arvin, CA	$0
Paragon Seed Inc.	Salinas, CA	$0
Rancho Alexander	Mcfarland, CA	$0
Stephen Pavich & Sons	Lindsay, CA	$0
Tulare Lake Farming Co.	Corcoran, CA	$0
Giumarra Vineyards	Bakersfield, CA	$0
Hure Brothers	Delano, CA	$0
Thomas Miles	Bakersfield, CA	$0
Grimmway Enterprises	Bakersfield, CA	$0
Kindig Bros.	Bakersfield, CA	$0
Giannetto Citrus	Terra Bella, CA	$0
Yaksitch Farms	Lamont, CA	$0
John J. Kovacevich & Sons	Arvin, CA	$0
Superior Almonds	Porterville, CA	$0
Vignolo-Delmart Farms	Shafter, CA	$0
Bushnell Farm	Buttonwillow, CA	$0
Hill Maricopa Ranch	Arvin, CA	$0
Raaviz Farms	Fresno, CA	$0
7th Standard Ranch Co.	Bakersfield, CA	$0
Norag Co.	Bakersfield, CA	$0
Bidart Farms	Chino, CA	$0
Klein Management Inc.	Bakersfield, CA	$0
Alborz Farms, LLC	Fresno, CA	$0
Hankins Farms, Inc.	Wasco, CA	$0
Lester E. Stout	Bakersfield, CA	$0
Richard Enns	Bakersfield, CA	$0
Cal-Organic Vegetable Co.	Bakersfield, CA	$0
Greenwood Farms	Buttonwillow, CA	$0
Dynamic Farms	Scotts Bluff, NE	$0
Etchegaray Farms	Earlimart, CA	$0
Loma Ranch	Los Angeles, CA	$0
FMP Vineyards Llc	Bakersfield, CA	$0
Jack S. Thomson Farming Co.	Bakersfield, CA	$0

Covenant Farms	Bakersfield, CA	$0
Sun Pacific Farming (tomato)	Exeter, CA	$0
Sun Pacific Farming Co.	Bakersfield, CA	$0
Ugo Antongiovanni Farms	Bakersfield, CA	$0
D'Best Produce Co. Llc	Fresno, CA	$0
Sherwood 209- Sun Valley Assoc	Visalia, CA	$0
Delano Farms Company	Delano, CA	$0
Dennis & Peter Frick, Inc.	Bakersfield, CA	$0
H. P. Anderson and Son	Tulare, CA	$0
Webster Pistachios	Kettleman City, CA	$0
Garry Richardson Farms	Bakersfield, CA	$0
Rainbow Ranches, Inc.	Bakersfield, CA	$0
Famoso Vineyards	Delano, CA	$0
Double G Farms	Buttonwillow, CA	$0
C.S. Sidhu Farms	Bakersfield, CA	$0
I.N.A. Farm Corp.	Bakersfield, CA	$0
Paramount Farming W Valley/DR	Lost Hills, CA	$0
Gless Ranch, Inc.	Riverside, CA	$0
Kirk Elholm Farms	Wasco, CA	$0
Uni-CA	Bakersfield, CA	$0
Dole Fresh Fruit Co. - Rch Lma	Bakersfield, CA	$0
South Valley Farms	Wasco, CA	$0
Eduardo Garcia Farm	Earlimart, CA	$0
Stan Voth Farms	Wasco, CA	$0
Sunworld Inc.DBA Superior Farm	Bakersfield, CA	$0
Robert S. Andrews	Bakersfield, CA	$0
Rancho Esteli	Visalia, CA	$0
A & P Ranch	Lost Hills, CA	$0
Shafter Ranch	Lathrop, CA	$0
Carreon Farms	Bakersfield, CA	$0
Tony Guerrero	Arvin, CA	$0
Lederhos Farms	Bakersfield, CA	$0
B J Farms	Bakersfield, CA	$0
Superior Sod	Tehachapi, CA	$0
Ag. Management Associates, Inc.	Bakersfield, CA	$0

Jack Reed Farming	Edison, CA	$0
Jim Hronis & Sons-Grapes Only	Delano, CA	$0
Dushmesh Farms, Inc.	Bakersfield, CA	$0
D. M. Camp	Bakersfield, CA	$0
Universal Farming #105	Redondo Beach, CA	$0
Slaydeco	Bakersfield, CA	$0
Four Star Fruit, Inc.	Delano, CA	$0
Ballantine Produce Co., Inc	Sanger, CA	$0
Don Laux Farm Management	Porterville, CA	$0
Gorgin Farms	Fresno, CA	$0
Lucas Brothers	Visalia, CA	$0
Grimmway Organics	Bakersfield, CA	$0
Aldo Angone Farming	Bakersfield, CA	$0
Don And Alfred Palla	Bakersfield, CA	$0
Doaba Farming Co., Inc.	Bakersfield, CA	$0
James Tazioli	Buttonwillow, CA	$0
Elex Farms, Inc.	Fresno, CA	$0
John Allen Farms	Bakersfield, CA	$0
Poochigian Farms	Bakersfield, CA	$0
Kenny Mc Clanahan Farms	Bakersfield, CA	$0
Hein Ranch Company	Visalia, CA	$0
Redbank-Malaga/Minda Corp	Lindsay, CA	$0
Hall Farming	Arvin, CA	$0
Agro Farming	Arvin, CA	$0
Kern Oil & Refining Co.	Delano, CA	$0
Pioneer Nursery	Visalia, CA	$0
Hay Brothers	Bakersfield, CA	$0
South West 320 Fruit Co.	Visalia, CA	$0
Desert Ranch	Wasco, CA	$0
Fred Starrh Farms	Shafter, CA	$0
Smith & Sons/Smith & Smith	Bakersfield, CA	$0
G. T. S. Farms	Bakersfield, CA	$0
Agtoprof, Inc.	Shafter, CA	$0
Farmland Management Service	Delano, CA	$0
Chaparral, Inc.	Fresno, CA	$0

RWB Ranch & Tejon	Lindsay, CA	$0
Lloyd Unruh Farms	Bakersfield, CA	$0
Blair Farms	Buttonwillow, CA	$0
Norman Efird Farms	Bakersfield, CA	$0
Doug Kaiser Farms	Bakersfield, CA	$0
J. H. Farms	Escondido, CA	$0
Triple Y	Delano, CA	$0
Dewar Farms	Bakersfield, CA	$0

Farmer Detail

No farmer specified, please return to this page and select a farmer

Expert Sources

These experts on water law are familiar with EWG's report and are prepared to comment to the news media.

Hamilton Candee
Natural Resources Defense Council, San Francisco
(415) 875-6100
hcandee@nrdc.org

Hal Candee, a senior attorney with NRDC's Western Water Project, has been working for two decades to reform California water policy. Currently he is closely monitoring the contract renewal negotiations between the Bureau of Reclamation and CVP water districts.

John Leshy,
University of California, Hastings College of Law
(415) 565-4726
leshyj@uchastings.edu

Leshy is Harry D. Sunderland Distinguished Professor of Real Property Law at Hastings College of Law. In 1993 President Clinton appointed him to be Solicitor (General Counsel) of the Interior Department where, following Senate confirmation, he served under Secretary Bruce Babbitt until the end of the Administration, the second longest tenure of any Solicitor in the Department's 155 year history.

Lloyd G. Carter
Save Our Streams
(559) 304-5412

As a journalist in the 1980s, Lloyd Carter reported extensively on the environmental disaster caused by CVP runoff to the Kesterson National Wildlife Refuge. He is a former lecturer in water law at San Joaquin College of Law in Fresno and a well-known local advocate.

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[7] Benson, 556.

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[9] Tahoe-Sierra (Echeverria at 356).

[10] Tulare, 49 Fed. Cl. at 320

[11] O'Neill v. United States 50 F.3d 677 (9th Cir. 1995)

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[14] National Audubon Society v. Superior Court of Alpine County, 33 Cal.3d 426 (1983)

[15] United States v. State Water Resources Control Board, (1986) 182 Cal.Appl.3rd [SC: 3d] 82, 227 Cal. Rptr. 161, 170.

[16] California Constitution, Art X, 2.

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EWG News Release

OAKLAND, Calif. — The Bush Administration is paying some of the biggest and richest agribusinesses in America $17 million for cutbacks in their taxpayer-subsidized water supply. But an Environmental Working Group (EWG) investigation found that these same California agribusinesses — including the world's biggest cotton producer and the largest farm in America — already get hundreds of millions of tax dollars from other federal farm subsidy programs.

The Administration's decision to pay off corporate megafarms in the San Joaquin Valley, over the objections of California officials from both parties and the government's own water-law experts, is not just another story of a wasteful federal handout to big agribusinesses.

It sets a dangerous precedent for similar cases, including a $100 million claim by farmers in the Klamath Basin on the California-Oregon border that will be heard next week. And it represents a radical extension of a right-wing ideology that regards environmental protections as illegal incursions on private property rights. The farmers claim the cutbacks were a government "taking" of their property, but EWG's findings raise the question: Who is really doing the taking?

"It's hard to say which is more outrageous: the claim by these large and profitable agribusinesses that they own the water — which under the state Constitution belongs to the people — or the Bush Administration going along with the scam," said Renee Sharp, an EWG senior analyst. "It amounts to paying the farmers not to take more of our water, while they're already getting millions of our tax dollars to support their businesses."

EWG's report, Taking From the Taxpayers, available at www.ewg.org, details that from 1995 to 2003, farmers sharing in the water settlement received about $250 million in

direct payments from federal crop subsidies and other programs. What's more, since 2001 the Kern County water agency serving almost all of those agribusinesses made about $40 million in profit by selling subsidized water back to California taxpayers at market rates.

The budget proposed this week by the Bush Administatration budget includes cuts in crop subsidies. Farm interests have already begun fighting the proposal by claiming it threatens their livelihood. But EWG's report shows that for many California agribusinesses who are reselling their subsidized water, crop payments are only one way they are underwritten by the taxpayers.

"This $17 million payoff is being spun by the agriculture lobby and property-rights movement as just compensation for struggling family farmers whose rights were trampled on," said EWG Vice President Bill Walker. "What is really is more corporate welfare for big agribusinesses who always have their hands out and never seem to get enough."

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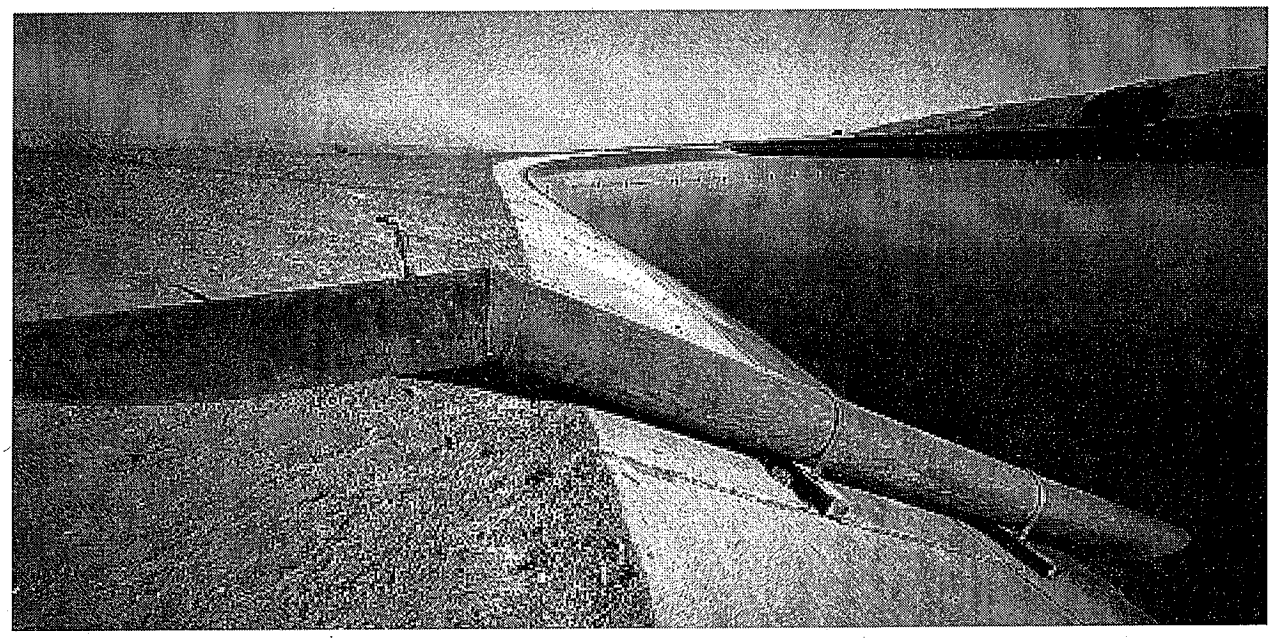


Water Heist

How Corporations Are Cashing In On California's Water

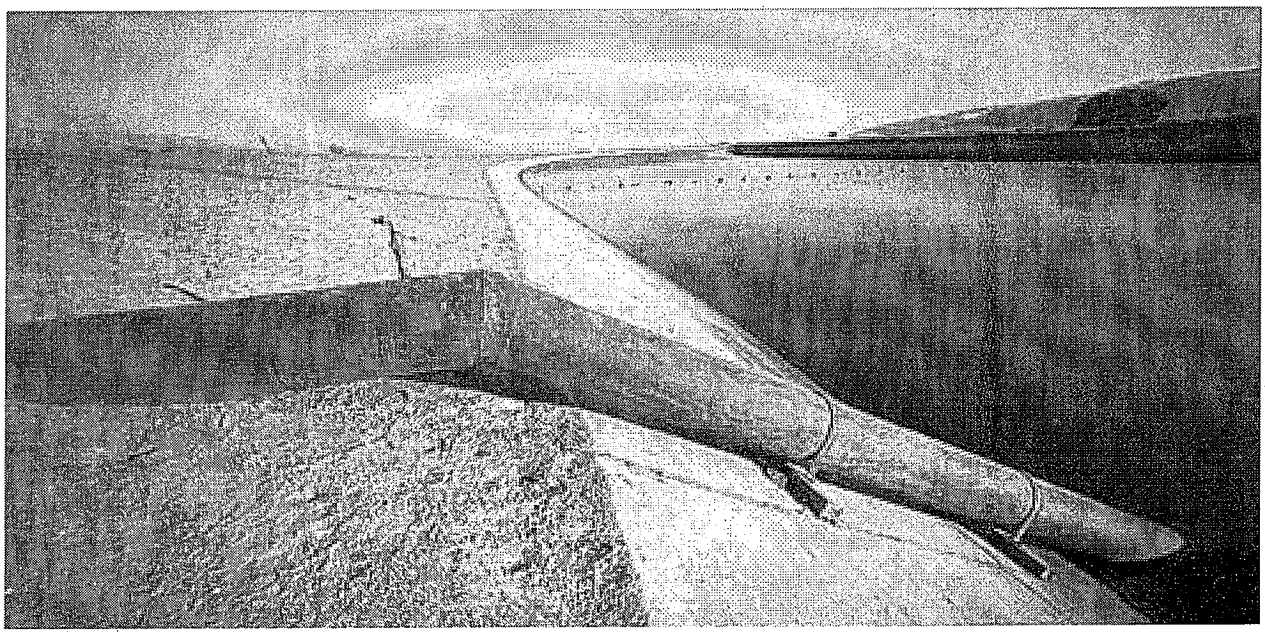
Public Citizen

WATER FOR ALL

CAMPAIGNING TO KEEP WATER AS A PUBLIC TRUST

California Office

December 2003



Water Heist

How Corporations Are Cashing In On California's Water

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California Office

December 2003

Public Citizen *is a national, nonprofit consumer advocacy organization founded by Ralph Nader in 1971 to represent consumer interests in Congress, the executive branch and the courts. We fight for openness and democratic accountability in government, for the right of consumers to seek redress in the courts; for clean, safe and sustainable energy sources; for social and economic justice in trade policies; for strong health, safety and environmental protections; and for safe, effective and affordable prescription drugs and health care. We have six divisions and two state offices.*

The California Office *Our campaigns protect the basics for life: food, water and democracy. We fight for safe and sustainable agriculture that provides locally-grown and nutritious food produced in a humane fashion. We advocate for democratic control and protection of public water resources in the face of international corporate strategies to privatize their ownership and distribution. And we continue to highlight how corporate-driven trade policy undermines environmental regulations, labor laws, and the democratic process.*

Public Citizen is campaigning to protect universal access to safe and affordable drinking water by keeping it in public hands. Public Citizen does not believe that citizens benefit from privatization of their water and wastewater systems because the sale of public works to private companies can foster corruption and result in higher rates, inadequate customer service and a loss of local control and accountability.

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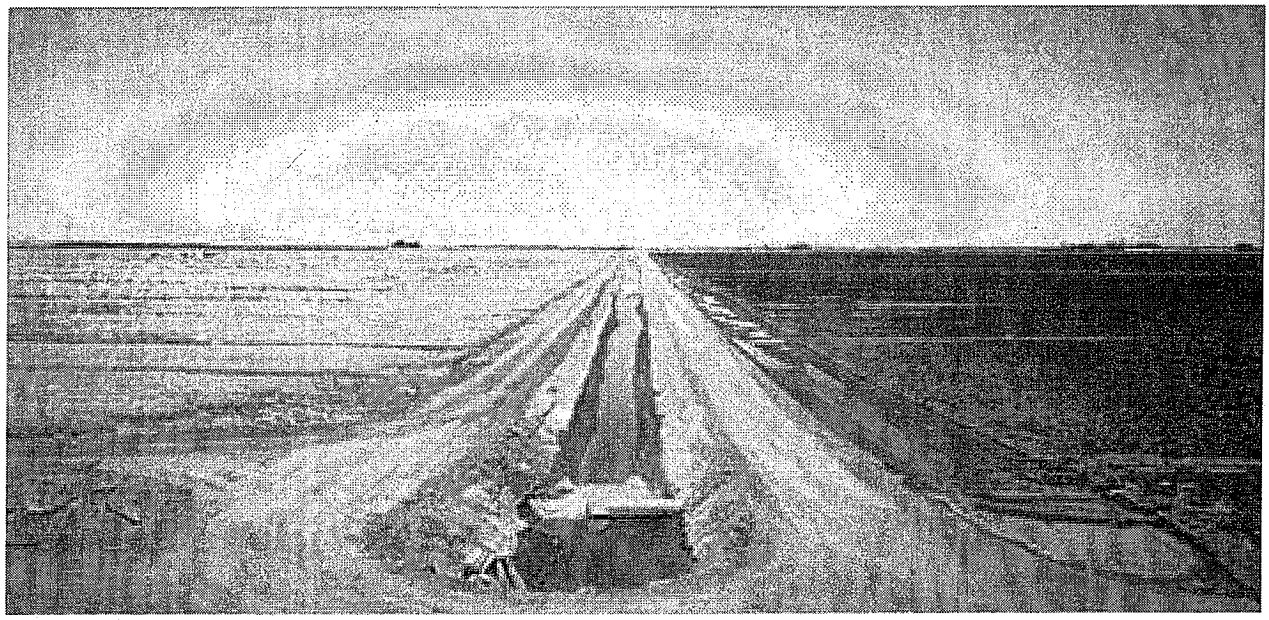


California's Great Central Valley receives between one and ten inches of rain a year. The diverted rivers sent south to be used as irrigation water provide the Midas touch that transforms the desert into the richest agricultural region in the world.

Executive Summary

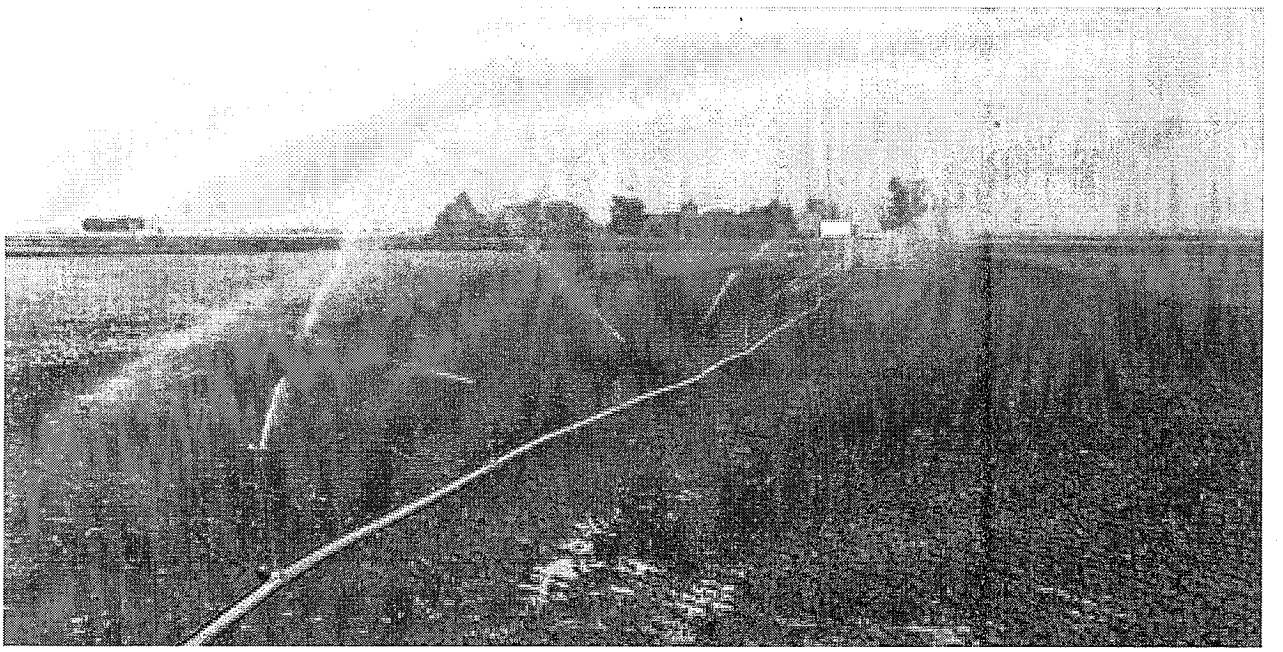
California's Central Valley is one of the largest contiguous swaths of land on earth to have been so completely altered by human activity. Lake beds and wetlands have been drained and planted with cotton and almonds, rivers dammed and diverted over hundreds of miles from their sources, the air filled with such quantities of dust and pesticides as to become the most polluted in the country, and the dry semi-desert floor turned into the most productive agricultural region in the world. Now, after a century of such cosmetology, the Valley is about to get yet another makeover from a boom crop: sprawl.

OVER THE PAST DECADE, a handful of the largest agribusiness and development corporations in the country have been rewriting California water policy in secret meetings to quench their thirst for unabated expansion and privatize the state's water supply. Displaying total disregard for the California State Constitution, representative democracy, and the environmental and social impacts of their actions, these players seek to "game" public water projects—much as Enron "gamed" energy deregulation. Their goal is to siphon as much of California's public water as possible to their corporate farms and "master-planned" cities in the desert while profiting from insider water sales.

In California state law, as laid out in the Constitution and the Water Code, water is a public good, held in trust by the state to ensure the greatest benefit to the public. In *Water Heist: How Corporations Are Cashing In On California's Water* we show how the public trust has been breached by an entrenched water plutocracy. The corporate interests that pervade the water districts that call the shots throughout the state are setting up insider water trading systems to facilitate the ease with which water flows to money. With direct corporate control over vital public water infrastructure—especially massive public water storage facilities—environmental protection and justice, urban renewal and smart growth face a desiccated future where profit rather than need dictates the destiny of California's water.

The abuses continue largely because they occur in closed meetings in hidden forms of government. Public Citizen aims to help cast the light of public scrutiny on the water deals taking place using the state's public water delivery system so that not just the CEOs of California have a voice in determining how our water is managed.

The water plutocracy includes some of the largest private agribusiness and development corporations in the country, who have created obscure and unaccountable water districts that act like "hidden government."



Usurping Democracy: The Monterey Amendments

In 1994, the largest contractors with the California State Water Project (SWP)—the state's largest water delivery system—called the Department of Water Resources (DWR) into a closed meeting. The agreements that the SWP contractors and the state reached in that meeting led to a document known as the Monterey Amendments, named after the city where the meetings took place. These "amendments" to the SWP contracts included denying that the SWP delivers half of what the contractors say it does and effectively deregulating the SWP so that the contractors can sell contracts for precisely the half of the water that doesn't exist. Sound confusing? It is. Welcome to the world of "paper water."

In the same Monterey meetings, the state also agreed to give away an underground water storage facility that DWR spent $74 million purchasing and developing.

State Giveaway of Essential Public Asset: The Kern Water Bank

The Kern Water Bank is an underground water storage facility—the largest of its kind—situated at the southern tip of the Great Central Valley, the region where the state delivers 80 percent of its surface water to industrial agriculture. The water bank is connected to the public canals and aqueducts that pipe water in from the northern, central and southern Sierra Nevada mountain range. The water bank can store about 1 million acre-feet of water and pump out over 200,000 acre-feet a year, according to official project descriptions.

The Kern Water Bank is an integral part of California's public water delivery system. It could store large amounts of water for times of drought or natural disasters such as fires or earthquakes. It could also provide a handful of private corporations with the keys to a virtual "switchyard" for controlling water deals between agribusinesses and real estate developers.

In 1994, DWR gave the Kern Water Bank to the Kern County Water Agency, which immediately signed it over to the Kern Water Bank Authority, a supposedly public entity comprised of a collection of water districts and one private company. The private company involved is a "paper company" with no listed telephone number or address: Westside Mutual Water Company. Westside is owned by perhaps the largest agribusiness in the United States: Paramount Farming Company.

Who's Behind the Kern Water Bank? Roll International Corporation and Paramount Farming Company

Roll International Corporation—a Los Angeles-based holding company—is one of the largest privately owned companies in the world, and everything that Roll owns claims to be the biggest at what it does. Roll International owns the Franklin Mint, Teleflora, and a collection of

agribusinesses—all of which operate in three California counties—including Paramount Citrus, Paramount Farming, and Paramount Farms, Inc. The California Farm Bureau Federation wrote that together "these firms constitute the largest farming company in the United States." Roll is privately owned by Stewart Resnick, a Beverly Hills billionaire and major campaign contributor who gave over $350,000 to the Gray Davis Committee and the anti-recall groups between 2000 and 2003. Governor Davis chose Resnick to co-chair his agriculture-water transition team with the champion of the failed Cadiz groundwater banking scheme, Keith Brackpool.

Although the Kern Water Bank Authority oversees a vital water resource, its staff is tucked away in the offices of Paramount Farming Company, without so much as a sign on the door. Executives from Paramount, who created an almond and pistachio empire over the past two decades, said that they went into the water bank to secure a firm water supply for their crops. Local newspaper articles, however, quote Paramount's vice president, who presides over the water bank's board of directors, as saying "sales from the water bank were contemplated from the time the bank was acquired." In fact, the paper reports, Paramount is particularly interested in selling water to its parent company's home town: Los Angeles. Paramount executives have already had "early talks" with the Los Angeles Department of Water and Power about selling "an as-yet-unspecified amount of water."

The website of Paramount's Los Angeles-based law firm clearly boasts about how the law firm advised Paramount Farming Company to set up a mutual water company (Westside Mutual Water Company) to "own and operate" the Kern Water Bank. Paramount, it seems, has been planning for some time to harvest more than just pistachios and almonds.

Irrigating Sprawl

California's population is expected to grow by 20 million in the next twenty years, and real estate developers are scrambling to get a hold of "secure" water supplies for their sprawling subdivisions. Public Citizen found a water sales contract between WV Acquisitions, a Roll International subsidiary whose president is also president of Paramount Farming Company, and Newhall Land and Farming Company, the largest developer in the state. Newhall has been taking advantage of the 1994 backroom deregulation of the SWP to go shopping for paper water contracts for the new "master-planned" city it plans to build in northern Los Angeles County. Such sales involve water supplies that are far from secure because they are based on allocated state water supplies: that is, paper water. Furthermore, this report raises the essential question: Should corporations like Paramount and Newhall be allowed to profit from buying and selling water that belongs to all Californians?

Usurping Democracy, Again: The Napa Proposition

In July 2003, just months after the seven-year lawsuit challenging the Monterey Amendments by a coalition of environmentalists, public advocates, and one State Water Project contractor was settled, the participants in the Monterey meetings met again, this time in Napa. The agreement that resulted from these meetings—called the Napa Proposition—plans to further integrate the SWP and the federal Central Valley Project (CVP). Such integration will allow landowners, principally in the San Joaquin Valley and Southern California, to trade off the federal project's superior storage capacity and the state project's greater pumping capacity with one goal in mind: to continue pumping water to agribusinesses, developers, and water marketing barons in Southern California, unabated by either federal or state endangered species acts, water quality issues in the Delta, or the unmet needs of communities in the Central Valley that don't have access to clean drinking water.

End Game: Water as Public Trust

California's public water utilities and resources are governed by a plutocracy—a select group of private corporations, individuals, and semi-public and public officials all working in tandem to "game" state water policy. They meet in closed sessions and rewrite public policy, tailoring their edits to the interests of monopoly-like agribusiness corporations and real estate developers. Is this a conspiracy theory? No. It is just business as usual.

The water plutocracy must be replaced with a vibrant water democracy.

Public Citizen strongly advocates returning the State Water Project to broad public use and oversight so that it can benefit all Californians, rather than only a select group of Los Angeles corporations. Water must be maintained as a public good, held in trust for broad and equitable use, *not* a commodity bought and sold by the highest echelons of the corporate elite.

We recommend the following concrete steps for accomplishing this goal:

Return Kern Water Bank to Public Control

Paramount and its Westside Mutual Water Company should never have been allowed to "own and operate the water bank." The privatization of this vital public resource should be reversed.

Repeal the Monterey Amendments

The Monterey Amendments should be repealed and the State Water Project contracts should be rewritten with an eye to water conservation and environmental restoration as well as the original stated purpose of the project: to reallocate California's water resources in an *equitable* manner.

Eliminate Paper Water

The Department of Water Resources continues to maintain on paper that the State Water Project can deliver almost twice as much as nature provides. The water "entitlements" of the twenty-nine State Water Project contractors should be re-drafted to fit the actual capability of the project to deliver.

No Resale of State Water Project Water

The individual contractors that receive state project water should not be allowed to profit from reselling that water, whether it is back to the state Environmental Water Account or to real-estate developers.

Democratize Water and Irrigation Districts

Water and irrigation districts that receive public water deliveries from the SWP should be transparent and accountable to the public. There should be elected, public representatives on the boards of such districts who would represent the non-landowning population affected by water policy decisions made most often in closed meetings.

NATURE PROVIDES ENOUGH WATER for California to meet all of its needs: to sustain water-efficient family farms and industries; to provide safe drinking water to present and future generations; and to restore and maintain California's much-abused environment. Nature provides enough water; that is, unless mismanagement and greed intervene and allow for the state's public water supplies to be manipulated for profit. Too much is at stake to let this water heist continue.

Background: The Monterey Amendments

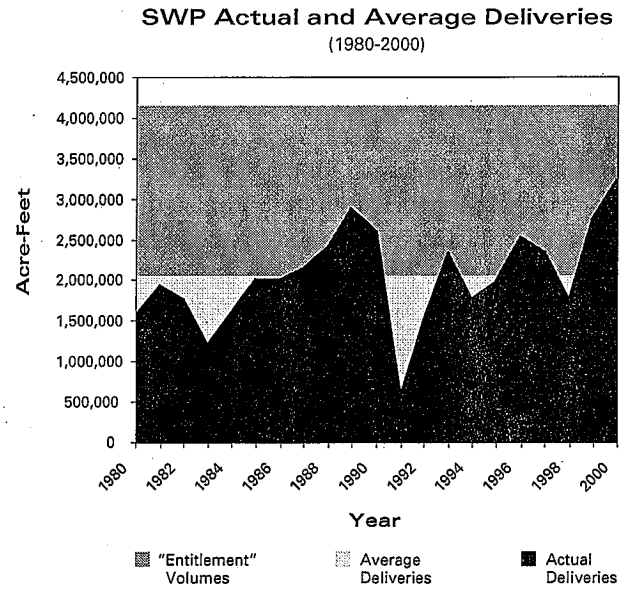
AFTER TWO YEARS of planning and negotiation, in 1988 the Department of Water Resources (DWR) purchased 19,900 acres alongside the Kern River.[1] DWR purchased the property for $31.4 million from Tenneco West Incorporated to build a subsurface reservoir to store State Water Project (SWP) water during years with above average rainfall.[2] On this property DWR first established the Kern Water Bank—an underground reservoir capable of storing a million acre-feet* of water. After conducting in-depth studies on the viability and potential environmental impacts of the project, DWR began putting in extraction pumps and building canals and conveyance facilities to connect the water bank to SWP aqueducts. All told, DWR spent $74 million on the project.[3]

From 1987 through 1992 and again in 1994, California experienced drought years. During the drought DWR significantly cut back deliveries to its agricultural contractors. In 1991 and 1992, DWR operated a Drought Water Bank to pay contractors willing to forgo their water entitlements. DWR then delivered the purchased water to agricultural contractors and urban areas with the strongest demand. The Drought Water Bank was the state's first experiment with water banking.[4]

Following the drought, the Kern County Water Agency (KCWA) was preparing to take DWR to court for cutting back its water deliveries.[5] The state legislature created the KCWA in 1961 under the tutelage of Kern County's corporate farmers to buy SWP water and then sell it to the local districts where the landowners formed the boards of directors. As an intermediary, the Agency spread out the cost of SWP water through a countywide property tax, principally paid by the Bakersfield urban population. Both the intent and the effect of the KCWA were to generate water subsidies for large landowners.[6]

In 1994, rather than call DWR to court, water brokers in Kern County and a select group of other SWP contractors held a series of closed meetings with DWR to rewrite the contracts that govern water allocation for the entire State Water Project.[7]

The backroom deal that resulted—in which participants produced a document known as the Monterey Amendments, named for the city in which the meeting took place—made several fundamental changes to the SWP contracts, all propitious for the agribusiness and real estate interests represented by the attendees of the meetings.[8] The agreement withdrew, for example, a requirement that water allotments be scaled back to fit available supplies in the case of permanent water shortages or the inability of the project to deliver as originally projected.[9] The SWP contracts for 4.2 million acre-feet of water but can only deliver an average of about 2 million acre-feet annually.[10] This modification permits SWP contractors to buy and sell entitlements to water that does not exist, otherwise known as "paper water."[11] California water historian Norris Hundley describes the Monterey Amendments as "[a]n 'institutional mirage' encouraging the notion that California can somehow find all the water necessary for development into the distant future."[12]



Source: Department of Water Resources Bulletin 132-90 and Bulletin 132-01.

It was also through the Monterey Agreement that DWR first gave the Kern Water Bank to the Kern County Water Agency, who then signed a joint powers agreement—enabling different districts to cooperate in their exercise of common powers—to form the Kern Water Bank Authority (KWBA). The KWBA is a joint powers authority consisting of two water storage districts (Semitropic Water Storage District and Wheeler Ridge-Maricopa Water Storage District), two

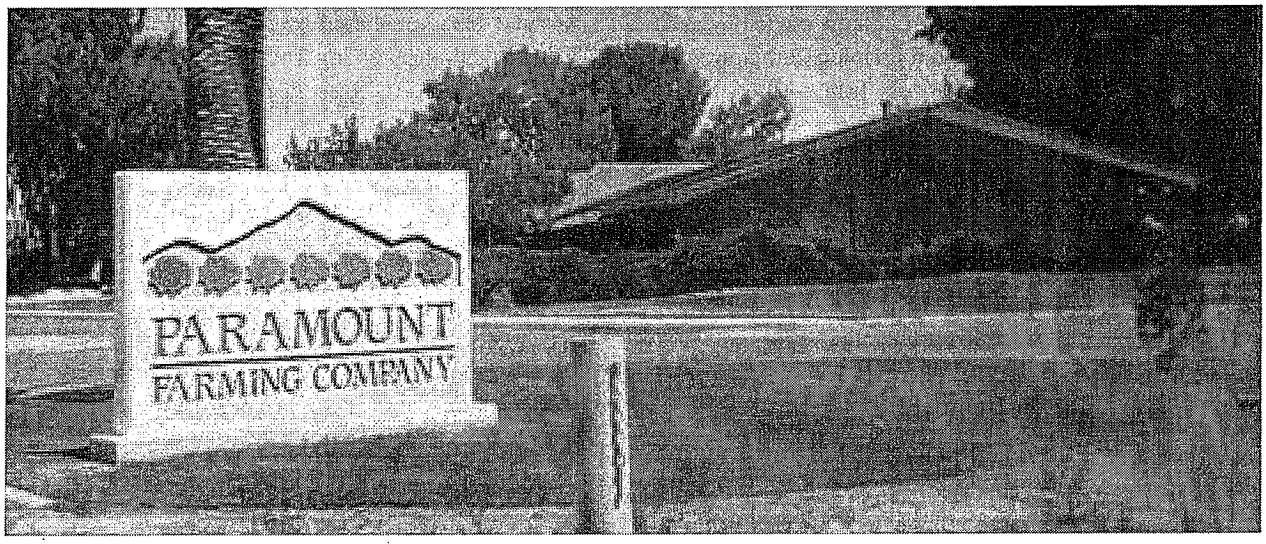
**An acre-foot is the amount of water necessary to fill an area of one acre to a depth of one foot, or 325,000 gallons. One acre-foot of water is roughly the amount that two families of four consume in one year.*

water districts (Dudley Ridge Water District and Tejon-Castac Water District), one special district (Kern County Water Agency), and one private company (Westside Mutual Water Company).

The Third District Court of Appeal ruled that, in 1995, DWR illegally passed off its responsibility under the California Environmental Quality Act of conducting an Environmental Impact Report (EIR) on the potential impacts of the proposed changes to the SWP contracts.[13] The DWR gave the task to the Central Coast Water Authority—one of the participants in the secretive Monterey meetings. The Planning and Conservation League together with the Plumas County Flood Control and Water Conservation District and the Citizen's Planning Association of Santa Barbara County challenged the validity of the EIR and the legality of the Kern property giveaway. The plaintiffs lost in the trial court but won a unanimous favorable ruling from the Third District Court of Appeal. They went into mediated settlement negotiations with DWR and its major contractors, finally reaching an agreement in May 2003.[14]

The Settlement Agreement requires DWR to prepare a new EIR on the Monterey Amendments. It also allows for the Kern Water Bank Authority's continued ownership of the water bank while the new EIR is in process.[15] Throughout the lengthy litigation and negotiation process, however, the changes wrought to California's water infrastructure and water politics continued unabated. Although the environmentalists were hoping to have the whole deal scrapped in court, for the first time in California history the agriculture and real estate magnates behind these deals began setting up a paper water trading system. Moreover, they turned the state's $74 million gift of the Kern Water Bank into "the switchyard for controlling the water market."[16]

Tim Stroshane, editor of the California water journal *Spillway: California Land, Water and People*, called the Monterey deal a "bloodless coup."[17] He wasn't exaggerating. The changes made in the closed meetings usurped participatory democracy and overhauled California's most vital public utility, tailoring it to the demands of agribusiness corporations and developers seeking to create and corner a subsidized water trading system.



The water bank's administration—the Kern Water Bank Authority (KWBA)—is housed in Paramount's corporate office outside of Bakersfield. Paramount's vice-president also serves as chair of the Authority's board. There was no sign for the KWBA anywhere outside or inside the building when Public Citizen visited in July 2003.

The Kern Water Bank

"THINK OF THE BANK OF AMERICA, the way it operates with dollars, that's the way we operate with water," said Jonathan Parker, general manager of the Kern Water Bank Authority (KWBA) in Kern County.[18]

The Kern Water Bank claims to be the largest water banking project in the world. It can store a million acre-feet of water on a long-term basis and provide around 240,000 acre-feet per year for extraction.[19] To put this figure in perspective, 200,000 acre-feet, about 65 billion gallons of water, is the amount of water that would be transferred annually from the Imperial Irrigation District to the San Diego County Water Authority under the much contested deal between the two. The price tag on that deal now stands at $52 million a year.[20]

The water bank is located on the Kern River alluvial fan—the disintegrated rock deposited over thousands of years by the Kern River. According to the KWBA project description, the water bank works like this: "Water rapidly soaks down through the sand to fill in the voids between particles. When it is needed, water is easily recovered by high-flow wells."[21]

"Think of it like a bank," said Mr. Parker. "Participants have water. We're a nonprofit entity. What we do is provide a service. We store water at cost and then take water out of the ground, at cost. They pay us to provide that service in the least expensive manner. We operate only for participants."[22]

In 1994, the California State Legislature approved Assembly Bill 2014. Introduced in the Assembly on March 5, 1993, the bill was amended in the Senate on June 13, 1994, where the original language concerning water rights was entirely deleted and replaced with a single sentence authorizing mutual water companies to enter into joint powers agreements.[23] Also in 1994, DWR, the initial owner and developer of the Kern Water Bank, participated in the closed meetings in Monterey that led the state to transfer the property to the Kern County Water Agency, who called the meetings in Monterey.

The private company involved in the Kern Water Bank is Westside Mutual Water Company. Westside owns 48% of the bank. Westside is not a well-known company; in fact it does not have a listed telephone number or address. When asked about the participation of a private business in the otherwise public agency, the Bank Authority's staff responded that "Westside Mutual Water Company represents land holdings in other districts. They are not that different from a storage district. We don't see any difference in that."[24]

And whose land holdings does Westside represent? "Westside owns land, they represent their land," said Cheryl Harding, the Authority's administrator.[25]

"They're no different from a water district," Mr. Parker added.[26]

Westside Mutual Water Company is wholly owned by and operates exclusively for Paramount Farming Company, one amongst the cluster of agribusiness firms—all privately owned by Roll International Corporation—that together constitute what may be the largest agribusiness company in the United States.[27]

The KWBA staff appeared reluctant to mention the name "Paramount Farming." Such reluctance was peculiar considering where the interview took place: in the conference room of Paramount Farming Company's office on East Lerdo Highway, about 10 miles outside of Bakersfield.[28]

The KWBA leases its office space from Paramount. However, there is no sign either outside or inside the building to announce the offices of this supposedly public entity. Indeed, there is no distinguishing feature between the offices of KWBA employees and those of Paramount employees. Posters and maps published by the KWBA hang on the walls throughout the building. The Authority's geographical information systems (GIS) specialist works off of a lap-top in Paramount's GIS department.

"We lease space from Paramount because we're trying to do stuff on the cheap. We're not empire builders," Ms. Harding said.[29]

"We operate in the public, we serve a board of directors," added Mr. Parker.[30]

Ms. Harding then continued: "The 7 a.m. board meetings go on for a long time. Some people come, find it boring, don't come back. There's no smoking gun, just a meeting."[31]

The Corporate Players behind the Kern Water Bank Authority

KWBA Participant	**Westside Mutual Water Company** (WMWC)	**Wheeler Ridge-Maricopa Water Storage District** (WRMWSD)	**Dudley Ridge Water District** (DRWD)	**Tejon-Castac Water District** (TCWD)	**Kern County Water Agency, Improvement District 4** (KCWA)	**Semitropic Water Storage District** (SWSD)
Ownership	48.06%	24.03%	9.62%	2.00%	9.62%	6.67%
Corporate Connection	William Phillimore: Chairman, KWBA Board of Directors; President, WMWC; ***Vice President, Paramount Farming Company***	Dennis Mullins: KWBA Board of Directors; WRMWSD Board of Directors; ***Vice President, General Counsel, and Secretary, Tejon Ranch***	Joseph MacIlvaine: President, DRWD Board of Directors; ***President, Paramount Farming Company***	Dennis Mullins: KWBA Board of Directors; President, TCWD Board of Directors; ***Vice President, General Counsel, and Secretary, Tejon Ranch***	See *Hidden Government*, p. 23	***Newhall Land and Farming,*** direct client, with 55,000 acre-feet of water storage capacity

The Kern Water Bank Authority (KWBA) is a joint powers authority consisting of two water storage districts (Semitropic Water Storage District and Wheeler Ridge-Maricopa Water Storage District), two water districts (Dudley Ridge Water District and Tejon-Castac Water District), one special district (Kern County Water Agency), and one private company (Westside Mutual Water Company).

Paramount Farming Company controls over 50 percent of the Kern Water Bank through Westside Mutual Water Company and Dudley Ridge Water District.

Another key player to keep an eye on is Tejon Ranch. Tejon Ranch, with 270,000 acres between Los Angeles and Bakersfield is "the largest contiguous expanse of land under single ownership in California," according to the company's website. Tejon Ranch, initially an agribusiness, plans to build a new town—even bigger than Newhall Ranch—with 24,000 houses, thus ushering in the trend of agriculture bowing to urban sprawl. Tejon's participation in the Kern Water Bank would allow them to store nearly twice as much water as their new town would require annually.

Sources: Kern Water Bank Authority, *Project Description*, Undated; Water Association of Kern County, *Who's Who in Kern County Water*, <http://www.wakc.com/whoswho.htm>; Dudley Ridge Water District, *Board of Directors*, Undated; Tejon Ranch, *Historic Tejon Ranch*, <http://www.tejonranch.com/HistoricTejon/HistoricTejonRanch.html>; and Vic Pollard, "Land not only issue in the mix," *Bakersfield Californian*, 07 June 2003.

Many industrial agriculturists in the Central Valley irrigate their almond orchards through routine flooding.

Who Controls the Kern Water Bank?

Power veils itself. From the mystery of what it does, what it owns, and, above all, who it is, it assumes added strength.

Gray Brechin, *Imperial San Francisco*

INFORMATION AVAILABLE to the public concerning Roll International Corporation is scant.[32] Roll is one of the largest privately owned companies in the world. Roll's 1998 sales were $1.57 billion.[33] Everything that Roll owns claims to be the biggest at what it does. Perhaps the most widely recognized company of the group is the Franklin Mint, "the world's largest direct marketer of collectibles."[34] In addition to the Franklin Mint, Roll International owns Teleflora, the nation's largest wiring service for flowers.[35]

Roll's agribusinesses—all of which operate in three California counties—include Paramount Citrus, the largest grower, packer and marketer of citrus in the country; Paramount Farming, the largest producer of almonds and pistachios in the country; and Paramount Farms, Inc., the largest pistachio processor and second-largest processor of almonds in the world. The California Farm Bureau Federation wrote that together, "these firms constitute the largest farming company in the United States."[36]

Roll International and its holdings such as Paramount Farming Company are Delaware corporations. Some of the perks of incorporating in Delaware include: incorporating without traveling to or living in Delaware; paying an annual corporate franchise tax as low as $50 regardless of income; and not paying a cent in income tax if you don't do business in Delaware.[37] Enron, for example, had 685 subsidiaries incorporated in Delaware.[38]

Roll International is owned and directed by Stewart Resnick. The Resnicks live in Beverly Hills, not Bakersfield. One visitor to the Resnicks' mansion commented that it was "like the Italian embassy but more tasteful."[39]

The Resnicks are active members in Los Angeles society. In the past few years they have received some of LA's highest awards such as the University of California Los Angeles (UCLA) Medal, the Duke Award and the City of Angels Award.[40] They give to numerous charities, universities, art museums and Democratic candidates, donating over $250,000 to the Governor Gray Davis Committee between 2000 and 2002 and $100,000 to anti-recall groups in June and September 2003.[41] In 1998, Davis, then governor-elect, appointed Stewart Resnick as co-chair of his "agriculture and water transition group."[42] Mr. Resnick's fellow co-chair was Keith Brackpool of the botched Cadiz water grab fame.

Paramount Farming Company has more than 5 million trees yielding billions of nuts a year. Growing, processing and marketing as one company, Paramount claims to be the largest vertically integrated supplier of pistachios and

almonds in the world.[43] The company currently has over 50,000 acres of pistachio and almond orchards in production in California. They also have the property holdings—and the plans—to expand into at least another 50,000 acres in the coming years.[44]

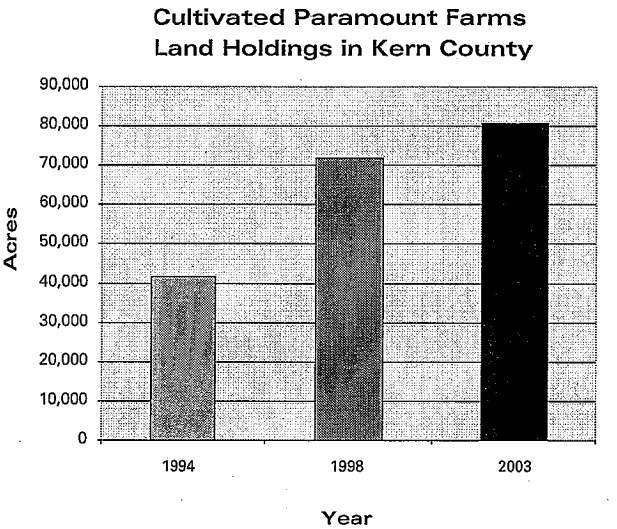
Almonds and pistachios are extremely lucrative crops. The California Farm Bureau Federation ranks almonds among California's top ten most valuable crops, generating $700 million in 2001 and over $1 billion in 2002.[45] Almonds are California's number one export crop, and also the top fruit and vegetable export crop in the United States.[46] Pistachios are not used as ingredients as often as almonds, making their demand significantly lower. Still, California's 2002 pistachio crop was valued at a solid $336 million.[47]

Paramount started buying pistachio, almond and olive orchards in 1986, after agricultural production dropped significantly in Kern County in the early 1980s.[48] Approximately 100,000 acres went out of production in Kern between 1982 and 1984.[49] Paramount and its associated companies, all held by Roll International, continued buying land into the 1987-92 drought that hit California agribusiness particularly hard. Roll purchased 12,000 acres of pistachio and almond orchards from Mobil Oil in 1986 and 77,000 acres of farmland from Texaco's central California agribusinesses in 1987.[50]

In 2000, Paramount bought most of Dole's citrus in California for $55 million, making it "the largest integrated grower, packer, and marketer of fresh citrus in the United States."[51]

In fact, while both the number of farms and agribusinesses and the total acreage of land in agricultural production in California dropped significantly throughout the 1990s, the Paramount group of agribusiness corporations doubled its acreage in cultivation from around 41,000 acres in 1994 to nearly 81,000 in 2003.[52] These figures come from analyzing Paramount's pesticide permits in Kern County alone. Paramount also has land holdings in Kings and Fresno counties.

Paramount has been steadily increasing its acreage and expanding production *against* the trend of the state's overall decrease in both agricultural acreage and production. Between 1992 and 1997 while Paramount was growing, California lost more than 3,500 farms.[53] Between 1998 and 2000, "90,000 acres of California farmland were lost to urbanization."[54]



Paramount has doubled its acreage in production in Kern County over the past ten years.

Source: Kern County Department of Agriculture, http://www.co.kern. ca.us/kernag/ftp/fileindx.html

Paramount's success is certainly a product of its agricultural technology and business organization.[55] Such success would not be possible, however, without water—indeed, enough water to satiate 100,000 plus acres of orchards depending upon year-round irrigation in a semi-desert.

Paramount and the KWBA's staff paint a picture of serious, risk-taking private enterprise saving the Kern Water Bank from the bungling hands of bureaucrats in Sacramento. In interviews they said repeatedly that DWR "couldn't get the project off the ground," and that the community prefers the water bank to be "under local control."[56] Paramount, a Delaware corporation, privately owned by one of the wealthiest residents of Beverly Hills, can hardly be considered "local."

The *Bakersfield Californian* also referred to the Kern Water Bank as a "local" asset. Under the headline, "Kern Water Bank will likely stay with county," the *Californian* describes the Kern Water Bank "property transfer" thusly: "One provision of the Monterey Agreement transferred ownership of the 20,000-acre water banking area along the Kern River bed west of Bakersfield from the state to a consortium of local districts, including KCWA."[57] The *Californian* does not mention Paramount Farming Company even though Paramount's water company, with 48% ownership, easily holds the largest share in the Kern Water Bank and Paramount's Executive Vice President, William D. Phillimore, is Chair of the Kern Water Bank Authority's

board of directors—a position that he is apparently able to carry out from his desk at Paramount.

Compare the *Californian's* take on the water bank acquisition with the following description provided by the Los Angeles law firm that represents both Paramount Farming Company and the Kern Water Bank Authority— Nossaman Guthner Knox & Elliott LLP:

> Paramount Farming Company was a key participant in the Kern Water Bank transaction, and Nossaman advised Paramount on all aspects of this transaction. The Kern Water Bank is a 20,000-acre property west of Bakersfield operated by the Department of Water Resources for groundwater storage. Pursuant to the Monterey Statement of Principles entered into by the Department and State Water Contractors in November 1994, the Department agreed to transfer the property. Nossaman advised Paramount regarding formation of a joint powers authority to own and operate the water bank, a mutual water company through which Paramount participates in the authority, relinquishment of entitlements, water rights, environmental issues and other issues regarding this transaction.[58]

Notice the language of intention: "Nossaman *advised* Paramount regarding the formation of a joint powers authority to *own and operate* the water bank."[59] Nossaman leaves little doubt that Paramount *planned* to acquire and control the Kern Water Bank.

Paramount grows pistachio and almond trees, some 5 million of them. Trees, unlike other crops such as rice or alfalfa, cannot be fallowed. In the semi-desert of the Southern San Joaquin Valley, no almond tree could survive without a constant supply of water. Kern County itself receives an average annual rainfall of less than six inches.[60]

The resource planning manager at Paramount Farming Company explained the motivation behind Paramount's participation in the Bank Authority as follows: "We're in the situation of growing almonds and pistachios without a firm water supply, so we went into the Kern Water Bank to secure a water supply."[61] He emphasized that Paramount's primary interest is in making a long term investment to grow their crops, and that "any sort of water marketing is very much secondary to crops."[62]

Should taxpayers and ratepayers foot the water bill for the self-described largest almond and pistachio producer in the United States to grow permanent specialty crops "without a firm water supply?" Is this the public's investment for a cheap supply of almonds? In 2001, Paramount's president, John McIlvaine, told the American Society of Farm Managers and Rural Appraisers that nearly 80% of California's almonds are exported—mostly to Western Europe and Japan—and that the almond industry is "on the move promoting foreign sales as its production grows larger and larger."[63] In fact, McIlvaine pointed out that California's tree nut exports have risen steadily over the past 15 years, a trend concurrent with Paramount's increase in acreage in production and the state's overall decrease.

Irrigating Sprawl

Water utilities exist primarily to nourish real estate, not people.

Gray Brechin, *Imperial San Francisco*

INTERSTATE-5 IS LITTERED with roadside banners facing the oncoming traffic with messages such as "Food Grows Where Water Flows" and "Farm Water Feeds the Nation." Is Paramount feeding the nation? Which nation?

The *Bakersfield Californian* reported that Paramount is "most interested in selling water to Los Angeles."[64] Though they said that such sales were most likely not going to take place any time too soon, officials from the Los Angeles Department of Water and Power have already "had early talks with representatives of Paramount Farming Co. and other participants in the Kern Water Bank about possible purchase of an as-yet-unspecified amount of water."[65] In an interview with the *Californian*, Paramount's Bill Phillimore said "sales from the water bank were contemplated from the time the bank was acquired by Kern County water agencies in 1995."[66]

Other sales have already taken place. WV Acquisitions, one of Roll International's Delaware corporations, recently sold Newhall Land and Farming Company 5,099 acre-feet of its SWP annual water entitlement.[67] Newhall Land and Farming Company plans to build a "new city" of over 20,000 housing units and 3.58 million square feet of commercial space in bone-dry northwestern Los Angeles County. After years of controversy and lawsuits, the project was recently approved by the LA County Board of Supervisors and the Superior Court.[68]

Newhall has gone on a buying spree where the most cherished item on sale is SWP contract entitlements, or "paper water." These entitlements are contract promises, so to speak, from the state. During wet years, DWR will deliver at best most of the contracted water. During drought years, it might not deliver any at all. This is why the changes to the SWP contracts ironed out in Monterey are so important to the brokers in water: holding the state accountable for its original—undeliverable—contracts enables the contractors to sell "paper water" that won't be missed by their parched crops.

The Third District Court of Appeal that ruled against DWR in the Monterey Amendments case of 2000 declared that "Paper water always was an illusion. 'Entitlements' is a misnomer, for contractors surely cannot be entitled to water nature refuses to provide or the body politic refuses to harvest, store, and deliver. Paper water represents the unfulfilled dreams of those who, steeped in the water culture of the 1960s, created the expectation that 4.23 million acre-feet of water could be delivered by a SWP built to capacity."[69]

Corporations and water agencies are trading in "paper water" as a way of "gaming" the water in California to keep the severely over-stretched public water projects pumping water to the highest bidder. Though the contracts referred to as "paper water" do not correspond to deliverable water quantities—as noted in the Third District Court of Appeals

PCL v DWR decision—they function as a siphon to pull as much water as technologically possible out of the Delta. Real estate development corporations can use "paper water" contracts to get their projects approved without having a secure water supply. Once the projects are built, and the people about to move in, the corporations can use the contracts to demand water deliveries from the state. Such deliveries would most likely come through purchasing water rights from small farmers (potentially driving them off their land), not to mention continuing to neglect existing rural communities without access to safe drinking water and the deteriorating Delta environment.

Newhall is trying to purchase SWP water entitlements from Castaic Lake Water Agency.[70] Castaic, in turn, is attempting to double its SWP water entitlements by purchasing more from such water dealers as the Kern County Water Agency, and its member districts Berrenda Mesa Water District and Belridge Water Storage District.[71] Paramount's president and vice-president are presidents of the boards of directors of Berrenda Mesa and Belridge respectively.[72] Paramount is apparently thus well poised to sell even more "paper water" to the largest prospective developer in California.

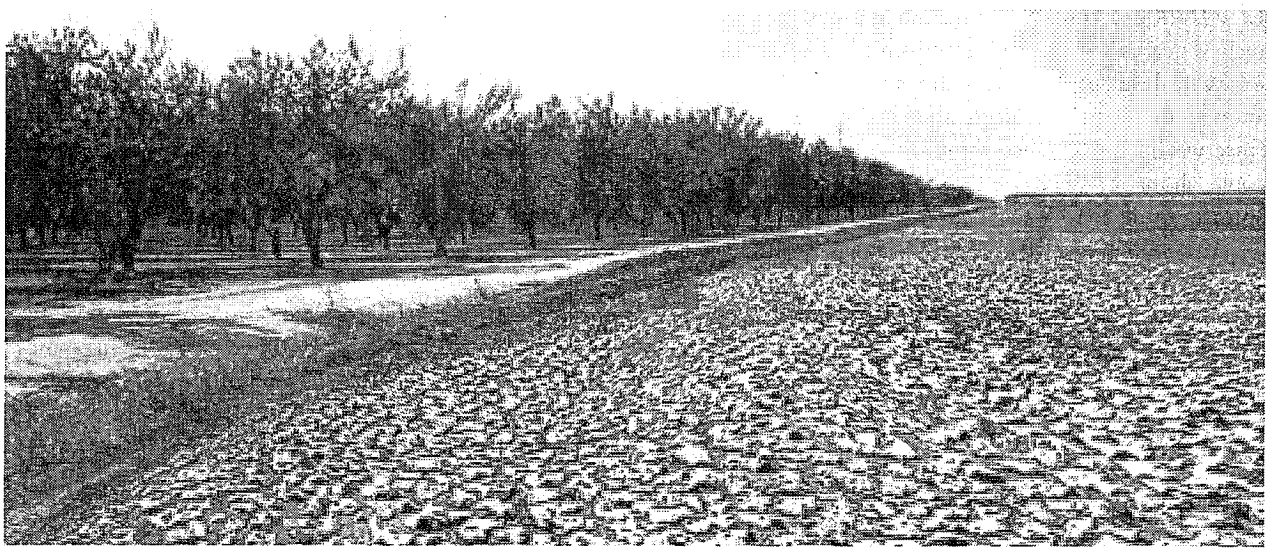
Newhall also purchased 55,000 acre-feet of storage capacity in the Semitropic Water Storage District—one of the participants in the Kern Water Bank Authority.

With control over water storage facilities, the largest agribusiness companies like Paramount can hold on to enough water to do the impossible in a severely over-drafted groundwater basin: increase their production *and* sell to developers. Also, with development companies able to buy in directly to the storage facilities as well as purchase "paper water," they can argue before the courts that their water supply is reliable, on paper.

Lynne Plambeck, an activist with the Santa Clarita Organization for Planning the Evironment (SCOPE) and an ardent opponent of the Newhall Ranch project, said that control over storage facilities like the Semitropic Water Storage District and the Kern Water Bank is "a way of controlling water without actually owning water."[73] Private facilities can favor developers over farmers and large corporations over small businesses by charging less to those who store large amounts of water. One company or individual, Ms. Plambeck said, "can take up the storage facility with a lot of water, and then a drought comes along...They can corner the market with no public oversight, just like Enron."[74]

Private storage facilities are not subject to public oversight through laws such as the California Environmental Quality Act (CEQA), Ms. Plambeck said: "When the water goes into storage facilities in the Kern Fan, there is no oversight, no CEQA. The public only has a chance if there is a CEQA process."[75]

And what happens when the water isn't there? With the houses built and the new dwellers moved in, the developers will push for new dams and more pumping of water from the north to save the stranded residents from drought. The losers will be the same: the rural communities in the north and throughout the valley, the tax and ratepayers who ultimately have to pay for it all, and the environment upon which all Californians depend.



Blaming the Environment

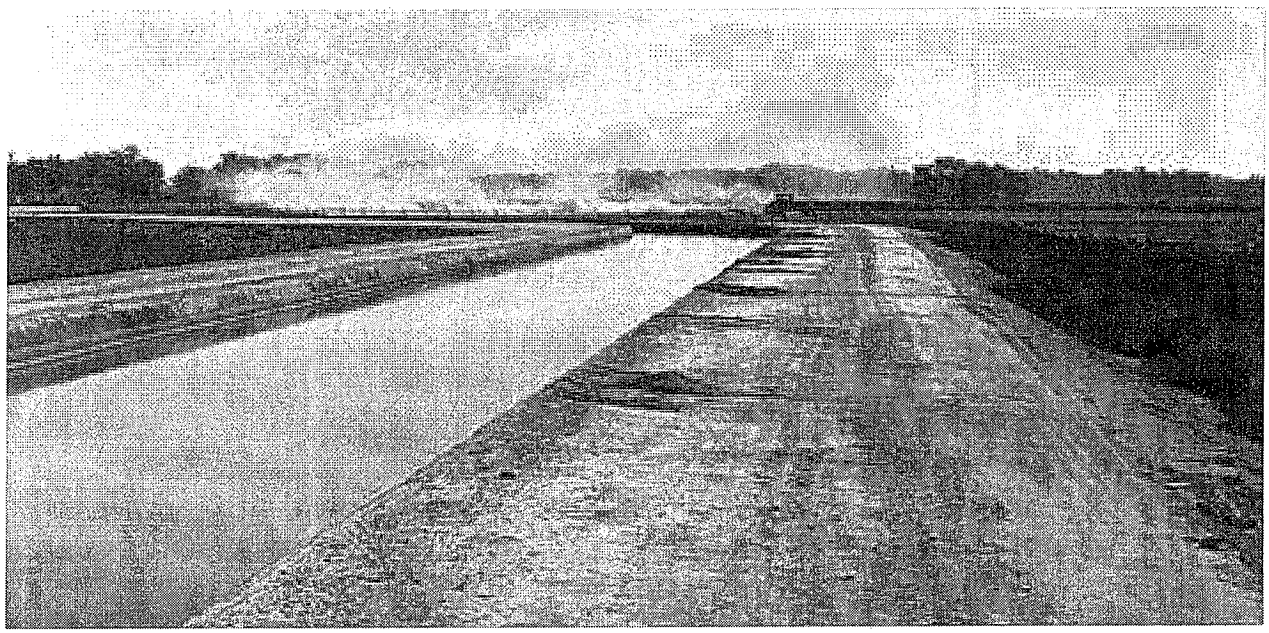
IN A SERIES OF ARTICLES written in 2002 on water issues in California, the *Sacramento Bee* profiled Kern County as "the hub of the water trade."[76] Dale Kasler, water correspondent for the *Bee*, reported that Kern water districts generated more than $100 million by selling water to cities throughout the state. In 2001, the Kern County Water Agency bought water from the SWP for $161 an acre-foot and then sold it back to the state's Environmental Water Account (EWA) for $250 an acre-foot, amassing $29 million. Paramount's Westside Mutual Water Company sold water it had previously "banked" in the Kern Water Bank to the EWA in 2000. All told, Kern Water Bank participants sold a total of 72,000 acre-feet to the EWA that year. Jim Nickel sold 10,000 acre-feet to the EWA for a total of $4.6 million, at "an eye-popping $460 an acre-foot."[77] What is even more "eye-popping" is that taxpayers throughout the state foot the bill for these sales.

The Environmental Water Account is a taxpayer-subsidized scheme that enables corporate agriculture to get around state and federal endangered species acts. It was created by CALFED, the state and federal collaborative effort to mitigate the continued devastation of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. CALFED is another step-child of the 1987-1992 drought that inspired the Monterey Amendments.

When the federal or state fisheries notify DWR of "high incidental intake"—when the pumps used to lift the SWP water uphill are sucking up too many endangered species—DWR slows down its pumping and monitors the amount of water *not* being pumped. DWR offers to purchase water from users south of the pumps and then deliver that water to contractors with higher value crops.[78] As a result, the water not pumped from the Delta is said to have been purchased for the environment. "Anytime by law exporters [SWP contractors] would have to stop pumping due to environmental or water quality conditions in the Delta, taxpayers buy replacement water for them," said Michael Jackson, a water attorney with the California Water Network who works with rural counties in Northern California.[79]

According to the chief of water transfers for the DWR, Jerry Johns, the EWA "is an example of a market remedy to help the environment."[80] The Public Policy Institute of California goes even further, saying that "[m]arket growth in the aftermath of the drought has been largely driven by environmental concerns."[81] Indeed, stronger environmental laws and advocacy have driven the largest SWP contractors to finagle market mechanisms to maintain undiminished SWP deliveries (secured by the "no net loss to exports" provisions for the EWA).[82]

The EWA enables market advocates to green-wash water sales. Advocates say that the program may be "a solution for creating more instream flows for endangered fish and habitat."[83] However, this is misleading. Agribusinesses and developers are not turning back water into the Delta. Rather, when their pumping threatens the continued existence of such species as winter-run salmon, the state pays to send them a quick fix.



The Napa Proposition

IN JULY OF THIS YEAR (2003) the Federal Bureau of Reclamation, the California Department of Water Resources (DWR), and representatives from the largest agricultural and urban water districts in California—including the Westlands Water District, the Kern County Water Agency, and the Metropolitan Water District of Southern California—met in Napa in a series of closed, mediated sessions (by the same retired judge who mediated the Monterey meetings in 1994) to, yet again, restructure the state and federal water projects.[84]

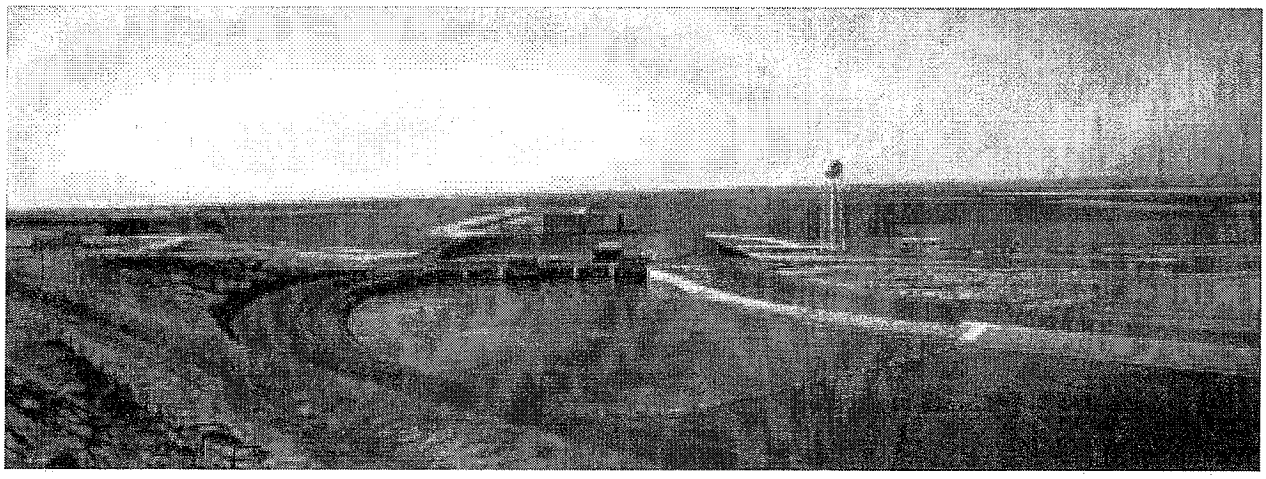
As noted by State Senator Michael Machado in a letter to the Editor of the *San Joaquin Record* on August 27, no "representatives of the Delta, environmentalists or anyone one else outside their small circle" were included in the meetings.[85]

The agreement that resulted from the meetings, called the Napa Proposition, plans to further integrate the SWP and the CVP. Such integration will allow landowners, principally in the San Joaquin Valley and Southern California, to trade off the federal project's superior storage capacity and the state project's greater pumping capacity with one goal in mind: to continue pumping water to agribusinesses, developers and water marketing barons in Southern California, unabated by either federal or state endangered species acts or water quality issues in the Delta.

Giving SWP contractors access to CVP storage capacity violates the later project's federal acreage limitations by enabling landowners, like Paramount, with over 100,000 acres to profit from federally funded infrastructure.

Increasing the SWP's pumping capacity violates the intent of the Delta restoration efforts and the federal and state endangered species acts by manipulating the technology to pump more water south at faster rates, ignoring the long-term effects of such levels of water exports on the environment.

The Napa Proposition would continue and greatly exacerbate the negative impacts of the Monterey Amendments, allowing the SWP and CVP to juggle water to maintain unsustainable exports for unsustainable development, unsustainable industrial agricultural practices and taxpayer-subsidized water sales among the state's largest landowners.



The State Water Project's California Aqueduct is a vital public asset that must be administered as an integral part of California's public utilities for all Californians, not as private property for a few.

Public vs. Private Property

WATER MARKETS, much less insider trading regimes, are incompatible with California's constitutional protection of water as a public trust. The concept of private property that is essential to functioning markets cannot justly be superimposed on the state's public trust doctrine or the taxpayer-funded public water projects that gather, deliver, and store water. The state grants the right to *use* water, not to *own* it.

California state law considers water to be public property, not private. Article 10, Section 2 of the California State Constitution states:

> It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.[86]

The architects of the backroom Monterey and Napa meetings, however, have come up with a way to privatize the state's water resources in violation of the constitution. What advocates are now calling a water market is actually a public rip-off designed by and for large corporations in monopoly-like situations.

Moreover, this "market" both survives and thrives on overstating water supply so as to make millions in profit on "paper water." The imbalance between supply and demand does not stop there: paper water sales allow massive developers like Newhall to create and profit from demands that were previously nonexistent. By building housing developments in the desert where no natural water supply exists, developers will use the "build it and the water will flow" logic to create further unsustainable reliance on water diversion from the north. Thus, far from making "more efficient use of existing supplies through reallocation," the architects of California's water market have rigged a system where water continues to flow to money. This is not efficient, much less just.

Joseph Sax, in his landmark essay *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, writes that, of the ideas that underpin the public trust doctrine in American law, the idea with the "greatest historical support holds that certain interests are so intrinsically important to every citizen that their free availability tends to mark the society as one of citizens rather than of serfs. It is thought that to protect those rights, it is necessary to be especially wary lest any particular individual or group acquire the power to control them."[87]

The state's giveaway of the Kern Water Bank and its backroom deregulation of the State Water Project have done just that: given the power to control California's water and the multi-billion dollar public projects that move that water to a particular group of private corporations.

Local and statewide activists and union members fight to keep water utilities under public control in Stockton, CA.

End Game: Time for a Vibrant Water Democracy

PREDICTIONS ESTIMATE that California's population will grow by up to 20 million over the next 20 years. Such growth places strong demands on the state's limited water supplies, and makes the need for a publicly accountable, equitable, and environmentally sustainable system of water distribution all the more imperative. It will be possible to meet the state's water needs, but not if private interests such as Paramount are allowed to control—and profit from—key public water resources like the Kern Water Bank.

Under the public trust doctrine, California's water is held in trust for the people of California, our future generations and the environment. Thus, California's water supplies should be managed with the greatest level of public accountability and oversight to ensure that water is distributed where it is needed most, not where it is most profitable.

California's public water utilities and resources are governed by a plutocracy—a select group of private corporations, individuals, semi-public and public officials all working in tandem to "game" water policy in the state. They meet in closed sessions and rewrite public policy, tailoring their edits to the interests of monopoly-like agribusiness corporations and real estate developers. Is this a conspiracy theory? No. It is just business as usual.

The water plutocracy must be replaced with a vibrant water democracy.

To protect California's water from profiteering:

Return Kern Water Bank to Public Control/ No More Public Giveaways

The Department of Water Resource's decision to give away the Kern Water Bank should be immediately reversed. The state's giveaway of this valuable resource to allegedly "local agencies" was in violation of the public trust doctrine and the California Environmental Quality Act and should never have taken place. Local control of this resource has become tantamount to private corporate control. Paramount and its Westside Mutual Water Company should never have been

allowed to "own and operate the water bank," especially in light of their confessions to Bakersfield reporters that sales from the bank were in their plans from the very beginning. The privatization of this vital public resource should be reversed.

Repeal the Monterey Amendments

The Monterey Amendments—the backroom restructuring of the State Water Project—usurped participatory democracy in California water policy. The "amendments" also perpetuate and gravely exacerbate the environmental detriment and social injustices established by the water plutocracy that has gamed tax and ratepayers for decades to raise agribusiness empires on subsidized water deliveries. The Monterey Amendments should be repealed and the State Water Project contracts should be rewritten with an eye to water conservation and environmental restoration as well as the original stated purpose of the project to reallocate California's water resources in an *equitable* manner.

Eliminate Paper Water

The Department of Water Resources continues to maintain on paper that the State Water Project can deliver almost twice as much as nature provides. After decades in operation, it is clear that the paper contracts do not match reality. The water "entitlements" of the twenty-nine State Water Project contractors should be re-drafted to fit the actual capacity of the project to deliver. Such re-drafting is provided in the original article 18(b) that contractors struck from the contracts in the closed Monterey meetings. Local and regional land-use planning decisions should be re-evaluated to ensure that developments have not been permitted based on water supplies that do not exist.

No Resale of State Water Project Water

The individual contractors that receive state project water should not be allowed to profit from reselling that water, whether it is back to the state Environmental Water Account or to real-estate developers. Furthermore, after decades of overdraft, pollution, and watershed devastation, the California and Federal cooperative venture known as CALFED requires that water quality be restored in the San Joaquin Delta and the rivers that feed into it. Clearly, there is no "surplus" water to be traded among corporations. Paramount and other private interests must not be allowed to hoard water to sell at a later date.

Democratize Water and Irrigation Districts

Water and irrigation districts that receive public water deliveries from the State Water Project (SWP) should be open, transparent, and accountable to the public. Most water and irrigation districts that receive SWP water are controlled by large-landowners driven by their interest in paying as little as they can for as much water as they can get. With the twin goals of expansion and profit, landowners such as Paramount make decisions over public resources without being held publicly accountable. There should be elected, public representatives on the boards of such districts who would represent the non-landowning population affected by water policy decisions made most often in closed sessions and meetings.

The Kern Water Bank's accounting of stored and transferred water—where the water deliveries come from, and where they end up—should be immediately disclosed to the public. All water trades and transfers should be publicly recorded with full disclosure of the financial terms of the agreement, as well as the identities of the buyers and the sellers. All water delivery, storage and transfer deals should be made with full and meaningful participation of the public.

NATURE PROVIDES ENOUGH WATER for California to meet all of its needs: to sustain water-efficient family farms and industries; to provide safe drinking water to present and future generations; and to restore and maintain California's much-abused environment. Nature provides enough water; that is, unless mismanagement and greed intervene and allow for the state's public water supplies to be manipulated for profit. Too much is at stake to let this water heist continue.

Get Involved

About Public Citizen's *Water for All* Campaign

Public Citizen is campaigning to protect universal access to safe and affordable drinking water by keeping it in public hands. Public Citizen does not believe that citizens benefit from privatization of their water and wastewater systems because the sale of public works to private companies can foster corruption and result in rate hikes, inadequate customer service and a loss of local control and accountability.

Public Citizen List Serves

Public Citizen maintains two water-related email lists. The Water for All list focuses on national and international efforts to protect water as a human right and includes action alerts, news articles, reports and the monthly newsletter of the Water for All campaign, Currents. The California Water for All list includes issue updates, campaigns action alerts, and Currents.

To subscribe to the Water For All list, send an email to cmep@citizen.org with "subscribe Waterforall" in the message.

To subscribe to the California Water for All list, send an email to cmep@citizen.org with "subscribe Waterforallca" in the message.

Groups Working on Water Issues in California

Alliance for Democracy
1223 Sequoia Place
Davis, CA 95616
phone 530.758.0726
http://www.theallliancefordemocracy.org

California Water Network
808 Romero Road
Santa Barbara, CA 93108
phone 805.969.0824 fax 805.565.3394

Center for Race, Poverty and the Enviroment
1224 Jefferson St., Suite 25
Delano, CA 93215
phone 661.720.9140 fax 661.720.9483

Community Alliance with Family Farmers (CAFF)
36355 Russell Blvd.
Davis, California
phone 530.756.8518 fax 530.756.7857
http://www.caff.org

Environmental Justice Coalition for Water
1010 11th St., Suite 305
Sacramento, CA 95814
phone 916.341.0612 fax 916.341.0401
www.ejwatercoalition.org

Santa Clarita Organization for Planning the Environment (SCOPE)
P.O. Box 1182
Canyon Country, CA 91386
phone 661.255.6899, extension 2
http://www.scope.org

Sierra Club, Angeles Chapter
3435 Wilshire Blvd., #320
Los Angeles, CA 90010
phone 213.387.4287 fax 213.387.5383
http://angeles.sierraclub.org

United Farm Workers (UFW)
1010 11th St., Suite 305
Sacramento, CA 95814
phone 916.341.0612 fax 916.341.0401

Glossary

Acre-foot An acre-foot of water is the amount of water necessary to fill an area of one acre to a depth of one foot, or about 325,000 gallons. One acre-foot of water is roughly the amount that two families of four consume in one year.

Central Valley Project (CVP) A Federal Bureau of Reclamation water project consisting of 20 dams and reservoirs, 11 power plants, and 500 miles of major canals. The project delivers about 7 million acre-feet of water annually.

Department of Water Resources (DWR) The California state agency that is responsible for managing the State Water Project.

Entitlement Also referred to as "Table A Allotment" in the Monterey Settlement, this is the volume of water contracted to State Water Project purchasers.

Environmental Impact Report (EIR) The study and report that is required under the California Environmental Quality Act for any large public or private infrastructure project as a means to assess the potential effects of the project on the environment.

Environmental Water Account (EWA) A component of the CALFED program, the EWA pays SWP water users when water deliveries are slowed down or reduced so that the SWP pumps decrease the amount of endangered fish species that get caught and killed in them.

Joint Powers Authority The agency created when two or more entities enter into a joint powers agreement. A joint powers agreement allows different (usually) public entities to join together in order to exercise their common powers toward a common objective.

Kern County Water Agency (KCWA) The KCWA was created in 1961 to distribute SWP water to Kern County water districts.

Kern Water Bank The largest underground water storage facility in the world. DWR spent $74 million purchasing the land, studying and developing the Kern Water Bank during the late 1980s-early 1990s. DWR gave the water bank to the KCWA in 1995.

Kern Water Bank Authority (KWBA) A Joint Powers Authority that consists of five water and water storage districts and agencies and one private mutual water company—Westside Mutual Water Company. Westside is in turn owned by Paramount Farming Company. The KWBA was formed immediately after DWR gave away the 20,000 acres that house the Kern Water Bank to the KCWA.

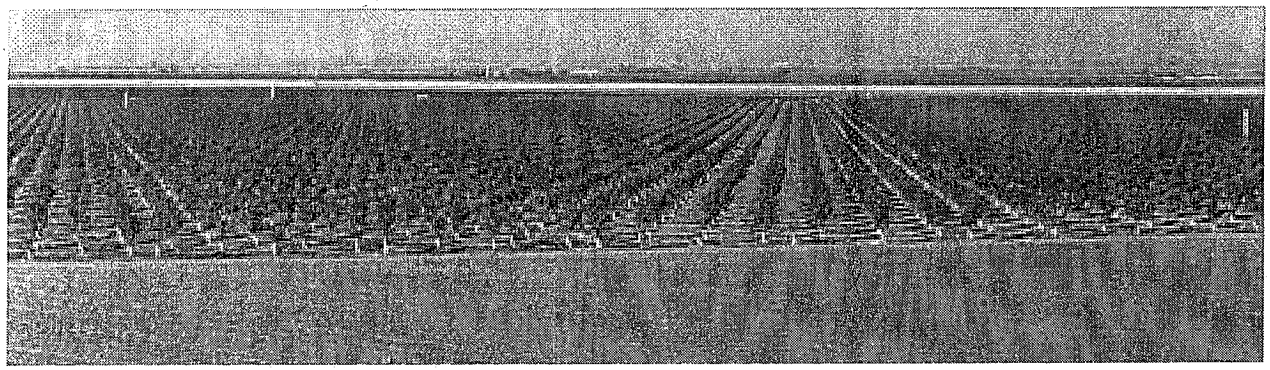
Monterey Amendments In 1994 DWR met in closed meetings with its largest contractors to rewrite the contracts that govern the SWP. At the end of the meetings the participants drafted a list of 14 principles which they called the Monterey Agreement, after the city in which the meetings took place. The changes to the SWP contracts that resulted from the Monterey Agreement are referred to as the Monterey Amendments.

Paper Water The original SWP contracts provided for an annual entitlement amount of surface water to be delivered to contractors upon availability. The SWP has never been able to deliver the contractors' full entitlements. The contractors, however, still treat the future expectations of the past as reality. One result of the Monterey Amendments was to enable contractors to buy and sell their entitlements. Hence, the entitlements, which stretch far beyond actual water deliveries, allow contractors to sell water that only exists on paper.

Roll International Corporation Roll International—a Los Angeles-based holding company, incorporated in Delaware—is one of the largest privately owned companies in the world. Roll International owns the Franklin Mint, Teleflora and a collection of agribusinesses—all of which operate in three California counties—that include Paramount Citrus, Paramount Farming, Paramount Farms, Inc. Paramount Farming is a member of the KWBA and owns 48% of the Kern Water Bank. Paramount also owns land in three of the other water districts and agencies that participate in the KWBA.

State Water Project (SWP) The SWP is a massive state water diversion and delivery project that comprises 662 miles of aqueducts, 19 dams with a combined surface area of more than 50,000 acres, 20 pumping plants, and ten energy plants producing about 6.5 billion kWh of energy annually. By 2000, Californians had paid more than $5 billion to build the project and another $11.9 billion to operate it and finance its debt.

Water Bank Water storage facility that operates like a bank. Participants or customers of the bank "deposit," or recharge, water and later "withdraw," or recover, water from their "account."



Appendix A—Historical Background

Water Flows Uphill to Money

CALIFORNIA IS A SEMI-DESERT. The mineral-rich soil of the Central Valley Region receives an average of 10 inches of rainfall a year, though far less falls in the southern portions of the Valley. Southern California's Imperial Valley receives 1 to 2 inches of rain a year. Yet, California's driest valleys are home to the richest agricultural region in the world.[88]

Step off to the side of Interstate 5 on a summer day, bend under a fence, and in the space of an inch you will see the sand turn into green fields. This is the unmistakable precision of industrial irrigated agriculture. Back on the interstate to the east and west, government-run irrigation systems douse crops with water. And as you proceed south on I-5 you will cross again and again one of the bond-funded arteries that makes this all possible: the State Water Project's California Aqueduct.

In California, agriculture consumes 77 percent of all usable fresh water.[89] Most of the water originates hundreds of miles north in the rivers bridled by the Oroville, Shasta and Trinity Dams. The state and federal projects that control the flow and destination of these rivers pipe and pump the water through a grid of nearly 4,000 miles of dams, aqueducts, canals, and reservoirs into the lands of the largest and wealthiest agribusinesses in the country.

By the 1930s, as a result of massive over-pumping, the earliest agribusinesses lowered the San Joaquin water table, the aquifer underlying the San Joaquin Valley, by as much as one hundred feet. Oak trees died and in places the valley floor itself dropped anywhere from 3 to 30 feet.[90] Fearing that they would run out of water within a matter of years, the largest landowners in the region began to push for publicly funded projects to pump water south from Northern California.

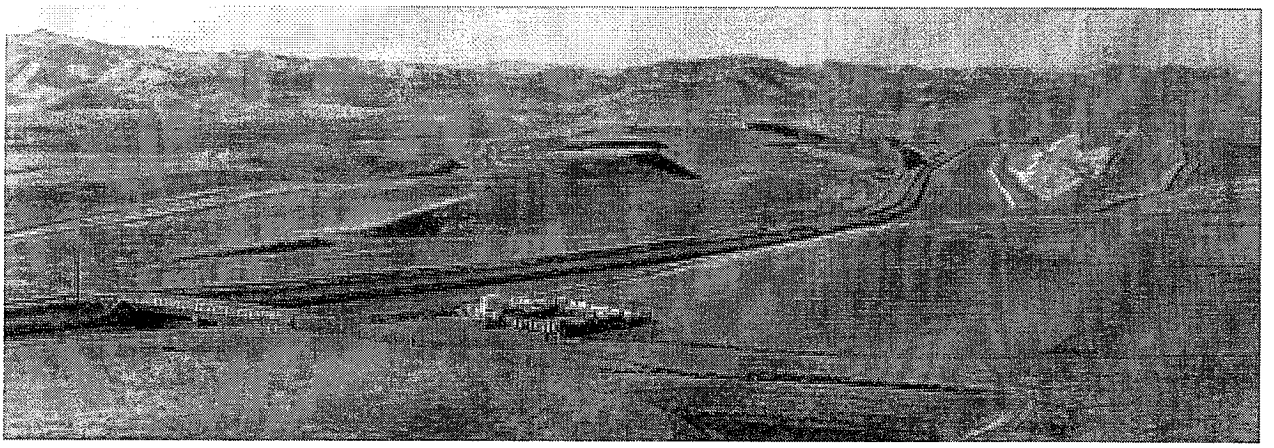
The Central Valley Project (CVP) began as a state initiative but failed for lack of funding until the federal government, and US taxpayers, came to pick it up in 1937. The CVP—the largest and most expensive public works project of its time—pipes some 9 million acre-feet of water from 20 dams and reservoirs to millions of city-dwellers and agribusinesses throughout the Central Valley and the urban San Francisco Bay Area.[91]

The Federal Bureau of Reclamation, the agency that administers the CVP, intended the CVP to break up land monopoly and promote small farms throughout the Central Valley. The project was subject to the 1902 Reclamation Law which put an acreage limitation of 160 acres—increased to 960 acres in 1982—on land eligible to receive CVP water for irrigation.

In 1978, when a federal team of investigators traveled into the largest district receiving CVP water—the Westlands Water District—they discovered that throughout the entire Westlands district there was not a single 160-acre farm. Through sleight of hand, family connections and sheer stubbornness, huge land owners failed to break up their farms and used the CVP water to build agribusiness empires.

California water historian, Norris Hundley, wrote that the CVP failed on both of its objectives: to combat monopoly and promote the family farm. Moreover, the result of the increasing power of landowners, Hundley wrote in *The Great Thirst*, was that "agriculture continued to concentrate in ever fewer hands. The number of farms over a thousand acres increased their combined property from 17.6 million acres in 1920 to 25 million acres in 1945. That trend... accelerated even more dramatically in the decades that followed. Thus did the family farm and local democracy fade from the California countryside."[92]

The California State Water Project (SWP), approved by the legislature in 1959 and by voters in 1960 made even greater



handouts to large growers in the state than the CVP. The state project was not subject to federal Reclamation Law, enabling large growers to expand production and increase acreage without the hassle of token acreage limitations. Moreover, the availability of state water as an alternative to federal water would make the Federal Bureau of Reclamation think twice before harassing the CVP recipients who were in "technical compliance" with the acreage limitations by deeding land to relatives or employees.[93]

The voter-approved bonds enabled the state to undertake the most ambitious water diversion project in history. The only way to get enough voters in Southern California to pass the statewide bond initiative—all assumed that Northern California voters would turn down a project to pay for pumping their water into the hands of Southern California landowners—was to lie about how much it would cost. Governor Pat Brown asserted that the project would cost about a billion dollars less than the estimated cost at the time.[94]

At present, the SWP comprises 662 miles of aqueducts, 19 dams with a combined surface area of more than 50,000 acres, 20 pumping plants requiring more than 60 billion kWh of energy annually, and 10 energy plants producing about 6.5 billion kWh of energy annually.[95] By 2000, Californians had paid more than $5 billion to build the project and another $5 billion to operate it and finance its debt.[96]

The Department of Water Resources (DWR) was created from 52 formerly independent state agencies to oversee the State Water Project and administer the delivery of water to the project's 29 contracting agencies.[97] These agencies range from the City of Yuba, 42 miles north of Sacramento, which had received a total of 10,260 acre-feet by 2000 to the Kern County Water Agency, which had received 26.3 million acre-feet by 2000.[98]

Kern County landowners advocated for both the CVP and the SWP as a way of improving the condition of the groundwater basin. However, with both projects, those very landowners increased the amount of acreage they held in production and thus exacerbated their overdraft of the basin.[99] Overdraft occurs when users pump more water out of the ground than nature can replenish or, in technical jargon, when extraction exceeds recharge. In Kern County, the increased overdraft of aquifers reached over 7 million acre-feet by the late 1970s.[100] According to the last *California Water Plan Update*, overdraft continues now at a pace of one million acre-feet a year.[101]

Marc Reisner, in his indispensable book, *Cadillac Desert*, described the SWP as "one of the country's foremost examples of socialism for the rich."[102] While urban water users bore the bulk of the expenses for the project, the corporate farmers got their water at bargain rates.[103]

In a 1981 report by the California Institute for Rural Studies, Don Villarejo writes that from the first SWP water deliveries in 1968 through to 1980, San Joaquin Valley contractors received 63% of the water delivered—almost entirely for agricultural irrigation—while mostly residential Southern California water users paid 70% of the costs of the project. "It is one of the many ironies of the SWP that those who get the most water pay the least, while those who get the least pay the bulk of the costs."[104] By the mid-1980s Norris Hundley estimates that Southern Californian water users were paying roughly $25 million a year in water subsidies for corporate agriculture in Kern County.[105]

According to DWR's Bulletin 132-01, by December 31, 2000, San Joaquin Area contractors had received 32.6 million acre-feet of water. They paid more than $1.3 billion for that water: an average of $40 an acre-foot. Meanwhile, contractors in Southern California received 22.5 million acre-feet of water

for a price of $6.65 billion. That makes SWP water $295 an acre-foot for Southern California's largely urban users.[106]

Hidden Government

The federal and state water projects propelled the creation of "hidden" forms of government in California: the water districts and agencies through which landowners exercise control over the state's water.[107]

Norris Hundley notes Kern County's legacy of spearheading the effort to create special water districts for the management of the new water supplies coming from the CVP and SWP. In *The Great Thirst*, he writes that bringing back the concept of property-weighted voting—the allocation of votes based on a property owner's total land value—led to the creation of a variety of new water districts, the further concentration of agriculture in ever fewer hands, and the withering of local democracy. Such districts, he writes: "are ordinarily managed by boards of directors made up of a homogeneous, single interest body of people representing the larger water users and guided by a rigid set of goals: maximization of water use at minimum cost with little or no regard for the environment or for the welfare of the people of California."[108]

The Kern County Water Agency (KCWA), for example, was created by the state legislature in 1961 under the influence of the county's corporate farmers to buy SWP water and then sell it to the local districts where the landowners again formed the boards of directors. As an intermediary, the Agency spread out the cost of the water through a countywide property tax, principally paid by the Bakersfield urban population. Both the intent and the effect of the Agency were to generate water subsidies for large landowners.[109]

The Kern County Water Association—not to be confused with KCWA, the *Agency*—was established and run by the most powerful landowners in the county. It advocated for the creation of the KCWA by the legislature. As Gottlieb and Fitzsimmons note: "The water association had three key goals: subsidies, to keep the price of water low enough to encourage new irrigation; elimination of acreage restrictions, that is, the 160-acre limit imposed—at least in name—on certain federal projects such as the CVP; and creation of a contracting agency on a countywide basis to secure the tax base of the entire county."[110]

The arrival of SWP water through the California Aqueduct set off a "speculative spiral" in Kern County where landowners rushed to expand their acreage and set up water districts to contract for SWP water through the KCWA. "A handful of landowners dominated most of the key water districts affiliated with KCWA, and these districts, in turn, dominated the agency."[111]

KCWA now has 13 member "units" that together contract for an annual total of 1,000,949 acre-feet of SWP water. Agricultural water users hold 88 percent of the contracts while municipal and industrial users hold 12 percent.[112] Corporate farmers in Kern however, have been receiving *more* water than they contract for since the beginning of the SWP, owing to the questionable concept of "surplus" water.

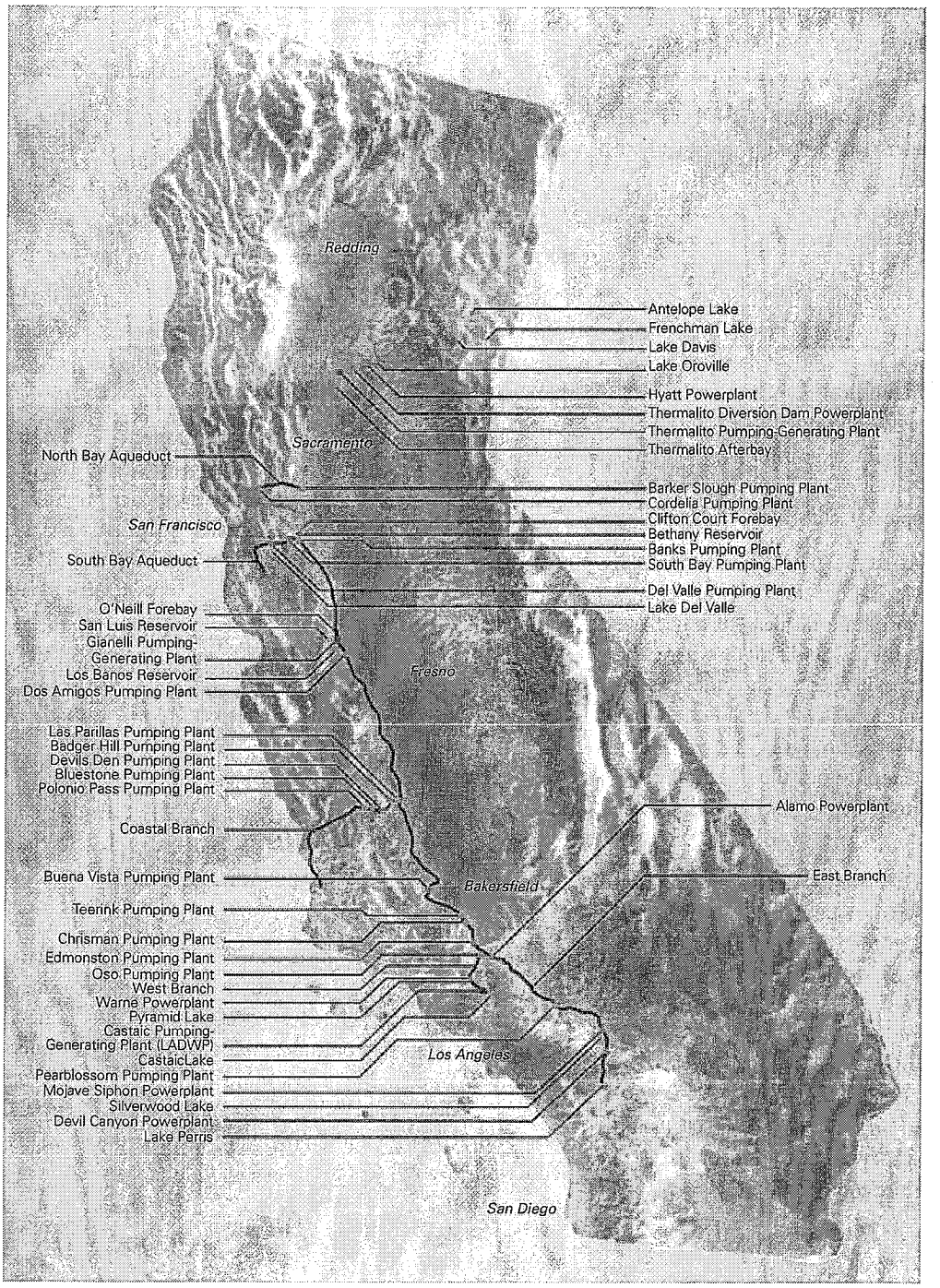
The SWP has never delivered the full 4.1 million acre-feet of water set forth in the original contracts. Average annual deliveries float at around half that amount. How then could there be "surplus" water?

The Metropolitan Water District of Southern California (MWD)—often referred to as The Met—is the largest water agency in California. MWD is a water wholesaler providing "supplemental" water to 27 clients, which in turn serve an area of over 5,000 square miles with a population of 15 million.[113] MWD is also the largest contractor with the SWP, contracting for over 2 million acre-feet of water.

MWD initially opposed the SWP, but signed on four days before the 1959 election.[114] MWD and the Kern County Water Agency came into conflict early on during negotiations over how to distribute the costs of the SWP. The agreement they reached enabled Kern to purchase water at discounted rates. MWD also had to pay for that same water creating "implicit subsidies for the agricultural agency [KCWA] which, by extension, penalized the district [MWD]."[115]

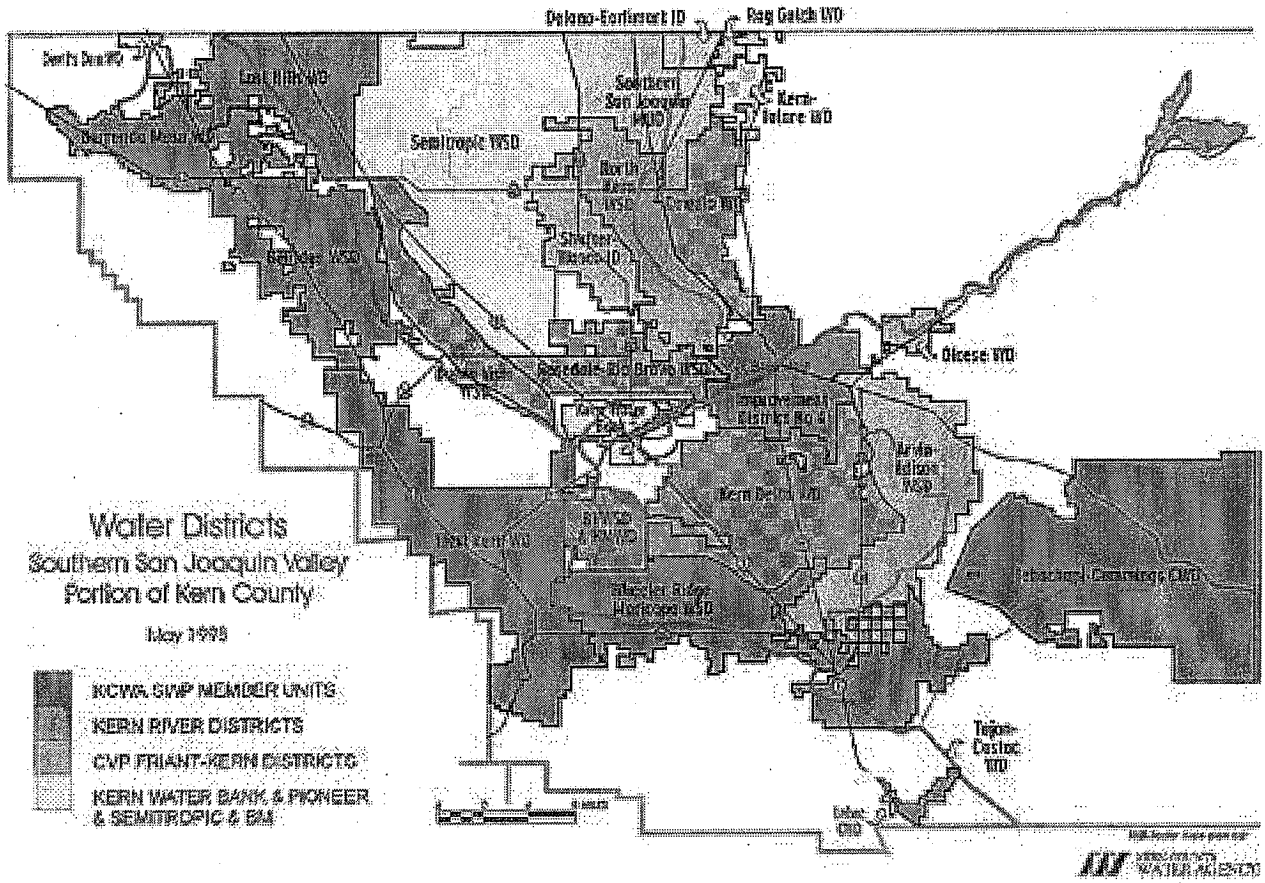
Kern landowners reaped the benefits instantly and have continued to do so ever since. For example, in 1979, KCWA entitlements had increased to 516,300 acre-feet, the agency purchased another 524,247 acre-feet of "surplus water" beyond their contract entitlements. That contracted water cost KCWA member agencies more than $15 million (or about $29 an acre-foot) while the same amount of "surplus water" only cost $2.3 million (or about $4 an acre-foot). This reduced the overall cost to $17 per acre-foot.[116]

Appendix B—Map of State Water Project

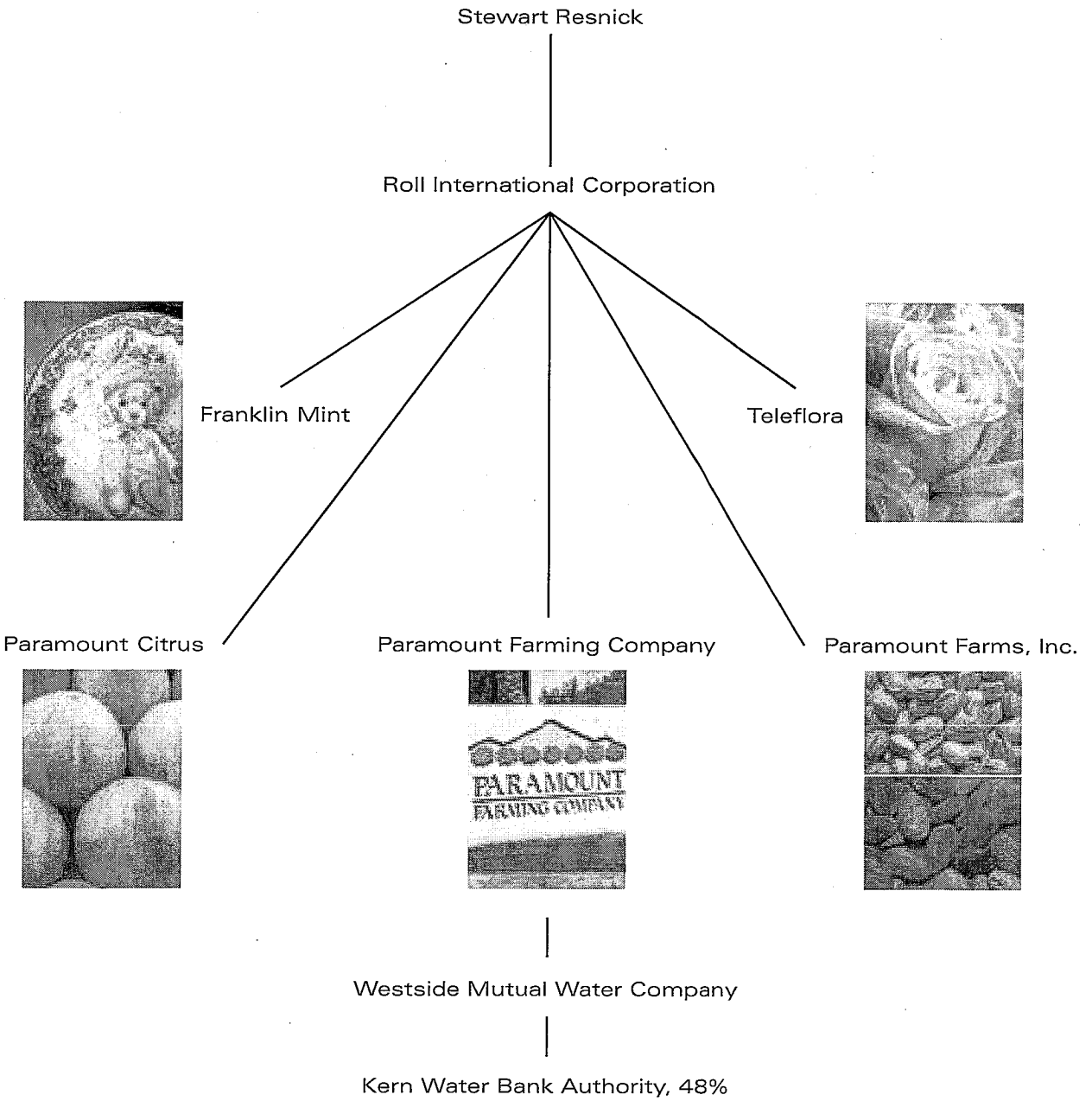


The SWP comprises 662 miles of aqueducts, 19 dams with a combined surface area of more than 50,000 acres, 20 pumping plants, and ten energy plants.

Appendix C—Map of Water Districts, Kern County



Appendix D—Roll International Corporation Holdings Diagram



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88 Kenneth W. Umbach, "A Statistical Tour of California's Great Central Valley" *California Research* Bureau August 1997. Online at: http:www.library.ca.gov/CRB/97/09/#Heading1 (last accessed 17 November 2003). For information and stunning visual images on the Central Valley and the impacts of water diversion projects discussed in this report, see Jon Else's PBS Documentary *Cadillac Desert. Program 3: The Mercy of Nature.*

89 Hundley, *Great Thirst*, 9, also fn.11, 568.

90 Hundley, *Great Thirst*, 239 and Devin Galloway and Francis S. Riley "San Joaquin Valley, California: Largest human alteration of the Earth's surface" in Devin Galloway *et. al.* eds. *Land Subsidence in the United States* U.S. Geological Survey Circular 1182 available online at: <http://water.usgs.gov/pubs/circ/circ1182/pdf/06SanJoaquinValley.pdf> (17 November 2003) and CALFED Bay Delta Program *Final Programmatic EIS/EIR* (Sacramento: CALFED Bay Delta Program, July 2000) 5.4-12.

91 Hundley, *Great Thirst*, 257-258.

92 Hundley, *Great Thirst*, 241.

[93] Hundley, *Great Thirst*, 276.

[94] See the interview with Pat Brown in: Malca Chall. *California Water Issues, 1950-1966*. (Berkeley: Bancroft Library Oral History Program, 1981). Marc Reisner wrote: "'Lie' is a strong word, but in this case it is advised, because one day Pat Brown would all but admit it himself." See: Marc Reisner. *Cadillac Desert: The American West and Its Disappearing Water* Revised and Updated. (New York: Penguin Books, 1993) 351.

[95] California Department of Water Resources, "Management of the California State Water Project," *Bulletin 132-01* (Sacramento: California Department of Water Resources, 2001) and State of California Resources Agency, *The California State Water Project*, Undated.

[96] Department of Water Resources, *Bulletin 132-01*, Ch. 14.

[97] Hundley, *Great Thirst*, 280.

[98] Department of Water Resources, *Bulletin 132-01*, 12.

[99] Gottleib and Fitzsimmons, *Thirst for* Growth, 93.

[100] Hundley, *Great Thirst*, 297.

[101] California Department of Water Resources, "California Water Plan Update," *Bulletin 160-98* (Sacramento: California Department of Water Resources, 1998) Ch. 3.

[102] Reisner, *Cadillac Desert*, 334.

[103] Hundley, *Great Thirst*, 295-297.

[104] Villarejo, *New Lands*, 2.

[105] Hundley, *Great Thirst*, 297.

[106] Department of Water Resources, *Bulletin 132-01*, p.12

[107] See Gottlieb and Fitzsimmons, *Thirst for* Growth.

[108] Hundley, *Great Thirst*, 536.

[109] Gottlieb and Fitzsimmons, *Thirst for* Growth, 94.

[110] *Ibid*, 94.

[111] *Ibid*, 96-97.

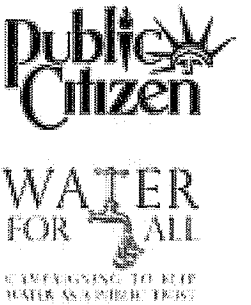
[112] Kern County Water Agency, *Annual Report 2000*, 10.

[113] Gottlieb and Fitzsimmons, *Thirst for* Growth, 5.

[114] Hundley, *Great Thirst*, 290.

[115] Gottlieb and Fitzsimmons, *Thirst for* Growth, 16.

[116] *Ibid*, 97.



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