

The Monterey Plus Amendments to State Water Contracts: It's Chinatown, Jake A C-WIN Policy Brief

In the 1990s, five of the extant 29 State Water Project contractors secretly colluded with the California Department of Water Resources (DWR) to change SWP policy, a move subsequently known as the [Monterey Plus Amendments](#). These changes caused major disruptions in Delta ecosystems and made water less accessible and much more expensive for most State Water Project customers, especially during droughts. Urban ratepayers bore the brunt of the burden, as they found out to their profound dismay in the drought that beleaguered the state from 2007 to 2009.

The Monterey Plus Amendments were concluded 17 years ago, but they are not established law, and are under current court challenge. Few Californians know about them. This is cause for deep concern, considering the pact's negative impact on the daily lives of rank-and-file ratepayers. If we are ever to achieve water equity in California, we must overturn this deeply flawed sub rosa agreement between DWR and California's largest water contractors.

How do we do this? We need to re-establish the so-called "urban preference" that gives cities first priority during periods of drought. We must end so-called "paper water" –

phantom water that exists in the ledgers of state bureaucrats, but not in our rivers and reservoirs. And we must return control of one of the West's largest water banks to the public sector.

The State Water Project (SWP) delivers water to 22 million urban water users in southern California and Kern County agribusiness.

To assure approval of the project, state officials promised in 1966 that the project's urban customers would have priority over agribusiness contractors during periods of drought. This was known as the **urban preference**. By including it in the SWP, both politicians and voters recognized a simple fact: during droughts, croplands can be fallowed, but urban and suburban households still need reliable supplies of water for domestic use.

This urban preference clause was invoked in 1991 at the end of a severe drought. In accord with principles established earlier, agricultural water

deliveries from the SWP were zero. Agribusiness

contractors were still required to pay their share of SWP construction costs.

Water projects are virtually synonymous with government subsidies, and the SWP is no exception; large



The State Water Project, courtesy of California Legislative Analyst.

C-WIN Policy Brief: Removing “Paper Water” from the State Water Project

agricultural contractors, water marketers and speculative real estate developers are often able to obtain SWP water at deeply discounted rates. But the [Monterey Plus Amendments](#) constitute a subsidy that is particularly brazen – indeed, cynical. The deal was struck in December, 1994, and it was concluded in complete secrecy between the California Department of Water Resources and five SWP contractors. The urban preference and other water protections for ratepayers were traded away, with corporate agriculture and water speculators increasing their stranglehold on the state’s developed water.

The Monterey Amendments deregulated and privatized key parts of the SWP, removing several safeguards from SWP contracts in the process. Delta farmers, fishermen and environmental advocates, however, recognized the agreement for what it was: a stalking horse for water speculators and their

political and agricultural allies. Opponents to the backroom deal -- including C-WIN’s co-founder and Executive Director, Carolee Krieger – [challenged it in court in 1995](#).

Litigation against the deal has been active ever since. Suits filed in 2010 demand reinstatement of the ratepayer protections and taxpayer investments that were gutted from the SWP by the Monterey Amendments.

Details of the pact’s impact follow.

Slashing Safeguards

The Kern Water Bank. In a particularly flagrant giveaway of public resources, the Monterey Plus Amendments deeded a SWP component known as the [Kern Water Bank](#) to the Kern County Water Agency. The Kern Water Bank is a 20,000 acre subterranean reservoir that can hold a million acre feet of water; it was originally intended as drought insurance for urban water users. What did state taxpayers and ratepayers receive in exchange for this valuable asset? A drop in the bucket – a mere 45,000 acre feet of “paper” water (the shorthand term for water that is contracted but does not exist) from the Kern Water Bank’s SWP allocation of 1,153,400 acre feet.

In a particularly arrogant political maneuver, the Kern County Water Agency turned the water bank over to the Kern Water Bank Authority one day after the exchange was finalized. Under state law, such joint powers authorities can

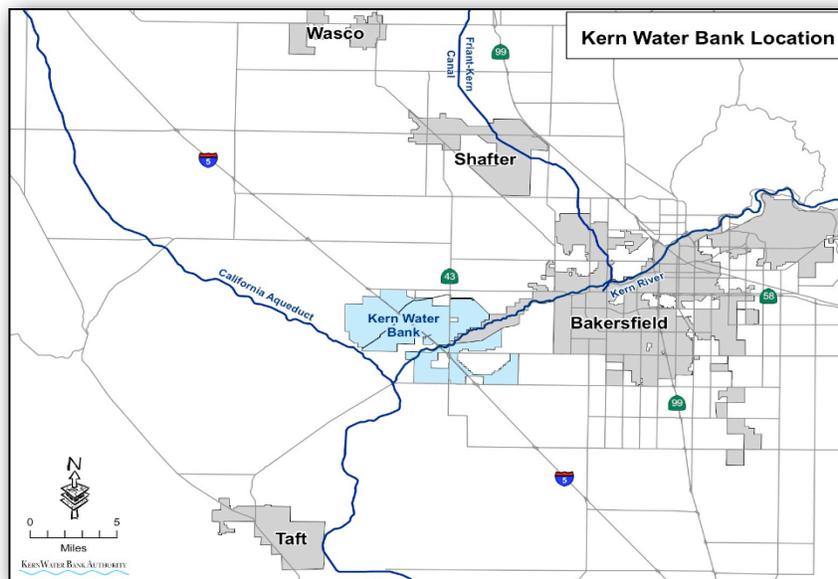
allow private corporations to participate in ownership of public assets. As a consequence, the Kern Water Bank is now controlled by [Paramount Farms, a Roll Corporation subsidiary owned by Stewart and Lynda Resnick](#). The Resnicks are powerful lobbyists for the Democratic Party and close friends of Governor Jerry Brown.

Thus, the Kern Water Bank – originally conceived as a public resource to benefit all Californians --is now used by corporate interests for private profits. Corporate farmers and water speculators buy taxpayer-subsidized water for rock-bottom pumping costs. This water is then hoarded in the Kern Water Bank until it is sold to urban water users and speculative developers at exorbitant rates.

Urban Preference. When the Monterey Plus Amendments nullified the urban preference for SWP water,

they assured severe water restrictions and spiking water rates for urban households during periods of drought. (It must be noted that drought conditions prevail in California more than one-third of the time.) The urban water preference was a centerpiece component of the original contract for the State Water Project. Its removal during secret meetings of a cabal composed of DWR officials and a handful of large contractors constitute an egregious breach of public trust. Moreover,

the move directly contravenes the California Water Code. As a matter of both law and public responsibility, the urban preference must be restored.



Kern Water Bank located near Bakersfield. Courtesy of Kern Water Bank Authority.

The Paper Water Conundrum. Under California law, the State Water Project was originally intended to deliver up to 4.23 million acre feet of water a year. Deliveries of this scope never materialized for two reasons. First, [Governor Ronald Reagan signed the state Wild and Scenic Rivers Act](#), which removed the Eel, Klamath, Smith, Scott, Salmon and Van Duzen rivers as SWP sources. Second, an attempt to build a trans-Delta conveyance system – the Peripheral Canal – failed in a voter referendum. Thus, throughout the 1990s, the average annual amount of water delivered by the SWP was 1.86 million acre feet, or 44 percent of the original planned deliveries. This “real world” shortfall, however, had little bearing on state policy and the ambitions of agribusiness contractors and speculative real estate developers. They continued to interpret the SWP’s original

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intended deliveries as developed water that actually existed in the system – even though there was a 56 percent shortfall in supplies. This difference between 4.23 MAFY and 1.86 MAFY is known as “paper water.”

In a 2000 decision invalidating the first Monterey Amendments environmental report, the Third District Court of Appeal called [paper water](#) “a wish and a prayer.” In fact, it is worse than that. This specious rationale has had a devastating effect on California’s landscape and public resources. The Monterey

Plus Amendments eliminated Article 18(b) of the original SWP contract, a clause that required the project to deliver only what it could, with provisions for reduction of target deliveries to reflect the reality of water availability. This move created an instant and still insatiable demand for so-called subprime water supplies – for paper water, in other words.

Speculative developers in particular demanded “access” to this phantom water because they could use it to justify their water demands to local planners. . The construction of sprawling subdivisions with no legitimate real world source of water remains one of California’s thorniest economic and environmental problems.

Because Article 18(b) was excised without environmental review, its elimination is illegal. To comport with both state law and economic and environmental reality, it must be reinstated.

Article 21 and Surplus Water. One of the many ironies of the Kern Water Bank fiasco is it’s

predication on “surplus water.” Under the Orwellian logic of the Monterey Amendments signatories, all the water that goes into the water bank is “surplus” – water that is somehow available because of the happy abundance of this precious resource in the Golden State. The fatal flaw in this argument, of course, is that there is **no** surplus water in

California. Claims on the state’s water, in fact, exceed availability by a factor of five.

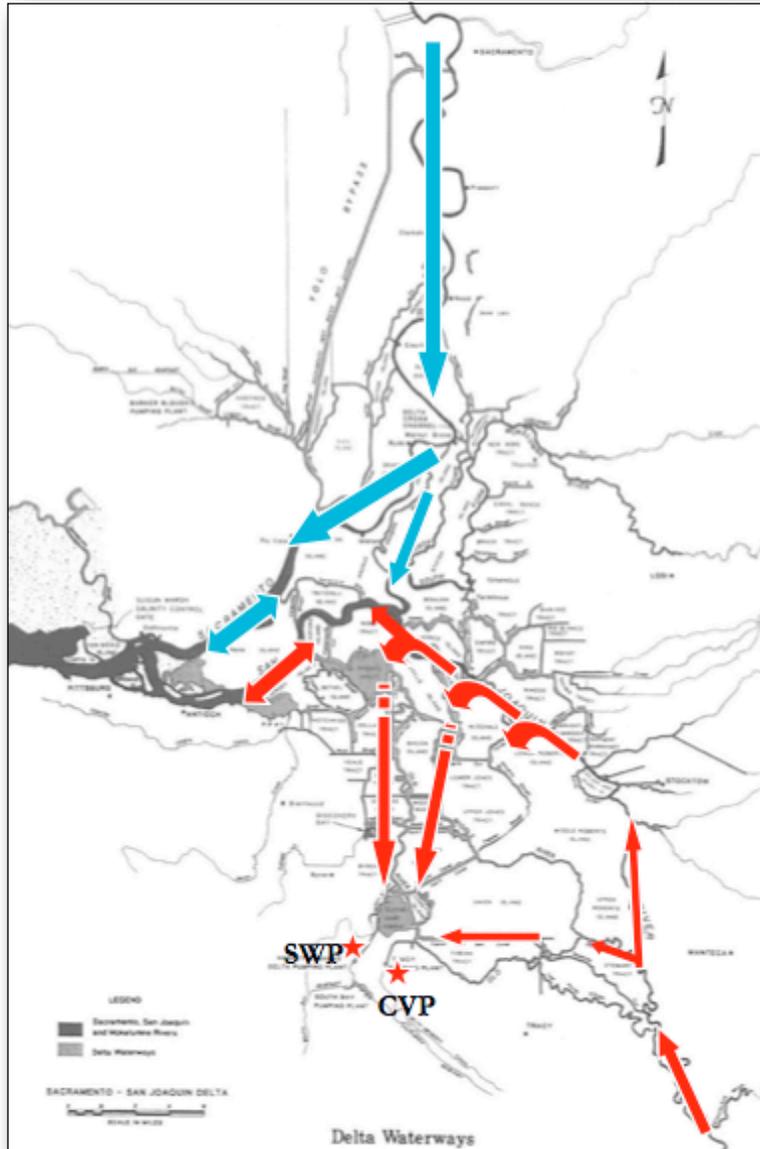
In the early years of the State Water Project, there was indeed some surplus water in the system. But that’s because not all contractors were using their full contract allocations. Today, however, all allocations are fully utilized. And because the SWP was never completed in terms of connections to now protected North State rivers, there is **no** surplus water. And attempts to extract the full amounts

enshrined in the original vision of the SWP from the Sacramento/San Joaquin Delta will only ensure spiraling water bills for ratepayers and the destruction of the biggest and most productive estuary on the west coast of the continental United States.

Nevertheless, the SWP continues to embrace the fallacy of “surplus” water, also known as Article 21 water. The original SWP contracts clearly stated that Article 21 water could not be employed for homes, orchards, or other permanent developments, in that such uses would be vulnerable to interruption. But Article 21 water is in fact devoted to these uses. The now privately controlled Kern Water Bank hordes Article 21 water and sells it as a “dependable” year-round source for suburban development and permanent orchard plantings. This is done by administrative sleight-of-hand: Stockpiled water is declared a “supply” in order to satisfy existing regulations and obtain development permits.

[\(See series on water sales by Mike Taugher, Contra Costa Times, 2009\).](#)

Further, because Article 21 water is SWP water, it is diverted from the Delta. This has had a devastating effect on fisheries, particularly salmon and steelhead trout. The California Department of Water Resources and SWP contractors export Article 21 water from the Delta in coordination with reservoir releases between November



Flows through the Delta: Blue arrows show Sacramento River flows; red arrows show San Joaquin River flows. Stars are state (SWP) and federal (CVP) water project pumping plants. Two-way arrows show tidal influence. Courtesy of National Marine Fisheries Service.

Solutions

- ✓ Overturn the Monterey Plus Amendments to State Water Project contracts
- ✓ Return the state-mandated “Urban Preference”
- ✓ Remove “paper water” from State Water Project contracts
- ✓ Stop the pumping of bogus “surplus” water
- ✓ Return the Kern Water Bank to public control

and April – the precise months when adult salmon and steelhead return to spawn in the Central Valley streams.

It was just such pumping that contributed significantly to the closure of commercial salmon fisheries in 2007, 2008 and 2009. Since those years, court rulings and new federal biological opinions on endangered fish under the U.S. Endangered Species Act have reduced winter water exports from the Delta. Nonetheless, aggressive efforts to undermine ESA restrictions on Delta exports continue.

Taxation without Representation

Until and unless the Monterey Amendments are overturned in court, DWR and large contractors will operate the SWP according to the agreement’s precepts. This is essentially taxation without representation. There was no legislative action or citizen referendum to overturn the urban preference, but two-thirds of all Californians pay higher water rates due to the policy change. During the last major drought (2007 to 2009), between 22 million to 25 million Californians paid significantly higher water bills due to the Monterey Amendments. As California is about to mark its driest year on record, the necessity for nullifying the Monterey amendments has never been greater.

Seeking Justice. The courts are one avenue of ending the inequity of the Monterey Plus Amendments.

Accordingly, C-WIN has filed suit in California courts to overturn the policy. The State Water Resources Control Board, however, can also play a role in ending [paper water](#).

The Board issues permits to applicants who want to build and operate water projects. After such projects have operated for a few years, they are licensed to use a specified amount of water based on established water use. State Water Project permits encompass 7.6 million acre feet of consumptive water claims. SWP contracts total 4.3 million acre feet, while actual deliveries have averaged just over two million acre feet annually over the past decade. The project’s last major facility was the Coastal Branch aqueduct to Santa Barbara, completed in the 1990s. Licenses have not been issued for many SWP facilities. Thus, the State Water Resources Control Board is long overdue for licensing SWP projects.

In 2010, the Department of Water Resources asked the State Water Resources Control Board for a five-year extension for its SWP permits. [C-WIN protested this request](#). DWR has no major projects forthcoming. It merely wants to delay such a decision in the hopes that a Delta conveyance system can be included under existing permits.

The Board should reject all such requests, and it should act to [eliminate paper water](#) from the SWP by licensing project permits.

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A.D. Edmonston Pumping Plant southwest of Bakersfield. This pump station lifts northern California water over the Tehachapi Range to southern California. Photo by Chris Austin.