



Water Heist

**How Corporations Are Cashing In
On California's Water**

**Public
Citizen**

**WATER
FOR ALL**

CAMPAGNING TO KEEP
WATER AS A PUBLIC TRUST

California Office
December 2003



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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

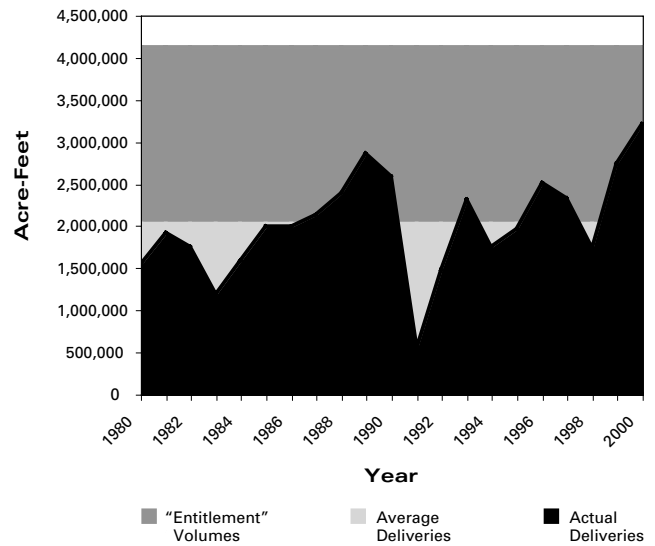
In 1994, rather than call DWR to court, water brokers in Kern County and a select group of other SWP contractors held a series of closed meetings with DWR to rewrite the contracts that govern water allocation for the entire State Water Project.⁷

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

*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.

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

SWP Actual and Average Deliveries
(1980-2000)



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

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

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

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 Strohane, 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 (WRMWS D)	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; WRMWS D Board of Directors; Vice President, General Counsel, and Secretary, Tejon Ranch	Joseph MacIvaine: 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 <i>Hidden Government</i> , 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

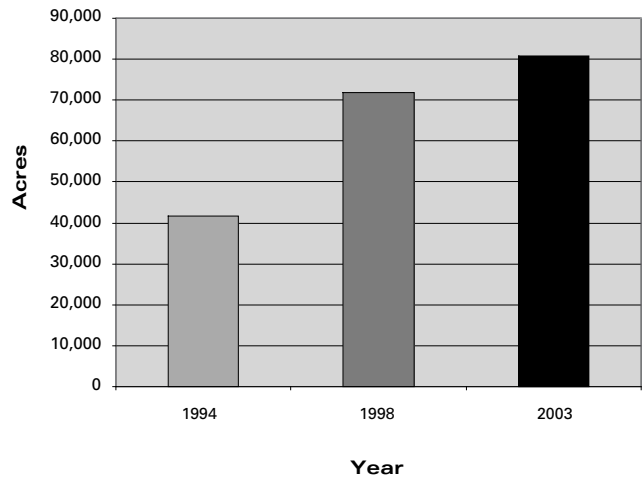
Paramount started buying pistachio, almond and olive orchards in 1986, after agricultural production dropped significantly in Kern County in the early 1980s.⁴⁸ Approximately 100,000 acres went out of production in Kern between 1982 and 1984.⁴⁹ Paramount and its associated companies, all held by Roll 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

Cultivated Paramount Farms Land Holdings in Kern County



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 Environment (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.thealliancefordemocracy.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 Environment

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.

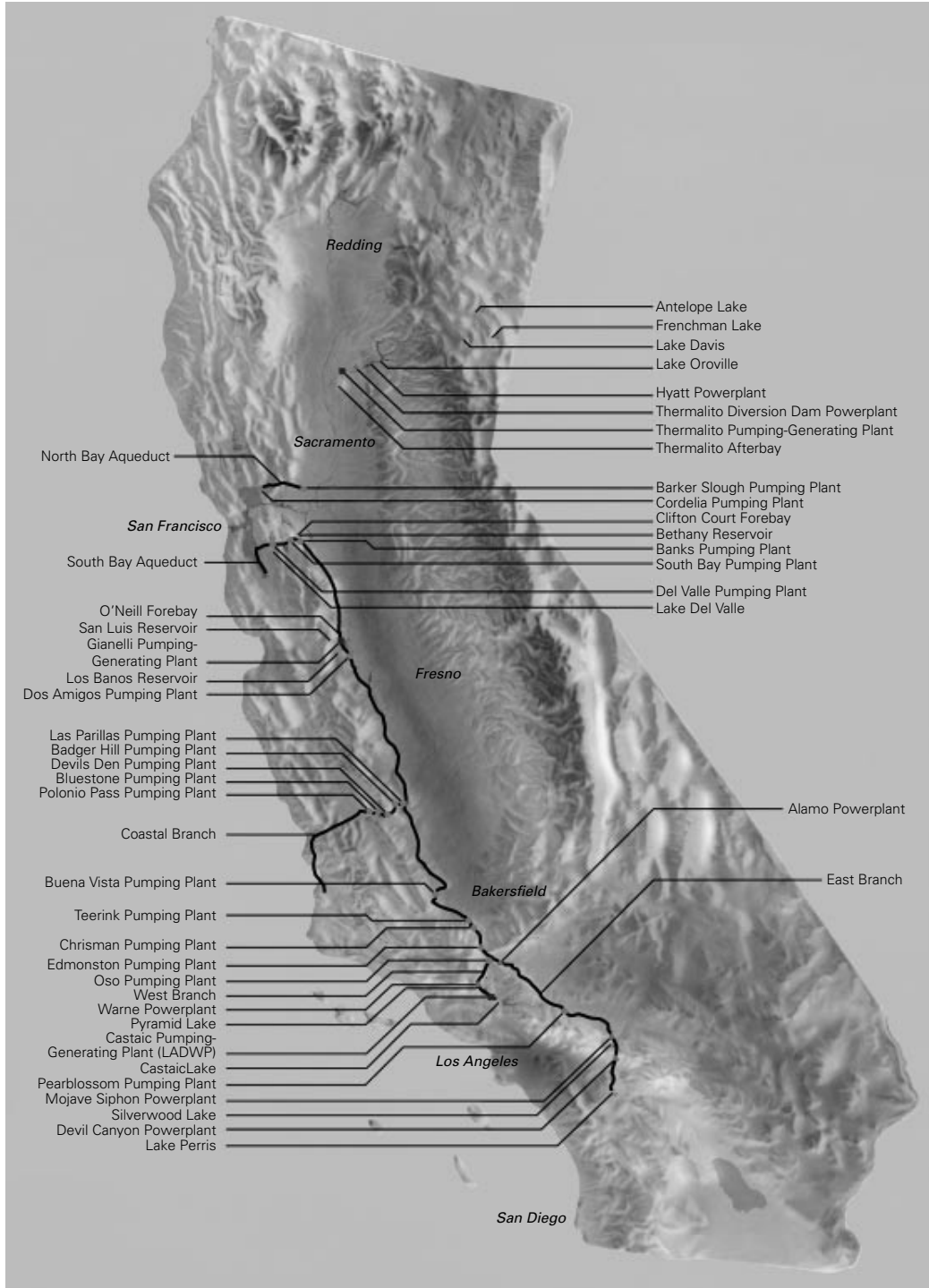
The SWP has never delivered the full 4.1 million acre-feet of water set forth in the original contracts. Average annual deliveries float at around half that amount. How then could there be “surplus” water?

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

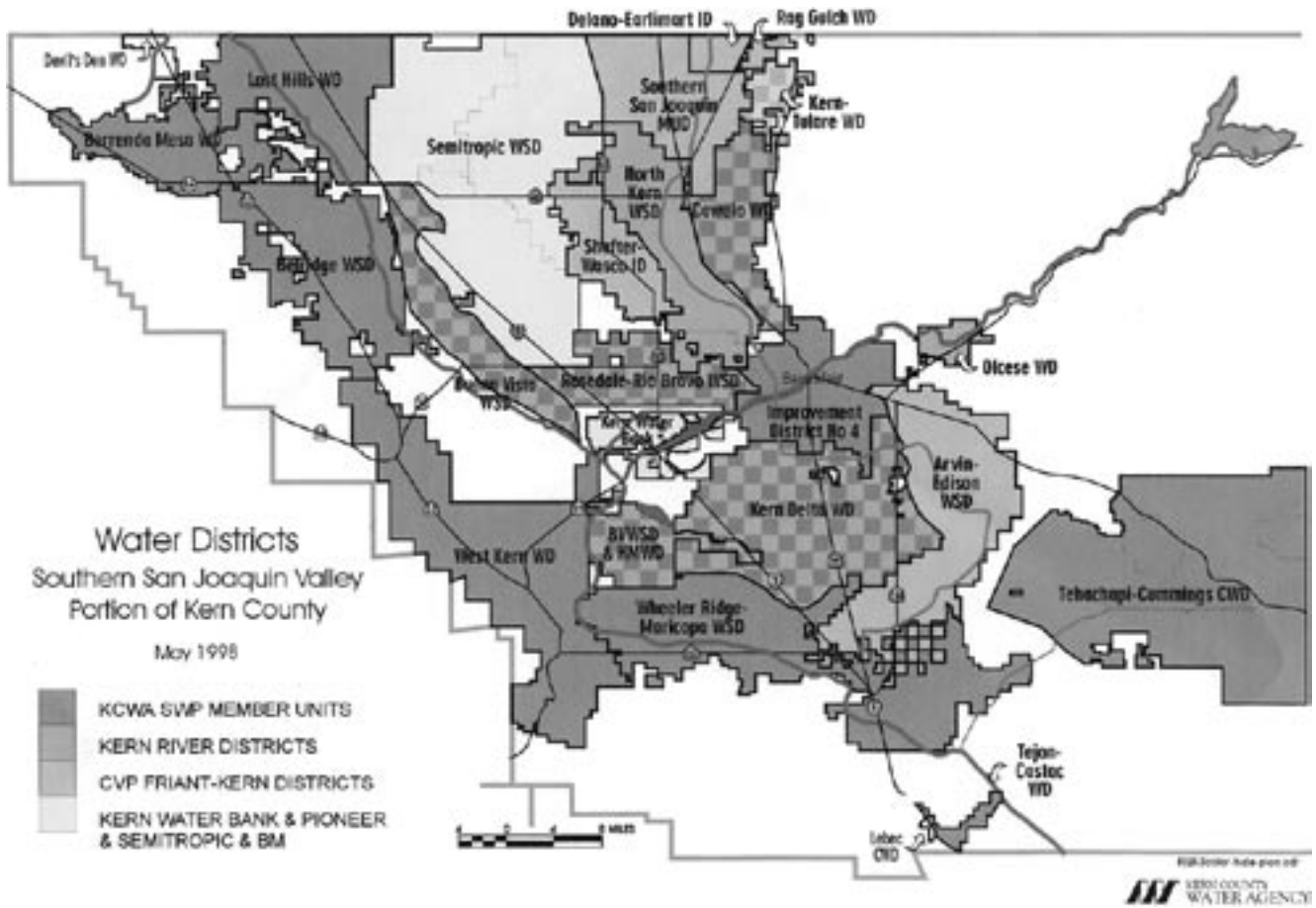
Kern landowners reaped the benefits instantly and have continued to do so ever since. For example, in 1979, KCWA entitlements had increased to 516,300 acre-feet, the agency purchased another 524,247 acre-feet of “surplus water” beyond their contract entitlements. That contracted water cost KCWA member 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

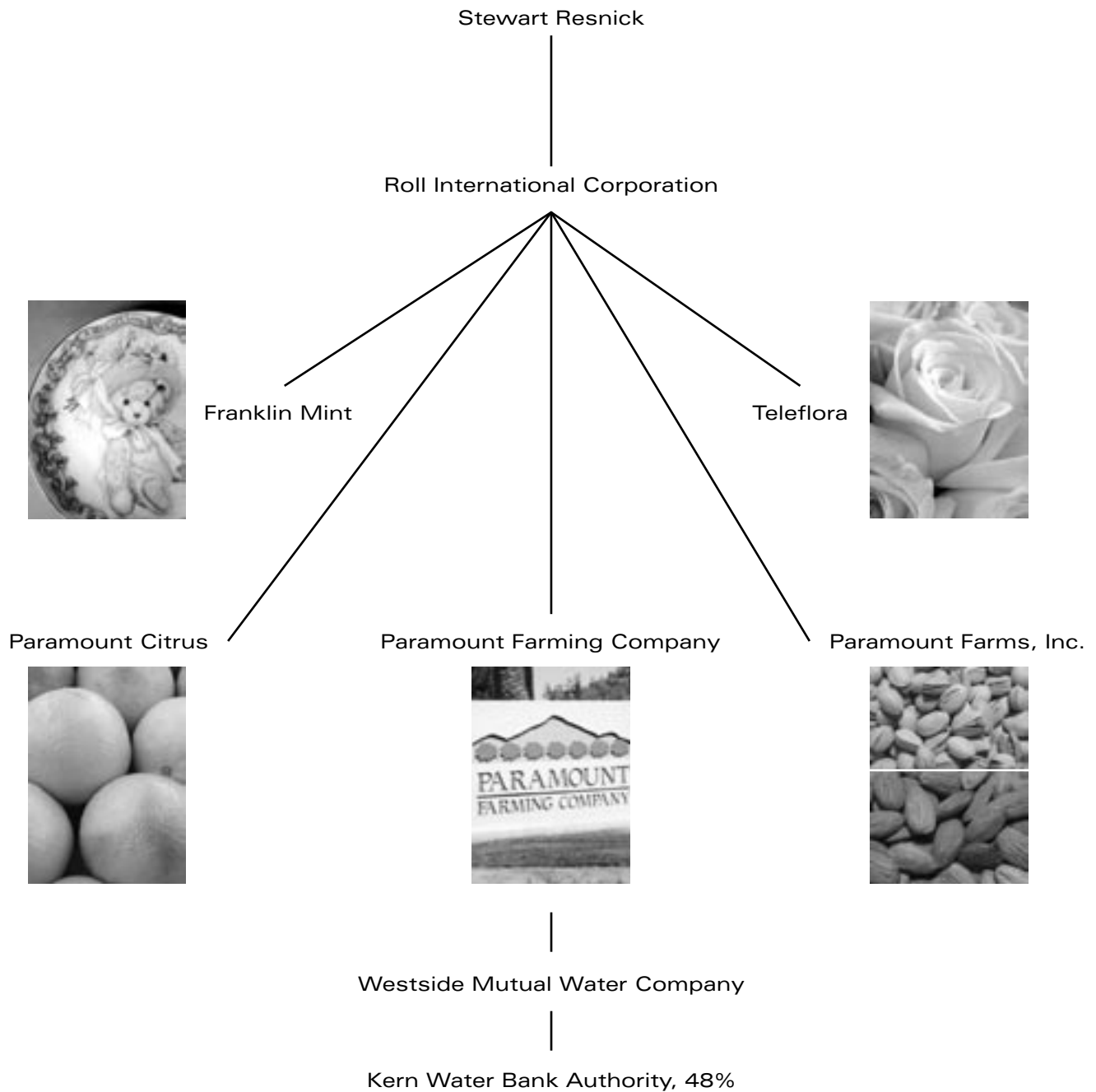


The SWP comprises 662 miles of aqueducts, 19 dams with a combined surface area of more than 50,000 acres, 20 pumping plants, and ten energy plants.

Appendix C—Map of Water Districts, Kern County



Appendix D—Roll International Corporation Holdings Diagram



Endnotes

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