

# MISMANAGING THE CALIFORNIA STATE WATER PROJECT

## WHOSE RAIN IS IT?

Few Californians know what the California State Water Project is, even though an estimated 23 million of them pay for it and drink the water that its long pipes and canals reroute from the Northern Sierras to house taps and irrigation canals along the length of the state. And while visions of the Project's 444-mile long California Aqueduct do not grace as many t-shirts or collectible coins as the Golden Gate Bridge or the grizzly bear, the aqueduct is by far the more telling icon of California's troubled and romanticized past as well as its precarious future.

California's bounty is on life-support. The California Dream of "making the desert bloom" is kept alive by an intricate and often make-shift collection of surgical fixes that try to make nature do what it does not want to do: drain lakes and floodplains for fields and cities; reroute entire rivers over hundreds of miles to water almonds and subdivisions where no rain falls; and hold back the push of salt and contamination into drinking water supplies.

The California State Water Project is at the center of this life-support machine, and it is in trouble. The Project has long punished those who live and work closest to the rain and rewarded those at the greatest distance. Now, a few powerful water agencies representing those who have most benefited want to take the reins from the state and manage the Project directly. Doing so would move water quality and supply decisions of vital statewide importance

away from the state and into the fractured and opaque structure recently created by the water agencies.

Spokespeople for the agencies say that they want to assume control of the Project to increase its operational efficiency without changing the state's involvement in political decision-making.<sup>1</sup> The agreement that would give them power over the Project, however, *explicitly* grants them broad authority to make substantive political decisions concerning water supply and water rights. And their track record on these issues is, to put it mildly, bad.

## WHAT IS THE STATE WATER PROJECT?

The State Water Project is a true marvel of both engineering and myopia. It is the largest state-run water and power utility in the United States. It spans over 600 miles, is a supplemental water supply to 23 million residents, irrigates over 700,000 acres of agricultural land, and consumes about 5 billion kilowatt hours per year, or a quarter of the energy consumed by the entire state of New Mexico in that time.<sup>2</sup> The Project's major hardware—besides the 444-mile concrete river—includes 19 dams, one of which, the Oroville Dam, is the highest in the United States, 10 energy plants, and 20 pumping plants.

These massive underground pumps actually lift the Feather River 244 feet out of the Sacramento-San Joaquin River Delta and into the California Aqueduct,



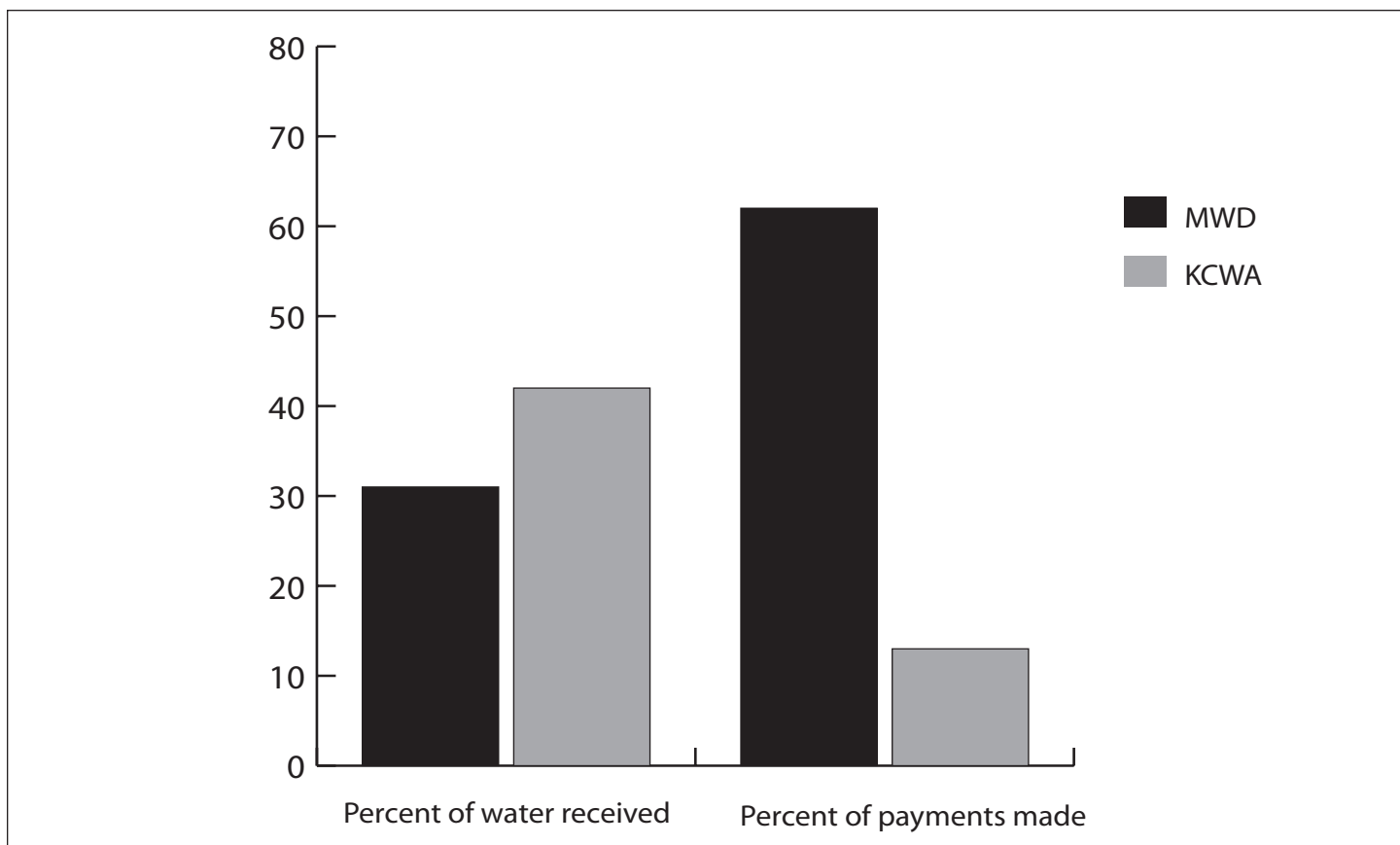
drive it down the San Joaquin Valley and finally lift it again—1,926 feet—over the Tehachapi Mountains and on to Los Angeles. This heavy lifting makes the State Water Project the single largest user of electricity in California.

The stated purpose behind all this engineered movement of water is, in the words of a former California Department of Water Resources senior official, to correct “nature’s malfunction.” The Project’s main advocates view the concrete and energy used to hold and move water as an engineering fix to the “problem” of where the rain falls rather than as a life-support system to fix the “problem” of where people decided to put certain cities and agribusinesses. As a result, those cities and farmers near where the rain does indeed fall now pay more for their water than their counterparts in the south and have to face the devastating environmental burdens of the dams and diversions.

## BUILT-IN SUBSIDIES

In 1960, California voters narrowly approved the Burns-Porter Act which authorized the sale of \$1.75 billion dollars in bonds to help finance the original construction of the project. An additional \$510 million for Project construction came from the California Water Fund which was created using Tidelands Oil revenues. Since the Tidelands funds were an interest free loan, taxpayers have had to make up for the money that the state declined to charge in interest.<sup>3</sup>

While the state financed the construction of the Project, the 29 regional agencies that contracted with the California Department of Water Resources for water, all make payments to repay the initial costs, pay off the state’s debt and cover all of the operation and maintenance costs of running the Project. Most of the 29 contractors raise the money to make these payments from property taxes and water rates charged to customers. Thus, the Project has been financed and paid for in its vast majority by taxpayers and ratepayers across the state. The State Water Project was designed and built for economic reasons. Residents in rural and small-town Plumas



and Butte counties—where the Feather River originates and is caught and harnessed by the Project’s Oroville Dam—have long known that the rain and snow falling in their neck of the woods is used to make money in distant cities. The popular refrain in these parts is that Southern California “grabbed” the water. The refrain, however, is misleading. Although Southern California’s largest water agency, the Metropolitan Water District of Southern California, does hold the largest contractual rights to Project water, and has paid, through property taxes and water bills, the largest share of the costs, they have not actually received all the water for which they have contracted and paid.\* That’s where Kern comes in.

The Kern County Water Agency buys Project water for the largest agribusinesses in the state. And they get the water at a very low cost, softening their payments to the state through a county-wide property tax, known as a “zone of benefit” tax, which nets the Kern County Water Agency over \$12 million a year. However, the benefits for many of these taxpayers are hard to find; 20 percent of the population in Kern County lives below federal

poverty levels, and the average household income—\$35,446—is \$12,000 less than the state average.

Taking a closer look at who pays for what in the State Water Project is illuminating. Kern County Water Agency has paid an average of \$45 an acre-foot of water. Only the smaller San Joaquin agencies like Tulare Lake Basin Water Storage District and Dudley Ridge Water District—both of which are controlled by the nation’s largest agribusinesses—pay less, averaging a little under \$30 an acre-foot. Still, Kern alone has sipped up 42 percent of all the Project water delivered to the 29 contractors statewide, while paying for only 13 percent of the total costs.

Metropolitan did not get such a sweet deal. Southern California tax and ratepayers have paid for 62 percent of the total Project costs while receiving only 31 percent of the water. Metropolitan does have to pay for the construction and electricity costs of pumping a river over a mountain range, but that alone does not explain the disparity between use and cost in the State Water Project. The entire Upper Feather River area, which includes the City of Yuba, Butte and Plumas counties, for example, has

\* It should be noted that the State Water Project water rights are held by the California Department of Water Resources, not the State Water Project contractors.

received less than 0.12 percent of the water shipped down to Kern, but they pay an average of \$144 an acre-foot, over three times what Kern pays. Agencies in the North Bay area which includes Napa and Solano counties pay an average of just over \$200 an acre-foot. A quick glance at the Project financing shows: it pays to use as much as you can, punished are those who conserve.

Beyond the subsidies that are built into the financing of the State Water Project, agencies like the Kern County Water Agency rake in tens of millions of dollars from statewide water bonds. Kern was awarded \$22 million in grants from Proposition 13 in 2002 and is spending this money on improvements to the various regional canals that carry Project water to private property.<sup>4</sup>

However, Kern and Metropolitan are not satisfied with the deal as it stands. They still want more. They want to continue building hardware and plumbing, they want to trade in water like stocks, and they want to turn up the giant Delta pumps to get more water faster down their long straw and out into the fields. And they want to do it themselves, without a state agency like Department of Water Resources slowing them down.

## **STATE WATER PROJECT CONTRACTORS AUTHORITY**

In 2003, 27 of the 29 contractors with the State Water Project signed a joint powers agreement which enables them to establish a separate agency, the State Water Project Contractors Authority, or State Water Contractors. This new agency, called a joint powers authority, or JPA, is capable of exercising all the powers common to all of the member agencies. For example, if all of the members of the JPA are authorized to receive state or federal grants, then the JPA itself would be able to receive such grants.

Two of the 29 contracting agencies with the Project have a dominating political influence over the project, and have written that influence into the joint powers agreement that governs the State Water Contractors. The contracting agency that has most benefited from the Project is far and away the Kern County Water Agency. The Kern agency—formed by the earliest advocates of the Project—was created not only to purchase Project water from the state, but to lower the costs to Kern County's

largest agribusiness landowners by levying a countywide "zone of benefit" tax, which includes the urban Bakersfield area.

Kern receives a very good deal, if not an outright subsidy, and one that encourages over-use and punishes conservation. The Kern water agency contracts for 24 percent of the State Water Project's water. The Agency has actually received, however, 42 percent of the water and paid for only 13 percent of the costs of the project. Kern has paid an average of \$45 for an acre-foot of water, while the average cost for water, spread out across all the contractors, is \$147.

The Metropolitan Water District of Southern California contracts for 48 percent of the water, but has received only 31 percent while paying for 62 percent. Metropolitan has paid an average of \$298 an acre-foot for State Water Project water. Somehow, Los Angeles and Southern California home and business owners and water ratepayers have paid to send water to agribusinesses in Kern County, the largest of which is owned by one of the 50 wealthiest residents in Los Angeles, Stewart Resnick.

## **STATE WATER CONTRACTORS VIE FOR CONTROL OF THE PROJECT**

The State Water Contractors are planning to take direct control of the Project. They advocated contracting with the state to administer the Project before Governor Schwarzenegger's California Performance Review. Their advocacy resulted in a strong recommendation in the California Performance Review report for the Governor to sign an executive order removing responsibility for the administration and operation of the Project from the Department of Water Resources, placing it within a Resources Agency and then contacting it out to the State Water Contractors.<sup>5</sup> The California Performance Review team cites interviews with managers from Kern, Metropolitan and the State Water Contractors. The report's water policy recommendations do not cite interviews with any environmental or public interest organizations or advocates.

The language of the recommendation is very clear concerning the extent to which the State Water Contractors would control decision-making for the Project. The recommendation states: "Potential activities could include providing contractual services, operating and maintaining portions



of the project and acquiring water and water rights.”<sup>6</sup> The State Water Contractors’ joint powers agreement is even more explicit. The recitals state:

**Whereas,** *the Parties to this Agreement each have and possess the power to acquire, construct, operate and maintain works and facilities for the development, transmission and use of water resources and water rights including, without limitation, works and facilities to divert, store, pump, treat, transport and deliver water and to operate power facilities incidental to such pumping and delivery of water and to contract with the United States, the State of California, municipalities, districts and public and private corporations in the construction and operation of works and the provision of services for the purpose of conserving, providing and transporting water for beneficial uses...* (emphasis added).<sup>7</sup>

Article 4 describes the shared powers of the contractors further:

**Section 4.1 Purpose:** The purpose of this Agreement is to provide for the joint exercise, through the Authority, of powers common to each of the Parties, as described in the Recitals above, to provide services to and to operate and maintain, through contracts with the State, portions of the State Water Project and *to acquire, construct, own, operate, maintain and replace other facilities appurtenant thereto, to acquire water and water rights and to do all acts related or incidental thereto*, either by the Authority alone or in cooperation with the State, the United States or other entities, in order to provide for the development and delivery of water from the State Water Project to Contractors (emphasis added).<sup>8</sup>

The language is clear: the joint powers agreement specifically grants the State Water Contractors the power to build projects, acquire water and water rights as does the wording of the California Performance Review recommendation to the Governor.

The phrase “acquire water” can mean two things, both of which are issues of statewide political importance. One can “acquire water” by building things: dams to capture the fresh water of rivers, desalination plants to render ocean, sea or discharge water usable, and reservoirs and underground water banks to store captured water. One can also “acquire water” by turning it into a marketable commodity and buying it from another source that has already secured the rights and captured the water.

The State Water Contractors present their designs for the Project as purely technical. *The Los Angeles Times* reported

that “water contractors said that environmental groups are overreacting to plans for strictly operational changes in the nation’s largest state water system.”<sup>9</sup> The Contractors’ documents, however, very carefully lay out a much different and more expansive and political scope of authority.

## KERN AND METROPOLITAN DOMINATE JPA

Article 5.2 of the joint powers agreement establishes eight classes of membership in the JPA. Both Kern and Metropolitan are in a separate and independent class. This separation secures that both of these powerful agencies will have a permanent seat on the Contractor’s Board of Directors. Separating Kern and Metropolitan from their regions also increases the voting power of the south of Delta contractors.

Further tilting the balance of power to south of the Delta, the Feather River and North Bay contractors are combined into one class and the Southern California contractors—excluding Metropolitan—are divided into two classes. This membership classification scheme gives south of Delta contractors an unbreakable voting block.

Kern and Metropolitan have spearheaded the creation of the JPA and guided its crafting to solidify their grasp of power over the project. Article 3.1 of the joint powers agreement states that the agreement will become effective once Kern and Metropolitan “certify that it has been executed by five or more Contractors that have a combined total of at least seventy-five percent (75%)” of the contracts for State Water Project water. Kern and Metropolitan alone hold 72 percent of the contracts. Out of the remaining 27 contractors Kern and Metropolitan needed only to find three followers before vying to take control of the entire Project.

## STATE WATER CONTRACTORS BAD TRACK RECORD ON TRANSPARENCY AND ACCOUNTABILITY

The contractors have a clear record of working behind closed doors to redesign California water policy without public input. Kern and Metropolitan have been the principal organizers behind a series of highly controversial hidden meetings that have sought to over-

haul the policies guiding the Project. The first such meeting took place in Monterey in 1994 and led to the Monterey Amendments which have been the subject of exhaustive critique and successful litigation.<sup>10</sup> In the Monterey meetings, a select, non-inclusive group of Project contractors led by Kern and Metropolitan orchestrated the giveaway of the state's largest underground water storage facility—the Kern Water Bank—and the rewriting of the Project contracts. One change to the contracts was to delete an article that provided for the scaling back of water contract amounts in the case of the Project's inability to deliver on the full amounts.

In 2003, Kern and Metropolitan once again led a select group of contractors into unpublicized meetings with Department of Water Resources and the federal Bureau of Reclamation to discuss increasing the pumping capacity out of the Delta.<sup>11</sup> The so-called Napa Agreement that came out of these discussions also led to widespread criticism as well as state legislative hearings held by then-chair of the State Senate Agriculture and Water Resources Committee, State Senator Michael Machado (D-Linden).<sup>12</sup>

The precedence of the Monterey and Napa meetings which sought to make extremely controversial political decisions concerning the operation of the State Water Project beyond the reach of public participation and scrutiny sounds a clear alarm against increasing the ability of the dominating influence of these contractors.

Other related JPAs have also attracted serious criticism for lack of transparency. The JPA that took over the Kern Water Bank, for example, is housed in the offices of Paramount Farming Company which controls 48 percent of the JPA through its paper company, Westside Mutual Water Company, and another 9 percent through its land ownership in the Dudley Ridge Water District, where Paramount executives control the Board of Directors. Paramount's vice president, William Phillimore, is also chair of the Kern Water Bank Authority JPA.<sup>13</sup>

Elsewhere in the state JPAs have exhibited similar problems. The *Sacramento Bee* recently published an editorial detailing the lack of accountability in the Association of California Water Agencies Joint Powers Insurance Authority. The JPA's resulting legal problems will lead to higher water costs for ratepayers across the state.<sup>14</sup>

## **STATE OVERSIGHT NEEDED TO PROTECT THE DELTA**

The Sacramento-San Joaquin Delta is the largest estuary on the West Coast. Drinking water for about two-thirds of the state's population and irrigation water for over 7 million acres passes through the Delta. It is also one of the most heavily managed estuaries in the world, making its altered ecosystem extremely fragile. Over the past few decades salt water incursion, pesticide drainage and industrial pollution have severely deteriorated water quality in the Delta. The drop in water quality, the introduction of non-native predators and invasive plant species, and the massive pumps that lift water out of the South Delta have all contributed to the decimation of Delta fish species such as the delta smelt and the striped bass. To address the water quality and endangered species problems in the Delta, Congress enacted the Central Valley Project Improvement Act in 1992, and the state and federal government created the CALFED program in 1994. The select group of contractors who met in private in Monterey and Napa propose to increase the amount of water pumped out of the Delta. Such increases would have devastating impacts on water quality and endangered species protection in the Delta. Moreover, the highly exclusive manner of making such decisions threatens the CALFED process. These contractors should not be given direct control over the Project with a permanent, unbreakable south of Delta voting block. State oversight is needed to balance the competing demands on the project, and prevent irreversible damage to the Delta.

## **STATE WATER PROJECT POLICY LACKS STATEWIDE SCOPE**

Kern and Metropolitan both represent unique perspectives and should not be entrusted with the overall management of the state's largest and most important water project. The State Water Contractors cannot be reduced to Kern and Metropolitan, but it is clear that these two agencies wield tremendous influence in the JPA. The State Water Project has statewide implications both in terms of the drinking and irrigation water it provides and in terms of its environmental and economic impacts on various regions throughout the state and should be managed by a transparent and accessible state agency charged with balancing various demands in light of statewide impacts. The Department of Water

Resources' mandate should be strengthened to address existing imbalances in the Project.

To date, the North of Delta and Delta regions have borne the near entirety of the direct negative environmental and economic impacts of the project and reaped scant amounts of the economic benefits. Kern County agribusiness, on the other hand, has secured the lion's share of the economic benefits, and has distributed those benefits in a highly inequitable manner. Since the State Water Project began pumping subsidized water to Kern County agribusinesses, the concentration of landownership has steadily increased, numbers of farms have decreased and rural poverty indicators have increased. It

is unjust when state subsidized irrigation water exacerbates the division between wealth and poverty, but it is truly offensive when the multi-billion dollar state water infrastructure carries water within miles of low-income rural communities of predominantly farm laborers who struggle with some of the worst water quality and access problems in the state.<sup>15</sup>

Now is not the time to give control of the State Water Project to those who use a smaller and smaller lens through which to view the statewide water supply, water quality, social and environmental problems facing the Project and the millions who drink from its tap.

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## RECOMMENDATIONS:

### *Maintain and strengthen state oversight*

The Department of Water Resources should retain management of the State Water Project and its mandate should be strengthened in accordance with the state's public trust responsibilities to balance the statewide environmental and economic impacts of the Project and to ensure that major water policy decisions are made in a transparent and accessible way. The State Water Contractors should not take over operation and maintenance of the State Water Project.

### *Redress imbalance in the Project*

The Department of Water Resources should exercise its scope of authority over the Project to redress imbalances that have resulted in disproportionate negative socio-economic and environmental impacts in the areas where the waters originate and in the farm-working communities near the San Joaquin contractors' agribusinesses. These communities, both from the north and the south, have consistently been cut out of the policy debates surrounding the Project, including the recent Monterey and Napa meetings.

### *Enforce public meetings law*

Existing law—Government Code 6527(e)(5)—requires all joint powers authorities to conduct meetings in public in accordance with the Ralph M. Brown Act. The State Water Contractors must be held accountable for holding their meetings in open and accessible locations with proper public notice. State agencies such as the Department of Water Resources and federal agencies such as the Bureau of Reclamation should refuse any meetings that are not properly notified, open and accessible to the public.

### *Reform joint powers authority law*

Existing law—Government Code 6525—enables a mutual water company to enter into a joint powers agreement with any public agency for the purpose of exercising common powers. The law has formed the basis for private corporations to take over ownership of public property, take advantage of access to public bond funds and evade paying property taxes. This law should be repealed or amended to only allow mutual water companies who provide potable water services to residential users to join into joint powers agreements to share common powers.

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- <sup>1</sup> Daryl Kelley, "Battle Looms Over State Water Project," *Los Angeles Times* December 26, 2004.
- <sup>2</sup> Ronnie Cohen *Et. al.*, *Energy Down the Drain: The Hidden Costs of California's Water Supply* (Oakland: Natural Resources Defense Council and Pacific Institute, August 2002), 2.
- <sup>3</sup> Robert Fellmeth, *Politics of Land*. (New York: Grossman Publishers, 1973), 158.
- <sup>4</sup> Water Association of Kern County, "Proposition 13 Grants Awarded to Several Kern Interests." July 2002. Available online at: <<http://www.wakc.com/~p13grants.htm>>.
- <sup>5</sup> California Performance Review, INF07. See recommendations A, C and D. Available online at: <<http://cpr.ca.gov/report/cprprt/-issrec/inf/inf07.htm>>.
- <sup>6</sup> *Ibid.*
- <sup>7</sup> State Water Project Contractors Authority, Joint Powers Agreement. Unsigned copy dated 20 June 2003, 1.
- <sup>8</sup> *Ibid.*, 3.
- <sup>9</sup> Daryl Kelley, "Battle Looms Over State Water Project." *Los Angeles Times* December 26, 2004.
- <sup>10</sup> For more information on the Monterey Amendments, see Tim Strohane, "Monterey Agreement: A Bloodless Coup," *Spillway: California Water, Land and People* 1, no.2 (2000) and *Planning and Conservation League v. Department of Water Resources* (15 September 2000) 83 Cal. App. 4<sup>th</sup> 892, 912-913.
- <sup>11</sup> Mike Taugher, "Water proposal pumps it south." *Contra Costa Times* August 07, 2003.
- <sup>12</sup> Mike Taugher, "Tapping of Delta waters opposed." *Contra Costa Times*, August 19, 2003 and Mike Taugher, "State committee looks into Delta water deal." *Contra Costa Times*, September 10, 2003.
- <sup>13</sup> John Gibler, *Water Heist: How Corporations are cashing in on California's Water*. Public Citizen, Oakland, 2003.
- <sup>14</sup> Editorial, "Unisex stupidity." *Sacramento Bee*, December 02, 2004.
- <sup>15</sup> See: California Department of Water Resources, *Californians Without Safe Water* (Sacramento: Department of Water Resources, 2003); Dean MacCannell, "Industrial Agriculture and Rural Community Degredation [sic]", in Louis E. Swanson, ed. *Agriculture and Community Change in the U.S.* (Boulder: Westview Press, 1988), 15 and 17; Dean MacCannell and Jerry White, "The Social Costs of Large-Scale Agriculture: The Prospects of Land Reform in California," in Charles C. Geisler and Frank J. Popper, eds., *Land Reform, American Style*. (Totowa, New Jersey: Rowman & Allanhead, 1984), 39; and John Gibler, "Not a Drop to Drink," *Terrain Magazine*, Winter 2005.
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