



July 20, 1995

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RE: Draft Environmental Impact Report for Implementation of the Monterey Agreement

Dear Mr. Masnada:

Behind closed doors, a group of State Water Project (SWP) contractors, the Central Coast Water Authority (CCWA), and the Department of Water Resources (DWR) drafted the Monterey Agreement, a complex set of principles which, if implemented, would apparently have far-reaching implications for the future of the SWP. The Environmental Defense Fund (EDF) recognizes that SWP reform may be desirable, and generally would support efforts to ensure greater reliability, efficiency, and financial integrity for the SWP and its contractors. Unfortunately, we do not feel that we have sufficient information to decide whether the Monterey Agreement negotiators successfully achieved these worthwhile goals. Moreover, we feel the Draft EIR on the implementation of the Monterey Agreement inadequately addresses, or does not address at all, a host of important issues.

Because of the short comment period, the press of other major events affecting California's water resources, and the inability to schedule desired briefings, we have not yet had the opportunity to analyze the Agreement and the Draft EIR in detail. We will therefore focus our initial comments on (1) the financial restructuring provisions of Principle 5 and (2) the buildout provisions stated explicitly in Principle 12 and implied in Principle 2(b). We also intend to submit further comments as we learn more about the Agreement and the Draft EIR. We therefore respectfully request that you postpone the closing of the comment period and, if necessary, open the Agreement to other participants to allow both time and opportunity for a full airing of relevant issues and concerns.

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## 1. Principle 5: Financial Restructuring

We have a number of concerns and questions about Principle 5, which allocates funds to the SWP's urban and agricultural water contractors.

*Disbursement of Funds* We do not believe the California Water Code allows the parties to disburse funds to SWP contractors as provided for in the Agreement. California Water Code § 12937(b) explicitly states that "[a]ll revenues from the sale, delivery or use of water or power, and all other income or revenue... [derived] from the State Water Resources Development System" may be used *only* for specified purposes in the following order of priority: 1) maintenance and operation; 2) annual payment of the principle of and interest on the bonds; 3) transfer to the California Water Fund as reimbursement for funds used to build the SWP; and 4) acquisition and construction of water facilities. Nowhere does the statute provide for "rebates" to SWP contractors, as Principle 5 would do.

Unlike rebates to the contractors, however, funding for environmental improvements is contemplated by California law. Section 11900 of the Water Code states: "The Legislature finds and declares it to be necessary for the general public health and welfare that preservation of fish and wildlife be provided for in connection with the construction of state water projects." In light of this explicit finding and declaration, EDF believes that, at the very least, any reshuffling of SWP funds can and must provide, as a priority, for environmental mitigation and restoration.

Not only does the statute authorize environmental improvements, but the SWP contractors have already committed to it. The December 1994 Bay-Delta Accord, signed during the same month as the Monterey Agreement, commits to funding a \$180 million program of so-called "Category III" improvements. SWP contractors (and other signatories to the Bay-Delta Accord) thus far have been unable or unwilling to find sufficient funds to fulfill this Category III commitment.<sup>1</sup> At a minimum, full consideration should be given to addressing this commitment through an explicit dedication of SWP rebates or similar sources of funds. Moreover, as part of any long-term Bay-Delta solution, an Ecosystem Restoration Trust should be created to oversee continued environmental funding and improvements. Both Category III and the Restoration Trust could also serve, in whole or in part, as a mechanism through which the state would meet some or all of its cost-share obligations under the 1992

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<sup>1</sup>We do acknowledge and commend the \$10 million per year committed in advance by the Metropolitan Water District of Southern California. We are also in receipt of a preliminary draft "Summary of 1993 Bay-Delta Costs Paid by State Water Project Contractors." Unfortunately, we do not understand the basis for this compilation, nor its relationship (if any) to the Category III commitment.

Central Valley Project Improvement Act. (Additionally, California's environmental mitigation and restoration efforts could be enhanced by coordinating the Category III, Bay-Delta Ecosystem Restoration Trust, and CVP Restoration Fund implementation efforts.) None of these issues or alternatives is addressed by the Monterey Agreement or the Draft EIR.

**Supporting Data** We are unclear about how the figures in Principle 5 are derived. Exhibit A, entitled "State Water Project Payment Management Program," apparently uses a variety of revenue and other data from DWR Bulletin 132-93. This Bulletin contains a great deal of information. On what data, specifically, do the Exhibit A figures rest? Assumptions about construction of future water facilities, water delivery commitments, water rates, and interest rates should be provided in explicit detail. In addition, DWR has failed to provide documentation demonstrating that reimbursement to the California Water Fund, including interest payments, will in fact be complete before money is disbursed to the SWP contractors. In short, a complete exposition of the Draft EIR's assumptions, data sources, and methodologies is necessary. The financial restructuring of the SWP should not be based on figures produced from "black box" calculations.

## **2. Completion of the State Water Project**

The Draft EIR entirely omits any discussion of the environmental impacts of completing the SWP. Principle 12 of the Agreement explicitly calls for completion of the project. Principle 2(b), by deleting Article 18(b) of the SWP water supply contracts, implies completion of the project. (Article 18(b), if invoked, would result in the reduction of entitlements to conform with the amount of "wet water" the existing SWP can provide.) The Draft EIR's failure to consider the environmental impacts of these important Principles is the most salient example of the Draft EIR's inadequacy.

## **3. Other Concerns**

EDF agrees with many of the comments submitted to the Central Coast Water Authority by others interested in the implications of the Monterey Agreement. The Planning and Conservation League, for example, raised a number of excellent points. (Letter to the Central Coast Water Authority, 6/21/95.) Among other matters, we agree with PCL that the Draft EIR lacks the specificity necessary for the Monterey Agreement to be carried out without further environmental review.

Citizens Bob Wilkinson, Carolee Krieger, and Arve Sjøvold also raised a number of important concerns. In particular, we agree with them that the Draft EIR fails to address

adequately the SWP reform alternatives to the Agreement, such as the invocation of Article 18(b). Moreover, we share their skepticism that Principle 13 is workable: how will DWR allocate water and other "benefits" to some contractors under one set of rules and to other contractors under another set of rules? Finally, we are concerned about transferring control of portions of the SWP to the contractors. Although we are not necessarily opposed to this concept, we do not think it should be done in the piecemeal fashion suggested in the Agreement, nor without a full evaluation of other possible alternatives.

Finally, the Monterey Agreement Draft EIR makes only cursory efforts to consider a comparatively narrow range of alternatives: litigation (which seems more like a means of achieving change rather than an alternative in itself); transfers of entitlements; increased water extraction from the Delta; construction of more water projects; and state subsidies to relieve contractors. (Pages 2-15 to 2-17.) Even these few alternatives were summarily dismissed. Additional alternatives abound, however, and many of them deserve attention. A good starting point for discussions would be consideration of the twenty options for restructuring the SWP that Dennis O'Connor explored in his California Research Bureau publication entitled "Financing the State Water Project: Options for Change."

In summary, EDF concludes that the Draft EIR for the implementation of the Monterey Agreement does not adequately address crucial environmental, financial and operational issues. Nor has the Central Coast Water Authority afforded interested parties sufficient time or opportunity to formulate the in-depth review and analysis warranted by the complexity of the Monterey Agreement Principles.<sup>2</sup> We urge the signatories to the Monterey Agreement to push back the deadline for comments on the Draft EIR, to postpone the CCWA's consideration of a final EIR, and most importantly, to engage in a true consensus-based dialogue on appropriate SWP reform.

Sincerely yours,



Thomas J. Graff  
Senior Attorney



David Yardas  
Senior Analyst

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<sup>2</sup>As we were finishing this letter, we received notice that the CCWA board will consider certification of the final EIR on August 24, 1995. It is, at best, highly premature for the CCWA board to consider certification of a final EIR when the drafters have not even begun to address the questions and comments raised in conjunction with this draft EIR.