

# **Lawsuit seeks return of millions for failed Delta protection plan**

**Mike Taugher, Contra Costa Times, 6-4-10**

A coalition of Delta farmers and environmentalists sued Thursday to recoup millions of dollars in taxpayer money they contend was paid illegally to Kern County landowners who sold water to a failed Delta environmental protection program.

The lawsuit, the latest salvo in an increasingly chaotic and bitter statewide fight over Delta water, also seeks to force Kern County landowners to return a giant underground reservoir to public ownership and to undo a 16-year-old pact between state water officials and their customers. That agreement, the litigants say, is destroying the Delta ecosystem and enriching Kern County landowners.

Known as the Monterey Agreement, it changed how a sprawling, state-owned water project delivers Delta water to parts of the Bay Area, Kern County, Southern California and other parts of the state.

The agreement gave Kern County landowners the underground reservoir and more reliable water supplies while also increasing the amount of water pumped out of the Delta, the lawsuit contends.

"It's like Chinatown, on steroids," said California Sportfishing Protection Alliance director Bill Jennings, referring to the 1974 Jack Nicholson film that depicted Los Angeles' infamous raid on Owens Valley water in the early 20th century.

A spokesman for the state Department of Water Resources said lawyers there had not received a copy of the complaint and could not comment on it. The Kern County Water Agency also declined to comment Thursday and representatives of Paramount Farms, a private business with a major stake in the underground water bank, were unavailable.

The lawsuit was filed this week in Sacramento Superior Court because the state Department of Water Resources only recently completed the environmental approvals needed to complete transfer of the bank and other elements of the agreement. Despite the lengthy delay in completing the environmental impact report, the changes have been in effect since 1996.

Specifically, the lawsuit seeks to invalidate the environmental report and return to state ownership the 1 million-acre-foot Kern Water Bank — 10 times the size of Los Vaqueros Reservoir near Brentwood.

It also seeks to undo other changes made at the Monterey meetings, including one that increased the reliability of Kern County's water deliveries and another that eliminated a contract provision that would allow the state to permanently trim contracted water deliveries. Several reservoirs envisioned when the contracts were written were never built, the litigants said.

"We've handed out promises to people that can never be met," Jennings said. "We're living essentially an illusion."

The lawsuit's allegation that Kern County landowners illegally profited from sales to an environmental water account was based on a Bay Area News Group investigation last year that showed the bank was used to facilitate the sales.

Landowners and Kern County water agencies were able to sell tens of millions of dollars worth of water to the Department of Water Resources for more than they paid the department for the same water.

So much water was pumped out of the Delta from 2000 to 2007 that, in most cases, Kern County water agencies did not have to physically deliver any water. Instead, they only had to make accounting adjustments and collect the difference between what they paid, which could be as low as \$28 per acre-foot, and what they sold the water for, which was typically about \$200 per acre-foot.

Environmentalists blame the increased pumping for the precipitous decline of Delta fish species that were supposed to be helped. Delta water users contend the pumps were not to blame.

The newspaper investigation found \$8.6 million in credits, checks and refunds that were distributed from the water districts to private landowners, including more than \$3 million each to Paramount Farms, owned by billionaire Stewart Resnick, and Blackwell Land LLC.

The lawsuit seeks return of those sums, but the lead lawyer for the coalition that filed it said they would seek the return of "every cent" in profits for water sold through the Kern Water Bank, including sales of water to developers.

"We have this group of fat cats that have been stockpiling water in their own slush fund that they had no right to possess," said Adam Keats, a senior attorney in San Francisco for the Center for Biological Diversity.

"These guys have been operating as if they own this thing, but the entire time their ownership was dependent on the (environmental) document."

Joining the environmental group in the lawsuit are two Delta farm districts, the Central Delta Water Agency and the South Delta Water Agency, the California Sportfishing Protection Alliance and the California Water Impact Network, and two individuals.