

# "Chinatown II"? Water bank sued as wells go dry

*Kern Co. districts, others say key deals were illegal.*

**Mark Grossi, Fresno Bee, 9-5-10**

A story worthy of Hollywood will soon unfold in California courtrooms -- allegations of government corruption and corporate greed to rival the infamous Los Angeles water grab that inspired the film "Chinatown."

Call it "Chinatown II," a tale beginning 15 years ago -- when, according to lawsuits filed in the last three months, the state illegally turned over the publicly owned Kern Water Bank to an agency controlled by giant corporations in a backroom deal.

Defendants say the charges, like the movie, are mostly fiction. But environmentalists and others who are suing say innocent people have been hurt while big landowners reaped big profits.

Kern Water Bank owners stored water from Northern California rivers in a vast underground aquifer and made millions of dollars selling it back to the state and farmers during the recent drought, environmentalists say.

And by pumping water out of the aquifer, they dried up wells at neighboring homes, say plaintiffs, who include neighboring Kern County water districts. Residents are scrambling for loans to drill deeper wells. Some are losing homes.

"People are suffering, just like they did during the 'Chinatown' debacle," said Carolee Krieger, a Santa Barbara activist and plaintiff. "Private businesses are hoarding it and selling it for huge amounts of money."

Filed by the Tucson, Ariz.-based Center for Biological Diversity, Northern California water districts and a fishing group, two lawsuits seek a court order putting the bank back in state hands. They allege the water bank is controlled by two corporations -- Roll International, owned by billionaire Beverly Hills businessman Stewart Resnick, and Tejon Ranch Co., one of the largest private landowners in California.

A third lawsuit, which includes the Kern water districts, asks the court to stop pumping from the water bank and require further analysis to determine how much water can be pumped without drying up neighboring wells.

Environmentalists and Kern County water districts around the water bank say a state environmental impact report did nothing to protect the neighbors.

State officials won't discuss pending litigation. But representatives for Resnick and Tejon say the transfer of the bank and its operation are completely legal.

And William Phillimore, executive officer of Resnick's Paramount Farms in Bakersfield, said the owners have since invested at least \$30 million.

In return, California now has the largest underground water storage in the country -- perfectly located in the southern San Joaquin Valley -- to ease south-state shortages during droughts.

"We got a great deal of praise for taking the chance 15 years ago and making it work," Phillimore said. "I don't

understand why we are such a target now."

### **Wells running dry**

Gaylord Beeson won't forget the Kern Water Bank or July 29, the day his productive water well went dry. Nor will the 32 northwest Bakersfield customers in his small water association.

He blames heavy pumping by his neighbor, the water bank. The water table has dropped 115 feet in the last three years -- something that in the past would have taken two decades.

Officials at Rosedale-Rio Bravo Water Storage District agree, saying water bank withdrawals changed the regional underground flow and created a huge dip in the water table.

Water levels in Rosedale are the lowest since the district was formed in 1959, even though the district has pumped surplus water into the ground, said General Manager Eric Averett, whose district has filed suit to stop the pumping.

Despite the Kern Water Bank problems, Averett and most area water officials think water banking is a good idea. Kern County has the ideal geology for it.

The Kern Water Bank is spread over 32 square miles on the Kern River's sandy alluvial fan, which is thousands of feet deep with the Valley's impassable bedrock below. It can trap more than 300 billion gallons of water -- twice as much as Millerton Lake near Fresno.

In the last three decades, the concept has been the political darling of bureaucrats and politicians, especially after a damaging six-year drought ended in 1992. Water banks are considered ecologically benign and cheap compared to building a dam and creating a new reservoir in a mountain canyon. They also minimize loss of water due to evaporation.

But the state couldn't make it work in the late 1980s and early 1990s. Kern County wouldn't give the necessary approval, mostly because surrounding landowners were afraid of having their wells dry up.

As part of the California State Water Project's collection of reservoirs, canals and pumping plants, the state already had invested \$74 million in the banking project -- which was going nowhere.

Ironically, a drought provided them a way to unload the project, which hadn't begun operation yet.

### **History of water bank**

A drought that hit the state from 1987-92 started talk of a lawsuit among Kern growers, who suffered more severe cutbacks than cities. The State Water Project favored cities over farms in dry times, and growers wanted that to change.

The state headed off the lawsuit in 1994 by renegotiating contracts to put cities and farms on more equal footing. The talks took place behind closed doors in Monterey -- secrecy that state officials have said was justified because the talks involved legal negotiation.

In the process, the water bank wound up in the hands of the Kern County Water Agency, one of the biggest state project customers.

To get the bank, the Kern agency gave up an allotment of 45,000 acre-feet of state water annually, a right worth about \$30 million as part of the State Water Project. Activists say it was not a big price to pay, especially since farmers weren't getting much of that water anyway due to continuing shortages.

To many, it seemed clear the water bank deal was in the works before the negotiation. The Kern County Water Agency obtained the bank Dec. 13, 1994. The next day, it was turned over to another public agency, the newly formed Kern Water Bank Authority, the lawsuits say.

The bank authority includes the Kern County Water Agency, Dudley Ridge Water District, Semitropic Water Storage District, Tejon-Castac Water District, Westside Mutual Water Co. and Wheeler Ridge-Maricopa Water Storage District. Though technically public entities, votes are divided according to land holdings -- corporations with the most land get the most votes.

Authority officials spent \$30 million on wells, canals and other facilities for the bank, which now has stored more than 1.2 million acre-feet of water.

The authority pumped out hundreds of thousands of acre-feet during the most recent drought, starting in 2007, according to surrounding districts. Wells began drying up near the bank, they said.

When the surrounding water districts complained to the oversight committee of the Water Bank Authority, they were stonewalled, district officials said. Water bank pumping did not slow down, they said.

Dan Bartel, general manager of Buena Vista Water Storage District, which also has dry wells and is a plaintiff in one lawsuit, said he understands that the Kern bank authority needed to deliver water to its predominantly agricultural customers.

"But you can't hurt your neighbors like this," Bartel said.

### **NorCal weighs in**

In Northern California, there are sore feelings, too. Northern water districts, fishing representatives and farmers didn't like the idea of private corporations getting delta water to turn a profit at times when salmon runs dwindled and water shortages hit many areas.

Northern districts don't like the 1994 Monterey amendments, which made it easier for state project customers to get cheap extra water from the Sacramento-San Joaquin Delta during big rainfall years.

When the water was available, as it was in 2006, the cost was just the electricity it took to pump the water. Nearly half a million acre-feet of this cheap water went to Kern County that year, according to one of the lawsuits.

In drought years, the state spent at least \$8.6 million buying back water from the Kern Water Bank, the lawsuit says.

The bank's water is mostly used by agriculture, unlike the "Chinatown" scenario in which Owens Valley water was used to help Los Angeles expand.

The use of Northern California water for agriculture in the dry southern San Joaquin Valley rankles water district officials in the delta. Even in a wet year, delta water officials say more water is needed to help the

ecosystem recover.

Stockton-based lawyer Dante Nomellini of the Central Delta Water Agency, representing farms and other customers, said the bank's actions amount to an attack on delta water supplies. The agency is a plaintiff in the legal action.

"We view this as corruption," he said. "Something is just not right about this."

### **Stories are similar**

The most striking parallel between the Kern Water Bank and the "Chinatown" story in the Owens Valley: Landowners control the water rights.

The Owens Valley, on the east side of the Sierra Nevada, was dried up as its water was funneled to Southern California in the 400-plus-mile Los Angeles Aqueduct.

The headlines about the Owens Valley often focused on violence, sabotage and a failed dam. But the issues really began years before when the Los Angeles Department of Water and Power quietly gained the rights to Owens Valley water by purchasing tracts of land.

Resnick's Paramount Farms controls 58% of the water bank through property ownership in Westside Mutual Water Co. and Dudley Ridge Water District, the lawsuits say.

Through continuing farmland purchases, Paramount owns 120,000 acres, company officials say, making Resnick one of the biggest farmers in the state.

Tejon Ranch controls another 26% in the same way, the lawsuits say. The company plans the state's largest development -- Tejon Mountain Village, nearly 3,500 homes, dining, shopping and other amenities in the Tehachapi Mountains of southern Kern County.

Barry Zoeller of Tejon Ranch Co. disputes the lawsuits, saying his firm is a minor player with only 2% control of the water bank. The company controls only the Tejon-Castac Water District, he said.

But the legal action says Tejon Ranch also is the majority landowner in the Wheeler Ridge-Maricopa Water District, which controls 24% of the water bank.

The legal action also alleges the Tejon Mountain Village will rely on water from the bank. Zoeller said the bank's water is only a fallback plan -- its current State Water Project allotment should suffice.

Phillimore, the Paramount executive who is also chairman of the Kern Water Bank Authority, said there is nothing wrong with state project facilities being run by state water contractors. He said everyone in the Kern area was asked about participating in the water bank.

"In the end, many of them declined, because they felt it was too risky," Phillimore said. "Only six invested the money and effort."

Now Bakersfield resident Beeson, 62, must invest \$100,000 in a new well. Others have to buy water daily and hope they can hook up with a local water system, but that's expensive, too.

"This is morally wrong," Beeson said. "These water bank districts are storing and manipulating a huge water supply. How do we stop this?"

There is very little state regulation of underground water reserves. California groundwater is among the least regulated in the West.

Phillimore said the Kern Water Bank Authority is protecting the area. He said the authority has put in far more water than it has removed. He says the bank has actually added to Kern's underground water supply.

But, for neighbors, the key is how fast the water is taken out. They say this issue is a red flag for any region considering a water bank.

"It's got to be done in a reasonable, sustainable fashion," said Averett of Rosedale-Rio Bravo Water Storage District. "In other words, you need to make sure you're not impacting your neighbors or the environment."