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Joan Claybrook, President

April 21, 2005

Assemblywoman Lois Wolk, Chair
California State Assembly
Committee on Water, Parks and Wildlife
1020 N Street, Rm 160
Sacramento, CA 95814

RE: AB 1245 (Wolk) –Oppose

Dear Chairwoman Wolk and Committee Members,

On behalf of Public Citizen, which has over 160,000 members, 35,000 of whom are Californians, we write in regards to Assembly Bill 1245, which would establish in the State Treasury the California Bay-Delta Environmental Water Account Fund (EWA Fund). We oppose the EWA Fund as structured on the grounds that it will not have the desired beneficial environmental impacts, that it is an inappropriate use of scare state funds and that it will create a water market in California with harmful socio-economic and environmental consequences.

We would like to commend Assemblywoman Wolk for her leadership in addressing endangered species and water quality concerns in the Sacramento-San Joaquin Delta, but strongly feel that the EWA Fund will not be successful in improving species protection in the Delta.

State would become broker in water market, betray public trust responsibilities

The State of California holds all water resources in trust for the people of California. No individual or company is able to own, buy or sell water. Various entities have rights to *use* water, not to own it. When residents pay their water bills they pay for the service of water delivery, not the water itself. Water industrialists are pushing, however, to make way for water marketing in California under ambiguous titles such as “water transfers” and the “environmental water account.”

The EWA Fund would sanction a contradiction: allowing the State of California as public trust guardian to become, in effect, the water market auctioneer. The EWA Fund would commodify water, allowing for its purchase and sale independent of service provision. Such a market, harkening back to California’s ill-fated experiment with energy

deregulation, could lead to speculative trading in water itself and even water futures, or “paper water”—contracts for water that has yet to fall to the earth as rain or snow.

EWA benefits Los Angeles businesses, not delta smelt

The existing EWA operations are already cause for alarm. In August 2003, the *Bakersfield Californian* reported that of the water purchased south of the Delta, “The biggest local player in the EWA market is usually Paramount Farming Company, which not only sells major amounts of water through its Westside Mutual Water Co., but is also one of the sellers in Berrenda Mesa, [a water district that receives State Water Project water through the Kern County Water Agency]” (Vic Pollard, “County farmer’s tap new cash crop—water.” *Bakersfield Californian* August 09, 2003). Department of Water Resources records for EWA water purchases for fiscal year 2000-2001 alone show that Westside Mutual Water Company sold 36,000 acre-feet for a total of \$7,950,000.

Paramount Farming company is privately owned by one of the fifty wealthiest residents of Los Angeles, Stewart Resnick, whose collected agribusinesses constitute the largest privately owned agribusiness in the United States and whose private holding company, Roll International, recently purchased the one of the highest selling imported bottled water companies in the United States. Paramount owns around 100,000 acres of land and receives State Water Project water through five of the Kern County Water Agency’s 13 member units. This makes Paramount perhaps the single largest potential benefactor from a taxpayer funded EWA. Their benefits increase sharply however when they are also among the largest *sellers* of water to the EWA.

Where does Westside Mutual Water Company get the water to sell ? Westside owns 48-percent of the formerly-state owned Kern Water Bank. Since the years directly preceding the 2000 implementation of the EWA were unusually wet years, Paramount Farming was able to store its State Water Project water in the Kern Water Bank. In the subsequent years when the Delta pumps needed to be slowed down to protect fish, California taxpayers paid the largest privately owned agribusiness in the United States, through their wholly owned subsidiary, Westside, to pump their “surplus” water back out of the ground. It is even possible for taxpayers to pay Westside to pump water to other parcels of Paramount Farming’s own property. This is precisely the sort of shell game with California’s vital water resources that the state should prevent in its role as guarantor of the public trust.

No proven environmental benefits

The Environmental Water Account (EWA), as established in 2000 by the CALFED Record of Decision has been in operation for four years. The EWA had two goals: 1) to curtail the killing of endangered fish species at the state and federal pumps in the South Delta and 2) to ensure no net loss of water delivered to state and federal project contractors as a result of fishery protection actions. State and federal taxpayers paid for the program. In four years the EWA has proven successful in protecting water supply reliability for contractors and unsuccessful in protecting fish.

Over the past four years the already low numbers of monitored endangered fish species in the Delta has dropped even further. There are no existing studies that provide solid evidence of fish benefits due to EWA operations. In fact, after four years of experimentation, the EWA Technical Review Panel expressed “frustration” at the lack of scientific research to support the EWA.

The EWA is unable to fulfill its beneficial fishery goals as a result of being subjected to water reliability for state and federal contractors downstream of the Delta [12929.49(e)(1)]. The pumps are slowed down infrequently and at short intervals and do not have significant fish population benefits. The National Oceanic and Atmospheric Administration recently wrote that the EWA impacts on salmon, for example, “would be too low to detect.”

If the EWA were solely a water reliability program that complied with water quality standards and endangered species law, financed by the contractors, we would not have our present concerns about the lack of proactive beneficial environmental impacts. With the EWA presented as an “environmental” program, however, we are concerned that tens of millions of state taxpayer dollars—in a time of universal cutbacks in local and state budgets—will be siphoned off to, in essence, pay for businesses to comply with the Endangered Species Act.

EWA Fund steps out of CALFED as mitigation for increased pumping

In July 2003, a group of select state and federal water contractors circumvented the CALFED process and met behind closed doors with state and federal agencies to approve a plan to increase Delta pumping. The so-called Napa Agreement that came out of these discussions led to widespread criticism of the contractors’ clear intentions to work outside of CALFED to achieve their water supply objectives, to the neglect of the environment.

The EWA was one of the more controversial aspects of CALFED. Taken out of the context of CALFED, the EWA Fund would become a taxpayer mitigation fund for the planned increase in Delta exports pursued—independent of CALFED—by the contractors. The EWA Fund would enable contractors to justify their increased pumping rates as part of “operational flexibility.” Such flexibility is doubtless a good idea, if the projects intend to comply with species law, but it is not an environmental program. It is simply obeying the law.

EWA does not reduce conflict

Assembly Bill 1245 declaration (c) states that the principle reason to make the EWA permanent is because “the EWA’s operations can reduce the risk of conflicts over the effects of SWP/CVP operations on the delta’s fishery resources.” Looking over the past four years of EWA operation, the reduction of conflict can only be understood to mean the reduction of contractor protests and lawsuits. The environmental community has

consistently expressed concern over the operation of the EWA (see, for example, studies published in 2001 and 2002 by the Bay Institute and Public Citizen's critical position on the EWA in a 2003 report, *Water Heist*). Beyond the existing conflict over the EWA, we do not think that tens of millions of taxpayer dollars should be spent to soften conflicts while the reasons behind the conflicts remain unaddressed.

Protect the Delta, study the ecosystem

As the Committee Members are well aware, the Delta is the largest estuary on the West Coast and provides a supplemental supply of drinking water for about two-thirds of the state's population and irrigation water for over 7 million acres. It is also one of the most heavily managed estuaries in the world, making its altered ecosystem extremely fragile.

The *Sacramento Bee* recently wrote in a February 15, 2005 editorial, "Delta in distress"

Southern California's Metropolitan Water District and other water exporters have been aggressively pushing government officials to increase the rate of Delta pumping, particularly in the summer. A more flexible pumping regime may prove helpful, even though it may not produce more water for exporters. But the Delta is complex and fragile. If new and better science and changing environmental conditions are to guide water policies, this is a time to pause and figure out what really is happening in this unique resource, not a time to add new stresses to it.

We agree that now is the time to study deeply and act cautiously. The EWA Fund would do neither. Please vote "no" when AB 1245 is heard in your committee. Thank you for your consideration.

Sincerely,

John Gibler
Policy Analyst

cc: Senators Machado and Kuehl