

HEARING OF THE LITTLE HOOVER COMMISSION  
ON GOVERNANCE OF THE CAL FED  
BAY-DELTA PROGRAM

TESTIMONY OF  
THOMAS J. GRAFF, CALIFORNIA REGIONAL DIRECTOR,  
ENVIRONMENTAL DEFENSE

ON

THE SCARCITY OF LOW COST WATER IN CALIFORNIA

SACRAMENTO, CA

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Thomas J. Graff  
California Regional Director  
Environmental Defense  
5655 College Avenue  
Oakland, CA 94618  
510-658-8008  
[tgraff@environmentaldefense.org](mailto:tgraff@environmentaldefense.org)

CHAIRMAN ALPERT, MEMBERS OF THE COMMISSION:

I am Thomas Graff, California Regional Director of Environmental Defense, a national non-profit environmental advocacy organization dedicated to the protection and restoration of the environment. My personal credentials relevant to today's hearing include past service on the following boards and commissions: the Colorado River Board of California (appointed by Governor Edmund G. Brown, Jr.); the National Research Council's Commission on Geosciences, Environment and Resources and its Committee on Western Water Management; the Citizens Advisory Committee to the San Joaquin Valley Drainage Program; the Bay Delta Advisory Council; and the Commission on Transportation Investment (appointed by Governor Pete Wilson).

It is an honor to have been selected to appear as a witness before you here today on a topic of such great importance to the future of California and the nation: the governing structure for water resources management affecting the greatest estuarine system on the west coast of the Americas, the San Francisco Bay/Sacramento – San Joaquin Delta.

I. The Levees

Since Governor Schwarzenegger asked you to pursue this subject, the nation and the

world have watched with horror as two great hurricanes brutally assaulted our nation's Gulf Coast and caused untold human and economic hardship, most notably in one of our country's great cities, New Orleans. It is likely too early to proclaim with any certainty what lessons should be drawn from the breach and overtopping of the levees protecting New Orleans. It is not too early to proclaim, however, that the choices our political and economic system made in the past were inadequate to save New Orleans from the devastation wrought by hurricanes Katrina and Rita and that it is crucial in California as elsewhere to examine the choices we have made to protect our residents from the effects of devastating floods.

To prepare my own testimony, I decided that my first task should be to read the submitted testimony of all who spoke at this Commission's first hearing on August 25<sup>th</sup>. Reading all the testimony at one sitting provided me a fascinating lesson in public governance theory and practice. Interestingly, however, I discovered that the distinguished, experienced and thoughtful authors of that testimony, led by Governor Wilson and Secretary Babbitt, said remarkably little about flood prevention and levee maintenance and enhancement. Indeed, given that the Cal Fed mantra throughout my tenure on the Bay Delta Advisory Council, had been imprinted upon me as being a stool with four legs (environmental restoration, water supply reliability, water quality and levee protection), it quickly became apparent to me that most of the August 25<sup>th</sup> testimony referenced only three legs of the stool and dropped the fourth: the levees. This

should not be construed as Monday morning quarterbacking criticism of the witnesses who presented this testimony. Rather I would observe that the testimony in August accurately reflected Cal Fed's priorities over the last decade: levees and flood prevention and management were treated like a weak step-sister to the other Cal Fed purposes, as the agencies with principal responsibility for the levees at all levels of government were barely seen or heard in Cal Fed's deliberations. Katrina and Rita, however, have given the Commission and all of us a second chance. Whatever the recommended governing structure for California's and the Bay/Delta's water management should be going forward it must integrate the flood prevention and flood management function with the other important objectives in Cal Fed's mandate. This is not something that Cal Fed has thus far accomplished.

## II. Important Policy Choices Not Resolved in the Cal Fed Record of Decision

This Commission's letter inviting me to testify here today asked that I identify the difficult policy choices that were not resolved by the Cal Fed ROD, but that should be addressed in Cal Fed's next phase. This is not an easy question to answer, but - admitting bias as I speak - I venture the following response: California and the nation should develop a water policy appropriate to a set of fairly obvious physical understandings about California's water resources endowment.

While there are times when our problem is too much water where we don't want it to be, hence the need for a carefully designed flood prevention and management policy that includes adequately designed and maintained levees, many more times and in many more places the problem is too little available water to satisfy all the claims stakeholders make upon our water purveyors and policy-makers. For many commodities in our society we have a simple solution to this problem of scarcity. It is called the free market. In a free market, the scarcity of a given commodity, be it, for example, tickets to a ballgame or a concert, is reflected in its prices (the 50-yard line and the orchestra are priced differently than the end zone and the second balcony). Those who value a resource more highly will pay more to acquire it.

Water, however, for good reasons and bad, has been treated differently than most other commodities in our nation's history. Indeed, ever since the passage by Congress of the Reclamation Act of 1902 (with its promise of federal largesse, incorporated in such ventures as the Central Valley Project, Hoover Dam and the All American Canal) and even before that by the establishment of legal regimes (federal and state) that encouraged the use and appropriation of water at no cost to the riparian or appropriator other than perhaps a filing fee and the cost of a pro forma filing application, our public policy has subsidized water storage and delivery, which has translated into artificially low prices for and excess consumption by many users, frequently at the expense of environmental values.

Of course, this policy is not applied consistently across the board. Water in situ is now understood to be subject legally to a public trust (we do value free-flowing rivers, Mono Lake, and the San Francisco Bay Delta estuary to name a few salient examples) and we have reformed our federal and state water law and policies to encourage voluntary water marketing, in some instances to subsidize water conservation and water reuse, and in others, most notably in the Central Valley Project Improvement Act of 1992, to increase the price at which water and power is sold by public agencies (with the associated revenues earmarked, at least in law, for environmental restoration uses). But at best our current public policy response to natural resource constraints (I suppose not just in water policy, but I do believe especially in water policy) is muddled. We subsidize water supply more or less indiscriminately, for rich and poor, rather than limiting subsidies to those who can not afford to pay for a commodity that of course in small amounts is essential to life on our planet. We also often subsidize water demand reduction. We use law and regulation and often public subsidy to protect the environment. Yet we also continue to subsidize government sponsored projects that despoil the environment.

This muddled set of policy choices is evident in Cal Fed's history. The Cal Fed ROD and supporting documentation are thousands of pages long, yet there were effectively only two pages dealing with public finance in the Cal Fed ROD. They proposed \$8.5 billion in funding over the first seven years of the Cal Fed plan, with the responsibility to appropriate those funds distributed arbitrarily, literally with no justification whatsoever, \$2.5 billion to federal taxpayers, \$2.5 billion to state taxpayers, \$2.5 billion to "users", and \$1.0 billion to a category ambiguously designated as "other". Many among those

who have testified before you have praised the Cal Fed ROD. Few, I would venture to say, would highlight these two pages as the ROD's crowning achievement.

I was present for many of the conversations that took place regarding financing, funding, user fees, beneficiary pays, and related subjects in the years between the signing of the Bay Delta Accord in 1994 and the signing of the ROD in 2000. With my colleagues at Environmental Defense, we probably initiated more of those conversations than any other participants in Cal Fed's deliberations, arguing frequently, based on orthodox economic theory, that those who use water should pay prices commensurate with the marginal costs of supplying that commodity (including associated environmental mitigation costs). But frankly, I must admit that so far we have failed in our quest to have Cal Fed confront these subjects. In my mind, therefore, perhaps the most crucial question facing this Commission is whether it will deploy its prestige to drive Cal Fed to confront the vexing questions of public finance and supply limitations in a credible manner.

Consider the cases in which large sums of money have been authorized and appropriated for water-related purposes affecting the Bay/Delta in the last decade and a half. Six milestones call out for examination. Two involved Congressional legislation, three originally were passed by the state legislature and became ballot propositions passed by state voters, and the last was a general obligation bond passed by state voters as a result of what Governor Wilson characterized on August 25<sup>th</sup> as a pay-to-play initiative. I personally played a significant role in the first three (by chronology) of these measures,

CVPIA in 1992, Proposition 204 in 1996, and the Bay Delta Security Act, also in 1996 (incidentally the last major authorization of federal funds for Bay Delta purposes).

I am proud of my contributions to the CVPIA, less so of my contributions to Proposition 204, its progeny, and the federal Bay Delta Act. I am proud especially of the creation of the CVP Restoration Fund that the CVPIA established and of the increases in the price of water and power that the CVPIA imposed, modest though they were. (Parenthetically, I am proud as well of the water marketing provisions in CVPIA, though mistakes to which I contributed have made those provisions less effective in practice than what should have resulted from the opening of the CVP to users beyond its traditional boundaries).

What became Proposition 204, a general obligation bond approved by California voters in November 1996, began as a bill carried by Senator Costa in the state legislature. If my memory serves me correctly, the bill was stalled in committee for the same reason as many other Cal Fed initiatives over the last decade have foundered, disagreement over the appropriate role of taxpayer subsidies in the construction of new surface storage facilities. What broke the legislation logjam was a decision by the principal proponents of the bill, including the major agricultural and urban water agencies of our state, effectively to limit the projects authorized by Proposition 204 to those that promoted environmental restoration, on the one hand, and conservation, water reuse, groundwater storage and similar water supply-enhancing projects on the other.



I do recall clearly a telephone call I received from representatives of two of the state's most powerful and influential water agencies effectively asking me point-blank: "How can you not endorse a billion dollars for environmental restoration and other good projects, no strings attached?"

Environmental Defense threw its active support behind Proposition 204 because of its environmental restoration components and because its water supply subsidy components seemed at least to have redeeming features, including cost-sharing requirements and relatively benign environmental side-effects. True, the taxpayer contributions would subsidize consumers' ultimate prices for water, but at least there would be offsets in terms of environmental improvements and in the avoidance of other more directly damaging public investments.

From that decision the road to agreement on the basic terms of the federal Bay Delta Act of 1996 was not long. Federal cost-sharing of \$420 million over three years for the environmental aspects of what became Proposition 204 was authorized by Congress over a near-record period of just a couple of months of deliberation.

So where do we go from here? Will Californians continue to pass more bond measures modeled on Prop 204: one foot on the gas pedal, one foot on the brake? That effectively has been Cal Fed policy since 1996. Or will this Commission and ultimately will the Schwarzenegger administration or some future administration actually address the scarcity of available low-cost water, at least for more than lifeline supplies, by restricting

the delivery of public subsidies only to environmental restoration and other “public” goods and purposes and by encouraging market prices for private uses, internalizing environmental externality costs as part of the cost of water storage and delivery?

Having probably rambled on too long on the issue of scarcity and public finance, allow me one more comment on the scarcity of water in the Bay Delta estuary. The Cal Fed ROD was understood by the CVP and SWP water user constituencies south of the Delta (although not necessarily by others) as having promised them expanded water exports at the Delta pumps. The Cal Fed ROD also made wide-ranging promises about environmental restoration in the entire Bay/Delta watershed, including specific objectives for anadromous and resident Delta fish. Is there enough water in the watershed to meet both of these objectives? How about when the Colorado River Aqueduct has a half million acre foot hole in it, with no real plan in place to make up much more than a couple hundred thousand acre feet of that “shortage” and with the plan that is in place even for that partial solution facing significant obstacles in the near future? As has already been discussed in prior hearings, there are major scientific, technical and political questions surrounding the capability of the Cal Fed agencies to meet all these competing demands. Cal Fed’s promises to all and sundry do not constitute a policy for making difficult choices among those demands, especially in light of the continuing limited availability of federal funding and the lack of enthusiasm for water user funding that has characterized the position of all California water agencies, at least when it comes to S.F. Bay Delta watershed projects, since the passage of Burns-Porter in 1960.

III. Has the Federal Government Been the Problem?

I would start with the observation that governance has not been the principal problem in Cal Fed's history. Rather, the principal problem, as noted above, has been Cal Fed's unwillingness to confront real-world limitations in the availability both of water and of public funding in designing a sensible water policy appropriate to California's future. I say governance has not been the problem, because it is my experience that a series of competent and dedicated individuals have filled the important positions in both the resource and the project agencies working on Cal Fed over the last two decades.

Personally I have agreed with the policy leanings of some of these officials more than others, but all to my knowledge have, I believe, fairly accurately reflected in deed the policy preferences of the elected officials they served. All, at least in my personal experience, have also been accessible and actively engaged in the conduct of their offices. This includes the leading federal officials of both the Clinton and Bush administrations. In fact it should be noted, in my opinion, to their credit, that neither the Clinton nor the Bush administration actively promoted significant increases in federal funding for Cal Fed related activities. The impetus for the Bay Delta Security Act in 1996 came from Congressional sources, notably Senator Dole, Speaker Gingrich, and Congressman Baker, and it passed with lukewarm support from the Clinton administration only after Congressman Miller won agreement from his Congressional and Senate colleagues to limit the subsidies in the Bay Delta Act to environmental purposes.

Others may deplore the fact that since 1996 federal funding authorizations and appropriations have lagged expectations. But from the perspective of those who argue that public policies toward the management of water should rely more heavily on having users pay for what they are getting, rather than having taxpayers subsidize water deliveries, the federal government's approach over the past several decades, spanning both Democratic and Republican administrations at least as far back as President Carter's, if not President Nixon's, administration, does not look so off base.

There is, of course, an alternative point-of-view. Some have already effectively argued from the experience of the recent hurricanes that the problem those storms uncovered was inadequate federal investment in the levees surrounding New Orleans and more generally inadequate public investment in needed infrastructure maintenance and expansion. But even if those arguments are accepted, they beg the question of who should pay for what infrastructure. Levees, dams, canals . . . indeed all the elements that make up water resources infrastructure of our state, benefit particular residents of the state more than others. While it is no doubt a difficult task to develop a coherent policy for differentiating public and private responsibilities for funding particular infrastructure investments, as well as for determining what should be the federal, state and local cost-sharing for those investments, that difficulty is not an excuse for the failure to develop such a policy.

#### IV. Conclusion

Today, it is obvious that Cal Fed has not met the expectations of any of the major constituencies. Many of the levees in the Delta are inadequate, and bringing them up to snuff would entail huge expenditures. The Delta ecosystem is also a mess, the numbers of several endangered and threatened fish species have shown precipitous declines after some gains in the 1990's, and water quality improvements have been few and far between. Moreover, at no time in Cal Fed's history has any scientifically respectable person or institution certified that any projected level of Delta exports was compatible with a desired level of protection of the Bay Delta ecosystem and its inhabitants, however defined. As the Commission has no doubt discerned from testimony submitted by fellow environmentalists at past hearings, it is our belief that no reasoned evidence has been provided to justify the environmental impacts of the existing record levels of export, much less the expanded levels that both the federal and state projects and their contractors are aggressively pursuing.

On the other hand, a number of water agencies, notably the federal contractors on the west side of the San Joaquin Valley, believe that water supplies promised to them have been unfairly reduced to satisfy amorphous environmental demands. And, looking forward, other water agencies worry that their water supplies are threatened by environmental water demands, by increased Delta exports, or by both, or that they may be "taxed" to support environmental remediation or the construction of new projects from which they do not believe they will receive commensurate benefit.

In these circumstances, some set of leaders will eventually need to make difficult choices, likely disappointing some constituencies without pleasing others at least to the same degree. That is certainly the outcome of most other circumstances where a resource is limited. There are many fewer seats on the 50-yard line than there are above the end zone. Yet in Cal Fed's history the tendency has been to tell everyone that they were destined to be winners, whatever their interest or their location.

So that leads to the conclusion of my testimony. Where I believe this Commission, steeped as it is in knowledge about governmental systems rather than in the intricacies of California water policy, could be of most service to our current governmental leaders and ultimately to our society as a whole now and in the future is if it were to promote a reform that moves water policy in the direction of having water users pay for what they are getting.

What is at the heart of Cal Fed's difficulties, the Commission should say, are the built up expectations of California's water agencies that they should and will continue to enjoy the benefits that accrue from access to huge quantities of very cheap water, even in the face of recurring droughts, increasing population, the potentially adverse effects of global and regional climate change, and public demand to repair ecosystems severely damaged over the last century of economic development. These expectations are no longer

realistic, the Commission should conclude, and it is up to our political leadership and our government institutions to confront this reality.