

From: Daniel Marsh
To: [commentletters](#)
Subject: Restricting valley river flows would cost this state big time , for sure
Date: Thursday, December 29, 2016 7:14:09 AM



Lots of angry words were billowing about during the momentous state water board hearings in Stockton, Merced and Modesto. There were vows to fight, to resist and not to accept the second-class-citizen status the state's proposed rules would impose. One threatened to "unleash the dogs of war."

Through most of it, board members sat stoically, letting it roll off their backs. They expected anger. But there was one word that probably made board members nervous.

"Taking."

Bill Lyons, the former California Secretary of Agriculture, said it first: "I call this a water taking by the state."

It came up again during the Merced Irrigation District panel discussion. "This is an illegal taking of storage space on Lake McClure," said general counsel Phil McMurray.

Coincidentally, the same word was being heard in the courtroom of federal Judge Marian Blank Horn some 2,400 miles away. Ruling in the U.S. Court of Federal Claims, she told farmers in northern California and southern Oregon they could sue the Bureau of Reclamation for damages after the Bureau refused to live up to its water contracts on the Klamath River. That happened in 2001, when the Bureau decided fish needed the water more than the farmers who had relied on it for 90 years.

Judge Horn ruled the farmers' losses were from a "physical" taking of their rights, not a "regulatory" taking – which government can do with impunity.

The situation here doesn't appear all that different, though far larger in scope. On the Klamath, 1,200 farm families were effected; here it will be several thousand. And that doesn't count those who rely on those farms for jobs, or who work in factories, or those who will suffer from lost public services.

In its Substitute Environmental Document, the State Water Resources Control Board says it doesn't want all of the Tuolumne, Merced and Stanislaus rivers for environmental purposes – just 40 percent, or maybe half. For now. The state also wants to control even more of the water it allows to be stored in dams.

The state says its plan will cost the local economy \$64 million a year. Virtually every public official from Chowchilla to Manteca disputes that number, putting the costs at five or 10 times higher.

The state's plan will make water deliveries to farms unreliable. And when the state's groundwater rules kick in, there will be even less water for farming – compounding the economic implications.

"The state has the ability to regulate the use of water, and they need to," said land- and water-use attorney Gene Tanaka of Best Best Krieger in the Bay Area, citing efforts to deal with flooding or drought. But, "the issue becomes a lot more complicated when the state is regulating the amount of water available and it affects the viability of the dams – then there is an issue of taking."

So what's a dam worth if there's no water behind it?

Exchequer Dam is owned by the people who live within Merced Irrigation District; Don Pedro Dam belongs to the people living in Turlock and Modesto irrigation districts. Together, they must be worth \$9 billion – unless they're empty. Oakdale and South San Joaquin irrigation districts own three dams that generate substantial power – when there's water.

Then there's the land itself. Reliable water makes farmland more valuable. The five districts with rights to the Merced, Tuolumne and Stanislaus irrigate 460,000 acres between them. With reliable water, each acre is worth at least \$25,000. In districts without reliable water, an acre sells for \$5,000 (often less). A difference of \$20,000 per acre would cost farmers here \$9.2 billion in lost value. As land values fall, so will taxes, meaning there will be less to pay deputies, firefighters, teachers and doctors.

At the water board hearings, many spoke of their mistrust of the state – not its motives, but its methods. No wonder. Legislation introduced last year would have allowed the state to implement its plan even if the water districts sought an injunction.

Such tactics are both unfair and likely to fail. First, what judge would look kindly on an effort to usurp his or her power. Second, it might be hard to convince anyone that we're in an environmental emergency after the state took eight years to put its plan together and when salmon populations are actually rising. If misguided environmental groups push such legislation again, it will only deepen the distrust and increase the anger.

What would such anger look like? Ask Alex McCabe, a Livingston city councilman who got emotional while addressing the board: "I'm embarrassed, as an elected leader, over the water quality in my own city," he said. "This plan will turn my city into Flint (Mich.). ... I am the face of an unreasonable man; I'm angry, if this comes through, we will unleash dogs of war. ... I pray you listen. I don't want to be your devil as you are mine right now."

Or it could look like Stanislaus Supervisor Terry Withrow, who recommended the state go slowly, "Because you know we'll all end up in court."

And if the judge in that court sees things as Judge Horn sees them, the state will owe our region billions upon billions of dollars.

Mike Dunbar: 209-578-2325, mdunbar@mo

Read more here: [Taking the water could cost the state](#)



Taking the water could cost the state

If the state persists in trying to grab so much of Tuolumne, Merced

and Stanislaus rivers, it will undoubtedly w...

From the mailbox of Daniel Marsh 1324 Lindstrum Ave. Modesto , CA 96351...phone 209 / 576-8266