

Luxury development's dubious Delta water supply

By Mike Taugher Contra Costa Times

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A luxury housing development 250 miles south of its Delta water source is moving forward, even though its water supply relies on a 15-year-old deal that has never passed environmental muster.

Critics say the Tejon Mountain Village project is the first of a number of planned subdivisions that would use provisions in the water deal to harden the demand for Delta water at a time when environmental regulations are reducing the amount of water that can be taken from Northern California.

At issue is whether Delta water resources, which already appear oversubscribed, will become even more so under the "Monterey Agreement," which is not yet final because of difficulties in analyzing and justifying its environmental effects. What happens, for example, if thousands of houses are built in Southern California and a court rules again that the agreement they rely on for water does not meet the requirements of environmental laws?

The deal was made in 1994 when, after the last major drought, the state's major water players reclassified Kern County's supply of Delta water to guarantee that it would be as reliable as the Delta water delivered to Los Angeles. The deal also transferred a 1 million acre-foot underground reservoir to Kern County interests.

By making their water supply more reliable and giving Kern County interests a place to store the water locally, Tejon's developers were able to count on water for subdivisions that previously was meant for annual crops.

Besides the Monterey water deal, another deal figures prominently in plans to develop the Tejon property.

In 2008, several major environmental groups agreed not to oppose development on Tejon Ranch — the largest contiguous private property in California — in exchange for the company setting aside most of its land for condor habitat and other environmental purposes.

The pact between Tejon Ranch and the environmental groups did not address water supplies.

Tejon Mountain Village, the smaller of two developments now being planned at Tejon Ranch, would be a luxury development with nearly 3,500 houses, two 18-hole golf courses, as many as 750 hotel rooms and 160,000 square feet of commercial and retail space. The plan includes trails for horses, hikers and bicycles, and it boasts rolling, oak-studded hills.

On its Web site, the company says Tejon Mountain Village will, "protect local groundwater by utilizing outside sources of water to serve the community."

Namely, the project is planning to use Delta water available under the Monterey Agreement.

However, the environmental approval for the agreement was tossed by a state appeals court nine

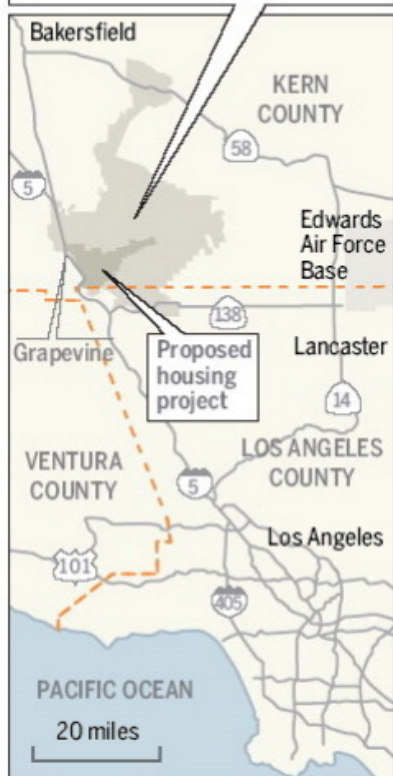
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years ago, and the state Department of Water Resources still has not issued a new certification.

Tejon Ranch

Located on the largest private property in California, a plan to build 3,500 houses near the Grapevine is relying on a 15-year-old water deal that has never passed environmental review. Critics say the plan could over commit Delta water resources.



Once the new certification is issued, there is a decent chance that environmental groups — those who were not party to the land conservation agreement with Tejon Ranch — will challenge it again in court, where they might try to invalidate it again, get it changed or increase requirements for offsetting environmental damage to the Delta.

State water officials appear to be moving toward approving the Monterey Agreement largely intact, documents show, and the Department of Water Resources says it hopes to issue its decision early this year.

"It took longer than anyone would have liked," said Katy Spanos, senior staff counsel for the department. "It's a complicated subject matter, and it's a complicated process."

Tejon's water supplier says so much time has passed, so many investments made and so much planning done that it is highly unlikely the state would reverse the commitments. And, if it does, they say they will be able to find water elsewhere.

"Since 1995, water districts and their customers have relied on the (Monterey Agreement) to build, construct and maintain water service facilities throughout California," the Tejon-Castac Water District reported in a water supply assessment for the project. "Due to this reliance, it is highly unlikely that the ... (original) provisions would be reimposed as a result of" the new environmental study.

Representatives of Tejon Ranch Company and DMB Associates, the companies backing the development, say they have years worth of water stored in an underground reservoir that was transferred to Kern County interests in the Monterey Agreement.

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"This is wet water, in the ground, right now," said David Crowder, a spokesman for the project. "Under all these scenarios, (the Tejon-Castac Water District) demonstrated that they had adequate water to serve the project."

However, a lawyer for an environmental group said the project is overly reliant on an agreement that, even though it is 15 years old, is still not final.

"Just because you have been operating under the assumption that what you're doing is legal doesn't make it so," said Adam Keats, a lawyer for the Center for Biological Diversity. "Our eyes are open to how fundamentally wrong the system is, and we're going to vigorously go after them on it."

Critics such as Keats say the developers' use of water is another example of how the Monterey Agreement was used to transfer of public resources to private use.

In May, the Times detailed how Kern County interests were able to sell Delta water they bought from the state back to taxpayers at a higher price. The exchanges were made possible by the fact that they controlled the Kern Water Bank, which was transferred from the state to Kern County interests by the Monterey Agreement.

The Tejon project is "the first large-scale beneficiary of these water agencies that have been creating a very complicated water-laundering scheme," Keats said.

His group in November sued to stop the Tejon Mountain Village development because of concerns about water supply and other environmental issues. The Center for Biological Diversity was an early participant in talks with Tejon Ranch regarding the land conservation deal, but the Tucson, Ariz.-based

group withdrew before the deal was struck and is free to file a lawsuit.

The environmental groups who signed the deal promised not to sue over development of the ranch. They include the Natural Resources Defense Council, the Planning and Conservation League, the Sierra Club, Audubon California and the Endangered Habitats League.

The Monterey Agreement was reached in talks that grew out of the most recent major statewide drought. During the 1987-92 drought, Kern County farmers took much deeper water-supply cuts than urban Southern California because contracts at the time gave preference to urban water users.

Kern County water officials contended that their water shortages had less to do with the weather and more to do with a series of North Coast dams that were planned but never built. Those dams were, at one time, envisioned to send more water into the State Water Project, which includes Lake Oroville, a Delta pumping station near Tracy and a network of aqueducts that deliver water to the East Bay, South Bay, San Joaquin Valley, Central Coast and Southern California.

The prospect of across-the-board cuts led to the Monterey meetings where water officials agreed that Kern County would give up a small percentage of its water contract amount and sell more water to urban water districts.

In exchange, Kern County water interests would be given property for storing water underground — the 1 million acre-foot Kern Water Bank, into which the state had already invested \$74 million. (The Tejon-Castac Water District, which exclusively supplies Tejon Ranch, received a 2 percent share of the bank.)

Agricultural water in Kern County also would become just as reliable as Southern California's urban supply, and "surplus" water from the Delta would be made available to more contractors.

The agreement eliminated a provision that allowed water contracts to be trimmed in the case of a permanent shortage.

Environmentalists sued and won, invalidating the agreement because of deficiencies in the analysis of the pact's environmental effects. But the courts agreed to allow the Monterey changes to continue on an interim basis until completion of a new environmental certification.

A lawyer who represented environmentalists in that lawsuit said that no one expected the state to take 15 years to complete its work.

"DWR has exceeded everyone's expectation in delaying publication of a final EIR," lawyer Roger Moore said.

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