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Politics cloud water debate



White earth attests to the lower water level at Cachuma Lake in Santa Barbara County last month. (Brian van der Brug, Los Angeles Times / January 14, 2014)

By Michael Hiltzik
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Fixing California's water crisis requires finding a way to reallocate supply among the state's three major user groups — and avoiding the political posturing and bickering that have surfaced.

There are two possible policy outcomes to a severe drought like the one California is experiencing now.

One is that the drought focuses the minds of political leaders and water users, prompting them to come together to craft a broad, com-

prehensive solution to a problem that won't be going away.

The other is that the community of water users will fragment and turn on one another, with farmers lining up against environmentalists, suburbanites against farmers, and so on.

Which way would you guess things are going?

Here's a clue: Last week a clutch of Republican members of Congress from California agricultural counties arranged (with the connivance of House Speaker John Boehner) to pass a bill overriding mandates to keep water

flowing in the state's rivers in favor of increasing supplies to farmers. They sounded the tired old cry about "putting families over fish," as though there aren't families in California dependent on healthy fisheries, too, and as though the water transfer in question would relieve what is shaping up as a record drought year.

The measure is opposed by Gov. Jerry Brown, state water officials and Democrats in both houses of Congress. It's nothing but a sop to credulous farm voters in the districts of Reps. David Valadao, Kevin McCarthy and Devin Nunes, its sponsors. It doesn't create a single drop of water, despite ridiculous claims that it will "solve California's water crisis" (Nunes), and abrogates jealously guarded states' rights over water allocations to boot.

Yet while this posturing was going on in Washington, the drought in California was growing worse and solutions more elusive. Even if it's relieved by the wet spell we've seen in recent days continuing through the rest of the wet season, it's a harbinger of more extremes to come, thanks to climate change.

No one thinks a fix will be simple. The supply of water from within and outside the state is becoming oversubscribed, and the allocations and promises made to growers and residential developments out of step with reality. More dams won't solve the problem, nor will technological innovations like desalination.

Even conservation has its limits.

As Ellen Hanak and her colleagues at the non-partisan Public Policy Institute of California have documented, per capita consumption

in semi-arid Southern California is among the lowest in the state. But incremental gains may be getting harder to come by.

The Central Valley congressmen who introduced the "Sacramento-San Joaquin Valley Emergency Water Delivery Act" talk as though the farmers' problems would be solved if only they got their hands on 800,000 acre-feet of water that must legally flow through the Sacramento delta to save the delta smelt, an endangered species, but that's a self-interested simplification.

At its core, California water policy is about allocating supply among the state's three major user groups — agriculture (the largest consumer), residents and the environment. That's not simple.

The state's legal and regulatory framework for allocating water is complex — some of it is antique, some of recent vintage and some laboring under a legal cloud. For example, it's legally unclear whether diverting water from agricultural users for environmental protection is a "taking" under the U.S. Constitution and therefore requires financial compensation, which would complicate such diversions enormously.

The last appellate judges who considered the matter said no, but the issue hasn't come before the Supreme Court and won't for years at least. "Until the U.S. Supremes rule, it'll be a live wire," says Antonio Rossmann, a veteran water rights attorney in Berkeley.

Another constraint dates from the so-called Monterey Amendments, a backroom deal reached in 1994 between the State Water

Project and several water contractors, including the Metropolitan Water District and private Paramount Farms. Paramount is owned by Roll Global, the corporate arm of Beverly Hills billionaires Stewart and Lynda Resnick, who are better known as the purveyors of Fiji Water and Pom Wonderful pomegranate juice. Paramount also is the largest grower and processor of almonds and pistachios in the world, in part because the Monterey deal gave it access to a permanent supply of water. That's necessary for the cultivation of nut trees, which can't survive interruptions in water.

Critics say the Monterey Amendments turned over too much control over water allocations from the SWP to private interests. "They cut the natural resource aspect out of the SWP water and made it just about its economic value," says Adam Keats, senior counsel for the Center for Biological Diversity, which is suing to overturn the deal. "They eliminated the state as manager of public resource. When you do that, the rich guys benefit." (The Sacramento Superior Court judge hearing the case has hinted that he might uphold the deal, but his decision is almost certainly destined for appeal no matter which side prevails.)

The amendments' effect was to make it easier for Paramount to keep its water flowing to its nut trees, and also for farmers to sell their water to land developers. "That hardened demand," says attorney Rossmann — farmers growing beans and alfalfa can fallow their land for a year or two in a dry period; nut growers and residential developments can't. And that leaves the state with less flexibility than it had even during the long, severe drought of 1987-92 to reallocate supply to where it's most needed.

Inevitably, the solution to the state's water crisis must lie in finding a way to reallocate supply among the Big Three users. Playing the people-versus-fish card is utterly pointless, because even canceling all the environmental allocations wouldn't solve the essential supply problem.

Already, observes Hanak of the Public Policy Institute of California, supplies are so low that all categories of users are going to have to absorb cuts. "If it doesn't rain," she says, "they'll have to balance the water between different fish species."

Hanak advocates freeing the state's water trading system so that the guardians of fish and wildlife can buy and sell environmental water allocations the way urban and agricultural users do now. What's troubling about that idea is that the environment doesn't have legal water rights like other users: fish, wildlife and rivers are protected through regulatory actions, not through contracts. "The environment should not have to participate in a market with consumptive users," says Rossmann, the Berkeley water attorney. State and federal fish and wildlife officials would face "major institutional hurdles" in water trading, "because they're not used to doing that." He argues that environmental water, which serves not only ecological needs but the fishery and resort industries, should be allocated first, with farmers and urban dwellers free to trade the rest.

The most important factor in meeting the crisis is a recognition that California has made some bad choices in the past that would not be made today, knowing what we know about the likely trajectory of statewide water supply. We would plant fewer permanent crops like nut trees,

and make fewer commitments of firm water to housing project developers.

Some of these decisions will have to be undone in the near term, some will be undone by the implacable economics of residential development and agriculture, and some we will have to live with for decades more. Fatuous political posturing to give some groups of users priority over others is a waste of time, and one thing we have less of every dry day is time.