Stop the Federal Water Wasters

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If you came across somebody gasping with thirst, you wouldn't give him one of those prank drinking cups that would trickle water down his shirt.

By the same token, in drought-parched California, we can't afford to have federal environmental bureaucrats drilling holes in our dams.

Yet that's what they've been doing, figuratively, by imposing Endangered Species Act regulations that have sent vast quantities of water straight out to sea.

Over the past six years, the federal game plan for protecting smelt and salmon in the Sacramento-San Joaquin Delta has involved robbing our cities, towns, and farms of water. Regulators have intentionally captured less water in Northern California dams, and they've powered down the pumps that transport water to the Central Valley and Los Angeles, Orange and San Diego Counties.

The effects were scorching even before the drought. In the agricultural heartland of the San Joaquin Valley, hundreds of thousands of farm acres went unplanted, and thousands of jobs dried up. In the cities of Southern California, water rates shot up 20 percent – a wallet-pinching "Delta smelt tax" on the middle class.

When drought set in, its impact was harsher because less water had been stored in reservoirs due to the species schemes. In one wet season alone (the winter of 2012-2013) more than 700,000 acre-feet of water was sent to the ocean – an amount that could have supplied 1.4 million households for a year.

As the drought drags on, there's an understandable urgency, at least in some quarters, about planning for the new dams we've been promised under Proposition 1, the water bond that voters approved last November. In fact, ex-L.A. Mayor *Antonio Villaraigosa* probably spoke for many when he recently said the $7.5 billion bond is "not enough."

"We've got to do more," he told the Water Education for Latino Leaders conference in Palm Springs. "We need to think bigger."

Hard to argue with that. However, a truly "big-thinking" agenda should include a plank His Honor didn't stress: Confronting the environmental bureaucracies that have been wasting our water on a grand scale.

The feds' reverse rain dance

Barring a policy reversal by these federal officials, any new, "Prop. 1 dams" will operate under the same restrictions that hamper our water storage and delivery systems right now.

In other words, given the mandated underutilization of our *current* water infrastructure, we have to expect that *future* facilities will also be handicapped in serving the needs of this thirsty state.

How myopic and harmful are the U.S. Fish and Wildlife Service's Delta species regs? Former Federal Judge Oliver Wanger put it concisely in 2010, when he slammed the smelt rules as based on "sloppy science and unidirectional prescriptions that ignore California's water needs."

Even the Ninth Circuit branded the blueprint for smelt regulations as “chaotic,” with implications for “more than 20,000,000 … [water] consumers in central and Southern California.”

Don’t misunderstand: This isn’t a call to neglect the species on the ESA list. Instead, the feds must stop neglecting the *human* species. What we need is balance – a holistic approach to rulemaking that serves endangered animals and plants without *dis*serving the welfare of human beings.

Any California politicians who fancy themselves leaders on water issues – from either party – should be insisting on this fundamental policy shift at the federal level.

They should also support the courtroom work by Pacific Legal Foundation, among others, to force this commonsense change on the feds if it isn’t adopted voluntarily. Unfortunately, earlier this year the U.S. Supreme Court declined to hear two lawsuits over the Delta smelt water cutoffs. But the legal fight for regulatory sanity continues; there will be more opportunities, through cases in California and elsewhere, to target the perverse rationales that ESA regulators have used to excuse their sloppiness, blunders, and ideological zealotry.

“Whatever the cost” is too high a price

Leading the list of wrongheaded legal precedents is 1978’s *TVA v. Hill*, in which the U.S. Supreme Court held that the ESA elevates species protection above all other interests and concerns, “whatever the cost.”

You read that right: “Whatever the cost.” As in: Even if the price means denying the people of California an adequate water supply.

Former PLF Vice President Dave Stirling summed up *TVA*’s destructiveness in “Green Gone Wild,” his book on ESA overkill: “With the natural propensity of regulatory bureaucrats to find ways to expand their authority over time, [*TVA v. Hill*] … virtually assured that they would increasingly adopt a ‘command-and-control’ mindset … .”

The encouraging news is that *TVA*’s legal basis was always shaky, and it has been decisively undercut by later amendments to the ESA. One of Pacific Legal Foundation’s prime goals is to see this anti-human ruling reversed.

Until then, California’s “big thinkers” on water shouldn’t stop with advocating for more infrastructure; they also need to agitate, loudly and persistently, against the federal “green” policies that help brown our state by draining the dams, canals and pipelines we already have.