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Administering the CVP

*Arthur A. Maass**

A QUICK review of the articles in this issue written by students of law reveals that a great many become involved in some way in the major substantive issues which have led to such intense political controversy in the Central Valley. In many cases, perhaps, these students would have preferred to avoid these issues, to limit themselves to matters of law which can be dealt with with more technical precision. But this does not seem to be possible with regard to the CVP; the major substantive issues are found at the very heart of most legal problems.

As a student of administration and government, this author has been asked to prepare an analysis of the various proposals for administering the CVP. As passionately as his lawyer colleagues he should like to make a competent technical analysis of alternatives which would have general application to the Central Valley, but would avoid the major substantive controversies over the project—those relating to acreage limitations and distribution of power to preference customers. But like these colleagues, he has found that the substantive controversies cannot be avoided; they are so fundamental that they must of necessity pervade any analysis. Under given conditions, one type of organization will favor the opponents of acreage limitation, another the proponents; and it is for these reasons, of course, that different administrative forms have different and intense advocates. It would be sheer deception for anyone to write on forms of administration without demonstrating their intimate relations to these issues.

STATE CONTROL V. FEDERAL CONTROL: THE MAJOR ISSUES

Today the CVP is a federal reclamation project. There are many in California who believe that this should not be; that the CVP should be owned and operated by the State of California. The most vocal of the advocates of state control are the State Chamber of Commerce, the Irrigation Districts Association of California, and the California Farm Bureau Federation. A careful examination of the public statements of these groups reveals that their preference for state jurisdiction is not controlled by considerations of administrative responsibil-

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ity and efficiency, but rather by those of "social" policies. Thus, for example, a publication of the State Chamber of Commerce states:¹

Social and Economic Issues Involved

The Central Valley Project potentially is more than a plan for irrigation, flood and salinity control, navigation and the generation of electric power. Wrapped up in the same package is the power to influence greatly, sometimes to determine, where and how large numbers of the inhabitants of the great valleys of California shall live, and whether business therein shall be privately or publicly owned and privately or publicly operated; as well as the power to influence, if not to determine, who shall be the owners of those agricultural lands in the valleys, the usefulness of which depends on irrigation.

These are the types of social and economic issues upon which men's minds will often be focused as the years ahead of us unfold . . .

The principal reason for insisting that the irrigation and power phases of the Central Valley Project shall be directed by California and not Washington is to make sure that issues affecting our social and economic system will be determined by the citizens of California through democratic processes, and not by the Board of Directors of a Federal Government corporation or by a proconsul from Washington.

The "social" policies inherent in federal operation, but which, it is hoped by proponents of state control, can be avoided by state operation, are fundamentally two: (1) promotion of the "family size" farm, by limiting the delivery of water from the project to not more than 160 acres in a single ownership (320 acres in the case of joint ownership by husband and wife); (2) promotion of public ownership of power distribution systems by granting such systems priority in the purchase of low-cost power produced by the project. Acreage limitation and power preference are "social" issues because they involve fundamentally a determination of who should be the beneficiaries of the project, and secondarily the related determinations of who should distribute the benefits and who should own the distribution facilities. This article is not concerned with any careful analysis of these issues. A further word on their relation to proposals for state control is in order, however.

Acreage Limitations

The most important reason for advocacy of state control is that thereby acreage limitations can be avoided. This conclusion is based

¹ ROBINSON, WHY THE STATE SHOULD ADMINISTER THE CENTRAL VALLEY PROJECT, reprint of address by Pres. Cal. State Ch. of Com. (1945); see also, comment of E. G. Buerkle, Pres. Kern Co. Farm Bur., San Francisco Chronicle, June 26, 1944.

on three types of evidence no one of which is conclusive, perhaps, but the sum of which is substantial:

(1) An examination of the public statements of the advocates of state control. This examination bears out the following conclusion reached by Montgomery and Clawson in 1945:² "The concern over Federal operation of the Central Valley Project, and particularly the opposition to acreage limitation, anti-speculation, and public power preference features of reclamation law, by 1945 crystallized into definite proposals for project operation by the State of California."

(2) In effect, assurances given to opponents of acreage limitation by officials of the State of California that operation by the state would be without regard to any such limitations (assuming, of course, the state could acquire the project from the Federal Government with no restrictions in this regard). Thus, the California Water Project Authority, the state organization which under law would operate the CVP if the state were to acquire control, has come out vigorously and often against the 160-acre law.³ So has the State Division of Water Resources and to a lesser extent its parent Department of Public Works, the most important water policy determining agencies of the state and those which are authorized to present the "Views of the State of California" on most water policy matters.⁴

(3) Statements by federal officials most intimately concerned with the federal project. Thus, Harold Ickes, under whom the project was started in 1935 and who for over ten years kept a close tab on all developments, has said in connection with the recommendations of the State Chamber of Commerce, particularly those for state control and operation:⁵

² MONTGOMERY AND CLAWSON, *HISTORY OF LEGISLATION AND POLICY FORMATION OF THE CENTRAL VALLEY PROJECT* 117 (1946). An excellent study of acreage limitation as a social issue and of its varied political implications has been published by Professor Paul Taylor, *Central Valley Project: Water and Land*, 2 WEST. POL. Q. 229 (1950).

³ E.g., CALIF. WATER PROJ. AUTH., *APPLICATION OF THE EXCESS LAND PROVISIONS OF FEDERAL RECLAMATION LAW TO CENTRAL VALLEY PROJECT* 33, 41-45 (1945), and *SUPPLEMENTAL REPORT* 25 (1947); *Hearings before Sen. Com. on Irrigation & Reclamation on S. 1948*, 78th Cong., 2d Sess. 17-35, 243-47, 65-88, 503 (1944); *Hearings before Sen. Com. on Commerce on H. R. 3961*, 78th Cong., 2d Sess. 633-35, 623-37 (1944); *Hearings before Sen. Com. on Military Affairs on H. R. 3961*, 78th Cong., 2d Sess. 50-55 (1944).

⁴ E.g., *VIEWS OF THE STATE OF CALIFORNIA ON ELEMENTS OF A NATIONAL WATER RESOURCES POLICY SUBMITTED TO PRESIDENT'S WATER RESOURCES POLICY COMMISSION 90-91* (1950); see also report on State Division of Water Resources in *San Francisco Chronicle*, Nov. 7, 1945.

⁵ Quoted by DE ROOS, *THE THIRSTY LAND* 168 (1948).

The source of the recommendations convinces me that, regardless of their purport, their principal objective is to avoid application to the Central Valley of California of the long-established reclamation policy of the Congress which provides for the distribution of the benefits of great irrigation projects among the many and which prevents speculation in lands by the few.

Opposition to acreage limitation has been, then, the single most important reason for the advocacy of state control. Within the last year, however, acreage limitation has lost some of its central importance as a social issue in California. The farmers of the Central Valley are acceding. Thus, the Assistant Secretary of the Interior, at the dedication of Shasta Dam recently said:⁶

Within the last few weeks, Secretary of the Interior Oscar L. Chapman has approved contracts, embodying the acreage-limitation principle, entered into by the Department of the Interior and more than half of the water users' districts in the San Joaquin Valley. We expect that within a short time 84 per cent of the firm water supply of Millerton Reservoir, behind Friant Dam on the San Joaquin River, will be committed under contract. Acreage limitation is fast becoming an academic issue because of these contracts and through them the long fight against land monopoly in California is now being won.

Public Power Preferences

Opposition to federal control is found also in opposition to federal power policy and its preference for publicly owned distribution systems. First, the Pacific Gas and Electric Company and those who are sympathetic with its position are opposed. Second, many irrigators fear that federal power policy will result in lower rates than would prevail under other policies and that this will mean less revenue from power to help pay off the costs of irrigation development. Thus, a spokesman for the California Farm Bureau Federation, in supporting a resolution calling for state administration, said that the Federal Government "intends to . . . prevent power development on the CVP from paying the cost of irrigation."⁷

However, in the case of power, unlike acreage limitation, there is no assurance that state control as an alternative would mean necessarily a radically different policy. The act by which the state adopted the CVP in 1933⁸ and under the authority of which, it is assumed,

⁶ Address by Secretary Warne at dedication of Shasta Dam, Int. Dept. Press Release, June 17, 1950.

⁷ Buerkle, *supra* note 1; Chas. Kaupke, Master, Kings R. Water Assoc., statement to Pres. Water Policy Com. at Sacramento (June 23, 1950).

⁸ Cal. Stat. 1933, c. 1042.

the state would operate the project if it were transferred from federal to state jurisdiction, provides for preference to public agencies in the distribution of power and authorizes a transmission line from Shasta to Antioch.

Why, then, do the opponents of federal power policy call for state control? Some of the irrigators hope, no doubt, that the manner in which the state implements the preference policy will give central emphasis to irrigation payout and only secondary emphasis to non-farm power users.⁹ The power company and those sympathetic with its point of view apparently feel that state effectuation of the preference policy would be less potent, and thus less detrimental to their interests, than federal operation. Thus, Congressman Cecil White of Fresno, Madera, Merced, and Stanislaus Counties—all in the Central Valley—said in the House recently:¹⁰

They [the private power people] . . . have two other strings to their bow. One is State development of the Central Valley project. They know the State cannot do the job and the fat plum of hydro-electric power development would fall into their hands. Or even if the State did do the job, they undoubtedly feel they would have a better chance of acquiring the power under State control. The other string to their bow is the propaganda slogan "complete the irrigation features of the Central Valley project first and the power features later."

Lest there be misunderstanding, one more word on the position of PG&E.¹¹ It opposed vigorously but unsuccessfully the Central Valley Project Act of 1933 which contemplated *state* construction of the project. Because of the power features of that Act, the company largely financed the campaign against it in the referendum of 1933. The company opposed successfully the proposals of Governor Olson in 1940 to authorize revenue bonds for *state* construction of transmission lines. This proposal was supported fully by Secretary Ickes who was willing and anxious to turn over to the state the job of power distribution, providing that the state constructed transmission lines so as to be able to effectuate priority in delivery to publicly owned distribution systems. The company has opposed also successfully the con-

⁹ E.g., Edson Abel, Asst. Dir. Pub. Utilities Dept., Calif. Farm Bur. Fed., in *Report of California Joint Legislative Com. on Water Problems to 1949 Regular Sess.* 86 (1949).

¹⁰ 96 Cong. Rec. A5231 (July 10, 1950).

¹¹ See BROWN, PG&E (unpublished honors thesis in Harv. College Lib. 1949); ANGEL, POLITICAL AND ADMINISTRATIVE ASPECTS OF THE CENTRAL VALLEY PROJECT IN CALIFORNIA (unpublished Ph.D. thesis in U.C.L.A. Lib., 1944); MONTGOMERY AND CLAWSON, *op. cit. supra* note 2.

struction by the *Federal* Government of an integrated transmission grid supported by steam firming capacity. Thus, the company is now in a monopoly position with respect to the purchase of the electric power output of Shasta Dam, and the Federal Government has been unable to effectuate its power policy.

Water Rights

A third major issue which generates a great deal of support for state control is that of water rights—of the manner in which the Bureau of Reclamation is contracting to provide irrigation water from the project.

Traditionally, the Bureau of Reclamation has entered into so-called 9d contracts with organizations of water users. Under these contracts the organizations are required to pay back to the Federal Government the reimbursable costs allocated to irrigation within a period of 40 years. Some projects are transferred within that period to the water users for operation and maintenance, with the Bureau of Reclamation exercising only sufficient supervision to protect the federal investment and assure contractual repayment. Other projects, those which require complex water management and scheduling because either they serve several groups of water users, or they serve several purposes (for example power production and flood control, as well as irrigation), are operated and maintained by the bureau. But the water users' organizations must pay for that part of the operation and maintenance concerned with providing irrigation water. At the expiration of the repayment period for all 9d contracts, the water users will have acquired an absolute right to such water as is made available by the project works. Some hold the intention of the Reclamation Act is that the water users should acquire at the end of the repayment period not only absolute water rights in the project, but also the physical facilities which they can then operate as they see fit. However, actual transfer of facilities requires specific legislation by Congress.

For irrigation water from the CVP the Bureau of Reclamation for the first time is offering water users' organizations so-called 9e, or utility type contracts. Under these contracts the organizations agree to pay a standard rate per acre foot for water delivered to their distribution systems. They purchase a utility service in the same sense that a citizen anywhere purchases electric power at an agreed rate. The water users do not acquire absolute rights to the water made

available by the project, nor an equity in the capital facilities, so that at the end of the contract period—40 years—they must renegotiate another utility contract.

The bureau has used 9e rather than 9d contracts for many reasons, including the following:

(1) The project is highly complex and involves a great number of structures and purposes. Reservoirs are used for irrigation, power, flood control, navigation, municipal and industrial water, and other purposes. The 9d contracts, if negotiated for these facilities, would introduce serious rigidity into the operation of an integrated multi-structure multiple purpose system. The acquiring by water users of absolute rights to specific storages of water in specific reservoirs would vitiate in part the advantages that can be realized from a truly integrated system. According to the Bureau of Reclamation, this rigidity would result in the attainment of less than the maximum benefits that can be derived from all purposes of the project. (It should be noted that distribution systems which serve individual irrigation districts, where built by the Federal Government, continue to be subject to 9d contracts.)

(2) In addition to full integration of facilities, the CVP requires full financial integration. Money to pay off the project will be derived from the sale of irrigation water, commercial power, and municipal and industrial water. Furthermore, the irrigation water users will not be called upon to repay the total cost allocated to irrigation features of the project; and since the cost of these irrigation features must be repaid according to federal law, it becomes necessary to assign power revenues to make up the difference. Thus, recent estimates for the CVP set the allocation to irrigation at about \$220 million.¹² Of this, the irrigators are scheduled to repay only about \$60 million, the remaining \$160 million to be made up largely from power revenues. The cost allocated to commercial power is about \$130 million, whereas anticipated power revenues are about \$270 million. All of this is mighty complicated; but it does serve to demonstrate the need for financial integration. And according to the bureau, such integration can be accomplished only through service type contracts, involving the same methods used by public utilities in the sale of power and water.

(3) It is deemed desirable by the bureau that water from the proj-

¹² UNITED STATES DEPT. OF INTERIOR, TENTATIVE COST ALLOCATION AND FINANCIAL ANALYSIS OF INITIAL FEATURES OF CENTRAL VALLEY PROJECT (1950).

ect be sold at "postage stamp" rates—*i.e.*, that all purchasers of water for a given use within a large service area pay the same rate, regardless of their distance from the major supply facilities. This rate policy is a utility type policy and requires for its effectuation the flexibility afforded by utility type contracts.

The Irrigation Districts Association and others have fought the utility contract. Their objections can be summarized as follows:¹³

(1) No water rights whatever are acquired by irrigation districts through the purchase of water, thus, in effect, violating the long established principle of joining water rights to the specific lands they serve.

(2) An irrigation district accepting such a contract gets no credit toward repayment of the costs of constructing the project as contemplated by Section 9d of the Reclamation Act.

(3) At the expiration of a 40-year contract the irrigation district would be compelled to seek another contract under such terms as the Bureau of Reclamation would choose to offer; no permanent rights, as above indicated, having been acquired.

(4) The Bureau of Reclamation as a result of such a policy would remain in the Central Valley in perpetuity as the owner of the project and all its water supply, controlling the agriculture and industrial economy through its control of water resources.

It is not the purpose of this paper to attempt any evaluation of the controversy over water rights. It is the purpose, having set out the nature of this controversy, to demonstrate its relation to the demands for state control and operation. Here again, as already indicated, an examination of the public statements of the advocates of state control, particularly those of the Irrigation Districts Association and the Farm Bureau Federation, reveals opposition to 9e contracts. Here again, assurances are given in effect by officials of the State of California that operation by the state would under no circumstances involve utility contracts. Thus, Edward Hyatt, appearing before Congress as the executive officer of the Water Project Authority, called for the immediate termination of utility contracts.¹⁴ The State Attorney General and members of the California Districts Securities Commission have condemned the contracts.¹⁵ The State Division of Water

¹³ *E.g.*, DOWNEY, THEY WOULD RULE THE VALLEY 226-29 (1947); de Roos, *op. cit. supra* note 5 at 155.

¹⁴ *Hearings before House Committee on Public Lands on H. R. 1770*, 81st Cong., 1st Sess. 107 (1949).

¹⁵ *E.g.*, REPORT OF CALIFORNIA JOINT LEGISLATIVE COM., *op. cit. supra* note 9 at 27 *et seq.*

Resources and the Department of Public Works, in presenting the official "Views of the State of California" to the President's Water Policy Commission recently, hit hard at the Bureau of Reclamation for its use of 9e contracts in the Central Valley.¹⁶

Finally, in commenting on the relation of the controversy over water contracts to the issue of state control, it should be pointed out that the deep-seated and fundamental opposition to utility type contracts does not lie in the denial of water rights *per se*, but rather in the conditions which the utility may impose for its services. One of the most important of these conditions is, of course, acreage limitations. And thus the controversy over water rights is intimately bound up with that over the 160 acre law.

STATE CONTROL V. FEDERAL CONTROL: SECONDARY ISSUES

There are other arguments for state control. Many advocates of state control, no doubt, support their positions largely on these other arguments, which for them bear no relation to the major issues discussed above. However, the manner in which these other issues are presented in the overwhelming majority of public statements on the whole problem of project administration leaves no doubt but that they are considered by their proponents to be additional or secondary support for a position based on the primary "social" issues. A brief statement of several of these other issues follows.

Originally a State Project

The Central Valley Project was originally conceived and authorized as a state undertaking. The State Act of 1933 authorized a State Water Project Authority to do the job. The project was to be financed by the issue of revenue bonds not exceeding \$170 million and such federal financial assistance as could be secured. California was unable to raise the money; and in order to obtain full federal financing, the idea of the CVP as a state undertaking with federal financial assistance had to be given up for federal construction of the project. Thus, the present CVP is a 100 percent federal project being built under reclamation law.

As de Roos points out,¹⁷ state officials understood, or certainly should have understood, this change in project status well. The people of California were never fully informed, however. Thus, demands for

¹⁶ VIEWS OF THE STATE, *op. cit. supra* note 4 at 89-91.

¹⁷ DE ROOS, *op. cit. supra* note 5 at 93.

state control, based on the assertion that the CVP is and always has been a state project, can be understood insofar as they have originated with those who were uninformed. But as a matter of fact these demands have been made most vocally by those who should have known the project history.¹⁸

An Intra-State Project

Unlike most, but certainly not all, reclamation projects, the Central Valley Project is constructed on streams that lie entirely within a single state. Although in the past some have raised doubts as to the legality of a project on wholly intra-state streams in an area in which there are no public lands, these doubts have been laid to rest.¹⁹ However, there are many who feel that, regardless of the legal issues involved, the intra-state character of the project gives special emphasis to the need and justification for state ownership. Thus, for example, Irvin Althouse, prominent irrigation engineer consultant, told the President's Water Policy Commission:²⁰

There are a great many people who believe firmly that the State of California should own, operate, and manage the CVP. Reasons for such opinion are: First, that the project is entirely intra-state and because of such, the water rights are purely local in character and can be continued to be administered by the State as in the past . . .

It will be noted that Mr. Althouse associates the intra-state character of the basin with local water rights and thus, indirectly, with the problem of acreage limitation, among others.

Grass Roots

There is considerable support for local control because of the general advantages of "grass roots" administration. The public statements of "grass roots" advocates, however, confuse the problems of *control*, or authority, and *administration*. As Lilienthal points out so effectively, the two should be distinguished.²¹ TVA operates on the basis of centralized *authority*—its powers are those derived from the

¹⁸ *E.g.*, statement of Chas. Johnson, Cal. State Treasurer, in DE ROOS, *op. cit. supra* note 5 at 159.

¹⁹ See in particular *United States v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950). In this case Mr. Justice Jackson for the Court said: "Thus the power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other internal improvement, is now as clear and ample as its power to accomplish the same results indirectly through resort to strained interpretation of the power over navigation." *Id.* at 738.

²⁰ (Sacramento, June 23, 1950).

²¹ LILIENTHAL, *TVA: DEMOCRACY ON THE MARCH* 142-43 (1944).

central or Federal Government. Yet through a decentralized administration of centralized authority it has achieved, in the Tennessee Valley, "grass roots" *administration* perhaps unequaled by that achieved by any other federal agency in the administration of its central powers.

Thus, the supporters of "grass roots" administration for the CVP, when they use this argument to advocate state ownership and operation, are really talking about the issue of *control*, not that of administration. As such, their support for "grass roots" is in fact so closely related to control over the determination of project beneficiaries that it cannot be entirely distinguished.

Though it contains this limitation, a reasonable and effective statement on this issue was made recently by an official representative of the State of California before the President's Water Policy Commission:²²

It is acknowledged that there is national interest in both interstate and intra-state water resources problems . . . There is, however, a deeper and more intimate interest and concern in such problems at the state and local level . . . Under present national water policy, as administered by Federal agencies, the reasonable capabilities of state and local agencies to independently accomplish required works is not sufficiently considered. The independence and initiative of local governmental agencies, necessary in the interests of orderly, efficient and economic government, local, state and Federal, has been impaired.

WHAT TYPE OF STATE CONTROL?

In the light of the background just presented we are in a position to delve deeper into an analysis of the types of state control which might be effected.

This analysis will be limited by the assumption that the state is to take over and operate a completed project—that is, that the Federal Government will complete construction. Even the most ardent advocates of state control insist that the Bureau of Reclamation continue to completion its construction operations.²³

This analysis is further limited by the fact that specific and detailed proposals for state operation just do not exist. This may appear startling in view of the vocal agitation for state control, but it is nonetheless true. All efforts have been devoted to condemning federal and to demanding state control. Little, if any, effort apparently has been

²² VIEWS OF THE STATE, *op. cit. supra* note 4, at 90-91.

²³ CAL. ST. CH. OF COM., SUBCOM. ON ST. CONTROL OF THE CENTRAL VALLEY PROJECT, STATE CONTROL OF THE CENTRAL VALLEY PROJECT (1948).

devoted to working out a scheme for such state control. Thus, George Sehlmeier, Master of the California State Grange and a supporter of federal operation, complained to the President's Water Policy Commission:²⁴ "We have heard it said again and again California should take over this project. When we ask 'how' they become very vague. They say, 'we are going to find some way'; but how?"

The most specific proposal of the Chamber of Commerce's special subcommittee on the subject reads as follows:²⁵

The Committee repeats its previous conclusion that the thinking in the project area and in the State as a whole has not crystallized on what should be done and how it should be undertaken to enable support to be secured at this time for the enactment of the State legislation that will be required to create a proper State agency to handle local operations of this project and to define its powers and obligations. Until the project is further along and public support for local operation has developed and become definite as to its form, the Committee recommends that specific legislation on this subject should *not* be sought.

This lack of detailed recommendations, it should be noted, extends to matters of financing the acquiring of the project as well as to the form of organization for operating it.

Required Characteristics for Any State Agency

Let us begin, then, by attempting to establish certain characteristics deemed essential for any agencies that might contract with the United States to acquire and operate the project. These characteristics are developed on the assumption that the State of California does not have immediately available the \$400 million which possibly would be needed to acquire outright ownership of the project and that, therefore, a state agency or agencies must enter into long-term contracts with the Federal Government for this purpose. It is assumed, further, that any such contracts would allow state operation, but that they would also provide for federal supervision and control sufficient to protect the United States investment and assure contractual repayment. There is no consideration here of the exact nature of the obligations which the United States may impose for this purpose; and it is not assumed that provisions of existing reclamation law need apply.

²⁴ (Sacramento, June 23, 1950).

²⁵ CAL. ST. CH. OF COM., *op. cit. supra* note 23.

The minimum characteristics are as follows:²⁶

First, The contracting party should have the legal right or power to enter into the contract and to exercise the privileges and responsibilities entailed by the undertaking.

Second, The contracting party should have financial stability and ability to pay the charges that it contracts to pay. This requires that the contracting party be in a position to offer proper assurance that the charges will be paid, and security that can be realized upon in case of default. Integrity and ability in management and administration are important elements of financial stability.

Third, The contracting party should be in a position to insure the proper distribution and application or use of water and power—whether the contracting agency operates the local distribution system directly, or is merely a collection or bargaining agency which apporions or allocates the water or power to subsidiaries.

The State Water Project Authority

We have already noted that the State Water Project Authority was created in the 1933 CVP Act as the state agency to construct and operate the project. That authority has continued in existence to this day, though its functions have been few and ill-defined since the Federal Government took over the project in 1935. The question here is whether the authority could meet the minimum requirements established.

The authority is authorized to "enter into contracts and agreements for the accomplishment of the purposes and objects" of the project (Water Code Sec. 11454). It is specifically authorized to enter into contracts with the United States for the purpose of financing the construction, maintenance, and operation of all or any part of the project; and for the acquisition of works and repayment of their costs. (Water Code, Sec. 11500). It is further authorized to contract with any "State agency, mutual water company, political subdivision, or other entity or organization" for the purchase or use of water, power, or other resources and facilities made available by the project. (Water Code, Sec. 11625).

Under these authorities, which appear to meet the requirements of legal ability, the Water Project Authority could enter into a repay-

²⁶ Much of the material on required characteristics and on the State Water Project Authority comes from unpublished staff studies prepared by Henry Holsinger of the Water Project Authority for Committee on Problem 17 of Central Valley Project Studies, Bureau of Reclamation.

ment contract or contracts with the United States, supported by contracts between the authority and eligible local agencies or organizations.

If the requirements of financial ability are to be met fully, it would appear that the local agencies or organizations with which the authority would contract under such procedure should be those that themselves are eligible under the criteria stated. The security of the United States for the return of funds that are repayable would lie in the contract between the United States and the authority, backed by the contracts secured by the authority with the local agencies. The authority is not authorized to exercise the taxing power directly, but it may contract with agencies that have that power; and in the event that the contracting state agency fails to levy the necessary tax or assessment, the authority may compel it to do so by mandamus, or may pursue any other remedy provided by law. (Water Code, Secs. 11650-11656).

We have said that ability in management and administration are important elements of financial stability. How is the SWPA likely to measure up to this requirement? Not too well, it is feared. The authority is governed by a five man ex-officio board, comprising the State Controller, the State Treasurer, and the State Attorney General, all elective officers, and the State Director of Finance and State Director of Public Works, appointed by the Governor. The State Engineer has been made ex-officio executive officer of the authority. Students of public administration agree that an ex-officio board is a very ineffective device for administering executive functions, particularly functions which involve any degree of operation, maintenance, and construction. State officials, assigned numerous duties by the constitution and statutes, cannot give full attention to ex-officio board membership. Furthermore, members of ex-officio boards cannot be chosen with special reference to their fitness for the work of the board. With three of the authority's members chosen by public election and two appointed by the Governor, there is likely to be a division of executive authority, resulting in a lack of clear and definite responsibility—one of the greatest dangers to democratic control over bureaucracy.

Finally, and most important, there is serious question that the authority as presently constituted gives proper representation to those interests which should be represented in the operation of a multiple purpose basin-wide development. This question is considered further, though in a slightly different context, in the next section.

A Super-District

A super irrigation or water users' district could be organized under state law to acquire and operate the project. Some advance this proposal because it would place control of the project in the hands of the water users of the Central Valley rather than in the hands of an authority whose members represent the state as a whole.

Others have supported a super irrigation district for quite a different reason—namely, that it would provide a means for taxing indirect project beneficiaries and thereby reducing the direct repayment obligation of irrigation water users. The reasoning here is that existing irrigation districts have the authority to assess all lands within their bounds to meet the obligations of repayment contracts. But a great many people who are not water users and who live outside organized irrigation districts will receive indirect benefits from the project (from increased trade, for example). It is desired to tax these beneficiaries so as to reduce the repayment obligation of those within districts, and this can be done if the indirect beneficiaries are included within a super-district.²⁷

The most ambitious and perhaps significant pending proposal for so-called super-districts is that contained in the Watkins bill which has been referred recently to the Senate Committee on Interior and Insular Affairs.²⁸ This bill would provide for the operation and control and eventual ownership of interstate and certain intrastate water development projects by the water users of the area organized into inter or intrastate water and power users' associations. Capital stock in these associations would be issued to conservancy districts, water users' associations, or other organizations authorized to acquire such stock under state law. The stock would be issued to the respective holders in proportion to the water rights which they hold or represent. The shareholders would elect a board of directors which would exercise the powers of the associations. The boards would have from five to 21 members; and as long as an association owed any money to the United States, there would be an additional director appointed by the President and representing the Federal Government.

Here we shall analyze the Watkins bill only insofar as it might

²⁷ A special committee set up by Bureau of Reclamation to study the problem of payments by indirect beneficiaries recommended a super-district. UNITED STATES DEPT. OF INTERIOR, REPORT OF THE COMMITTEE ON PROBLEM 12, CENTRAL VALLEY PROJECT STUDIES 137-38 (1947).

²⁸ S. 3376, 81st Cong., 2d Sess. (1950); see Carr, *Recent Developments Concerning Valley Authorities*, 22 ROCKY MT. L. REV. 472 (1950).

relate to the CVP. Although the bill applies primarily to interstate projects, Section 15 provides for application of its major principles to intrastate projects "upon the request of a water users' association or other organization credited under State law." In discussing Section 15 on the floor of the Senate, Senator Watkins said:²⁹ "I have in mind the situation which prevails in the Central Valley Project of California."

Section 15 could be interpreted as an authorization for the Federal Government to enter into a contract with the Water Project Authority. But it is not believed this is what Senator Watkins intends. He is thinking rather of a super irrigation district; for continuing his discussion with respect the CVP, he said:

Section 15 would make possible in that area the organization by the people of the area—all the public corporations as well as the private water users' corporations getting together, very much the same as it is done in Utah and Colorado—to sign a contract with the United States for the operation of all dams, whether built by Army engineers or by the Bureau of Reclamation, to maintain them, operate them, and, eventually, to own the equitable title to them as soon as the reimbursable costs are repaid. That would take the United States out of the utility business in California, or in any other State in which there is a similar situation.

The major defect of the Watkins bill arises out of its approach to water resources development—an approach which is not based on the concept of developing resources in a balanced manner for *all* their purposes and for the benefit of *all* the people affected by the development. The bill establishes a favored position for irrigation and very definitely subordinates all other uses and purposes to irrigation. As such, it runs counter to present federal policy of multiple purpose development and, it is believed, to the best interests of California. The development of California depends upon the growth of industry as well as the growth of agriculture. Development of California industry is dependent in turn upon the development of large amounts of low cost hydroelectric power and of municipal and industrial water supplies.

The dominant status afforded irrigation is found in the policy declaration section of the bill.³⁰ Preference for irrigation is found

²⁹ 96 Cong. Rec. 5039 (April 10, 1950).

³⁰ Sec. 2(b) speaks of "maximum beneficial use [of the waters] for irrigation purposes and other consumptive uses" and provides that power revenues shall be applied to repayment of irrigation costs "to the extent necessary to insure that *all* such waters

even more effectively in the provisions for organizing the governing bodies. The capital stock in the associations is to be held only by water users, through their districts, in proportion to the water rights they hold. This limited group of shareholders in turn would elect all members of the board of directors with the exception of a single federal member. There is no provision for representation of interests concerned with power, fish and wildlife, flood control, navigation, pollution control, recreation, or other non-consumptive uses of water. And remember, the CVP is a *multiple* purpose development.

In presenting the bill, Senator Watkins said: "I have adopted the policy . . . that when the reimbursable costs are repaid, those who repaid them are entitled to the equitable ownership and operation of the projects." However, the bill does not adopt this policy. Most of the repayment would have been made by power users rather than by water users, and there is no provision for representation on the board by power users as such.

Senator Watkins also said that his bill adopts a policy of "local control." But in reality the bill does not adopt this policy either. The local interests which will operate and eventually own the project are not fully representative of the local community.

It should be noted also that the type of super-district envisioned by the Watkins bill is not designed to meet the objectives of those who advocate such a district in order to effect taxation of indirect beneficiaries.

Finally, the question recurs as to the manner in which the super-districts proposed by the Watkins bill would meet the minimum requirements for contracting parties set out earlier in this article. There is little question but that they would have legal competence. Section 9(6) authorizes the associations to enter into contracts, and Section 10(a) specifically authorizes contracts with the Federal Government.

As to financial ability, the associations are adequate in a sense. They have authority to make assessments against shareholders to meet payments due the United States (Sec. 8(a)); to sue or be sued in corporate name (Sec. 9(2)); and, until such time as all obligations to the United States have been discharged, are required to apply any excess power revenues to a reserve for depreciation, a reserve for future payments, or to use them for making accelerated payments (Sec. 13(d)).

available and which can be feasibly used for irrigation purposes and other consumptive uses be put to the *fullest possible* beneficial use." (Emphasis supplied).

On the other hand, as previously pointed out, the federal representation on the boards of directors is very limited. It must be remembered that for a period of about 55 years the United States will hold a substantial interest in the CVP, yet during this entire period the Watkins bill would authorize one federal representative as against up to 20 representatives of the water users.

Insofar as ability in management and administration constitute important elements in financial stability, the super-districts are deficient. The effects of providing almost exclusive representation to irrigators and other consumptive users of water have been indicated.

Finally, as to operating ability, the legislation provides ample authority for the construction and operation of various distribution systems (Secs. 9, 10, 12), but here again the undue preference provided for irrigation constitutes a serious limitation.

Existing Water Users' Organizations

Originally it had been intended to discuss the extent to which various existing types of irrigation and water districts meet the requirements established for agencies that contract with the United States to acquire water developments. Space limitations have encouraged the abandonment of this inquiry. It is true that the qualifications of these agencies are important, because it is with them that the Water Project Authority or a super-district would make contracts, and thus the fulfillment of all obligations to the United States would depend ultimately on the performance of these units. But these agencies are not in a position to acquire large multiple use units of the project, so that in this respect relations between the Federal Government and the districts are likely to be less direct than those with the larger state agency. It is true, also, that these agencies would probably continue to negotiate directly with the Bureau of Reclamation for the construction of their individual distribution systems. But such systems are at present constructed under 9d contracts, in which the districts acquire absolute water rights after repayment and usually operate the systems prior to that time; so that no new problem is involved here.

Let it suffice to say of these districts, as has been indicated before, that in order to protect adequately the United States investment, they should be required to meet the same qualifications that have been set for the agency which contracts with the United States.

Obligations to be Imposed by Federal Government

In this analysis of types of state control that might be effected we have avoided any full discussion of the total obligations the United

States might or should impose in order to protect sufficiently the federal investment. It should be pointed out that these obligations need not be limited to those which a banker would impose to insure repayment. It may be claimed that the United States role would be in many respects that of a banker—to the extent that the federal investment is repaid with interest. But the fact remains that the CVP actually involves a very substantial subsidy from the Federal Government, including nonreimbursable costs allocated to flood control and navigation, and interest on the irrigation investment. Further, making the investment, whether or not reimbursable, has a pronounced impact on the fiscal position of the Federal Government, and the risks involved can hardly be regarded as no more than bankers' risks.

Why is any federal financial aid at all justified for this project? The legal answer is found in part in the clauses of the Constitution which relate to promotion of the general welfare and to the strengthening of the national defense.³¹ These broad constitutional bases indicate how appropriate it is that the Federal Government insure that arrangements for the control of the CVP include some means for the reconciliation of the conflicting views of *all* interests and for the enforcement of *national* policies for resource development. Something less than that will warrant something less than general public support of the project. Governor Warren appears to recognize these facts. "There can not be a simple 'yes' or 'no' answer to the question of State operation," he has said. "If we ask the Federal Government to come in here and build Shasta and Friant and the other works with its own money, we have to realize the Federal Government has something to say about the project. We can't eat our pie and have it, too."³²

WHAT TYPE OF FEDERAL CONTROL?

Regional Administration by the Bureau of Reclamation

If we limit the CVP to the originally authorized major units, then the existing pattern of federal control is regional administration by the Bureau of Reclamation. The Bureau's Region II, with headquarters at Sacramento, has supervision over the construction, operation, and maintenance of the project. In 1944, when the bureau was reorganized, considerable responsibility for making final decisions and taking action on the CVP was transferred from Washington to Sac-

³¹ See *United States v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950).

³² Quoted by DE ROOS, *op. cit. supra* note 5, at 172.

ramento, though all matters of major policy are still referred to Washington headquarters.

The planned and authorized program for integrated multiple purpose development of the Central Valley Basin has expanded far beyond the originally authorized units. And it is in connection with this expanded development that serious problems of federal administration have developed.

Bureau v. Corps

Many of the key multiple purpose units in the expanded program have been surveyed by the Army Corps of Engineers, and authorized by Congress for construction and operation by the corps. Most of these units have been surveyed also by the bureau, which has proposed that Congress authorize it to build and operate them. Thus, although the major multiple purpose units of the original plan are under the single administration of the Bureau of Reclamation, administration of the multiple purpose units of the expanded plan is hopelessly divided between the bureau and the Corps of Engineers.³³

These two federal construction agencies operate under very different *legislative authorities*: The bureau operates under reclamation law with its fairly precise standards for repayment, acreage limitation and speculation prevention. The corps functions under the very broad standards of flood control law.

They have very different *water use philosophies*: The bureau gives primary emphasis to closely integrated, multiple purpose drainage basin development. The social objectives to which the bureau subscribes are those related to the wide distribution of federal land improvement benefits among small independent landholders and of federal power benefits among all ultimate consumers—rural and urban. The corps gives primary emphasis to the cost-benefit ratio of the individual water projects which the Congress has requested it to investigate. The major concern of the corps is flood control and navigation, and it places little emphasis on social objectives related to the wide distribution of benefits.

They hold conflicting concepts of *administrative responsibility*: Through the Secretary of Interior the bureau holds itself directly re-

³³ Much of the material on the conflict between the bureau and corps and on efforts to settle it was obtained from this author's case study on Kings River, prepared for the Hoover Commission and appearing in U. S. COM. ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, TASK FORCE REPORT ON NATURAL RESOURCES app. 7 (1949).

sponsible to the President, and, through the President, responsible to the Congress. The corps holds itself directly responsible to the congressional committees which handle its legislation and hardly responsible to the President at all. This basic difference makes effective coordination within either the legislative or executive branches extremely difficult.

And they report to different *legislative committees* of Congress: The bureau reports to the House Committee on Public Lands and the Senate Committee on Interior and Insular Affairs. The corps reports to the House and Senate Committees on Public Works. Furthermore, they report to different subcommittees on appropriations in both Houses.

These fundamental differences between the two agencies, which both seek to do the same thing—build and operate multiple purpose water projects in a comprehensive Central Valley Basin development—have led to each acquiring strong partisan support and opposition among the people of California. It is interesting to note that those who have supported the corps are the same as those who have supported state control, and for the same reasons. As a matter of fact, it is believed that many of the most ardent supporters of state control would be quite willing to accept instead control by the United States, acting through the Corps of Engineers.

Take the ten-year period from 1934 to 1944:

Those who opposed acreage limitation, and for this reason supported state control, also supported construction by the corps of multiple purpose projects which would provide irrigation benefits. For if the corps constructed such projects under flood control law, the acreage limitation and anti-speculation provisions of reclamation law would not apply.

Those who opposed public distribution of power to preference customers, and for this reason supported state control, also supported construction by the corps of multiple purpose projects at which power might be developed. For if the corps constructed such projects under flood control law (prior to 1944), the power preference provisions of reclamation law would not apply. And as a matter of fact, the corps was prone to leave the development of the power at such projects to private utilities under Federal Power Commission license.³⁴

³⁴The present controversy over the development of Kings River power, described elsewhere in this issue, stems in large part from the fact that a corps, rather than bureau, project is being built at Pine Flat.

Those who opposed the utility type contracts, or arrangements which they believed would have a similar effect on their water rights, and who for this reason supported state control, also supported the Corps of Engineers. For the corps in some cases promised that once individual multiple purpose dams were constructed, they would bow out of the water distribution picture entirely and turn operation of the dams over to existing land owners. The conflicting reports of the bureau and corps on the Kings River project illustrate this point.³⁵

From the beginning, competition between two federal agencies for the support of California interests in the construction of water projects was deplored by the President and his Executive Office. A series of remedies have been tried, and others proposed. The fact that the controversy continues indicates that none of those tried has been wholly successful.

Dominant Interest Theory

First, President Roosevelt attempted to differentiate the responsibilities of the bureau and corps by the use of the "dominant interest theory."³⁶ Multiple purpose developments in which flood control or navigation clearly were dominant were those in which the interests of the Corps of Engineers were to be superior, and projects in which irrigation and related conservation uses were dominant were to fall into the legitimate field of the Bureau of Reclamation. All interests accepted the President's statement of theory, but they failed to agree on its application. Should the theory be applied to each individual project or to an entire basin-wide plan? The corps and its supporters argued for the first interpretation, under which the engineers would be authorized to construct certain multiple purpose reservoirs in the Central Valley which appeared to have greater benefits for flood control than for consumptive uses. The bureau argued that individual multiple purpose reservoirs in the Central Valley, regardless of the purpose which may be dominant for each one, cannot be considered in vacuum; that they are all elements of what should be a coordinated basin plan; and that the acknowledged dominant purpose of the basin plan is conservation uses of water. President Roosevelt agreed with the bureau position, but the corps and their supporters never have.

Other questions raised by the dominant interest theory, but never answered to the satisfaction of all parties, included: (1) How should

³⁵ U. S. COM. ON ORGANIZATION, *op. cit. supra* note 33, at 155-56.

³⁶ *Id.* at 161.

the dominant interest be determined—solely by a comparison of prospective benefits to be derived from each purpose of a multiple development, or should other factors be taken into consideration? (2) Where estimates of benefits prepared by the bureau and the corps differ, what procedure should be adopted?

Flood Control Bill of 1944

Second, President Roosevelt realized that much of the partisan support of the different agencies would disappear if it were evident that the resulting resource developments would be used under the same laws and policies in any case. Thus in 1944, when Congress was preparing important postwar water development legislation, the President urged the enactment of provisions which would make all irrigation developments, no matter by what agency constructed, subject to the provisions of reclamation law; and all power developments, subject to the provisions for preference to publicly owned distribution systems.

Congress complied in the Flood Control Bill of 1944.³⁷ Section 8 relates to irrigation and authorizes the Secretary of Interior to construct and operate any irrigation facilities required in connection with corps reservoirs. Irrigation uses of these reservoirs are made subject to reclamation law.

Section 5 relates to power and provides in substance that the Secretary of Interior distribute all power developed from corps projects. For this purpose the Secretary is directed to give preference in the sale of power to public bodies and cooperatives, and he is authorized to build or acquire transmission lines.

These provisions, Section 8 in particular, have not accomplished fully their intended purpose. Controversies have arisen over the application of Section 8, and therefore of the 160 acre limitation, to corps projects in the Central Valley.³⁸ In certain parts of the Central Valley, like the Kings River and Tulare Lake areas, additional irrigation water can be provided by the construction of dams without the necessity of supplemental federal distribution works. Existing privately owned canal and distribution systems are fed from the main river channels; and water in the channels and canals, not required for immediate use, can seep into the ground water table from which it can be pumped when needed for irrigation purposes. The corps has held

³⁷ 58 STAT. 887 (1944), 16 U.S.C. § 825s (1946), 43 U.S.C. § 390 (1946).

³⁸ See U.S. COM. ON ORGANIZATION, *op. cit. supra* note 33, at 172.

that where it constructs dams in these areas, Section 8 does not apply because there is no necessity for the Bureau of Reclamation to construct a distribution system. The Executive Office of the President and the Department of Interior have held that the Army's interpretation is incorrect and constitutes a serious perversion of the intent of Congress. They cite the oft-quoted exchange on the floor of the Senate between Senator Hill (Alabama), the acting majority leader, and Senator Overton (Louisiana), chairman of the subcommittee which held hearings on flood control projects, and floor manager of the Flood Control Bill.³⁹ In this exchange, Overton assured Hill that Section 8 was intended to apply to the Central Valley.

Folsom Formula

Third, President Truman has directed that the so-called Folsom formula be applied to the entire Central Valley.⁴⁰ This formula, stated originally in connection with the President's recommendations to Congress concerning Folsom Dam on the American River in the Central Valley, provides that all multiple purpose dams are the responsibility of the Bureau of Reclamation, and dams and other works exclusively for flood control are the responsibility of the Corps of Engineers. To effectuate this policy, the President has recommended that multiple purpose projects under construction or nearing construction by the corps be transferred to the Bureau of Reclamation after completion of construction; that existing construction authorizations of the corps for other multiple purpose projects within the Valley be transferred to the bureau; and that Congress in the future not authorize the corps to build multiple purpose projects.

For Folsom Dam, Congress has passed a law providing for transfer of the works to the bureau upon completion of construction by the corps, and for integrating the development with the CVP.⁴¹ No other projects have enjoyed similar treatment. A bill now pending on the Kings River, where Pine Flat Dam is under construction by the corps, has been opposed vigorously by representatives of the Kings River Water Association, the California Farm Bureau Federation, and others.⁴²

³⁹ 90 CONG. REC. 9264 (1944).

⁴⁰ See SEN. DOC. NO. 113, 81st Cong., 1st Sess. 5 (1949).

⁴¹ Pub. L. No. 356, 81st Cong., 1st Sess. (Oct. 14, 1949).

⁴² *Hearings before House Committee on Public Lands on H. R. 5264*, 81st Cong., 2d Sess. (1950).

Basin Account

Fourth, it has been proposed that financial integration of all projects in the Central Valley, no matter by whom constructed, be accomplished by the establishment of a single basin account. The basin account would serve to pool all revenues from all sources from all projects in the basin and to allow the application of these pooled revenues to repay any or all of the repayment obligations for any of the projects. It would not affect the flow of funds into and from the Treasury, that is, it is not for funding, but rather for accounting purposes. Besides providing accounting flexibility, the main purpose of a basin account would be to assist irrigation in the Central Valley. We have already noted that power revenues are required to pay out 73 percent of the costs allocated to irrigation as well as all costs allocated to commercial power. The Bureau of Reclamation can now establish such a basin account for the CVP, over which it has sole supervision. However, it appears desirable to include within the account corps projects as well, and this apparently cannot be done under existing legislation. Adoption of the Folsom formula, of course, would accomplish this purpose and more. Short of that, legislation to provide for a basin account would accomplish financial, but not physical and policy, integration.

Executive Reorganization

Fifth, after studying these various efforts and others to effect coordination between the bureau and the corps, and after giving special attention to the Central Valley, the Hoover Commission concluded that the only way to obtain an efficient administration of water development programs is by a major executive reorganization involving the consolidation of the functions of the Bureau of Reclamation and the Corps of Engineers into a new Water Development and Use Service in the Department of the Interior.⁴³

The consolidated Water Development Service is to decentralize its activities "so that basic resource development decisions will be made in the light of conditions and established rights and responsibilities in the areas they affect."⁴⁴ This would be done by (1) providing for regional subdivisions based largely on river basin boundaries; (2) requiring broad delegations of authority to the regional river

⁴³ U. S. COM. ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, REORGANIZATION OF THE DEPARTMENT OF THE INTERIOR (1949); U. S. COM. ON ORGANIZATION, *op. cit. supra* note 33.

⁴⁴ U. S. COM. ON ORGANIZATION, *op. cit. supra* note 33, at 78.

basin offices of the service; (3) establishing unified budgets and working programs for each river basin; and (4) establishing advisory councils in all basins, representative of federal agencies, the states, the region, local agencies concerned, and groups of water users and beneficiaries. These councils would be given an opportunity to review and advise upon the unified basin development programs and plans.

Thus, under this proposal there would be a Central Valley office of the Water Development Service, whose director would have considerable responsibility and would be assisted by a Central Valley Advisory Committee.

Although legislation has been introduced to carry out these Commission recommendations, no action has been taken to date.⁴⁵ As in most executive reorganization matters, the initiative really lies with the President, who under the Reorganization Act of 1949 may draw up Reorganization Plans which become effective unless vetoed by either house of Congress within 60 days. The President has taken no action in the resources field.

Valley Authority

Sixth, when the state legislature in 1940 refused to approve Governor Olson's proposal for the sale of revenue bonds to finance construction of transmission lines so that the state could undertake to distribute power from the CVP, the Governor recommended that a federal regional authority be established.⁴⁶ After a conference with President Roosevelt, he announced to the press that the President favored the establishment of a Central Valley Authority and that David Lilienthal had been commissioned to assist in drafting the necessary legislation. This proposal never saw the light of day because of the conditional opposition of the Secretary of the Interior and the Director of the Budget and because defense preparations and war began to occupy the full time of those who might have been involved in working out the legislation.

It is not proposed here to analyze the valley authority device. Space is too limited. But because of the general misunderstanding of what is involved in the type of federal authority which has been pro-

⁴⁵ S. 3657, 81st Cong., 2d Sess. (1950); H. R. 8663, 81st Cong., 2d Sess. (1950); H. R. 5469, 81st Cong., 1st Sess. (1949); H. R. 6317, 81st Cong., 1st Sess. (1949).

⁴⁶ MONTGOMERY AND CLAWSON, *op. cit. supra* note 2, at 102 *et seq.*, give the history of developments in California. The record of negotiations in Washington is available in the files of the National Resources Planning Board in the National Archives.

posed for the Central Valley, it is desirable to outline the basic characteristics of such an organization. They are as follows:

(1) The valley authority would consolidate under one administration the functions now performed in the Central Valley by the Bureau of Reclamation and the Corps of Engineers, and possibly some of the functions of the Federal Power Commission and the Department of Agriculture. As such, it would do just about what the Hoover Commission recommended by way of reorganization.

(2) The powers of the valley authority would be almost entirely those of the federal agencies whose functions it would assume. These powers would be only *federal* powers, not state powers as some claim. These powers in all probability would contain very few not already possessed by one of the existing agencies. With respect to electric power, for example, the Secretary of the Interior, under Section 9 of the Reclamation Act of 1939 and Section 5 of the Flood Control Act of 1944, already possesses powers generally equivalent to those of the TVA. Probably the most significant added power would be one authorizing the conduct of experimental programs in the development and use of natural resources.

(3) The valley authority would provide for financial integration of all projects in the basin. The basin account proposal, discussed above, provides for this in part. But the corporate structure of a valley authority goes further, it provides for funding as well as accounting and allows the greater freedom of operation and management of the corporate form. However, the valley authority, like any other Government corporation, would be subject to the Government Corporation Control Act of 1945⁴⁷ which requires close supervision of the fiscal operations of corporations by the Bureau of the Budget, the Congressional Committees on Appropriations, and the Comptroller General.

(4) The valley authority would provide for decentralized administration of federal powers somewhat in the same sense that the Hoover Commission recommended decentralization. The governors of the authority would be federal employees. If the authority were an independent agency, then the governors would be responsible directly to the President as are the heads of departments and independent agencies. If the authority were organized within the Department of Interior, as was proposed by Secretary Ickes in 1941, the governors

⁴⁷ 59 STAT. 597 (1945), 31 U. S. C. § 841 (1946).

would report directly to the Secretary as do the chiefs of all bureaus in the department.

A FUSION OF FEDERAL AND STATE POWERS

It is not the federal valley authority, but rather a proposal prepared under the direction of the editors of the *Yale Law Journal*, which contemplates a fusion of federal and state powers.⁴⁸

Mr. Asa Sokolow, for these editors, analyzed the valley authority. He found from TVA experience that administrative cooperation with individual states is essential to effective regional planning; but that the states have at their disposal positive means of hindering the operation of any federal valley authority. For example, they may fail to enact special enabling and permissive legislation. Thus, he concluded: "The chief legal deficiency of Valley Authority legislation is perhaps the failure to authorize an analogous fusion of federal and state powers, the absence of which renders the success of federal programs contingent upon continuous, voluntary, local cooperation."

To meet this deficiency, Mr. Sokolow proposed a "new executive agency to be vested with complete Federal and State authority bearing upon the conservation and utilization of water resources." First, there would be created a federal corporation modeled along the lines of the TVA. There would be no state representatives on the corporation, but there would be a consultative state advisory committee. Second, there would be prepared, as a cooperative federal-state venture, a comprehensive scheme for regional development. Third, the principal features of the development plan would be incorporated into an interstate compact to which the Federal Government and the states would be parties. The substantive provisions of this agreement would contain a delegation by the states to the federal corporation of the principal state powers affecting water resource control.

In supporting the constitutionality of such a fusion of powers, Mr. Sokolow lays emphasis on the "primary standards" to be set out in the compact, such as provisions for water rights, priorities in major water uses, etc.

To the knowledge of this writer, no one has attempted in a systematic way to apply the Yale proposals to the water problems of any large river basin. It appears at a glance, however, that application to the Central Valley Basin, even if we accept constitutionality without question, would be beyond the realm of reality. Recalling the intro-

⁴⁸ Comment, 56 *YALE L. J.* 276 (1947).

ductory statement of this article on the major issues involved in state v. federal control, it would be unreasonable to assume that the state and federal governments at any time in the history of the development of CVP since 1940, for example, could have reached an agreement that would have met the demands of the Federal Government with respect to uniform national irrigation and power policies and those of the state government to the extent that the State of California would be willing to yield up all of its controls over water resources to a federal corporation. Remember, the state would have no representation on the corporation and no control over it other than appeal to the courts to enforce compliance with the conditions of the compact or agreement. Problems relating to the development of water resources and particularly to the determination of the beneficiaries therefrom are continuing problems. They cannot be settled once and for all by a compact. And the State of California, wherein water is so basic to economic expansion, is not likely to assign to the Federal Government all of its powers to participate in the continuing solutions to these problems.

CONCLUSIONS

The states have, and it is believed they should have, important responsibilities in water development. These responsibilities are not delineated carefully in the Constitution. At any one time they cannot be delineated for all time. Taking into consideration all relevant factors, including in particular democratic values, the resource functions which can be performed best by the states and those which can be performed best by the Federal Government will vary from river basin to river basin, and within a single basin, from quarter century to quarter century.

For the Central Valley today this writer believes that the federal responsibility can be organized best through a Water Development and Use Service, as recommended by the Hoover Commission, or through a Federal Central Valley Authority. Turning the project over to the state is opposed under existing conditions. If the project were acquired today from the Federal Government without restriction and were operated by the State Water Project Authority, there is every evidence that the following important national objectives would not be fully attained: (1) limiting speculation in land benefits provided by public financing; (2) opposing land monopoly and promoting the settlement of family farms; (3) developing our natural resources for

all uses in balance giving no undue priority to any one use; and (4) insuring that the full benefits of low cost power are passed on to the ultimate consumer by eliminating, or effectively threatening to eliminate, monopoly in the distribution of such power. The same holds true for the super-district envisioned by the Watkins bill; these objectives would not be fully attained. Yet the objectives have been approved by the Congress; all recent efforts to repeal them have failed. They are the objectives of a Nation; and since the Nation has a great equity in the development of the resources of the Central Valley, these objectives should prevail.

On the other hand, had the State Legislature approved the Olson proposals in 1940 for state construction of transmission lines to guarantee priority to preference customers, then a good case could have been made for state administration of the distribution of project power. If the State Legislature and Executive were to evince sympathy for the national farm objectives and were to establish a state organization fully capable of achieving these, then a good case could be made also for state administration of the distribution of project water.

There can be no hard and fast rule. In a situation such as prevails in California today, social objectives largely determine one's position. And indeed they should. We don't build dams for the sake of pouring concrete.