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New board opens doors to Cal Am

By MADELEINE CLARK
Guest commentary

In the land of the blind, the one-eyed man is king.

In Monterey County, Cal Am is king.

After three years of legal wrangling and political maneuvers on the part of high-powered attorneys and corporate lawyers, visiting Judge Roger Randall decreed in a tentative decision this month that California American Water would hold three votes, more than any other entity, public or private, on the courts' new 13-member watermaster board.

This new water management board will have jurisdiction over the Seaside Basin aquifer and will be allowed to transfer more water from the over-pumped Carmel River to recharge the over-pumped Seaside aquifer. Under order 95-10, mandated by the California State Water Resources Control Agency, Cal Am is required to reduce pumping on the Carmel River. The judge's decree conflicts with local, state and federal environmental protection efforts to save the Carmel River ecosystem from over-pumping by Cal Am.

While we appreciate Judge Randall's desire to solve water problems in Monterey County by creating an appointed watermaster board, his ruling overreaches the confines that protect the public from abuses by the judiciary. His decision to usurp the authority of the duly elected Monterey Peninsula Water Management District board is a good example of why we live by the rule of "separation of powers."

The water district was created by an act of the California Legislature. The courts don't have the authority to structure a governing agency of their own design because the California Constitution expressly provides for the separation of governmental powers among three branches of government: legislative, executive and judicial. People charged with the exercise of one power may not exercise either of the others except as permitted by our Constitution (Cal. Const. art. III, 3).

The purpose of separation of powers is to protect individual liberty by preventing concentration of power in the hands of one person or governing body. For a judge to neutralize the water district by structuring and overseeing the activities of watermaster, he claims legislative and judicial authority. Only state representatives we elect have the privilege of creating or dissolving a legally implemented water management board.

All parties agree that the existing water district has jurisdiction over the Seaside Basin aquifer. Unless the district has broken the law, which no one has accused it of doing, the judge exceeds the courts' authority. By formulating a watermaster, whose decisions supersede those of the water district, he violates separation of powers mandates.

He also sows the seeds for graft and corruption by granting Cal Am three votes on a 13-member board. Cal Am only needs four votes from pro-Cal Am board appointees to gain the majority and implement their agenda. Anyone who has had dealings with Cal Am knows how influential it can be, both financially and politically.

Like his newly created water management board, Judge Randall is not directly accountable to the voters of Monterey County. He is a visiting judge from Bakersfield. His decision to devise a new board is illogical. What is to prevent other disgruntled multinational corporations such as Cal Am from suing and gaining control over any government agency when they don't like the ordinances or regulations?

What is next? A new watermaster board for northern Monterey County because Cal Am is annoyed that the county won't issue a permit for the pilot desalination plant it wants to build next to the power plant? After all, that water is slated to recharge the Seaside Basin aquifer. Why doesn't Cal Am sue to replace the Board of Supervisors? No one much cares for the job it is doing. The right judge might be happy to replace the supervisors with Cal Am appointees.

Policymakers and the public need to get straight on legal procedure and political protocol. If we allow a visiting judge to rob us of our democratic rights to elect our own representatives, we open the doors to the Kingdom of Cal Am.

Editor's note: Madeleine Clark is a lifelong resident of Monterey County and director of the Elkhorn Slough Coalition. She earned her bachelor of science degree in communications from Cal Poly. Clark founded the coalition in 2000 to file formal objections against Duke Energy's use of once-through cooling at their power plant in Moss Landing.

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