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Marginalization by collaboration: Environmental justice as a third party in and beyond CALFED

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ABSTRACT

Governance and planning of ecosystem and water management within the California Bay-Delta, a critical component of California's water economy, have been characterized by a range of innovations in collaboration and conflict resolution. Despite legal mandates to incorporate environmental justice, the California Bay-Delta Authority's (CBDA) policy-development process and the subsequent Delta Vision process have systematically marginalized the role of environmental justice in California's water policy. We suggest that environmental justice in Bay-Delta planning can be understood as a "third party" with a tenuous seat at the CALFED water management table. As such environmental justice is a useful lens through which to assess the state's broader commitments and capacities relative to equity as a planning principal and outcome. We interpret the fate of environmental justice within Bay-Delta planning as indicative of the inherent tensions between systems based on increasing market dominance and state legitimation and the values of environmental justice based on distributive, procedural, and cognitive justice. We construct a model of marginalization and environmental injustice in collaborative planning to illustrate these tensions. We draw upon experiences of members of the Environmental Justice Sub-Committee of CBDA's Bay Delta Public Advisory Committee, as well as interviews with other key environmental justice interests, and a comprehensive review of internal and public CBDA documents relating to the environmental justice program including budgets and program plans, and ethnographic field work. We conclude that by learning from the mistakes of Bay-Delta planning, a positive model of collaborative, environmental justice-based planning for water and ecosystem management is possible.

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1. Introduction

[T]he whole idea of "everybody getting better together," which was the mantra behind CALFED, didn't really work because the way it was developed without that [environmental justice] piece to it [which] meant that you couldn't

all get better together because your whole framework sort of excluded the priorities and needs of the EJ community... since these structures were created without EJ, you're always trying to retrofit, and [as] any... builder will tell you it's better to build things right from the beginning than retrofit..." – Environmental justice and water quality

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advocate and member of a CALFED sub-committee (Personal Interview, 2007)

Understanding any contemporary issue of water management and policy requires attending to the history of how water is understood, used, valued, appropriated, and fought over in the particular places tied to the issue (Worster, 1985; Espeland, 1998; Walton, 1992; Orlove, 2002; O’Neil, 2006). A brief overview of that history of discourse and practice in Western United States water management, especially in California, suggests that the ‘water wars’ of old between urban users, agricultural interests, and, more recently, mainstream environmentalists have institutionalized a system of power relationships that make it almost impossible to bring the concerns of the environmental justice (EJ) movement to bear on the process in a meaningful way. The model of ‘backroom’ deals may have shifted from being smoke-filled and exclusive to commercial and regulatory interests (McCool, 1987) to now include environmental interests and agendas structured to promote collaboration, but the tables around which California water is divided remain largely closed to environmental justice concerns and constituencies. Indeed, environmental justice is still a ‘third party’ in California water with a third class place at the table, leaving issues of disproportionate exposure to environmental threats (Pulido, 1996), inequitable access to clean water (EJCW, 2005), and the opportunity of low-income communities of color “speak for themselves” in planning decisions (Cole and Foster, 2001) out in the cold.

This article provides an alternate treatment of the otherwise ‘privileged accounts’ of past and current water

management practices that have legitimated the ‘privileged access’ to water resources and rights in California (Freudenburg, 2005) by exploring how environmental justice was marginalized as an aspect of the planning and management of water through California’s Bay-Delta. We begin with the three domains of justice sought by environmental justice advocates: distributive, procedural, and recognition (Scholsberg, 2004). We then review the processes through which these justice aims were contradicted within the CALFED process. We close with a set of policy and political recommendations for making water management more equitable and democratic.

The water planning history we examine was initially conducted through CALFED (a contraction of “California Federal”) and is now carried out through a combination of CALFED, Delta Vision (DV), and the Bay-Delta Conservation Plan. CALFED came on the heels of the 1992 water drought in California and was spawned out of “Club Fed” – a collaboration of the U.S. Environmental Protection Agency, Bureau of Reclamation, National Marine Fisheries Service, and the Fish and Wildlife Service to manage water supply issues within the Sacramento-San Joaquin Delta of California (see Fig. 1 for organizational chart). It was created through the San Francisco Bay Delta Agreement in June 1994 to facilitate cooperation among California state agencies with concerns over the Bay-Delta (e.g., Department of Water Resources, California Department of Fish and Game, California Environmental Protection Agency). More specifically, CALFED’s goal was to coordinate 26 federal and state agencies’ activities around the likelihood that massive diversion of water at the pumps in the Southern Delta were causing un-mitigated harm to threatened and endangered

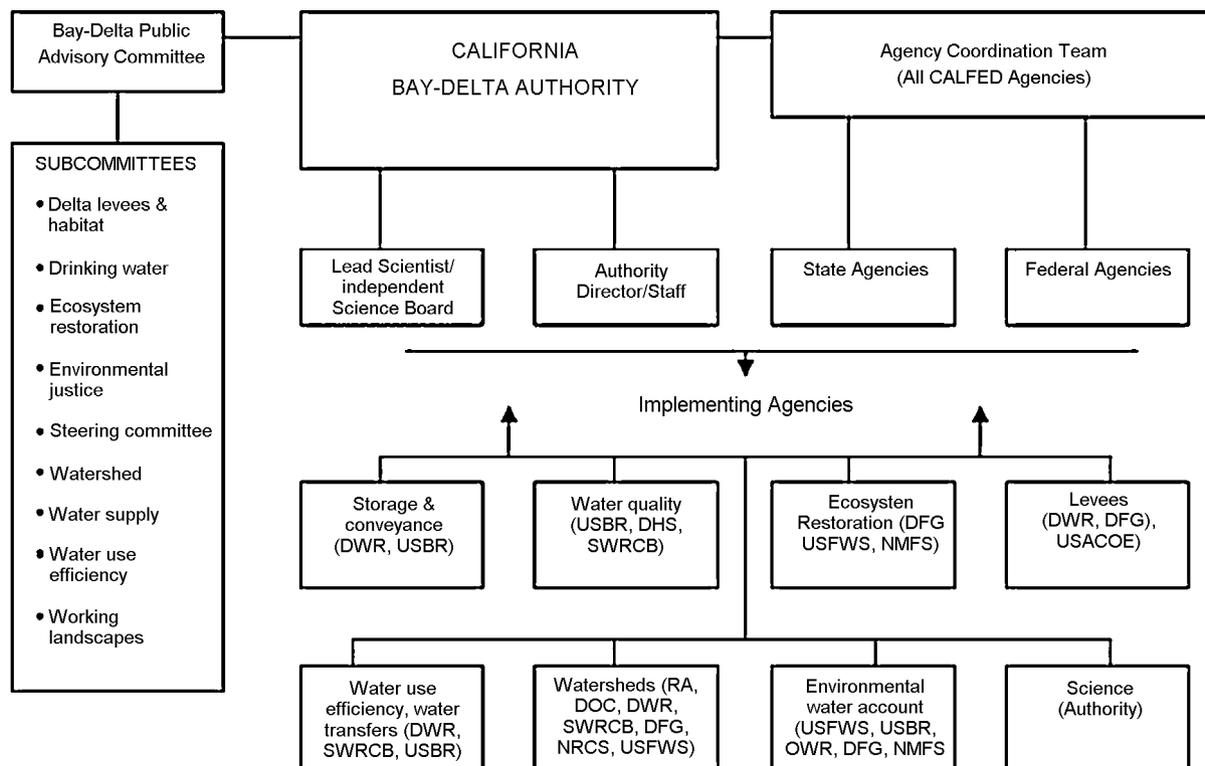


Fig. 1 – Organizational chart for CALFED (source: <http://www.nemw.org>).

habitats and species. To delay or even avoid an otherwise inevitable lawsuit by environmental interests under the Endangered Species Act, the US and California created this water-based partnership – one of the largest ever in the history of the United States.

The US Fish and Wildlife Service provided an annual waiver of the Endangered Species Act for state water interests, as long as CALFED showed progress under the “record of decision” (ROD). The ROD, signed by state and federal government representatives on August 28, 2000, described how the state would restore ecosystem processes, protect environmental values, repair levees for flood protection, improve water quality, provide a consistent water supply, and include a more transparent and presumably more open-ended way of managing water conflicts centered around and through the Bay-Delta through stakeholder and public input (CALFED Bay-Delta Program, 2000).

According to one member of the California Bay-Delta Authority (CBDA, the governing body of CALFED), the vision of CALFED was to be an “innovative, collaborative structures [that got] departments to think across boundaries ... It’s a twenty-first century model of governance. It creates a more open process because you have a public hearing, so there’s more opportunity for public participation, and it flattens out the decision making” (Personal Interview, 2007). Performance measures were included in the ROD against which progress in meeting this program design could be ascertained. This included a relatively bold and explicit commitment to environmental justice, which in turn served as the basis for many environmental justice stakeholders to engage in the process. We will return to the origins of this language in the following section, but for now it is useful to pay attention to the high-minded ideals in CALFED’s document:

[T]he CALFED agencies are committed to addressing [EJ] challenges related to water management in the Bay-Delta watershed. The ROD acknowledges the importance of examining the potential effects of water management reforms on rural communities and the public health and financial impacts of ecosystem and water quality program actions on the large numbers of minorities and disadvantaged people living in urban areas. With that understanding, the CALFED Program and agencies are committed to seeking fair treatment of people of all races, cultures, and incomes, such that no segment of the population bears a disproportionately high and adverse health, environmental, social or economic impact resulting from CALFED’s programs, policies, or actions. In order to turn these commitments and principles into action, the ROD requires the CALFED agencies, by the end of 2000, to collaborate with [EJ] and community stakeholders to develop a comprehensive [EJ] workplan across all program areas. This workplan was intended to ensure that the CALFED agencies developed the capacity and process to understand, monitor, and address [EJ] issues as the program moves into implementation, including identifying and developing specific methods to address and mitigate [EJ] impacts. (CALFED Bay-Delta Program EJ Workplan, December 13, 2000)

Based on much of the literature on CALFED highlighting its collaborative, open and participatory qualities (Innes et al., 2006, 2007), it would have been reasonable to expect that this high-minded language would be realized within CALFED. Recent accounts of CALFED have identified several important innovations in its strategies for water management and the resolution of water conflicts in the state. Perhaps most fundamental are the analyses by Innes et al. (2006, 2007) as well as Lejano and Ingram (2009) that highlight CALFED’s model of collaboration including horizontally networked, boundary-crossing, information-sharing, informally arranged decision-making. These accounts are in-line with the broader literature on governance-beyond-the-state (Swyngedouw, 2005) and innovative governance that occupy a prominent place in current political theory and practice in the United States and elsewhere.

Unfortunately for all involved, evidence suggests that the collaborative model employed by CALFED in fact produced marginalization of environmental justice interests and constituencies. In this paper, we puzzle over this apparent contradiction and ask how a process ostensibly based on collaboration could at the same time produce dynamics of marginalization. If CALFED is a paragon of collaboration, we ask: collaborative for whom? We describe the nature of the collision between environmental justice and the powerful water interests in the state that were involved in CALFED and from this to build a broader framework for understanding water and power in California.

2. The prehistory of environmental justice in CALFED

According to CALFED planning documents (CALFED Environmental Justice Workplan, 2000), environmental justice provisions were included in CALFED in response to federal and state mandates that public agencies incorporate environmental justice processes and principles in all of their activities. Layered on top of Title VI of the Civil Rights Act and President Clinton’s 1994 Executive Order (#12898), California’s SB 115 (Solis D-El Monte) and SB 89 (Escutia D-Montebello) passed just prior to the signing of ROD (in 1999 and 2000 respectively) obligate the California Environmental Protection Agency to institute a range of efforts to incorporate environmental justice (London et al., 2008). It is relevant to note that as Latinas, state Senators Escutia and Solis (now President Obama’s Secretary of Labor) represent a new wave of Latino political power in California. Together with their fellow members of the Latino caucus, Solis and Escutia were responsible for the sponsoring over half of the 20 state laws passed on environmental legislation since 1999. Based on this legislative push – itself in response to pressure from organized Latino and other constituencies, the state and federal agencies wrote environmental justice into their funding document in the language quoted above.

Beyond electoral politics in California, the appearance of environmental justice within CALFED was a result of historical dynamics on the state and national scales. Understanding the inherently oppositional relationship of environmental justice with modern nation states allows the conflicts over environ-

mental justice within CALFED to be more usefully theorized. The environmental justice movement in the United States arose during the early 1980s in response to a series of attempts to site hazardous waste facilities in low-income communities and communities of color. Local struggles to prevent these facilities from endangering their communities spurred national attention (Brown and Mikkelsen, 1990; Cole and Foster, 2001). Subsequent studies by the US General Accounting Office (1983), United Church of Christ (1987), and Robert Bullard's *Dumping in Dixie* (1990) validated that this inequitable exposure to toxic substances was a wide-spread phenomenon requiring federal action.

Over the past three decades, hundreds of environmental justice organizations have sprung up around the country, linking problems of racial and class stratification to community organizing against the siting of hazardous facilities, as well as for better access to cleaner air, water, and land; transportation, housing and urban development; and a full say in decisions that affect their health, economic vitality and well-being (Brown, 2007; Brulle and Essoka, 2005; Novotny, 2000). These organizations build more from the civil rights movements than the white, middle-class environmental movement (Bryant and Hockman, 2005). The environmental justice movement is based on the recognition that places in which people of color and low-income people “live, work, play, go to school, and worship” tend to bear a disproportionate burden of environmental threats (Pulido, 1996; Bullard, 1990) in what is already a “risk society” (Beck, 1992). Environmental justice has sought to intervene in ‘environmental racism’, “in which racial minorities are disproportionately exposed to environmental hazards and systematically excluded from environmental decision-making” (Pulido, 1996:xiii).

Environmental justice has also challenged contemporary applications of science. This is advanced through its advocacy for the “precautionary principle” or the idea that the burden of proof should be on the manufacturer, user, and/or regulator of a potentially harmful substance or technology not on the communities who are likely to bear the effects (Science and Environmental Health Network, 1998; Whiteside, 2006). Environmental justice has championed the notion of “cumulative impacts” that depart from single chemical, single pathway, single point in time analysis to construct models of multiple exposures to multiple hazards from multiple media faced by people and communities (Fox, 2002; Bullard, 1990). Pushing these methodological innovations even further, environmental justice activists have challenged the truth monopolies typically held by academic, industry, or agency scientists and called for a co-production of knowledge and a pluralistic structure to knowledge production with local/indigenous/embodied knowledge integrated with peer-reviewed science (Corburn, 2005, 2007).

Despite advances in the passage of legislation and promulgation of agency policies in support of environmental justice, there have been many setbacks and dead-ends in its pursuit (London et al., 2008). Significant questions remain about the effectiveness (and even integrity) of the state and regional agency practices to implement these policies (Targ, 2005). Theoretical understandings that posit “ecological

disorganization, and environmental inequality and racism as... fundamental to the project of modern nation building,” the normal routine functioning of capitalist economies (Pellow, 2007:5, 17), throw into question whether any reformist approach is even feasible. In the field, activists routinely raise concerns and voices about the limited resources, levels of decision-making authority, transparency, and accountability that doom agency attempts to address environmental justice in a meaningful way. Ultimately, environmental justice as a way to fine-tune state and market machinery clashes with visions of environmental justice as a new technology of democracy, which makes public policy approaches to environmental justice, such as those to be described within CALFED, so ridden with conflict.

3. Institutionalized power, inequities, and resistance in California water

While much of the environmental justice literature focuses on the risks of environmental contamination and the movements that have arisen to contest this, there is another history that bears directly on the experience of environmental justice in CALFED, and that is the history of water and power in California. Indeed, the “water wars” that have characterized much of California’s history provide an important context for understanding the dynamics associated with environmental justice in CALFED. It is the very military nature of this metaphor that bears examination for its emphasis on the clash of great powers and the collateral damages that are typically sustained by those that are un- or more lightly-armed. That is, at the risk of glossing too lightly over a complex and varied history: the place of water in the legacies of conquest (Limerick, 1987) of California has involved the contestation of powerful entities – agribusiness corporations, urban politicians and water districts, public agencies, and more recently environmentalists armed with legal standing and enforceable statutes (O’Neil, 2006). While the balance of power has shifted over time, what remains constant is both the push and pull between them and the marginalization of interests without the means to compel the attention and compliance of the others (O’Neil, 2006). It is this subaltern position that characterized the environmental justice participants of CALFED and against which they struggled.

The relationships between water and social/economic/political power in California (and elsewhere in the American West) is insightfully analyzed by Donald Worster (1985) as embedded within a process of “empire” building by state and capital interests. Worster (1985) builds on John Wesley Powell’s and Wallace Stegner’s (1954) focus on aridity as the defining condition of the region and – without lapsing into environmental determinism – recounts how arid conditions coupled with imperatives for economic and population growth concentrated tremendous power in the government agencies whose hands lay on the ‘spigots’ (dams, aqueducts) and set off extensive battles over the water rights to this liquid gold. The high political and economic stakes involved in the large-scale water engineering projects privileged the

water purveyors (agency engineers, contractors, and water rights holders) and helped fuel the rise of California's industrial scale agriculture (McWilliams, 1939; Pisani, 1983; Walker, 2004) as well as the feudal city-state-like LA Metropolitan Water District. Over time, "iron triangles" – to use Weber's term denoting alliances between state agencies and civil society elites – developed between public water agencies, congressional leaders, and agribusiness (McCool, 1987). Thus, in California, as Walton (1992:5) notes, "the record of human agency and institutional development... has been a succession of struggles over dominion, of claims and counterclaims on the legitimate possession and use of resources bound up with the land, subsoil, water, air, the natural environment generally, and, in particular, with the social groups that won and lost in the struggle."

A critical element of these struggles has been their transaction of water between the primary and secondary parties (sellers and buyers) and the positioning of all others as "third parties." The notion of third party, while an attempt to capture and potentially rectify negative economic, social and environmental externalities of water transfers (Carter et al., 1994) by definition distances such parties from the decision-making table (reserved for first and second parties) and limits the policy decision space to reactive, rather than preventative, measures. While the "power geometry" (Massey, 2005) of water in California has distanced third parties from decision-making power, this status has not gone uncontested. The growing strength of the environmental movement has enabled a countervailing force to urban and agricultural water interests as evidenced in the successful fight to "save Mono Lake" from water diversions in the 1980s, and law suits in the 1990s under the Endangered Species Act that threw a wrench into the diversions of water from the Sacramento-San Joaquin Delta, prompting the crises which CALFED sought to defuse. More recently, environmental justice advocates—sometimes aided by mainstream environmental advocacy organizations (e.g., Earth Justice), have launched a new wave of assaults on the monopolized power structure and marketization of water in California. A quote from one of the major environmental justice actors, the Environmental Justice Coalition for Water clearly states their critique of water management and policy in the state:

Many [environmental justice] advocates...worry that...[market-based water] transfers could disguise a reshuffling of the state's public water between powerful corporations and landowners... public and quasi-public agencies have cut out communities of color and low-income communities for decades precisely by creating policies and institutions that favor private and corporate interests...[environmental justice] advocates fear that in an improperly or insufficiently regulated market, those who have already been left out would be further unable to compete against those who have grown rich from decades of unjust water distribution in California (environmental justice 2005:36–37).

Environmental justice activists have increasingly been struggling to find their place in California's newest water

scheme, the Bay-Delta planning process(es), including CALFED. Their fight, in the context of environmental justice in general and in water policy development in particular, has led to the policy analysis we detail here: the Bay-Delta planning process started with informal and secretive meetings among conflicting parties, setting an exclusive table with seats for only certain parties. Presence at and access to this table where credibility is set (e.g., funding resources, knowledge, exclusive communication) was established at the beginning of the collaborative governance process, meaning that a lack of place and access to the table resulted in a lack of credibility. There have been various mechanisms for exclusion and denying access, including language, arbitrary legitimation of knowledge, cultural practices of interaction among those in power, and class. Apparently those present at the collaborative governance table have become accustomed to their relationship, with those desiring access being seen as alien and threatening. Environmental justice's stakes in the process are disproportionate impacts to disenfranchised communities and lack of access to decision-making. The conflict over access ultimately was a conflict between a moral economy (social values) and political economy (codified power arrangements). Because those in power at the table ended the conflict through elimination of the "third parties", the antagonism was only exacerbated and is leading to greater conflict in other arenas, signaling the fundamental failure of this experiment in collaborative governance over water in California. We examine the experiment in the sections below.

4. Research strategy

The data used as the basis for the descriptive and analytical parts of this study are a combination of three in-depth interviews and one four-member focus group with CALFED process participants, minutes of the CALFED Environmental Justice Sub-Committee meetings and recollections and notes of these meetings from one co-author (Shilling), ethnographic observations and field notes taken by our lead author at California policy conferences in 2005 and 2006, organizational and public documents about CALFED, and historical accounts of water politics and the environmental justice movement. The 45–105 min interviews were transcribed, and coded to track both unfolding of environmental justice in CALED and what that meant to Environmental Justice Sub-Committee members. The quotes from data sources in this article have been edited for clarity. Shilling's participant observation in the Environmental Justice Sub-Committee meetings lasted from late 2002 to mid-2005 when the Environmental Justice Sub-Committee was dissolved. He was also active in the Watershed Sub-Committee (WSC) until it was also dissolved. We used the organizational and public documents we gathered to corroborate our observations. Direct engagement by the lead author and close attention by the other two in the process enriches our study (Ganz, 2000), coupled with the other methods employed, facilitate the "triangulation" of multiple data sources to arrive at a thick, rich, and plausible description and interpretation of the case under study (Duneier, 1999).

5. A model of injustice

Lack of Recognition: Color- and/or class-blind ideology; English-only bias in communication. Failure to empirically explore the possibility of disproportionate impact from an environmental threat or the inequitable distribution of environmental, economic, and political benefits and burdens under the purview of the governing body. Failure to legitimize and develop participatory research programs with disproportionately impacted communities to explore these questions.

Procedural Injustice: Lack of meaningful representation, participation, authority, and funding of environmental justice stakeholders (relative to all other stakeholders) in decision-making processes.

Distributive Injustice: Insufficient reduction in the disproportionate impact from an environmental threat or the inequitable distribution of environmental, economic, and political benefits and burdens under the purview of the governing body.

Adapted from Schlosberg (2007).

To understand the rise and fall of environmental justice within CALFED, and in particular, the overall failure of CALFED to implement its ambitious goals for integrating environmental justice throughout the initiative, we construct a heuristic model of “nested marginalization” (Fig. 2). For this purpose we draw on the political theorist Schlosberg (2004, 2007) who provides a incisive analysis of the “justice” of environmental justice. Schlosberg (2007) proposes that environmental justice contains a concern about *process* and democratic access to decision-making by typically under-represented populations (heard in the environmental justice slogan, “we speak for ourselves!”); a concern for an equitable *distribution* of environmental risks as well as opportunities. To these standard elements, Schlosberg adds “*recognition*” or the respect afforded to diverse ways of seeing and knowing – a critical intervention in the science-based domains of environmental and natural resource policy. Schlosberg argues that without this recognition, claims for procedural or distributional justice are limited in their impact and even counter-productive.

Set against this normative framework, we can now begin to explore the production of injustice within CALFED. It is when one or more of these dimensions of justice are not present or not articulated with the others, that injustice arises. The outcome of all of the dynamics of the model is injustice and marginalization, the minimal influence of environmental justice principles or actors on the policies, funding allocations, and authority over water. At the center of the model are the institutional processes of CALFED’s vaunted collaboration and participation – processes which we argue have a significant anti-democratic underbelly. Surrounding and shaping these processes is the profound disconnect between the science-based culture of CALFED and the diverse ways of knowing, speaking, and communicating brought to bear by the environmental justice participants in CALFED. Wrapping around these contests of knowledge are the substantive issues addressed and neglected by CALFED and the marginalization of environmental justice issues within this framework. Finally, the notion of “legacies of conquest” to use Limerick’s (1987) evocative phrase refers to the historical context with its embedded power relations and political economies that serves as a context within which these institutional dynamics are formed and play out.

6. The process of marginalization of environmental justice in CALFED

Achieving the noble intentions contained within CALFED’s ROD has proven problematic to say the least. California’s Little Hoover Commission, in its critical analysis of CALFED, noted that the Environmental Justice Sub-Committee “has not been adequately funded and its ability to implement a basic work plan as outlined in the ROD was ‘an embarrassing failure’” (LHC, 2005, pp. 82). In her assessment of CALFED as part of her proposed legislation (SB 8 which was eventually vetoed by Governor Schwarzenegger) to formalize environmental justice as an official element of the effort, state senator Sheila Kuehl wrote:

Six years [after completion of the ROD], neither the CALFED agencies nor the [CBDA] have adopted a comprehensive [E]

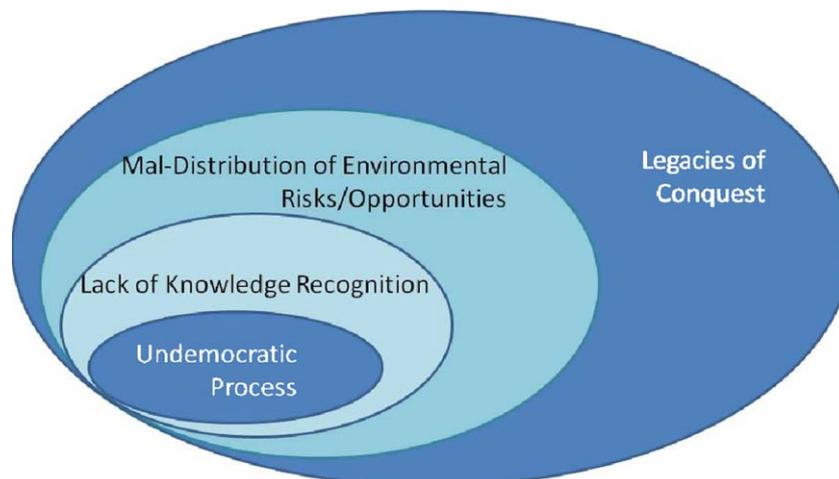


Fig. 2 – Nested marginalization.

work plan. Nor have the CALFED agencies nor the [CBDA] developed [EJ] goals and objectives as called for in the ROD. Simply stated, the CALFED agencies and the [CBDA] have demonstrated little commitment to addressing environmental justice challenges related to the management of water in the Bay-Delta watershed as called for in the ROD.

For the environmental justice advocates themselves, many of whom had spent countless hours toiling within the Environmental Justice Sub-Committee of the BDPAC, the inability to bring the reality of CALFED in-line with its rhetoric was a bitter disappointment. In a 2005 press release following the release of CALFED's 10-year action plan that included little attention to environmental justice and in comment letters written to CALFED, a number of the key members of the Environmental Justice Sub-Committee reflect:

Originally we were encouraged by what seemed like a real commitment on the part of CALFED to ensuring public participation... However, over the past five years it has become crystal clear that CALFED never had any intention of truly implementing its environmental justice obligations. (Martha Guzman, legislative analyst, California Rural Legal Assistance Foundation (CRLAF) and past Environmental Justice Sub-Committee chair)

This is a slap in the face to communities throughout California... The Bay-Delta Authority once again exhibits their total disregard for environmental justice and true public participation in the vital decisions concerning water in California. (LaDonna Williams, executive director, People for Children's Health and Environmental Justice)

Now is a moment of rare agreement that the system is broken... The Governor and the Legislature must ensure that CALFED does not repeat the same mistakes of exclusion and discrimination that have characterized it for so long. (David Nesmith, Environmental Water Caucus coordinator)

"[T]he people who sat at the table and signed the ROD may have had the best of intentions... The fact is that people implementing on the ground didn't have the same commitment... At every single turn, every opportunity they had to advocate in the budget process for money to fund this, they didn't... They just completely failed. It was not a priority." – Environmental Justice Advocate, Focus Group, 2007

In 2005, the Environmental Justice Sub-Committee was disbanded by CALFED. While there have since been occasional attempts within Bay-Delta to address environmental justice (some of which are on-going) the comments expressed above coupled with the disbanding of the Environmental Justice Sub-Committee and the current boycott of all environmental justice-related processes within CALFED by most environmental justice organizations have effectively ended the policy experiment spelled out in the ROD. To understand how such a bold policy intention could be reduced to a 'broken system,' we must examine the social processes of how environmental

justice interacted with the Bay-Delta planning system over time. We examine these processes in the next three sections describing authority, resources, and dissolution of the CALFED Environmental Justice Sub-Committee.

6.1. Procedural injustice: an absence of democracy and contention over authority

Understanding the "end-in-itself" character of institutions (Selznick, 1957, 1996), coupled with analysis of modern bureaucracies originated by Max Weber and skillfully applied to water agencies by scholars such as Wendy Nelson Espeland (1998, 2000), Gottlieb (1988), Gottlieb and FitzSimmons (1991), and O'Neil (2006), we can predict that "grassroots" interests from outside CALFED such as environmental justice organizations might be viewed as, at best, irrelevant and, at worst, a threat to the state and federal resource agencies leading CALFED. The reasons for this are varied and span the range of organizational theory. First, as Espeland shows in the case of the Bureau of Reclamation, notions of instrumental rationality, encoded in the agency's "surrogate political process... created a technologically driven, sanitized process" (2000:1083). Second, Espeland further examines how, the relevance of new stakeholders and their knowledge, "was strictly controlled, shaped powerfully by how rationality was conceived, the particular subjects it demanded and the way expertise was mobilized" (2000:1102).

This analysis provides a critical lens on more optimistic treatments of collaborative planning (Wondollock et al., 1996) and on CALFED more generally, (Heikkila and Gerlak, 2005; Innes et al., 2006) that gloss over the ways that collaborative planning can exacerbate power disparities. For example, the proclamation by Innes et al. (2006:53) that CALFED has "turned California water wars into skirmishes" only holds true from the perspectives of the Great Powers in the earlier wars, not those sustaining collateral damages such as the Winnimum Wintu (who remain technically at war with the Government of the United States over the desecration of Wintu lands by Shasta Dam) and disproportionately impacted communities excluded from planning.

CALFED leadership's initial response to the environmental justice mandates in the record of decision was to establish an Environmental Justice Sub-Committee to the Bay-Delta Public Advisory Committee. This sub-committee was one of many within CALFED (e.g., water supply, drinking water, watershed). Unlike all but the Watershed Sub-Committee the Environmental Justice Sub-Committee had no requirements for membership other than attendance. This open membership allowed for the environmental justice community to define and "speak for itself", a critical component of the practice of environmental justice, and initially supported an active and dynamic group culture. The chair and co-chairs were appointed by the CBDA, the first of which was Martha Guzman, a well-known organizer with the United Farm Workers and later the California Rural Legal Assistance Foundation, who later became co-chair. In summer of 2003, the remaining chair resigned and Dr. Henry Clark, Executive Director, West County Toxics Coalition, was unanimously supported by the EJS for this position. He remained the unofficial "interim" chair of the sub-committee for 2 years,

due to inaction on the part of the CBDA Public Advisory Committee (BDPAC) to recognize him as chair. As a result of this lack of recognition of his role as Environmental Justice Sub-Committee chair, Clark was never appointed as a member of the BDPAC, therefore depriving the sub-committee of direct representation in this body. He also happened to be African-American.

Attendance in the Environmental Justice Sub-Committee varied considerably over its 3-year history (Fig. 3). There were distinct phases of organizational participation, with eight organizational groups of stakeholders (e.g., state agencies, community organizations). Although exact cause is difficult to determine, state agency participation was greatest when CALFED coordination was low and waned to none over the ensuing 2 years. Community organization participation grew considerably after the contracting with the environmental justice coordinator, Ken McGhee from the Center for Collaborative Policy, but shrank significantly after summer 2003 when Guzman retired from the chair position and through 2004 when contention with CALFED management was growing. CALFED staff participation grew considerably through 2004 when contention between Environmental Justice Sub-Committee members and CALFED was high, but shrank to participation by just McGhee in 2005, in the months leading to dissolution of the Environmental Justice Sub-Committee. Overall institutional representation – indexed by number of institutions or organizations present at a given meeting – initially grew then generally declined from early 2003 onward.

The Environmental Justice Sub-Committee's legal authority was unclear to most within the committee and possibly to other interested parties, probably contributing to its varying attendance and eventual demise. The Environmental Justice

Sub-Committee was initially looked to by CALFED member agencies as a possible clearing-house for environmental justice issues (Environmental Justice Sub-Committee meeting minutes 3/21/03). Environmental Justice Sub-Committee members felt that this might be an appropriate role, but no formal or apparent authority or responsibility was given to the Environmental Justice Sub-Committee to provide input on any CALFED Program. In theory, the chairs would represent the Environmental Justice Sub-Committee's interests on the BDPAC and the coordinator would provide access to CALFED management and staff. However, as described above, after the resignation of the original chairs in 2003, the Environmental Justice Sub-Committee was without representation on BDPAC.

During 2002, the coordinator position was filled part-time by CALFED staff Dan Wermiel (later with the CALFED Watershed Program). Starting in January 2003, CALFED contracted with McGhee to provide full-time coordination for the Environmental Justice Sub-Committee. He was funded full-time, but questions remained throughout the life of the Environmental Justice program as to how this position actually achieved the environmental justice goals of the ROD. Coordinator McGhee functioned primarily to convene the Environmental Justice Sub-Committee, facilitate communication between the sub-committee and other CBDA committees and staff, and to develop program plans and budgets.

McGhee's position had a personal and structural dimension that spurred conflict. As an African-American man, McGhee seemed to serve as a positive response to the environmental justice representative's demand for greater attention to race in CALFED. However, some members of the Environmental Justice Sub-Committee objected to the fact that while African-American, McGhee's lack of experience

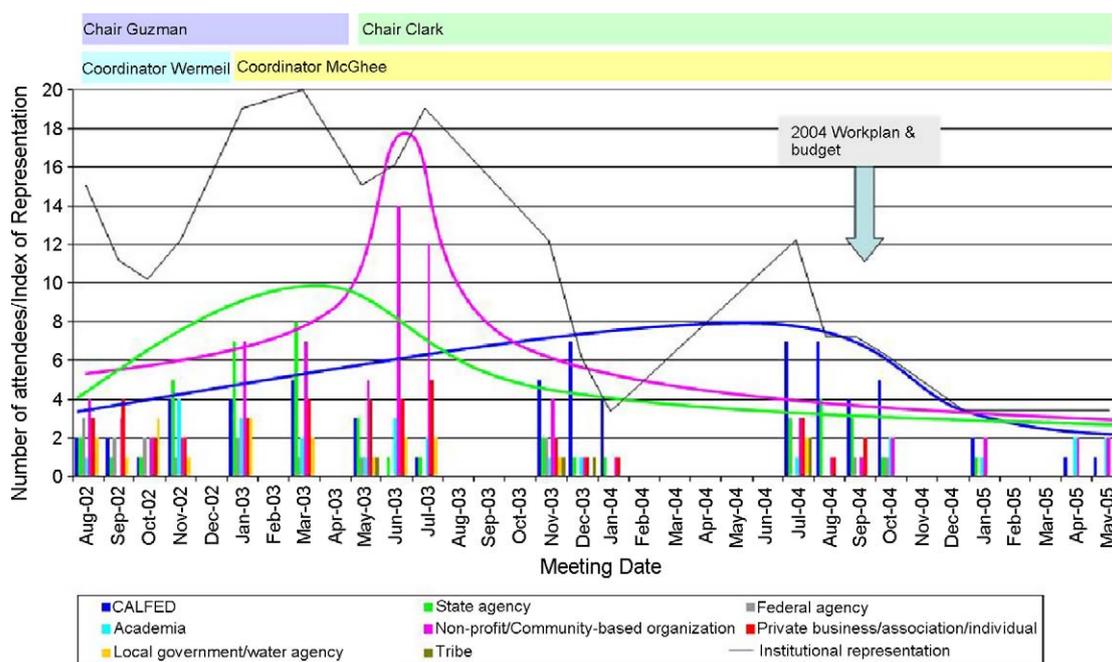


Fig. 3 – Attendance and institutional representation at CALFED EJSJC meetings. Number of individuals per institutional categories shown in the legend. The index of institutional representation represents the absolute number of institutions/organizations attending a specific meeting. Meetings were held regularly (monthly), but not all were officially recorded with meeting minutes. The last three meetings shown were indexed using Shilling's notes.

with environmental justice created an illegitimate basis for leadership. One former member of the Environmental Justice Sub-Committee commented, “Ken... wasn’t an expert in [EJ]. He knew a little by attending some of the CEJAC (California Environmental Justice Advisory Committee) meetings and other trainings, but... he didn’t have any grassroots foundation in [EJ].” Many also noted that McGhee was not given the resources he needed to succeed in his role, and was effectively positioned as one Environmental Justice Sub-Committee member said, at the “bottom of the chain in CALFED... he had to depend on student interns to help him. And plus, he said... they disrespected him by putting his office next to the toilet!” One environmental justice activist explained some anger towards McGhee: “I don’t blame him for the ills of EJ. It’s definitely the agencies’ fault, but I blame him for allowing himself for being used like that.” Even a member of CALFED’s governing body, the CBDA, observed how hiring a person of color may have limited, not expanded the attention to race and equity in CALFED:

[T]hey hired a person of color. They hired an African American... I think what happens when the thinking about environmental issues and environmental justice issues becomes polarized, as had been, is that some folks will... probably unwittingly... think, ‘Ok, well, we hired a person of color to run this committee, so... they’re all taking care of themselves. We’re addressing it, you know? We’re letting them do their thing, and... we’re funding it. So, aren’t we done now?’ (Personal Interview, 2007).

A member of the Drinking Water Sub-Committee noted that the tension over McGhee (with original emphasis), “illustrated the fact that having a coordinator is not what you need because the charge of the Environmental Justice Sub-Committee was ensuring that environmental justice was incorporated into all of CALFED’s programs and policies. And, how on earth is *one sub-committee with one coordinator* going to do that?” This ghettoization of environmental justice within one sub-committee, instead of its incorporation across the entire CALFED structure may have been the greatest impediment to its success. In many ways, this represented the invisibility of the Environmental Justice Sub-Committee within the bureaucratized democracy of CALFED and its absolute lack of authority.

6.2. *Un-recognized injustice: scientific rationality, contested knowledge, and access to resources*

“[T]he people who sat at the table and signed the ROD may have had the best of intentions... The fact is that people implementing on the ground didn’t have the same commitment... At every single turn, every opportunity they had to advocate in the budget process for money to fund this, they didn’t... They just completely failed. It was not a priority.” – Environmental Justice Advocate, Focus Group, 2007.

Espeland’s (2000:1102) description of the privileging of “expert knowledge” over “practical knowledge” to marginalize indigenous knowledge of the Yavapai Nation opponents

to the Orme Dam in Arizona provides a useful entry into the second layer of marginalization of environmental justice within CALFED. Expert knowledge, embodied as rational, technical, academically credentialed, and coded as white and male are used to construct and legitimate “regulatory science” and policy (Jasanoff, 1990). By extension, the vast population of those with “merely” experiential, embodied, local, or indigenous knowledge – and coded as non-white and (sometimes) female – are considered “an inferior source of authority” (Espeland, 2000:1102). This model of exclusive rationality and expert roles has been critiqued both for its disempowering effects on its subjects and for its dismissal of valuable knowledge in the form of “street science” (Corburn, 2005), “civic/citizen science” (Fortmann, 2008), and “popular epidemiology” (Brown, 2007) in the identification of environmental health problems and the forging of innovative solutions. One way that community interests can access the privileged circles of expert knowledge is through access to resources to address issues critical to community and environmental justice, using the scientific tools of the privileged. It was the lack of resources for research and lack of respect afforded the knowledge and expertise of the members of CALFED’s environmental justice committee and their broader constituencies by the CALFED leadership that provoked much of the anger and conflict in the process.

The Environmental Justice Sub-Committee and Environmental Justice program had little access to funding for research and coordination, especially compared to that afforded the rest of the CALFED program. Until late 2002, the Environmental Justice Sub-Committee and program did not have a budget that could support projects recommended by the sub-committee, a grant program, technical staff, or travel/stipend support for sub-committee members. This is in contrast to the other CBDA programs, which each had these resources. Starting in 2002, \$250,000 was budgeted by CALFED for the Environmental Justice program for each fiscal year. In the first year, half of these funds were contracted to Jones & Stokes Associates (J&SA), a private consulting firm, to provide various services. Despite consuming half of the already minor budget, these services were limited to summarizing 1-year of occasional environmental justice workshops, developing one Power Point presentation on the Environmental Justice Sub-Committee, and a report on possible environmental justice-related GIS sources for the CALFED solution area. Upon learning of this contract, the Environmental Justice Sub-Committee demanded of the coordinator a full accounting of the first year’s funding, especially for the contract with J&SA. This accounting was not provided to the Environmental Justice Sub-Committee and the resources available to fund environmental justice research in CALFED remained opaque and unavailable to the committee.

The continuing resources available to the Environmental Justice Sub-Committee and the nascent Environmental Justice program consisted of a Census data mapping project by staff at the California Department of Forestry and Fire Protection (supported by CALFED’ Watershed Program) and a full-time coordinator who reported to then-Deputy Director Joe Grindstaff. While not considered on the official budget, a major resource of the Environmental Justice Sub-Committee was their contribution of volunteer time and effort, totaling

Table 1 – Proposed CALFED 10-year finance plan (October, 2004 draft). The Environmental Justice program is within the “Oversight & coordination” program.

Program	Proposed annual budget (\$ in millions)	% of total CALFED
Ecosystem restoration	150.0	24.7
Water use efficiency	132.5	21.9
Storage	102.8	17.0
Drinking water quality	52.2	8.6
Levees	42.8	7.1
Environmental water account	40.7	6.7
Science	29.8	4.9
Watershed	25.0	4.1
Conveyance	18.2	3.0
Oversight & coordination	11.7	1.9
<i>Environmental justice</i>	0.34	0.06
Water transfers	0.6	0.1
Total	606.4	100

thousands of hours from organizations with few resources themselves.

In 2004 the proposed budget for CALFED was \$606 million/year (Table 1). The proposed budget for the oversight and coordination program, of which the Environmental Justice Program was a small part, was \$12 million/year. The Environmental Justice program's portion was proposed by CALFED staff to be \$335,000/year (the highest ever proposed), which amounted to 0.06% of the overall CALFED budget. An interesting facet of the conflict between the Environmental Justice Sub-Committee and CALFED staff was that the CALFED web site provides the Environmental Justice Program's budget and work-plan proposed by staff in 2004, amounting to \$335,000/year. It does not provide the budget and work-plan proposed by the Environmental Justice Sub-Committee amounting to \$1,342,400/year. The latter included specific projects recommended by the Environmental Justice Sub-Committee to advance understanding about disproportionate impacts to farm worker, rural, and Native American communities in the CALFED study area (e.g., community impacts from market-based water transfers). This was the only work plan among the CALFED programs where disproportionate impacts were proposed to be evaluated, but was strongly opposed by management and contributed to dissolution of the Environmental Justice Sub-Committee. The lack of these resources prevented the Environmental Justice Sub-Committee and its members from participating in the “legitimate” scientific rationality of CALFED and its authority over water.

6.3. Distributed injustice: marginalization of environmental justice issues in CALFED

Some analysts of collaborative governance have lauded the flexibility and reduction in conflict possible when public policy is developed through a consensus-building process as opposed to command and control or adversarial modes (Wondollock et al., 1996; Carpenter and Kennedy, 1988). These modes of “governance-beyond-the-state” that integrate state, capital and civil society domains are described as increasing the inclusiveness and democratic nature of policy formation

and implementation (Schmitter, 2002). Many of the accounts of CALFED (e.g., Innes et al., 2006, 2007) have approvingly highlighted the effort's collaborative and informal characteristics. Compared to the dysfunctional and conflict-laden landscape of California's water wars, it is not unreasonable to view the increased collaboration within CALFED as a significant achievement. However, to understand the frustrated experience of environmental justice within CALFED, it is necessary to look beyond these limited accounts.

Pellow (1999a,b) develops a useful complex of the collaborative governance and conflict resolution/consensus literature by describing how grassroots environmental and environmental justice organizations combine negotiation and confrontation. Pellow (1999a:202) describes as “infrapolitics” the “actions that members of less powerful groups take that are often disguised or veiled in the form of accommodation.” Infrapolitics can be used to understand the strategies of the environmental justice stakeholders within CALFED, partially explaining why a process devoted to resolving conflicts provoked such heated conflicts with a particular set of its participants.

Swyngedouw (2005) astutely captures the ambiguous politics of governance-beyond-the-state as represented by a two-faced “Janus” with one face looking toward increased democratization and inclusiveness and the other face trained on the imposition of a dominant market throughout society. First, Swyngedouw (2005:1997) observes that what Foucault (1991) calls “governmentality” or “the rationalities and tactics of governing and how they become expressed in particular technologies of governing” involves a reconfiguration of the state vis a vis capital and civil society. This reconfiguration itself is composed of the externalization of state functions through privatization, deregulation, and decentralization, a scaling up of national to transnational governing bodies, and a scaling down of national to state, regional, or local governing bodies (2005:1998). All of these restructuring processes can be understood as being “embedded in a consolidating neo-liberal ideological polity.” This ideological polity is biased towards the interests of the economic, socio-cultural, and political elites but in ways that are not transparent and therefore difficult to challenge. It is this “proliferating maze of opaque networks, fuzzy institutional arrangements, ill-defined responsibilities and ambiguous political objectives and priorities” in the reinvented and collaborative governance that leads Swyngedouw to caution against rejection of formal state procedures and structures. Swyngedouw (2005:2003) observes that the collaborative governance-beyond-the-state has further biased social power towards “those who accept playing by the rules set from within the elite networks” and those “associated with the drive towards marketization and has diminished the participatory status of groups associated with social democratic or anti-privatization strategies.”

It is precisely this scenario that we argue has occurred within CALFED and that it is the very elements so often lauded about CALFED – its collaborative governance model, composed of opaque networks and fuzzy institutional arrangements controlled by elites – that led to the marginalization of environmental justice issues and advocates within its process.

The marginalization of the distributive elements of environmental justice within CALFED can be seen in the need

of environmental justice activists outside the collaborative system to get their issues addressed. One notable example is SB 8 legislation by Sheila Kuhl (D-Santa Monica) that sought to compel CALFED to address environmental justice issues. SB 8 would have changed the status of environmental justice from a general CALFED policy to a specific program element as called for in the record of decision, thus providing the leverage necessary to ensure that agencies address advocates' concerns. Senator Kuhl's office's fact sheet on the bill provides a useful encapsulation of the issues that environmental justice activists perceived were not being addressed within CALFED.

- Any construction of new dams or raising of existing dams must take into account how that construction would affect the local population. The raising of the Shasta Dam, for example, could flood sacred tribal burial grounds of the Winnemem Wintu.
- Communities that still get most of their supply from groundwater are finding wells contaminated with arsenic and other toxic substances from pesticides in agricultural run-off. High levels of other contaminants have also been found in urban creeks and watersheds.
- Scientists are finding a high number of mercury-contaminated fish in the Bay-Delta. This could pose a major public health problem, especially for subsistence anglers who depend on fish for their diet. There is also a lack of outreach to low-income communities and communities of color on the dangers of eating mercury-contaminated fish.
- More investigation is needed on how water transfers impact surface and groundwater rights of communities at the point of origin.
- Equal investments must be made in upgrading levee and flood control systems across all affected communities regardless of income. There also needs to be some way of assuring that low-income communities in the flood plain do not have any greater risk of flooding than any other community in that area.

As notable as its need for being written is its veto by Governor Schwarzenegger. Kuhl's colleague state Senator Fran Pavley's office described the defeat, "In his veto message, the Governor said, 'My administration will continue to work with environmental and community organizations to address environmental justice issues in the public forums that have been established for that purpose.' However, it was precisely because his administration has not worked with environmental and community groups that the bill was introduced." (<http://dist23.casen.govoffice.com>).

In early 2005, Environmental Justice Sub-Committee members recommended that, consistent with the ROD, all program plans developed by CALFED should consider the environmental justice implications of their recommended actions. There was no action on this recommendation for several months. When the Environmental Justice Sub-Committee questioned this inaction, they were informed that one option would be for its members to volunteer to review (by-then) late-stage drafts of each program's plan and recommend how environmental justice could be incorporated. This was in the context of no information being given about how the recommendations could or would be dealt with. Late-stage

drafts were made available to the Environmental Justice Sub-Committee members starting in mid-February, 2005. CALFED held formal hearings on the program plans 3 weeks later. Eventually, several members did review program plans and made a number of suggestions, several of which were incorporated into the final document text.

By late 2004, attendance in the Environmental Justice Sub-Committee by most community groups, agencies, and other institutions had ceased, there were clear barriers within CALFED to implementing environmental justice projects and processes, and resources were limited. By May, 2005, the six remaining Environmental Justice Sub-Committee members were expressing frustration over access to CALFED decision-making, control over the committee's agenda, and lack of reflection of environmental justice priorities and concerns in any program plan. CALFED's response was that these concerns could be dealt with at a later meeting, a meeting that never occurred.

At about this same time, Environmental Justice Sub-Committee hosted members of the Winnemem-Wintu tribe as they sought allies to oppose the flooding of their ancestral and sacred lands by the raising of the Shasta Dam. The Environmental Justice Sub-Committee also began to push harder on the idea of disproportionate impacts of market-based water transfers. This increased pressure on CALFED to shift its priorities resulted in greater negative attention from CALFED directors. Coincident with the impending termination of McGhee's contract was the resignation of the remaining Environmental Justice Sub-Committee members. All members agreed that without a coordinator, a process for engaging CALFED, and without any apparent responsibilities or resources, there was no point in their meeting. One former member of the Environmental Justice Sub-Committee recounted the decision to withdraw from CALFED:

It was just ridiculous, you know? They would basically strip out anything useful and say, 'OK, here's your draft.' We'd say, 'OK, this is worthless ... Can we sit down at the table and can we all talk? You know, raise the issues and talk about them?' 'No, no, no, [the agency would say] 'We'll try and do a new draft. Put your comments in.' And [the coordinator] would do that and he'd send it around to all the agencies. All the stuff would get ripped out again. We were in this endless cycle. That's when we were like, 'this is ridiculous. We're not going to do this anymore.'

The dissolution of the Environmental Justice Sub-Committee was ultimately in response to its challenge of one of the Janus faces of water governance, representing the interests of the economic, socio-cultural, and political elites (Swyngedouw, 2005).

7. New avenues for environmental justice in the Bay-Delta

7.1. The CALFED environmental justice framework

Even after the demise of the Environmental Justice Sub-Committee, some within CALFED are still attempting to salvage an "Environmental Justice Framework." This framework's

overarching theme is to not create an Environmental Justice program, but to rather ‘embed it in every aspect of CALFED’. While this cross-cutting strategy was earlier advocated by some of the environmental justice community, the approach also couples a more problematic element of incorporating guidelines for social impact assessments – tied to the “logical structure of California Environmental Quality Act” and in consultation with a technical advisory committee of academics and scientists – on proposed water projects associated with CALFED.

The Framework generally calls for establishing (a) an environmental justice coordinator and staff, (b) a transparent process of authority and information-sharing between all stakeholders in developing and implementing policies, programs, or activities, and (c) an enlarged capacity for greater public outreach and enhanced performance measures to ensure environmental justice as stated in federal and state law is implemented. While a positive step, there are no funds allocated for any of these activities and discussions about developing this framework is mainly limited to one California Bay-Delta Authority member, Paula Daniels, and outside consultants. Despite good intentions, the Framework is problematic in its approach to justice: it restricts environmental justice to mitigating for third party impacts and developed through a process with limited credibility with the environmental justice community it seeks to engage.

7.2. Delta Vision

With the failure of CALFED and continuing Legislative and regulatory requirements for better Bay-Delta management, the DV process was created by Governor Schwarzenegger to take on the mantle of water authority. The DV process is composed of several hierarchical layers. At the top of the pyramid is a Steering Committee composed of five state agency secretaries reporting to the Governor. In turn a Blue Ribbon Task Force made up of scientists and policy experts reports to the Steering Committee. Finally, there is an invitation-only Stakeholder Coordination Group (SCG). The SCG provides the only formal stakeholder input into the process. Three of the 43 members of this group are the official environmental justice representatives, forming the smallest of the caucuses in the SCG (most which, including agriculture, water supply, water quality and so on, have 6–7 members each). One of the three environmental justice stakeholders on the SCG observed that her inclusion on the group can be considered one of the “good things CALFED did” by bringing her and her environmental justice focus onto the invitation list. This environmental justice advocate also noted that contrary to CALFED, environmental justice is seen as a potential cross-cutting issue within the SCG and therefore gained unanimous support for an environmental justice statement in their recommendations: “The water agencies like it because we talk about the costs of water to disadvantaged communities. Irrigated Ag likes it because we talk about impacts on farm labor. There was some piece of it where we talked about subsistence fishing, so fishermen liked it.” (Personal Interview, 2007). The view of environmental justice as an “umbrella” – the term used by one environmental justice advocate – able to incorporate the broad sweep of interactions between humans and nature illustrates the powerful potential of this concept.

However, despite this internal support for environmental justice, the issue seems to have received limited support within the larger Delta Vision process. In fact, as of November 2007, and with a year remaining before the final Delta “vision” was due to be drafted, the SCG was notified that it had one meeting left before being disbanded. In addition, the environmental justice statement was not included in the official SCG report developed by Delta Vision staff. The aggregation by SCG staff of stakeholder choices and needs into a general model of policy recommendations represented a de-humanization of the problems inherent to water policy formulation. This “rational structure” model (Espeland, 2000) of the SCG is essentially a fall-back to previous public input processes, prior to CALFED, and represents a regressive rather than progressive step in the advancement of environmental justice in California water policy. In public workshops for the Delta Vision, including one in December 2007, environmental justice was not detectable as an area of concern for Delta decision-makers. In the most recent draft report of the Delta Vision Committee, November 25, 2008, there was no mention at all of environmental justice.¹

8. Discussion

Despite CALFED’s self and scholarly branding as “innovative,” “collaborative,” and “inclusive,” (Innes et al., 2007) its experiment with environmental justice proved to be nothing of the sort. An environmental justice advocate and member of the Environmental Justice Sub-Committee claimed CALFED dealt with environmental justice the way it did because of “racism, at the top of the list.” (Personal Interview, 2007). The evidence provided throughout this article speaks to how

¹ This lack of mention is striking in that in earlier drafts of the Stakeholders Coordination Group to the Delta Vision Blue Ribbon Task Force, explicit and detailed policy targets on environmental justice were included (August 21, 2007).

1. Public health impacts resulting from mercury or other water contaminants in Delta waters.
2. Impacts on drinking water quality, both surface and groundwater supplies.
3. Impacts on potable drinking water availability due to any proposed changes in surface or groundwater rights or changes in current patterns of use, and the potential for communities currently lacking potable water to benefit from changes in Delta policies.
4. Targeted assessments of risk to low-income communities and communities of color from catastrophic events and of the potential for these communities to benefit from emergency response planning.
5. Effect on employment opportunities or other community resources or the potential to improve economic conditions including job creation, resulting from any policy changes of Delta Vision.
6. Any changes in the cost of domestic water and the impacts on affordability for low-income communities and communities of color.
7. Ecosystem changes that may impact access to cultural resources, especially salmon and other river-related resources critical to maintaining particular Native American cultures.
8. The impacts on land-use, affordable housing and quality of life due to the proposed SCG visions.

environmental justice in CALFED can be conceived as a ‘canary in the coal-mine’: the initiative’s broader commitments and capacities relative to communicative planning and to equity as planning principal and outcome were impacted by the institutionalized patterns of power, inequities, and resistance within Western water management and policy. Indeed, environmental justice in CALFED did not occur in a black box isolated from greater social currents. Rather, it has proved to be a useful lens through which to analyze the larger race and class-based power relationships that shaped the “privileged access and accounts” (Freudenburg, 2005) built into the structure of Bay-Delta planning and the politics of water in California and the rest of the Western United States. Reflecting on this phenomenon at attempting to work toward a “socially structured theory of resources and discourses,” Freudenburg notes:

Environmental harms involve a “double diversion” – two forms of privilege that deserve greater attention. The first involves *disproportionality*, or the privileged diversion of *rights/resources*: Contrary to common assumptions, much environmental damage is not economically “necessary” – instead, it represents privileged access to the environment. It is made possible in part by the second diversion – the diversion of *attention*, or *distraction* – largely through taken for granted or privileged accounts, which are rarely questioned, even in leftist critiques (2005, pp. 90).

The “privileged access” (Freudenburg, 2005) to water in California, from conquest to reclamation and to current water market formation, has been achieved through the “privileged account” of necessity of a system of relationships whereby “free” and “voluntary” buyers and sellers enter into a trade of water, while “third party” impacts from the transaction are mitigated. The “iron triangle” of agencies, urban users, and irrigated agriculture and now emergent (mainstream) environmental groups are afforded a seat at the table of power and the privileged access to water, while the third parties exercise ceremonial participation, or “input” in the process before, during, and after they are impacted. As illustrated in this article, this privileged access is made possible by the taken-for-granted or privileged accounts: water marketing is “rational” and “efficient,” and only the “legitimate” voices and programs to ensure this model will continue to be the most funded and given the highest priority. In this model, environmental justice and its advocates are marginal stakeholders with no seat at the table, as is the perspective they represent: the third parties who are impacted by market-based water transfers but have relatively no autonomous voice or authority.

The emergence of environmental justice within CALFED offered the opportunity for a new, more democratic and collaborative way to manage water in California (Innes et al., 2006). Because such access to decision-making had previously been lacking, even cynics within the environmental justice groups considered this a possible opportunity to influence the disposition of water as a public trust resource (London et al., 2008). Within 3 years however, the golden opportunity had dissolved, leaving in its wake even greater cynicism about the state agencies’ interest in sharing control

over what was increasingly a privatized resource and one managed under privileged decision-making processes. The reduction of trust that accompanied the treatment of environmental justice by CALFED makes it even harder to reconcile differences between agencies and community groups representing low-income communities and communities of color, leading to end-run solutions, such as acts of legislation.

The primary factor that seemed to result in the dissolution of CALFED’s environmental justice process was the disconnect between the understanding of the scope and implications of environmental justice held by the environmental justice advocates and the agency representatives. Where the agencies appeared to view environmental justice as a process constraint and something to carefully control, environmental justice advocates presented a broader vision of democratic governance that would fundamentally restructure the governance relationships between communities, natural resources, the state and the market. This tension is a hallmark of the tension within collaborative governance-beyond-the-state (Swyngedouw, 2005) between the power-haves and the have-nots.

There were few discernible impacts on water policy of the inclusion of environmental justice into the CALFED process. The use of the term environmental justice has become more common in water policy documents, but implementation is more about “checking the environmental justice box” than inclusion of community groups dangerous to an otherwise controlled process. The evidence for this lies in Delta Vision’s abandonment of an open stakeholder process, increased distance between the decision-makers and interested parties, and the absence of proposed policies that will serve broad environmental and community goals.

One regressive result of this experiment has been the replacement of the highly democratic model of “membership-by-attendance” advisory committee structure, characterized by the Environmental Justice Sub-Committee and CALFED’s Watershed Sub-Committee with a “stakeholder-by-invitation” model. This second model is currently used by the Delta Vision, California Watershed Program, and California Environmental Protection Agency’s environmental justice processes. This form of rational structure and participation is consistent with other historical applications of public involvement in water policy (e.g., Bureau of Reclamation (Espeland, 2000)). It represents a devolution (from democracy and participation points-of-view) from the open structures of both the Environmental Justice and Watershed Sub-Committees within CALFED. It also assumes that agency selection of representatives is a valid replacement for self-selection and “speaking for ourselves” that characterizes environmental justice actors and movements.

9. Conclusions and recommendations

The policy framework of CALFED (e.g., the ROD) and its legal bases (state and federal statutes) set the stage for agency application of environmental justice in CALFED decision-making. Yet as with all social justice struggles (e.g., the United

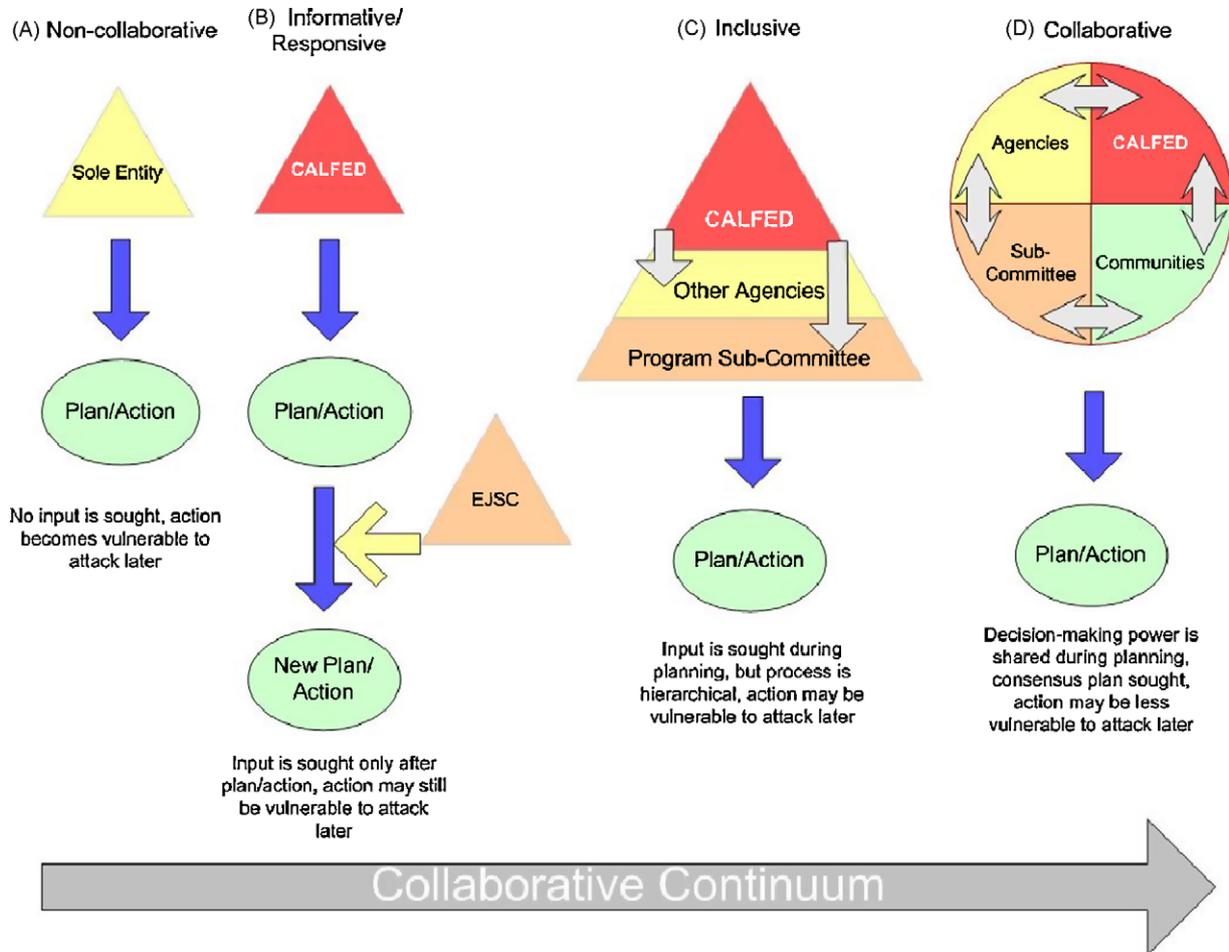


Fig. 4 – Simplified collaborative decision-making processes. (A) is the least collaborative and (D) is the most collaborative.

Farm Workers, see Ganz, 2000) implementation often depends on outside advocates and watch-dogs. Unfortunately, in this case, there was no consistent application of strategy and tactics by environmental justice advocates in CALFED. Any attempt to be assertive in ways typical of social justice struggles (e.g., declarations of support for Native water rights, attempts to control representation of environmental justice on the BDPAC) were met with either indifference or heavy-handed antagonism by CALFED management. In retrospect, the lead author, also a participant, detected a “wait-and-see” attitude by most participants, reticence on the part of overloaded environmental justice advocates to devote energy, take advantage of opportunities to affect decision-making, and faith in positive outcomes. In the heavily politicized world of water wrangling, this approach was too *laissez-faire* and lacked the assertiveness that has characterized successful social struggles in California. Given the significant and long-lasting effects that Delta-centered water policy can have on many communities throughout California, a new process of engagement is warranted, potentially through statutory and legal action.

To successfully engage communities and the public and to implement environmental justice, water policy programs need a new start and a new face. However, this does not mean reinventing the wheel, as others have laid out elements

of such a framework (Arnstein, 1969; Hester, 2006; London, 2007) that address both the degrees of community inclusion and the degrees of authority within decision-making and planning processes. Based on experience within the Environmental Justice Sub-Committee and other attempts at environmental justice in the state, the following basic rules for all stakeholder parties to participate; (2) allow sufficient time prior to decisions for an honest dialogue to form and paths forward to be forged; (3) share real power over decisions among the involved and affected parties.

From the point-of-view of a collaborative planning and decision process, several models can be drawn for water policy (Fig. 4). These models range from the least (A) to most (D) collaborative on a continuum. The second from the left “B: Informative/Responsive” reflects the experience of Environmental Justice Sub-Committee members, who were occasionally given the chance to comment on pre-formulated plans. This is contrasted with the “C: Inclusive” model enjoyed by other programs within CALFED. For future efforts, we recommend a further improvement, represented by the “D: Collaborative” model. This reflects the power-sharing and inclusive process that should accompany decision-making about this critical public trust resource – water, where all have a seat at the table. This model also integrates

environmental justice and community voice through all of the elements of the policy process and *does not* marginalize it within any one dimension or by including it only by “retrofit.” It is not clear that the momentum of concentrated power within water management in California, wrapped as it is within layers and histories of conquest, racism and market rationales, would allow for such a radical departure. It is clear that to achieve the promise of the CALFED ROD and democratization of water management, such a model is necessary.

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