

Bay-Delta Litigation at MWDOC Water Policy Forum

[Laer Pearce](#), President, Laer Pearce & Associates

Gregory Wilkinson, who has argued numerous groundbreaking – or, more appropriately, “waterbreaking” – cases dealing with water allocations from the Sacramento-San Joaquin Delta, foretold a bit of the future in his presentation as the keynote speaker at the Municipal Water District of Orange County’s Water Policy Forum and Dinner on November 4th, when he said federal representatives weren’t budging from a “more water for fish” position in Bay Delta Conservation Plan (BDCP) discussions. Just a few weeks later, the Westlands Water District said as much when it withdrew its support from the critical BDCP process.

The Best Best & Krieger attorney’s remarks were laced with humorous insights, like the aside that federal judge Oliver Wanger is the son of Hollywood star Deanna Durbin, but of greater interest to the packed room was his views on the impact on California’s water system on the current round of Delta lawsuits and negotiations. Perhaps most critical to a positive outcome, he said, will be the impact current litigation has on the standard of science applied in the Delta decision-making process.

“If the water industry wins this round in the courts, the federal government representatives won’t be able to play ‘The Great Carnac’ with science in order to ignore the impacts of Delta endangered species decisions on human populations,” he said. For our younger readers’ benefit, Carnac the Magnificent was *Tonight Show* host Johnny Carson’s “mystic from the east” character who could answer questions before they were even asked. Wilkinson also referred to the much-publicized National Science Foundation report recommending Delta flow levels, which would sharply reduce exports to southern California as “assumption layered upon assumption,” so in the end the report did little to bolster environmentalist demands for reduced exports.

Ultimately, Wilkinson sees an alternate conveyance as the solution to the ongoing struggle to save the Delta’s failing ecosystem, while providing a sustainable water supply to Central Valley farms and southern California cities. A tunnel, which appears to be the most favored option, would separate water supply functions from the Delta’s ecosystem, to the benefit of the Delta Smelt, and salmon would only have to swim once past a high-tech screen that would protect them, he said.

Opposition to the solution comes from “an element in the environmental movement that is using the Delta Smelt to stop growth – with great success,” and San Francisco, “which will go down swinging to stop our peripheral canal, while getting their water from their peripheral canal.”

So far, legal decisions in Delta Smelt, salmon, and related cases have redirected enough water for 7.4 million people out to sea, Wilkinson said, adding that the current round of litigation will be critical to seeing to what extent that will continue.

Laer Pearce is President of Laer Pearce & Associates, a strategic communications and public relations firm based in Laguna Hills, California. Quotes in this article came from Mr. Pearce’s Twitter tweets sent during the Water Policy Forum. You can receive similar tweets by following @LPAwater on Twitter.