environs

Volume 2, Number 4
Summer 1978

ENVIRONS, a non-partisan environmental law/resources newsletter published by the Students of King Hall School of Law, and edited by the Environmental Law Society, University of California, Davis.
The views expressed herein are those of the authors and do not reflect the position of the University of California School of Law or of the Environmental Law Society.
Submission of Comments, Letters to the Editor and Articles is encouraged. We reserve the right to edit and/or print these materials.





environs

# independence lake: going the way of dow?



Over the past five years, Walt Disney Productions has been preparing to construct a year-round recreational resort at Independence Lake in the northern Sierra Nevada. The proposed development has precipitated much conflict between proponents of environmental preservation and business interests, as well as between state and local governmental entities. The Disney project has also provided the first major testing ground for the new streamlined environmental impact reporting and review process enacted as AB 884 by the California Legislature in 1977 and effective January 1, 1978.

Although time consuming, the review process for the project appeared to be proceeding smoothly, establishing new precedents for cooperation between the federal government, the state of California, and Walt Disney Productions. However, early in March Disney requested a suspension of all work on the necessary environmental impact studies, claiming that excessive delays and the demands of California's review process were rapidly diminishing the project's feasibility. An analysis of the proposed resort project, the review process, and the competing interests at stake illustrates the complexity of evaluating the costs and benefits of a project on the large scale envisioned by Disney.

### The Project Site

Situated ten air miles northwest of Truckee, the 17,440 acres comprising the project site include Independence Lake and nearby Mount Lola. Although portions of the site are located in Nevada county, construction of the resort's major facilities will take place in Sierra County, a sparsely populated county of approximately 3,000 residents. The area is heavily forested and mountainous, ranging from 5,900 to 9,000 feet in elevation. In the past, the area surrounding Independence Lake has been used for logging, sportfishing and deerhunting. The project site is accessible from San Francisco (192 miles), Sacramento (117 miles) and Reno (50 miles), and is adjacent to the San Francisco-Reno traffic corridor.

An initial hurdle to planning the Disney resort was raised by the land ownership within the project site. Property surrounding Independence Lake is privately owned by the Sierra Pacific Power Company and the Southern Pacific Land Company, while lands elsewhere within the site are owned and managed by the United States Forest Service. Walt Disney Productions, Sierra Pacific Power Company and the Southern Pacific Land Company entered into a joint venture to develop the resort in 1974. In November, 1976, the U.S. Forest Service agreed to trade approximately 2,720 acres of U.S. Forest Service lands in the Independence Lake area for privately owned lands of equal value elsewhere, provided the project passed the environmental impact reporting process and received the approval of all state governmental agencies concerned.

(continued on page 8)

# viewpoint:

## e. robert wright deputy attorney general

Graduated from U.C. Berkeley, B.S. in Business Administration, 1966; graduated from Harvard School of Law, 1971; practiced environmental law with California Attorney General's Office, Special Operation Division, Public Resources Section until March 1978; now lead person for the Sacramento Environmental Protection Unit of the Attorney General Office.

**MR. WRIGHT, JUST WHAT IS AN ENVIRONMENTAL PROTECTION UNIT?**

There are four Environmental Protection Units (EPU's) in California. These four units are located in Sacramento, San Francisco, Los Angeles, and San Diego and are within the Attorney General's Special Operation Division. However, unlike the Resource Section, also in the Special Operation Division, The EPU's represent no client agencies. Instead, they could best be described as environmental watchdogs. Their responsibilities are to monitor most activities across the state and to insure compliance with state environmental laws and policies. When necessary, the EPU's can bring legal actions to enforce these laws and policies — often suing other governmental agencies or initiating legislation in the environmental area.

"Essentially our job is one of law enforcement, but many times our office ends up taking the same position as an environmental group like the Sierra Club or Friends of the Earth.

"Also, in environmental protection, our job is often one of speaking for the the silent majority."

**WHAT ARE YOUR CURRENT ONGOING PROJECTS?**

"My ongoing projects, right now, are primarily things I started before my transfer to the Environmental Unit —one being the major litigation against all four casinos at the south shore of Lake Tahoe (which is now on appeal to the Ninth Circuit Court of Appeals). Another case which I may keep is the suit just filed against the North Shore Club (at Tahoe). Other than that, I'm really moving into a new field and I haven't, in my first week on the job, filed any new cases."

**WHAT AREAS ARE THE SACRAMENTO ENVIRON—MENTAL UNIT LOOKING INTO GENERALLY?**

"There are different focuses for concern in the Environmental Unit. Originally the prime focus was the California Environmental Quality Act (CEQA) and this office either brought, or participated in a friend of the court status, in a number of suits seeking to obtain favorable interpretations of CEQA. (I mean favorable from the standpoint of carrying out the purpose of the Act, which was to protect the environment of this state.)

"Now, I think one new major area for concern and emphasis is the general planning laws. The general plan is supposed to be the 'constitution' for land development and land preservation in our counties. The idea being that all permit decisions and ordinances be consistent with the general plan. The fact is that apparently many inconsistencies exist; for example, an area might be shown on the general plan as zoned for agriculture and yet the local zoning ordinances may zone the same area for subdivision. Another problem is that several counties have large tracts of land zoned 'U', for unclassified, which make it very difficult to make any planning projections (you can't plan for the future needs, you can't plan for conservation, you can't plan for anything). So we're looking into these matters in some of the counties and attempting to require that there be some consistency —through the courts if necessary."

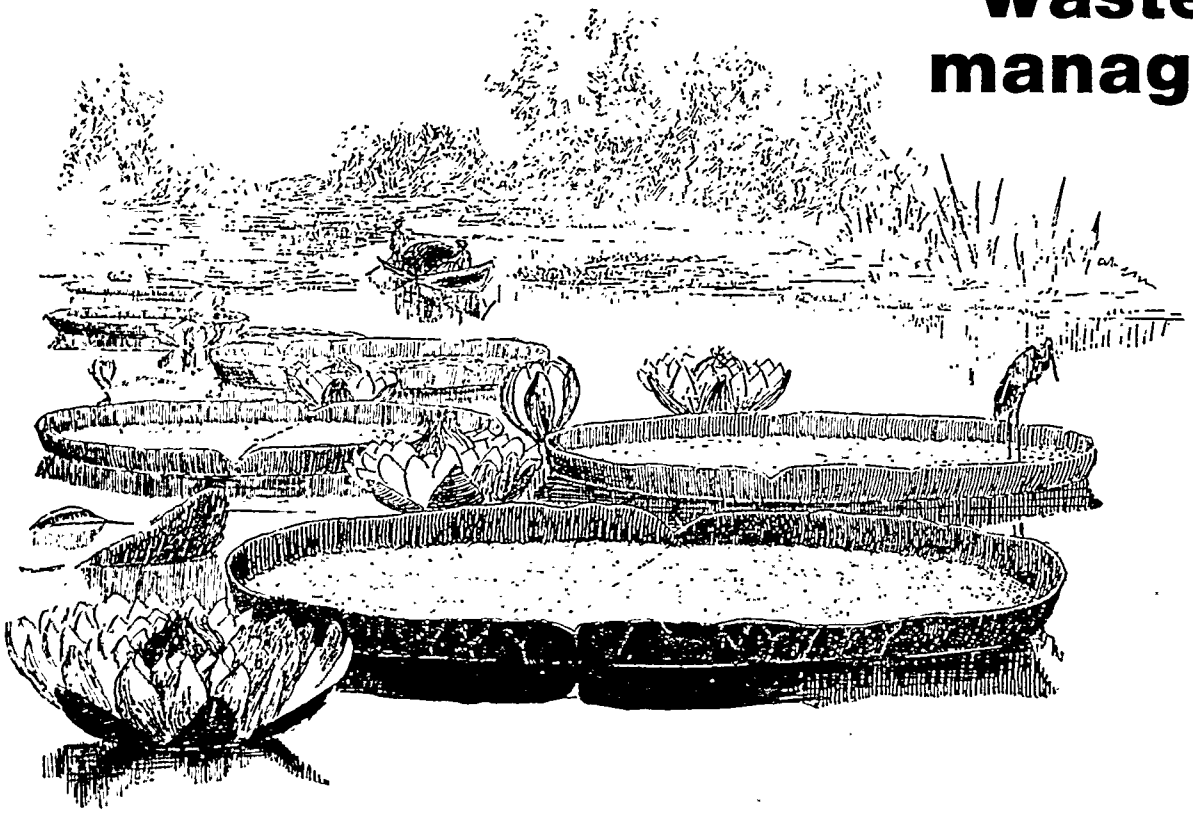
**WHAT OTHER AREAS OF FOCUS WILL THE UNIT BE CONSIDERING NOW, OR IN THE FUTURE?**

"Well. . .this general plan problem is actually one of our primary focuses (especially out of Sacramento), because the Sacramento Unit deals with many, if not most, of the rural areas of the state (all of the Third and Fifth Appellate Districts) and these rural areas have the most be gained by good general planning and the most to be lost by poor planning.

Other areas that we are starting to get into (or perhaps have been in, in a lesser fashion) are the regulation of dangerous substances and toxic chemicals. I think still another major concern is to develop a 'rapid response approach' in dealing with certain major environment affecting projects; liquid natural gas development is an example.

*Bill Cunningham*

# new alternatives in wastewater management



In California approximately three million people depend on privately owned, septic tank absorption systems instead of disposing their domestic wastewater through a sewer system connected to a central wastewater treatment plant. Failure of these on-site wastewater systems can expose people to disease-causing organisms, contaminating surface and groundwater supplies and causing odor and nuisance problems.

In the past, the widely used corrective measure for a group of failing septic tank systems has been to install a central sewage treatment plant. However, the installation costs of these sewer systems are high and therefore unattractive. Another alternative has been established by Senate Bill 430. Introduced by Senator Peter Behr and effective January 1, 1978, SB 430 allows qualified public entities to manage the rehabilitation, maintenance, and monitoring of existing on-site systems in a community to prevent septic tank failures. This alternative may in many situations prove to be less costly than the traditional, centralized sewage system.

Although a good septic system should last for fifteen to twenty years, systems are often subject to premature failure. A septic tank system introduces waste into a large underground tank which retains the heavy and light solids in the wastewater, requiring a periodic removal by a pumpout truck, while the liquid portion passes into an underground drainfield. Here the wastewater soaks downward into the soil, resulting in the removal of fine solids and the destruction of bacteria. These on-site systems fail because of poor soil conditions, improper design and construction, and inadequate maintenance —the latter largely due to the lack of knowledge of the homeowner about the operation of the septic system. Where septic system failures cause health and water quality problems, the county Health Department and Regional Water Quality Control Board will require the elimination of such hazards and can even prohibit the future development of these systems in an area.

The conventional solution, a central treatment system, for rural areas and small communities imposes a significantly high per capita expense on the users because of the cost of running sewers to homes which are widely dispersed and the difficulties of financing a system where costs are shared by a small group of customers. Although the Clean Water Grants Program provides federal and state assistance to construct new sewers and treatment plants, the local government must bear the full cost of the operation and maintenance of these systems. In addition to these financial impacts, centralized sewage systems introduced into previously septic tank communities result in some potential land-use impacts. Septic tank systems necessitate some land-use planning restraints; however, when a public sewage system is implemented in an area a community might suddenly discover apartments or subdivisions springing up. Therefore, to avoid these socially disruptive, growth-inducing impacts, small communities are seeking methods to improve and retain existing septic systems.

SB 430 enables the creation of On-Site Wastewater Management Zones (OSWMZ) in which public agencies, already empowered to construct and operate local sewer systems, would be authorized to inspect and

(continued on page 11)

# the peripheral canal: a setback in round two

The Peripheral Canal, as proposed in Senate Bill 346 (Ayala, D-Chino), has lost another round in continuing controversy over its construction. On February 2, 1978, the State Senate voted 20 to 14, with 6 abstentions, to approve the bill, 7 votes short of the two-thirds required for passage. This represented a setback for supporters of the bill, who secured a 21 to 16 vote in the Senate last September.

The Canal is part of a seven billion dollar water project plan. The 43 mile canal would divert water from the Sacramento River and reroute it around the SacramentoSan Joaquin Delta. The water would then be pumped into the already existing Delta-Mendota Canal and California Aqueduct, and sent to the San Joaquin Valley for irrigation.

The Peripheral Canal is a proposed solution to the problem caused by the current practice of using the natural waterways of the Delta to transfer water from the Sacramento River to the pumping facilities on the other side of the Delta for transport to the south. This has caused salt water intrusion into the inter-tidal areas in the Delta and interference with the Delta fisheries, problems the Canal is designed to alleviate.

Opposition to the bill comes from disparate sources. Agricultural interests in the San Joaquin Valley oppose the currrent proposal because they feel it gives priority to Delta water quality standards at the expense of water exports from the Delta. They hope that the proposal will reappear in the next legislative session in a form more favorable to their point of view. Some environmentalists also oppose the bill for exactly the same reason. They view the measure's ability to protect Delta water quality as insufficient. Senator Peter Behr (D-Tiburon) called the proposal a "paper cage" which could not hold the "thirsty tiger" from the south "when it became genuinely thirsty."

Regardless of one's viewpoint, in the crux of the controversy over the Canal is the complex issue of water quality control in the Delta. One element central to the present controversy is the presence of two separate water projects operating in the Delta. The State Water Project (SWP) is operated by the State of California. The Central Valley Project (CVP) is operated by the federal government. These two water projects do not have a coordinated plan for protection of the Delta. Both agencies transport water to the south San Joaquin Valley for irrigation. However, the Bureau of Reclamation, which operates the CVP, contends that it is not obligated to follow the water quality standards established by the State. As a result, the CVP will sometimes pump water out of the Delta when the SWP is required to release fresh water into the Delta to prevent salt water intrusion.

Because the two projects do not follow the same standard, they often work at cross purposes. This is a major stumbling block to passage of the legislation.

Federal water projects, in the past, have been the solution to the problem of ground water over-draft in the south San Joaquin Valley. This is caused by pumping more ground water for irrigation than is replaced by natural recharge.

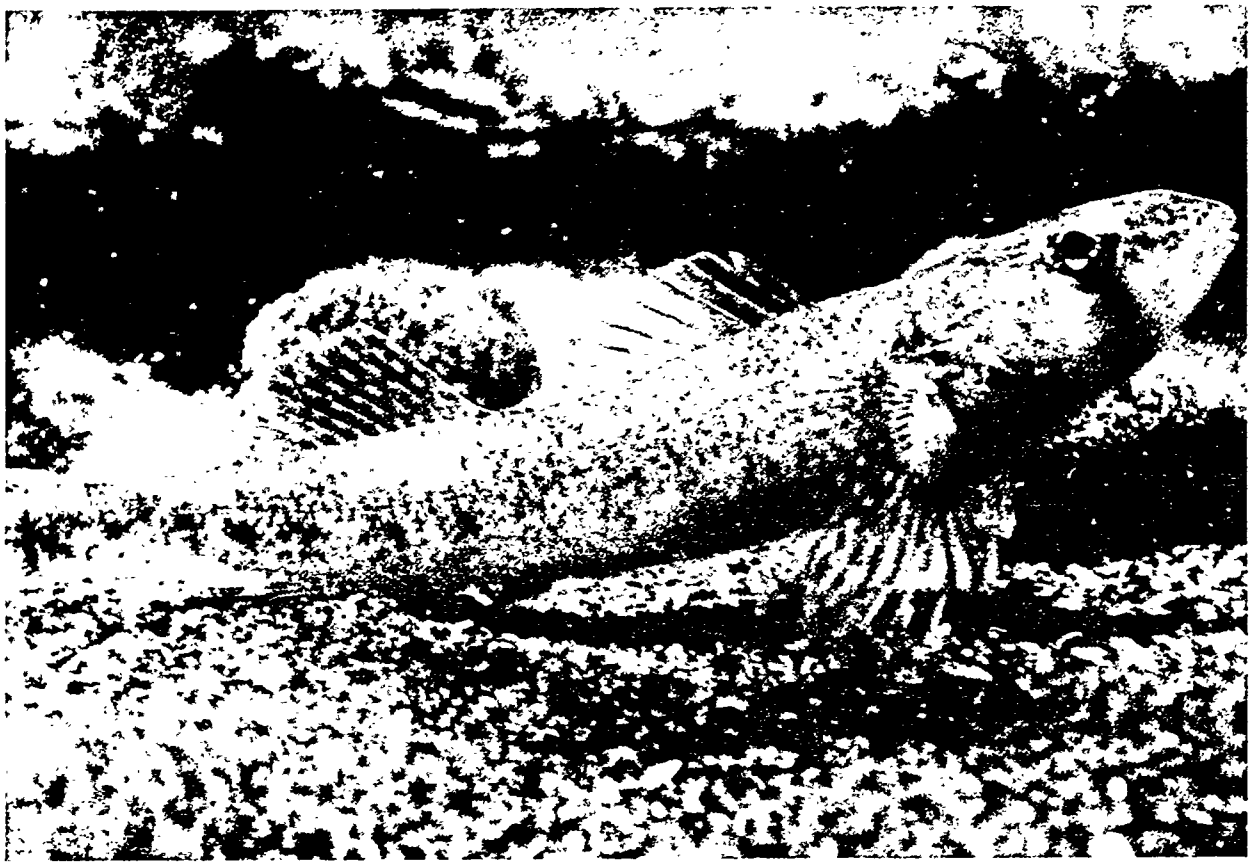
SB 346 includes a provision which required federal enabling legislation. This legislation would bind the CVP to water quality standards established by the State Water Resources Control Board. Clearly, this calls for a revision of federal water policy in the Delta. Many opponents believe that it is premature to expect such a revision in the face of long-standing federal policies.

This very issue is being contested in the courts. In Federal District Court, Judge McBride held that the federal government is not required to meet state-imposed standards in the management of federal water projects as a matter of law. *United States v California*, 403 F. Supp. 874 (E. Dist. Cal. 1975), aff'd 558 F. 2d 1347 (9th Cir., 1976). The United States Supreme Court granted certiorari, 46 L.W. 3145 (1977), and heard the case on March 28, 1978.

In an attempt to reach a workable solution to the Delta situation, the State Department of Water Resources (DWR) initiated negotiations with the Department of the Interior, of which the Bureau of Reclamation is an agency. Both parties are interested in a settlement because the Bureau of Reclamation does not intend to sign new water projects until the conflict is resolved. DWR Director Ron Robie has stated that Secretary of the Interior Cecil Andrus has agreed in principle to comply with State standards. However, the final form of any agreement will hinge on the decision in *United States v. California*. That should determine whether an agreement is a requirement or a matter of comity, thus establishing the bargaining position of the parties. Moreover, it is hoped that the decision will shed light on the question of whether the Bureau of Reclamation has the legal capacity to sign a contract binding itself to state-imposed water quality standards after maintaining for years that it did not.

While these events unfold, the clock continues to tick for SB 346. It will remain alive until the end of the current legislative session. No one in the State government appears to be looking beyond that date. Governor Brown made a statement immediately after the vote on February 2 maintaining that the Burns-Porter Act of 1959 (Cal. Water Code, Sec. 12930 *et seq.*) authorized the State to contract with the federal government for a Delta water transfer facility, even without further legislative approval. In spite of this statement, the DWR indicated that there are no plans to proceed without further legislation at this time.

(continued on page 10)



# tva's challenge to an endangered species

The Endangered Species Act is facing its biggest challenge to date in a suit now before the United States Supreme Court, *Tennessee Valley Authority v. Hill.* The suit concerns the application of the Act (Pub. L. 86-669, 80 Sta. 926, 16 U.S.C. sections 1531 *et. seq.* (1973)) to the Tennessee Valley Authority's (TVA) Tellico project. The project would dam the last clear-flowing stretch of the Little Tennessee River, destroying the habitat of the endangered snail darter fish, and rendering that species extinct. Citizen's groups say the impoundment is a clear violation of the Act, and that further construction and impoundment should be permanently enjoined. TVA insists that is it "impliedly exempt" from the Act because construction began before passage of the Act and before discovery of the snail darter.

The Tellico controversy has also spurred interest in Congress. Bills are now pending in the House to specifically exempt the project from the Act. The groups opposing the Tellico project first feared that an exemption would be jammed through Congress on TVA's representations of the controversy as a conflict between an insignificant fish and a multi-million dollar economic development program. According to Professor Zygmunt Plater of Wayne State Law School, attorney for one of the groups bringing the suit, this problem never arose because of the skillful work of Congressperson Robert Leggett (D-Cal.), who got the House subcommittee on Fisheries and Wildlife, which he chairs, to hold hearings on the subject later this spring. Plater says Leggett should be applauded for "turning to fact-finding instead of to emotion," and for not buckling under heavy pressure from pro-Tellico forces to exempt the project without further study.

Congress also initiated a General Accounting Office (GAO) study of Tellico that was highly critical of the cost-benefit analysis used by the TVA.

### History

The Tellico project was authorized in 1966 as part of a region-wide economic development project in eastern Tennessee, with the dam and the reservoir as its centerpiece. The reservoir to accomodate recreation, barge traffic and an industrial new-town (which has since been abandoned). The dam would provide. a minimal amount of hydroelectric power, and some flood control. It would also flood over 25,000 acres of farm land, and several archaeological sites important to the Cherokee Nation.

In 1973 the Endangered species Act was passed; in the same year, the snail darter (*Percina Imostoma tanasi*) was discovered in the area to be flooded. The snail darter was placed on the list of endangered species in 1975.

A regional association composed of local residents, biologists and conservationists tried to get TVA and the Department of Interior to comply with the Act, but TVA asserted it had no obligation to halt the project. Opponents then filed suit, alleging violations of Section 7 of the Act ( 16 U.S.C. section 1536 (1973)), which required federal agencies to insure that their actions

(continued on page 10)

# GRUB STAKE MINING

Dick Arbo decided to retire from the armed forces and return to mine his ancestors' valuable claim in the Trinity Alps near Denny, California. Early in 1976, Arbo went to the local ranger to obtain permits to comply with state environmental law. The ranger told Arbo that the Forest Service was having trouble with local residents and asked Arbo to shut down his operations for a couple of years. Arbo adamantly refused and continued operating without permits. When the rangers began to tear down the footbridges and fencing around his property, Arbo and several of his employees went to the Denny ranger station to protest the destruction of his property. The incident was reported as an armed attack on station personnel and Arbo was charged with assaulting a federal officer with a deadly weapon. After a trial in which some of the prosecution's key witnesses were indicted for perjury, Arbo was found not guilty. Arbo has since filed suits against the local rangers for conspiracy and destruction of property.

## Background

The Arbo case is part of a series of events which in 1971 broke the uneasy truce between the U.S. Forest Service and the grubstake miners in Trinity County. Over 14,000 miners have mineral claims on public forest lands in California. Forty of these claims are located near the small town of Denny (pop. 150). A great deal of gold has been mined in Denny since the gold rush days. Some of the claims yield very little gold, but one miner claimed $50,000 worth of ore in 1976. Arbo estimates he could make $100,000 from his operation in the next year. Recently, the U.S. Forest Service filed evictions against all forty claimants in the Denny area.

This article will discuss the relevant federal mining laws, the Forest Service position, and the problems and attitudes which have produced the controversy over grubstake mining in Trinity County.

## Current Law

The miner's claims are based on the Mining Act of 1872. Under this act a citizen can stake out a claim to minerals on federal land by delivering valuable samples from the "point of discovery" and filing maps of the claim at the county courthouse. Under this procedure miners can eventually file for legal title to the land.

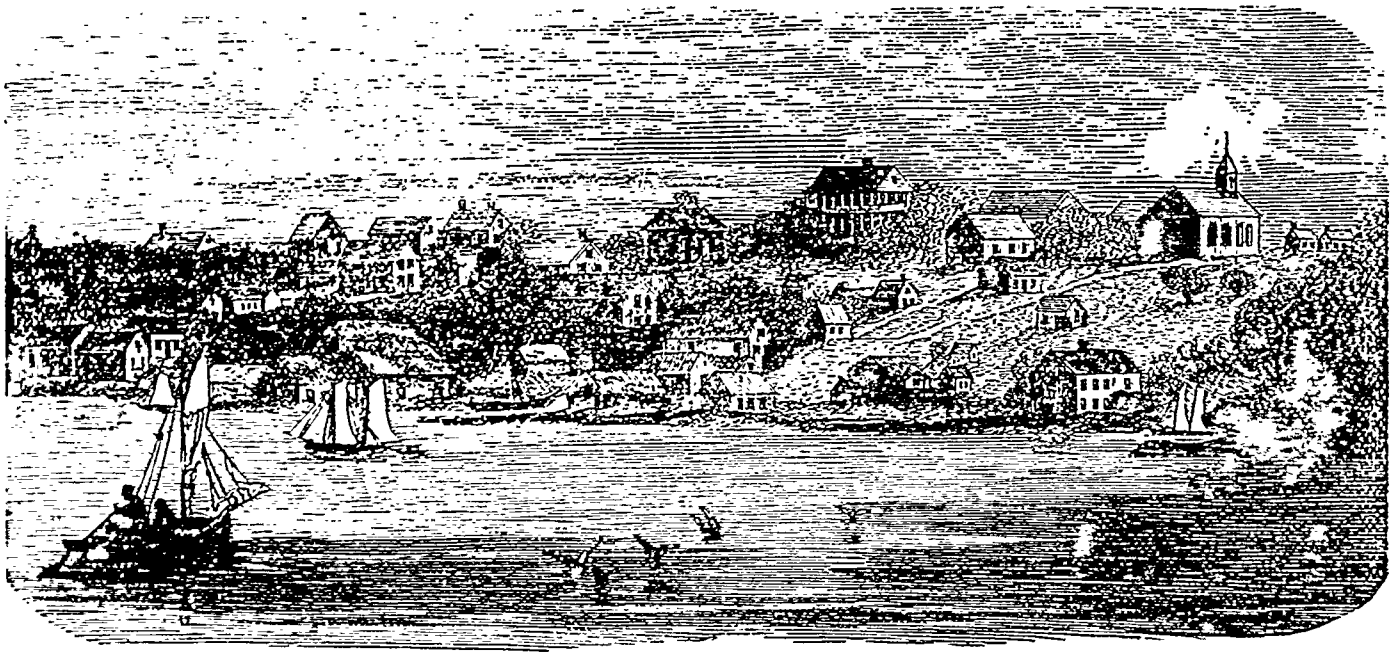
For many years claims were undisturbed if a miner put at least $100 in time and effort into the claim. In 1968, however, a federal court held that in order to invoke the protection of the 1872 act a claim holder has to prove that disputed deposits are of such character that a person of ordinary prudence would be justified in the further expenditure of labor by a *reasonable prospect of success* in developing a valuable mine.

The miners claim that this test should be interpreted to require them to extract enough ore to support themselves until they make a big strike. The miners also argue that under this standard they should be allowed to sustain themselves by hunting, fishing, and gardening on their claim sites. The Forest Service has interpreted the prudent-man test as requiring mineral examinations of the test sites called *validity tests.*

The Federal Mining Act is administered by the U.S. Forest Service acting on behalf of the Bureau of Land Management, an agency of the Department of the Interior (hereinafter referred to as the BLM). The Federal Land Policy and Management Act of 1976 provides additional enforcement authority. The Secretary of the Interior may vest these powers in any local law enforcement authority by contract.

## Enforcement

The Forest Service has been relying on *validity tests* to determine the viability of claims. The test requires the removal of approximately 300 pounds of earth from five or more locations on the claim site. The



randomly gathered sample is processed locally. Assayable ore is sent to a district processing station, along with the ranger's estimate of the miner's extraction costs. The information from these tests is submitted to an administrative judge who rules on the validity of the claim. The extraction cost estimates are not available to the miner until shortly before the hearing.

Under the authority of an interdepartmental agreement between the U.S. Forest Service and the BLM, the Forest Service procured a court order permitting validity tests on all claims in the Denny area.

Many miners oppose the validity testing technique. As a result, some tests required the presence of U.S. Marshalls. The miners claim that the five samples rarely are taken from the area in which they are working; thus the Forest Service intentionally avoids the deposits on which the claims are based. The Forest Service claims to take one sample from the area in which the miner is working. The Forest Services maintains random sampling is necessary to prevent claimants from "salting" their claims with gold.

### Forest Service Position

The U.S. Forest Service has commenced eviction actions against all forty claimants in the Denny area, seeking to prove that all claims are invalid. The Forest Service is convinced that Denny has become a gathering place for squatters claiming protection under the 1872 Mining Act. The Forest Service became militant in 1971 when a claim examiner suffered a superficial gunshot wound while conducting testing in the Denny area. The examiner and his companions claim they were beaten up by local residents. The shooting was followed by a series of skirmishes between local residents and the Forest Service. Hostility reached a high point in the Arbo case.

### Miners' Problems and Attitudes

The grubstake miners of Denny face three major problems in their fight to establish the validity of their claims: legal representation, health hazards from Forest Service-applied herbicides, and bonding.

*Legal Representation*

When the Forest Service filed evictions against the miners, the Trinity County Board of Supervisors instructed the District Attorney to intervene on the miners' behalf. The U.S. District Court in Sacramento denied the District Attorney's motion. A few of the miners, like Dick Arbo, can afford legal representation. Most cannot.

The Western Mining Council has filed an action against the U.S. Secretary of the Interior for a declaration that the Federal Land Policy and Management Act of 1976 is unconstitutional. The complaint alleges that the Act's grant of extensive administrative power to the Secretary of the Interior subverts the Congressional intent of the 1872 Mining Act. However, this constitutional challenge provides no immediate relief to the miners who face the threat of court-ordered validity tests and possible eviction.

*Health Hazards*

The miners have complained of health hazards due to Forest Service applications of 2,4,5-T ("Agent Orange") and other herbicides. The miners claim that spraying has occurred near water supplies. The Forest Service uses Agent Orange to enhance the growth of commercially valuable softwood trees by the suppression of broad-leaf vegetation. The Forest Service continues to use Agent Orange despite the fact that the Department of Defense stopped using it when tests revealed the chemical posed genetic and health hazards. Water samples taken in the Denny area in 1976 showed the presence of Agent Orange at slightly above acceptable levels.

(continued on page 9)

# independence lake

(continued from page 1)

As currently proposed, less than ten per cent of the total 17,440 acres would be developed into ski runs and lifts, hotel and condominium accomodations, dining facilities, shops, hiking and bike trails, a "swimming experience" with artificial rapids and runs for rafting, parking areas, and other amenities. Access to the project site would be provided by paving the existing dirt road that branches off state highway 89 and connects Sierra County to Truckee. The resort would ultimately employ 815 to 1,350 employees, and would accomodate up to 12,500 visitors per day, depending on the project's stage of construction and the season of the year. The total estimated cost of the project to Disney is between 100 and 120 million dollars.

### The Review Process

Pursuant to the California Environmental Quality Act (CEQA), the review process for the Disney project requires preparation of an Environmental Assessment, an Environmental Impact Report, and the acquisition of permits from a variety of state agencies. As enacted, AB 884 streamlined the environmental impact reporting process by establishing deadlines for state agency approvals and by requiring agencies to publish in advance the criteria they would use to evaluate a project's environmental impact report. (Stats. 1977, c. 1200.) Further assistance was provided in early 1977 when Claire Dedrick, former Secretary of Resources, created the "Mount Lola Task Force" for the Disney project. The task force's purposes were to designate the state agencies involved in the project, to require the agencies to produce their concerns in a timely fashion, and to keep Disney informed of any problems that appeared to be imminent in the review process.

Sierra County and the United States Forest Service have been designated the lead agencies for the Disney resort proposal. Under the provisions of AB 884, Sierra County must prepare a final environmental impact report by October, 1978, within one year of Disney's application to Sierra County for construction of the project. Since some of the resort site includes federal lands, an environmental impact statement is required of the U.S. Forest Service under the National Environmental Policy Act (NEPA). In a unique partnership, Sierra County and the Forest Service entered into a joint powers agreement to prepare a combined environmental impact report/environmental impact statement (EIR/EIS), thereby significantly reducing the time factor inherent in the review process. As originally planned, the draft EIR/EIS was to be released in late spring of 1978, and the final EIR/EIS in October.

### Suspension of the Project

Early in 1978, Sierra County indicated it would be unable to meet the October, 1978 deadline for preparation of the final EIR/EIS, and anticipated the impact statement could be ready by February 5, 1979. Under AB 884, a lead agency may waive the one year requirement for completing an environmental impact report when it is involved in a joint review process with the federal government. Sierra County alleged that Disney's failures to provide necessary information in a timely manner occasioned the delay.

Disney responded in early March, 1978, by requesting Sierra County to suspend the project until Disney received assurances that all planning agencies were ready to meet formerly agreed upon conditions and timetables. Citing the 2 million dollars spent to date on environmental studies, Disney claimed that requests for information were made known to it until much time had been lost. Further, Disney objected to the inclusion of various alternatives in the final environmental impact report, the resort village away from the lake and winter-only operation.

### Need for the Disney Resort

Among the various factors favoring the project, as cited by Disney in the Environmental Assessment submitted to the Sierra County are:

1) its accessbility from major metropolitan areas in northern California;
2) its proximity to a well-developed transportation system (Interstate Highway 80);
3) the overcrowded condition of existing resort areas in the Northern Sierra Nevada; and
4) the area's ability to support development without generating excessive environmental impacts.

### Spillover Effects

Opponents of the project in Nevada County and Truckee are primarily concerned with the massive social and economic spillover effects they predict the Disney resort will create. Among the feared potential impacts of the project are: increased traffic congestion and air pollution, rising crime, land speculation, higher taxes to sustain necessary public services, a greater degree of governmental bureaucracy, and an expansion of the Tahoe-Truckee airport. Conservations claim that the Environmental Assessment is weak in its evaluation of fish and wildlife resources, and contend the proposed resort will have a substantial impact on migrating deer herds and the nearly extinct Lahontan cutthroat trout. Additional concern has been articulated regarding the potential spillover of air pollution into the Lake Tahoe Basin.

### A Political Stalemate

After Dow Chemical Company's well publicized 1977 abandonment of its efforts to construct a petrochemical complex in Solano County, the Brown administration is sensitive to criticism of the new AB 884 process and fears the repercussions of enforcing strict enviornmental standards. Disney has claimed that the CEQA process is time consuming, expensive and the most restrictive in the nation as far business is concerned.

Supporters of AB 884 argue that Disney has complained too early about the expedited environmental review process and has failed to allow it to function properly. Further, it is speculated that Disney may be engaged in a novel form of blackmail, hoping to exact major concessions from the Brown administration in the CEQA review process. Pending resolution of these differences, the future of the Independence Lake resort remains uncertain.

*Kathi Beaumont*

# literature review:

The January 1978 issues of **Environmental Comment**, published by the Urban Land Institute, is devoted entirely to a consideration of economic incentives as alternatives to environmental regulation. "Improving the Environment Through Price Incentives" by Maury Seldin presents the basic economic argument for using economic incentives to control air and water pollution and land development. Roger Wells' article, "Impact Zoning: Incentive Land Use Management" focuses on alternatives to traditional zoning and other land use control mechanisms.

Trying to evaluate Governor Brown's environmental record in this election year? Perhaps the March 1978 issue of **California Journal** can help. Two articles in this issue discuss the Brown administration's participation in two of the most important and controversial issues in California today. "Jerry's Suit for Divorce from Pat's Tahoe Marriage"outlines the Governor's strategy for transferring authority over Lake Tahoe development from the bistate Tahoe Regional Planning Agency (TRPA) to the federal government. Included is the author's evaluation of TRPA's performance (in a word: ineffective) and an outlook for the future of Lake Tahoe. "The Sundesert Issue: Nuclear Safety or Brown Politics?" presents an in-depth history of the attempt by San Diego Gas and Electric to obtain approval of the Sundesert nuclear power plant. The article describes the efforts of the Brown Administration to block the plant's approval and the legislative efforts to exempt the plant from the nuclear energy laws passed in California in June 1976.

Those interested in the current controversy in Sacramento over the installation of high voltage transmission lines above ground may want to look at the January/February issue of **Environment**. The possible impacts on the environment of high voltage transmission lines are described in "High Voltage Overhead," an article co-written by a radiation biologist and a cancer researcher (and thus somewhat technical). In the same issue, "The Road to Erosion" discusses the reasons why river basins in California's North Costal Region erode 10 to 100 times as fast as other river basins in the United States and suggests ways to combat this condition through regulation.

The March 1978 issue of **Audubon**, published by the National Audubon Society, is filled almost exclusively with stories about wildlife, primarily birds, but it also contains an exceptional article of more general concern, "The Re-greening of Urban America." This is a lengthy article offering a rather depressing view of the current state of urban parks and recreation. Some of the hard facts are gleaned from the National Urban Recreation Study, prepared by the Department of Interior. In addition, the article touches almost all bases, including a history of the parks and recreation movement, some of its best and worst accomplishments, current development in upgrading urban environments, and prospects for the future. The author places particular emphasis on the dichotomy between urban and suburban areas and sensitively contrasts some environmentally pleasant areas with the worst examples of decaying urban centers.

*Elliot Gilberg*

## grub stake mining

(continued from page 7)

The Trinity County District Attorney felt that the spraying was in retaliation to the miners' obstinacy in fighting evictions. The District Attorney protested the spraying, noting that the hunting season was about to begin and that local residents should be warned that slaughtered animals should not be eaten if they had consumed foliage within 10 days of killing. The spraying was suspended temporarily after the District Attorney threatened to take legal action.

*Bonding*

Miners are having difficulty in maintaining their claims because the bonding companies in California refuse to bond the small miners in Trinity County. Miners find it difficult to make their claims profitable, since without bonding they are restricted to using hand tools to work their claims.

The miners generally view the Forest Service actions as part of an "inevitable bureaucratic power trip" or a multidepartmental conspiracy to control every aspect of the nation's natural resources on public lands. Validity testing is seen as the dubious means of control. The miners think that Denny is a test case which, if successful, will be used as a precedent to evict the remaining claimants on public forest land in California. According to one miner who has lived on his claim since the early 1930's, the Forest Service activity is motiviated by the BLM's desire to control hydroelectric power, mineral, and timber on all public lands.

**Conclusion**

The legal status of the miners is still uncertain. No decision has been handed down in the Western Mining Council suit challenging the constitutionality of the 1976 Federal Land Policy and Management Act. Undoubtedly, some people are illegally taking advantage of the protections of the 1872 Mining Act, in Trinity County and thoughout the state. However, wholesale eviction of all claimants in the Denny area seems an overbroad response. The grubstake miners in Trinity County are determined to maintain their claims. The Forest Service is equally determined to force them out. Until the courts settle the issue of the validity of the grubstake claims, the war between the miners and the Forest Service will continue and probably escalate.

*Christy Bliss*

## endangered species

(continued from page 5)

will not jeopardize the existence of endangered species or destroy their habitat.

The trial court found that the snail darter would be exterminated by the project, and that this was a violation of Section 7. *Hill v. Tennessee Valley Authority*, 419 F.Supp. 753 (E.D. Tenn. 1976). However, the court refused to issue a permanent injunction against the project, since it was already partly completed and incapable of "reasonable modifications." On appeal, the Circuit Court also found a violation of Section 7, and issued the permanent injunction. The court said that if the project was to be exempt from the Act, Congress must declare so specifically. A court-implied exemption would usurp the legislature's job. *Hill v. Tennessee Valley Authority*, 549 F.2d 1094 (6th Cir. 1977). *Certiorari* was granted in November, 1977.

### The Issues

TVA says that the Tellico project is almost completed, that millions of dollars in dam and highway construction will be wasted of the project is scrapped at this point. TVA has made efforts to transplant the snail darters to another river, but the results are inconclusive. TVA also feels it is "impliedly exempt" from the Act, since Congress has not cut off appropriations for the project since becoming aware of the snail darter controversy.

Opponents of the Tellico project see the issue as more than of one species, although that question is important in its own right. They also feel that species preservation is also utilitarian. To quote Senator Cranston:

> As we take steps to preserve environment of endangered fish and wildlife in some livable form...we will in the process preserve at least some of our own environment in a condition where we and our children can survive.

Professor Plater says that it is "probably more profitable to preserve the snail darter" than to proceed with the Tellico project, especially in the light of the GAO report. The GAO study found TVA's estimates of benefits too high. Barge traffic is decreasing, and TVA had failed to account for the abandonment of the industrial new-town. TVA's own figures show the farm land to be flooded could generate $6.4 million per year in agriculture, while the GAO quotes them as saying their own impoundment would only produce $3.7 million per year. Opponents say the area could be developed as a scenic, recreational and agricultural area, without destroying the snail darter, and while producing more beneifts than the Tellico project.

Opponents also point out that out of over 4500 "conflicts" arising under the Act, only three went to court, and *Hill* is the only suit to go this far. They fear TVA is not interested in complying with the Act at all, and has proceeded with construction to bolster their argument that an almost-completed project is exempt from the Act. A decision in favor of TVA, they say, would allow any agency to defeat the purposes of the Act simply by spending as much as possible before being forced into court. Opponents want the court to enforce the Act, but leave the question of exemptions in special cases to Congress, who is better equipped to make those decisions.

*Tennessee Valley Authority v. Hill* will be argued this spring; a decision is not expected until June. Congressperson Leggett's Subcommittee on Fisheries and Wildlife will hear the issue before then, and may suggest solutions, but probably not until late spring or early summer. The fate of a species, the snail darter, and of the Endangered Species Act in general, is in their hands.

*Robert Gendreau*

## peripheral canal

(continued from page 4)

Most supporters of the bill feel that it is too early to make contingency plans. There is a great reluctance to "throw away" many years of plans, reports and studies because of this adverse note. However, there is not much chance for revision or amendment of the bill which would alter the outcome. Only a week before the February 2 vote, the bill was reported out of conference committee by a 4 to 2 vote. Little would be accomplished by sending the bill back to the committee, because the process of "give and take" had effectively ended by the time the bill reached the Senate floor.

Proponents of the bill hope a resolution of the state-federal conflict over Delta water quality control will assuage the fears of environmentalists and persuade agricultural interests that SB 346 is the best they will get. Opponents of the bill point to the February defeat as support for their contention that the Peripheral Canal is the answer to neither Delta water quality, nor to efficient irrigation water supply in the San Joaquin Valley.

At present, the February defeat of SB 346 has put the Peripheral Canal into a holding pattern. All concerned parties await the decision in *United States v. California* in the hopes that it will provide a key for a final resolution of the controversy. If such a resolution is not reached by the end of the current legislative session the possibilities for construction of the Canal will suffer another blow. Thoughts of introducing the bill in the next legislature, or the more drastic measures hinted at by Governor Brown might be entertained at that time. For the most part, however, attention will be focused on the period between now and the adjournment of the legislature. In one way or another, the future of the Peripheral Canal will be foretold in these months.

*Donald Segerstrom*

## wastewater

(continued from page 3)

enforce maintenance of on-site systems, thus ensuring proper management. To carry out this goal, OSWMZ would also have the capability to repair a failed septic tank system which was not corrected by the homeowner. For the financial support of these services, OSWMZ would charge a service fee to all homeowners within its jurisdiction, similar to that of a public sewer district. However, the advantage to the rural or small community would be the smaller cost than that of a centralized system.

The formation of an OSWMZ under SB 430 can be initiated by a resolution by the Board of Directors of a public entity or by petition of the citizens who vote or own land within that entity's boundary. Legal notice must be published and a public hearing held on the proposed formation of an OSWMZ. In the event of more than 35 percent but less than 50 percent of the voters or property owners protesting the formation of a Zone, the local governing board must hold an election which requires a simple majority for approval. If 50 percent or more of the voters protest the formation, the proposal must be abandoned for consideration for not less than a year.

Besides providing a public management mechanism to maintain on-site wastewater systems, an OSWMZ would have access to innovative or alternative technology for sewage treatment. An objective of this project is to develop new systems which are cost-effective, less complicated and more energy efficient than conventional sewage treatment methods. One such alternative is the overland flow process which has already been implemented in several California counties, including Yolo County. In this process the wastewater, previously treated to remove solid waste material, flows down a slope covered with vegetation where biological, physical and chemical processes remove such pollutants as pesticides and harmful bacteria. The treated liquid is then collected at the bottom of the slope for reuse. Because this process requires little sophisticated technological training to use, it is well-adapted to agricultural communities where irrigation water is in demand. Another process, aquaculture, uses water to cultivate plants, such as algae and water hyacinths, which in turn remove nutrients from the water. After the water is purified, these plants can be utilized as livestock feed or even for energy production. The feasibility of using this natural biological system to treat wastewater is currently under research.

Not all communities would be benefited by on-site systems or innovative wastewater treatment processes because of the nature of their environmental conditions. Therefore, some rural or small communities would be best served by conventional centralized sewage systems. OSWMZ can work best where the groundwater table is too high and there is enough land available for septic or alternative treatment systems. Thus, the effectiveness of SB 430 will be determined on a local level and on a case by case basis.

*Dick Tomoda*

## our MONEYTREE

is part of an extinct species... in spite of our environmental efforts...so we turn to you, our readers, with this plea for support...

**PLEASE SUBSCRIBE TO ENVIRONS AND ASSIST OUR CONTINUING EFFORT FOR SUSTENANCE**

Please fill out the form below and mail to:

Environmental Law Society
UC Davis School of Law
Davis, California 95616

Please make checks payable to: ELS/Environs

NAME: _____

ADDRESS: _____

_____

_____

AMOUNT ENCLOSED:

☐ $ 5.00 — Bread & Water
☐ $10.00 — Soup & Sandwiches
☐ $15.00 — Three meals a day
☐ $25.00 — Gourmet Delight
☐ _____ — Friend of Environs
(any amount appreciated)

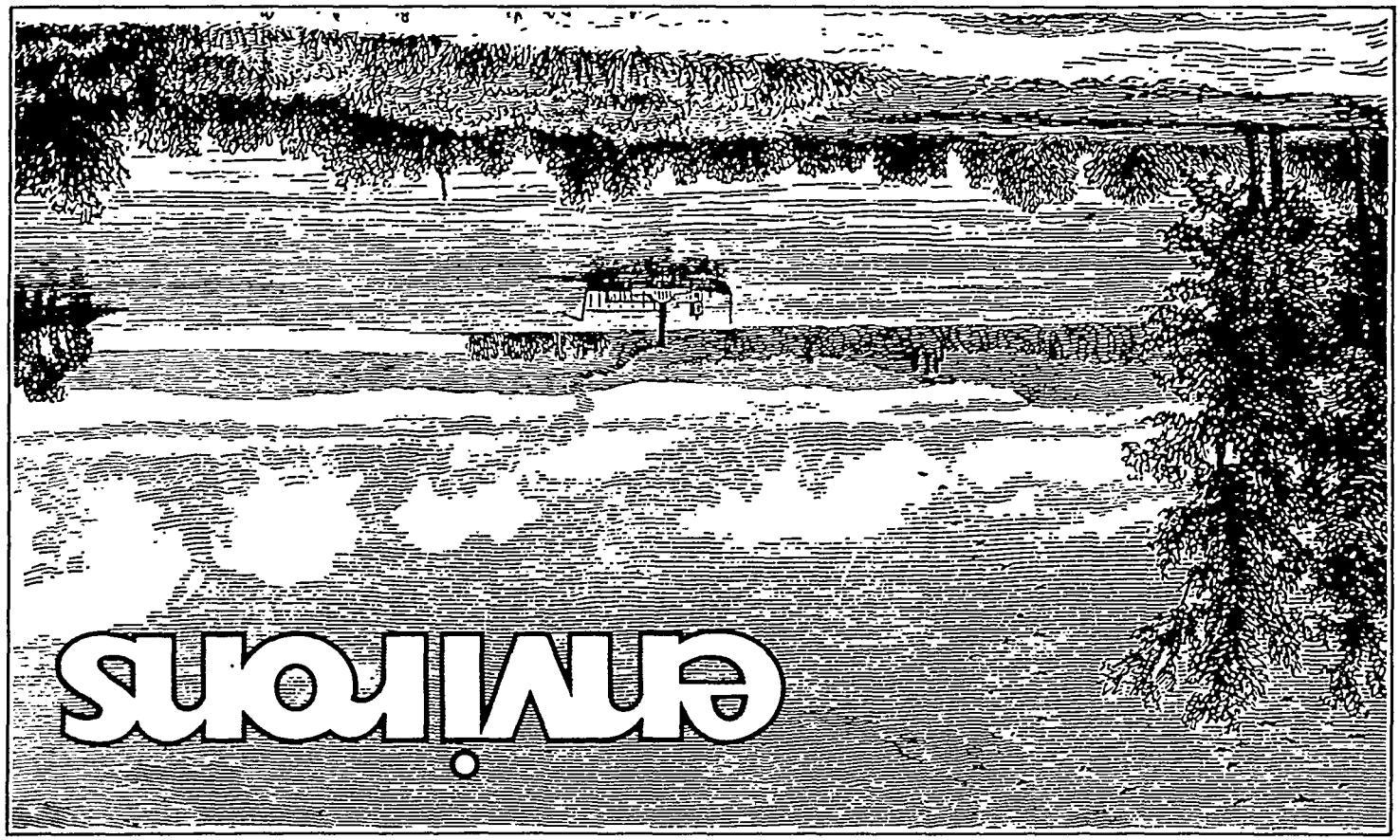
Any subscription donation given will insure your receipt of all issues of Environs published this year.

Is there some one/organization that might benefit from receiving Environs? Please send us their name/address too.

NAME: _____

ADDRESS: _____

_____




## inside:




Environs
Environmental Law Society
King Hall
University of California
Davis, California 95616



NONPROFIT ORG.
U.S. POSTAGE
PAID
Davis, Calif.
Permit No. 3