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Submission of Comments, Letters to the Editor, and Articles is encouraged. We reserve the right to edit and/or print these materials.

Special Acknowledgement
Harrison C. Dunning *Faculty Adviser*

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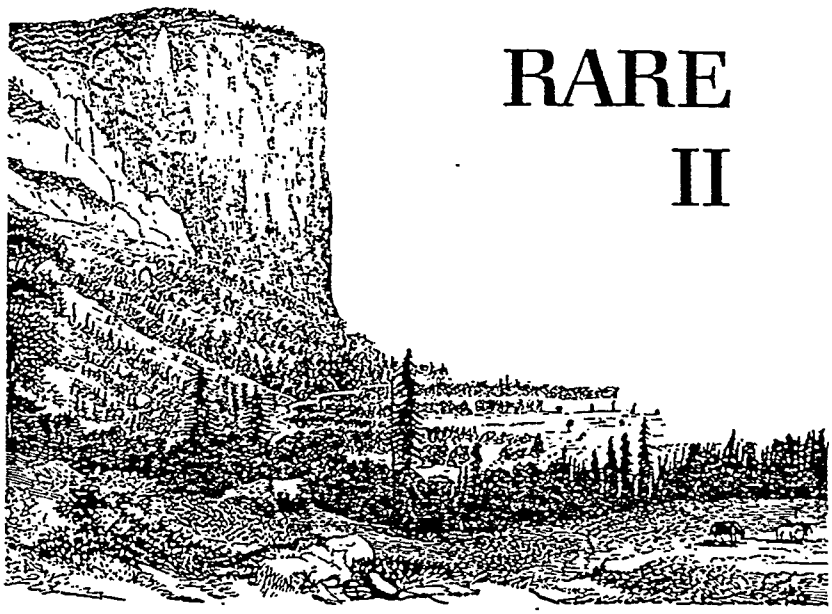

RARE II

The present system of National Forest management and wilderness preservation began in 1960 when Congress passed the Multiple-Use Sustained-Yield Act (MUSY). This act directed the U.S. Forest Service to manage the National Forests for the purpose of providing a balanced and sustained output of the multiple uses to be derived from them, including range, timber, wildlife and watershed protection. The act also contained the statement that wilderness preservation was consistent with the purposes of the act.

Four years later, Congress passed the Wilderness Act, providing for protection of undeveloped federal lands by legislative establishment of wilderness areas. Since that time, the Forest Service has been wrestling with the problem of how best to manage the tens of millions of acres of National Forest lands that have never been developed. Competing demands for timber development and wilderness preservation have prompted the Forest Service to try to formulate a comprehensive plan as to how much land will be preserved and how much will be developed.

The first such attempt culminated in the early 1970's with the Roadless Area Review and Evaluation (RARE I), a program to identify the remaining roadless areas in the National Forests and evaluate them for their wilderness potential. When the final plan for the program was released, however, RARE I was buried under criticism from conservationists. They charged, among other things, that the evaluative methods were inadequate and biased against wilderness and that many deserving roadless areas were ignored in the inventory.

Meanwhile, Congress passed the Resources Planning Act in 1974 and amended it in the National Forest Management Act (NFMA) in 1976. NFMA directed the Forest Service to develop long range management plans for all the National Forests. These plans are to "include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness." Regulations developed by the Department of Agriculture in response to NFMA require these plans to be revised every ten years. The guidelines for the initial management plans were published in September of 1979.

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LETTER FROM THE EDITORS

ENVIRONS is published by the students of King Hall—the University of California, Davis, School of Law. It is edited by members of the Environmental Law Society. *ENVIRONS* strives to present a forum for the presentation of objective, nonpartisan articles on the substantive issues in the environmental law/natural resources field which are of interest to our readers.

With this issue, the editorial staff of *ENVIRONS* is taking a step toward the improvement of our always precarious financial situation. In the past, *ENVIRONS* has been produced and mailed free of charge to our readers. In light of the financial situation in which the University of California currently finds itself, we will be unable to continue that policy.

Therefore, *ENVIRONS* is being converted to a genuine subscription production. This will provide a sound financial basis for ongoing publication. Also, we hope the support will be great enough to increase the size and frequency of our issues.

After the present issue, our yearly tax deductible subscription rate will be five dollars. This will entitle the subscriber to four issue of *ENVIRONS* to be published every two months during the academic year. A subscription form may be found at the back of this issue.

To those who have been past contributors, we are grateful for your encouragement and financial assistance. As in the past, *ENVIRONS* appreciates the donation of any subscription amount. The Editorial Staff will also continue its pursuit of grants and alternative sources of funding in an effort to stabilize our financial situation.

It is regrettable that a minimum subscription must be imposed, but it is the most efficient way to ensure the long-term fiscal viability of *ENVIRONS*. We trust that in this decision we will have the understanding and support of our readers.

As in the past, we encourage you to submit articles for publication on your area of expertise. Articles presenting the scientific or technical implications of environmental regulations and policies will affect (in a manner understandable by a lay audience) are also welcome. All articles submitted should either conform to our nonpartisan format, or be accompanied by suggestions of possible authors who could effectively present alternative views of the issues.

Woody Brooks, Donald Segerstrom, Bruce Klafter.

THE GLOBAL 2000 PROJECT

Charles Warren met with King Hall students recently for a lunchtime discussion sponsored by the Environmental Law Society. Warren has a considerable environmental background enhanced by the three years he served as chairman of the President's Council on Environmental Quality (CEQ). Prior to his post with the CEQ, Warren was active in the California State Legislature, where he sponsored bills leading to the establishment of the California Energy Commission, the nuclear moratorium, and the Timberland Reserve Act.

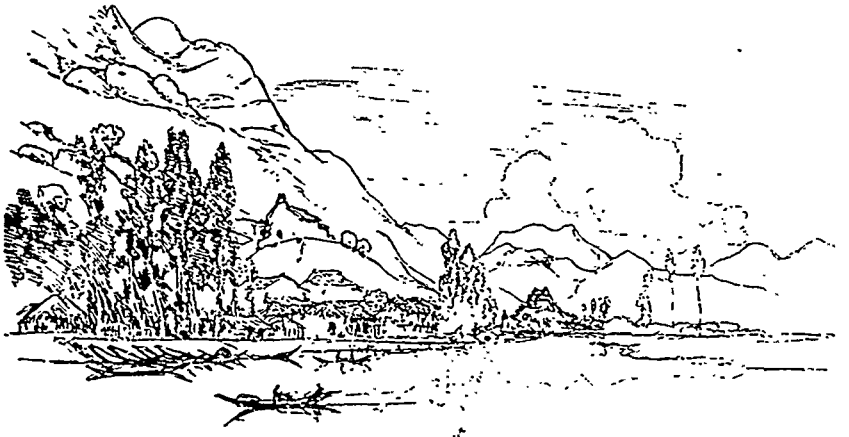
He remains active in environmental affairs today. He is currently Regents Lecturer at UC Davis, a special consultant to the House Committee on Insular Affairs (advising the committee on the Lake Tahoe Region), an advisor to Congress' Office of Technology Assessment, and chairman of the California 2000 Project sponsored by the California Tomorrow Foundation.

Although Warren discussed a variety of topics, including congressional indifference to environmental issues, Lake Tahoe, the viability of the Public Advisor's office as well as the Energy Commission, and California 2000; much of his discussion involved the Global 2000 Project. This report, authorized by President Carter, prepared by a number of federal agencies, and edited by CEQ and the Department of State, will soon be available from the Government Printing Office.

After attending a U.N. Food Conference in 1974, Warren decided that one of his key objectives in Washington would be to determine the ability of government to deal with global problems caused by rising population and industrial development. The Global 2000 Project was the realization of this goal. The study projects six factors over the next 20 years:

- population
- industrial development
- climate
- resource requirements
- demand accomodation, and
- environmental effects.

Warren emphasized that the project does not predict the future and that no systems analysis theories were used to extrapolate from existing data. Rather, the report merely projects the future using such data. Nonetheless, the report is still sobering in its message. Although we may be too accustomed to doomsday predictions, Warren's report contains some startling projections. It will be an important contribution to environmental planning in the coming decades. Some of the projections that Warren mentioned are:



Population—Global population will increase 50% in the next two decades—from 4.3 billion to 6.5 billion people.

- 80% of this increase will be in the developing nations: Latin America, Africa, and South Asia.
- Mexico City will have *36 million* people in 2000.
- the economic outlook is very bleak for the developing nations, especially in light of their tremendous population growth and energy dependency; in order to support the material well-being of these countries, their economies must grow by 3.5%.

Industrial development—A less certain area, but there is a universal quest for the material benefits of industrialization; as industrialization takes place, the per capita consumption of resources grows.

Climate—There will probably be a natural variation in climate. In the last 75 years, the earth has experienced an atypically benign climatic pattern; government projections are based on this pattern, but climatologists maintain that such projects should take into account expected climatic change.

Resource requirements—These will climb as the population rises and industrial growth occurs. Material requirements will increase in proportion to the economic development of a country (1.8%-3.5%).

Demand accomodation—Food requirements will increase by 90%, but land resources can only increase by no more than 4%; therefore there must be a turn toward high yeild technology, but such technology is always energy intensive.

- greatest concern is that land which will be used will be forest lands and wetlands. 80% of the earth's commercial fisheries are dependent on wetlands; this may cause the loss of one of the earth's greatest protein-producing sources.

Environmental effects—The major environmental threat is deforestation of the tropical forests—40% depletion by the year 2000.

- consequences of deforestation are:

a) loss of habitat—since tropical forests have great genetic diversity, hundreds and even thousands of species will be eliminated

b) serious changes in the world's hydrological cycles—more monsoons, heavier flooding, more frequent flooding

c) increasing conflict between nations for water that must be shared.

- "desertification"—As human population grows, so does animal population in each herd; thus the grassland regions are becoming increasingly inadequate, and the deserts are growing ever larger.
- an example of human overutilization of the land (causing it to become desert) can be found in the Upper Plains region of the United States where the desert is continually expanding
- increase in CO_2—result of increased fossil fuel consumption will cause increased CO_2 production which could result in an increase of 6° centigrade in the next 50 years; such an increase has not been experienced in recorded history
- acid precipitation will increase in severity and the regions affected will expand; biological effects of these changes are certain but will most likely be detrimental.

The Global 2000 Project provides no solutions. In addition to its startling projections, however, the study also reveals some serious problems in governmental planning for the future. Notably, it indicates that governmental projections do not take into account energy problems, environmental problems, or climatic changes that are likely to occur in the future. In addition, it indicates that such problems must be analyzed from a global viewpoint as well as a regional and national viewpoint.

Warren's insights were well received by those attending the discussion. The Global 2000 Project should provide further insight for environmental planning, and should be studied by all those interested in our environmental future.

Wm. George Wailes

in the aggregate

AN ENVIRONMENTAL SURVEY OF SAND AND GRAVEL OPERATIONS ON CACHE CREEK

A treasure hidden from the public eye by its remoteness from the major urban centers of northern California, Cache Creek contains sand and gravel resources essential to the development of Yolo and Solano counties. After decades of essentially uncontrolled excavations by sand and gravel operators, Cache Creek is now a center of environmental and political controversy because of recently enacted state and county regulations.

Cache Creek originates at Clear Lake where it flows southeasterly through the Coast Range into Capay Valley, finally emptying into the Yolo Bypass adjacent to the Sacramento River. In the mid-nineteenth century, Cache Creek was surrounded by miles of forests and dense riparian vegetation. But today, as a result of agricultural clearing, pumping of groundwater and aggregate extraction, dense vegetation is rarely more than a couple of hundred yards wide and, in many stretches, it is non-existent.

Sand and gravel companies first began major mining operations in the 1930's. These minerals are used to construct highways, homes and other buildings. So basic is this natural resource to our daily lives that its presence is often taken for granted. For example, construction of a typical single-family residence requires about one hundred tons of sand and gravel.

REGULATION OF AGGREGATE EXTRACTION

Until 1979 aggregate extraction from Cache Creek was effectively unregulated. Passage of the Surface Mining and Reclamation Act of 1975 (California Public Resources Code Section 2772 *et. seq.*) required the Board of State Mining and Geology to adopt general policies governing surface mining practices and reclamation of mined lands. Detailed regulation was to be carried out by the counties, under the Board's supervision.

After four years of study and debate, concern over the impact of aggregate extraction on Cache Creeck led Yolo County to enact five temporary mining and reclamation ordinances in 1979. In addition to imposing data gathering and reporting requirements, these ordinances regulate extraction within the channel boundary (generally from streambank to streambank) by requiring a mining permit of all operators and by limiting the depth if excavation to the theoretical thalweg (i.e., the lowest point of the streambed extended in all directions).

The county ordinances also place a limit on maximum annual extraction and require all agricultural land to be reclaimed so that agricultural production may once again take place.

An environmental impact report assessing the impact of sand and gravel operations along a fifteen-mile stretch between the towns of Capay and Yolo was recently completed. The county is now deciding upon a permanent, long range management plan for Cache Creek.

MINING PRACTICES

Gravel mining on Cache Creek is generally accomplished by scrapers which excavate the streambed and floodplain areas. Excavation is either done during the dry season or during the wet season by means of levees which divert the stream and expose large areas of aggregate. In-channel mining avoids the need to remove extensive amounts of top soil and vegetation and leveeing prevents reliance upon the less efficient dragline techniques required for wet pit excavation.

Mined material is transported to a nearby processing plant where it is washed, crushed, sorted by size, and stockpiled. Excavated sand is also cleaned and stored. The water used in the cleaning process is discharged into settling ponds where it percolates into the groundwater basin, thus reducing impacts on stream turbidity. Stockpiled material is used principally for construction projects in Yolo and Solano counties.

Gravel mining in Yolo and Solano counties has been centered around Cache Creek because of its unique capacity to supply large deposits of premium quality aggregate. In fact, Cache Creek may be designated an area of regional or statewide significance because of the strength, density, size, variation and chemical composition of its aggregate material.

ENVIRONMENTAL REPERCUSSIONS

While continued and extensive operations have provided this premium aggregate material, they have also produced a number of adverse environmental effects. The environmental impact report on the issuance of permits by the County (prepared by Environ, Inc., January, 1980) shows that the aggregate extraction of nearly four million tons per year has caused the streambed between Capay and Yolo to be lowered approximately ten feet since 1950. According to a report released in September 1979 by Woodard-Clyde Consultants, this has permanently reduced the storage capacity of the underground basin by an estimated 37,000 acre feet. However since the basin is probably in a permanent overdraft state (pumping of groundwater exceeds natural replenishment), this loss of storage capacity may only be meaningful in years of high rainfall.

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Constitutional Protection of Unused Riparian Rights

The California Supreme Court, in *Ramelli v. State Water Resources Control Board,* resolved an issue crucial to state regulation of water rights. *Ramelli* essentially approved a statutory scheme that adjusts the conflicts between appropriative and riparian water rights. Some background on the nature of those water rights and on the statutory scheme is necessary to understand the Court's decision in *Ramelli.*

Riparian water rights permit the owner of land which abuts a waterway, subject to the similar rights of all other riparians on the stream, to take as much water as is reasonably needed for beneficial uses on the riparian parcel. A riparian right arises by law as an incident of ownership of riparian land, and exists regardless of whether the water is actually used or not. When a shortage of water occurs, the available water must be shared by all riparians on the stream.

Appropriative rights are exclusive rights to use set amounts of water for specified beneficial uses at specific locations. In times of shortage, an allocation is made according to the principle "first-in-time, first-in-right." Generally, an appropriator may not take any water if doing so would interfere with any senior rights (any appropriations with earlier priority dates) and, generally, all riparian rights. If an appropriator stops using all or part of the water to which he is entitled, the right to the unused portion may be lost.

Statutory Adjudication

Without a comprehensive determination of all water rights on a stream system, riparians cannot know at any given time exactly what amount of water they are entitled to as against other riparians. The rights of appropriators are also uncertain, since their rights are generally subordinate to riparian rights, some of which may be currently exercised. While water which could be claimed by a riparian in the future may currently be used by an appropriator, such a temporary user is unlikely to invest heavily in any enterprise which relies on the continued availability of the water. One result of uncertain rights may thus be economic underutilization of water. Conflicting claims of right are another frequent consequence.

The final determination of individual rights to use the waters of a stream system can be a difficult problem. The factual situation is usually complex (e.g. the variation of the supply of water within and between years) and a large number of claimants are typically involved. Attempts by an individual to protect his rights through private litigation may prove ineffective because, generally, the judgment will bind only those persons who are parties to the action. Rights to some streams remain unsettled even after the litigation of dozens of such suits.

In an attempt to resolve this problem and to enhance certainty of water rights, thereby promoting the reasonable and beneficial use of limited water supplies, the California Legislature developed the *statutory adjudication* procedure. The State Water Resources Control Board is empowered to investigate and make, in a single proceeding, a comprehensive determination of water rights on a stream system. Specifically, the Board is required by California Water Code section 2769 to determine, "as to the water right adjudged to each party, the priority, amount, seasons of use, purpose of use, point of diversion, and place of use of the water."

In *In re Waters of Long Valley Creek Stream System; Ramelli v. State Water Resources Control Board,* 25 Cal. 3d 382, 599 P. 2d 656, 158 Cal. Rptr. 350 (1979), the California Supreme Court was faced with the question of whether the California Constitution permits the Board to limit or eliminate unexercised riparian rights in the course of a statutory adjudication. The Court declared section 2769 constitutional to the extent that it allows the Board to limit unexercised riparian rights, including placing such rights in a priority below riparian rights which are currently being exercised. The Court held that the Board could not, however, completely eliminate unexercised riparian rights.

The subject of the *Ramelli* proceeding was the Long Valley Creek System in Lassen, Sierra, and Plumas Counties in northern California. Claims to water rights were filed with the Board by 234 claimants. It was undisputed that there is not enough water in the stream system at any time to satisfy the existing claims of riparian and appropriative users; only about 4130 of a total 297,000 arable acres can presently be irrigated. Ramelli holds riparian rights, and for 60 years he and his predecessors have irrigated only 89 acres. In the adjudication, Ramelli claimed unexercised, or prospective, rights to irrigate an additional 2884 riparian acres. The Board awarded Ramelli water rights for the 89 acres for which riparian water rights were currently being exercised, but denied any rights for the remaining acreage. The trial court overruled Ramelli's objections to the Board's determination, thereby allowing the Board to completely extinguish Ramelli's currently unexercised riparian claim.

Vested Rights Versus Efficient Usage

On appeal, Ramelli asserted that the Board must recognize unexercised riparian rights because such rights, whether used or not, are a *vested* incident of ownership of a riparian parcel. It was maintained that such rights cannot be lost merely because they are not exercised, but may be exercised whenever the owner wishes to do so. Ramelli also contended that unexercised riparian rights may not be quantified (limited to a specific

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SANTA MONICA MOUNTAINS CONTROVERSY CONTINUES

Assembly Bill 13, a controversial bill which would have exempted a substantial portion of the Santa Monica Mountains from the Coastal Zone, has been defeated in the California Assembly Resources, Land Use and Energy Committee. Although the Committee has agreed to reconsider AB 13 this session, it is probable that the measure will be dropped. Negotiations between the State Coastal Commission and the two development companies involved have resulted in a compromise proposal which the Commission is presently considering. While the Commission appears likely to approve some development under a compromise proposal, considerable controversy still exists over the type of development to be permitted in the Santa Monica Mountains.

Assembly Bill 13 was authored by Assembly Rules Committee Chairman Louis J. Papan. Papan maintained that the measure was necessary to provide fair treatment to developers hampered by restrictions imposed by the State Coastal Commission. Proponents of the bill argued that Coastal Zone Boundaries designated under the 1976 Coastal Act were improperly drawn, and should have excluded the property in question.

The bill was hotly contested by environmentalists and citizens groups who contended that it was special interest legislation which would benefit two development companies at the expense of the public interest. These groups argued that although some development had already occurred within the Santa Monica Mountains, the area still retained many scenic and recreational values. They further maintained that the area should be protected from uncontrolled development, since it is one of the few natural mountain areas readily accessible to residents of Los Angeles.

Controversy over the appropriate use of California's coastal resources had reached a peak in 1972, when California voters approved Proposition 20, the Coastal Initiative. This landmark initiative created the State Coastal Commission. The Commission was required to prepare a state coastal plan identifying sensitive areas deserving permanent protection and outlining a permanent way to control future development. The initiative prohibited development within the Coastal Zone without a permit issued by the Commission. It also defined the Coastal Boundary as extending inland 1,000 yards from the mean high tide line.

In 1976, the State Legislature enacted the California Coastal Act. This Act extended the Coastal Zone Boundary inland "in significant coastal, estuarine, habitat and recreational areas—to the first major ridge line or five miles from the mean high tide line of the sea, whichever is less, and in developed areas the zone generally extends inland less than 1,000 yards." (Pub. Resources Code, Sec. 30103(a)). This vague definition spawned the boundary dispute which gave rise to AB 13.

Assembly Bill 13 would have removed 4,500 acres from the Coastal Zone and placed it under the jurisdiction of the Los Angeles City Council. Headland Properties, Inc. and AMH Corporation owned 2,300 acres and proposed to develop 2,150 residential units on the property. The proposed units would have ranged from $200,000 condominiums to homes costing over $1 million.

Papan was first approached by Headlands and AMH during the 1977-1978 legislative session. Headlands had spent over $47 million since 1968 on development of roads, drainage and utility systems in anticipation of project approval. According to Papan, the Los Angeles City Council had approved the development prior to the property's inclusion in the Coastal Zone in 1976.

The City Council had actually approved only one of four proposed tracts, and this approval came over a year **after** the property had been placed in the Coastal Zone. The Council's approval was contrary to the recommendations of the City Planning Commission and other departments. The Council's action has been challenged in a lawsuit by Pacific Palisades Property Owners Association (PPPOA). Research by PPPOA indicated that companies with an interest in the Headlands and AMH subdivision contributed $101,381.55 to Los Angeles City Councilmen during the three year period preceeding the Council's approval of the project.

In June, 1977, the Coastal Commission granted Headlands a coastal development permit exemption allowing construction of a portion of the project, but refused to allow development of the majority of the disputed property. Headlands argued that the Legislature in 1976 had erroneously included the Headland property in the coastal zone by picking the wrong ridge. The Coastal Commission, however, has contended that the Legislature selected the proper ridge.

In 1978, Papan introduced Assembly Bill 2301, which would have exempted 6,403 acres surrounded on three sides by public lands, including Topanga Park, from the Coastal Zone. The bill was defeated in the Assembly Resources, Land Use and Energy Committee. Papan introduced AB 13, a revised version of AB 2301, early in 1979.

Assembly Bill 13 was introduced at a time of general resentment against the Coastal Commission. The Commission had refused to allow victims of the Malibu fire to rebuild their homes without first undergoing the lengthy process of obtaining coastal development permits. The Commission's apparently insensitive handling of the Malibu fire victims received widespread publicity and criticism, leading the Governor to call the Commission a group of "bureaucratic thugs."

Assembly Bill 13 passed the Assembly Resources, Land Use and Energy Committee by a 7-4 margin on February 27, 1979. Two major factors accounted for the bill's early success.

First, many legislators angered by the Coastal Commission's "obstructionist tactics" were eager to reform the Coastal Act and enact measures punitive to the Commission. Assembly Bill 13 was viewed as an instrument to achieve this objective. Although the Commission had approved 95% of all coastal development permit applications statewide, development interests sought to restrict the Commission's power through legislation. Over forty bills to alter or weaken coastal protection were introduced in 1979.

The second factor contributing to AB 13's successful passage from committee was Papan's pledge to return the bill to the Assembly Resources, Land Use and Energy Committee for review at a later date if the Committee voted his bill out. A bill is normally returned to its house of origin only if amendments are added in the second house. Several committee members assumed that Papan, as Chairman of the Assembly Rules Committee, would be able to secure rule waivers to return AB 13 to the Assembly Resources, Land Use and Energy Committee.

The Assembly passed AB 13 by a vote of 52-21 on April 26, 1979 and sent it to the Senate. The Senate Natural Resources and Wildlife Committee appeared ready to pass AB 13 without amendments. If the Committee had passed the bill and the Senate had subsequently approved it without amendments, it would have gone to the Governor to be signed without being returned to the Assembly Committee. Members of the Assembly Resources, Land Use and Energy Committee felt that Papan had betrayed them by reneging on his promise.

A technical drafting error proved the key to the bill's demise. The Senate Natural Resources and Wildlife Committee amended the bill to correct the drafting error. The Senate subsequently passed AB 13 by an overwhelming 26-6 margin. As a result of the amendment, AB 13 was sent back to the Assembly Resources, Land Use and Energy Committee in late August.

Significant events had occurred during the six months which had elapsed since the Committee originally passed AB 13. Other legislation to reform the Coastal Commission had been approved by the Committee and appeared likely to become law. Consequently, some committee members had reservations concerning the need for AB 13. In addition, concentrated lobbying efforts by the Sierra Club, Coastal Alliance II, PPPOA and other groups had been directed against the bill. Although other bills had proposed changes in the Coastal Act of equal or greater impact than the Papan measure, AB 13 received considerable attention and became the target of statewide lobbying efforts because it was viewed by many as the most blatantly special interest piece of coastal legislation introduced.

Headlands and AMH, in response to the growing opposition to AB 13, proposed a covenant which would have restricted development in the disputed area to a maximum of 1,150 units on 470 acres—considerably less than the 2,150 units originally proposed. The proposed covenant would have authorized **only** the City of Los Angeles to enforce its terms and conditions. Neither local property owners nor the State of California would have standing to enforce the terms of the covenant if the City of Los Angeles rezoned the property to allow a higher density.

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Rare II

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In response to the criticism against RARE I, a second roadless area evaluation (RARE II) was instituted in 1977, forming the basis of today's controversy. It proposed to designate particular National Forest roadless areas into one of three categories: those that would be recommended to Congress for wilderness designation (wilderness); those that would immediately be opened for development (nonwilderness); and those that would require further study. Areas selected for nonwilderness would not be considered for wilderness protection in the first set of management plans mandated by NFMA. The Forest Service ultimately evaluated 2919 areas totalling 62 million acres (an area the size of Oregon).

The draft Environmental Impact Statement (EIS) for RARE II was released in 1978 and it, too, drew a barrage of criticism. Conservationists charged that the impact statement was done too quickly to adequately comply with the requirements of the National Environmental Policy Act (NEPA). Most criticism was directed at the range of alternatives offered. Each alternative presented a combination of wilderness, nonwilderness, and further planning designations in different proportions. Except for the "all wilderness" alternative, they were all weighted toward nonwilderness and further planning.

The final EIS for RARE II was released in January, 1979, and soon after the Carter Administration announced its final recommendations based upon the EIS. The administration made only minor adjustments in the EIS recommendations. In California, over 900,000 acres were recommended for wilderness and about 2.5 million acres each for nonwilderness and further planning.

The Forest Service's wilderness recommendations must be approved by Congress before taking effect. However, the nonwilderness designations became effective immediately, and these areas were officially opened to development activities on April 15, 1979.

The State of California brought suit against the Forest Service on July 25, 1979 challenging the designation of 41 areas in California as nonwilderness, comprising almost one million acres. **State of California v. Bergland**, 10 ELR 20098 (E.D. Cal. Jan. 8, 1980). The state sought a declaration of the invalidity of these designations, and preliminary and permanent injunctions against development of these areas pending the preparation of an EIS in compliance with NEPA. Two environmental groups and Trinity County intervened on behalf of the state, and lumber companies, homebuilders associations (as **amici**), and a group of counties intervened on behalf of the Forest Service.

The gravamen of the state's complaint was that although the RARE II EIS was programmatic or generic in nature, the 41 nonwilderness designations in question had potential negative environmental effects. The Forest Service failed to analyze adequately any site specific impacts. Yet, the state argued that later consideration of these impacts and of these areas for wilderness is precluded once nonwilderness designations are made. Therefore, the state urged that NEPA requires the Forest Service to prepare a site specific EIS for each selected nonwilderness area before the area can be released for such uses.

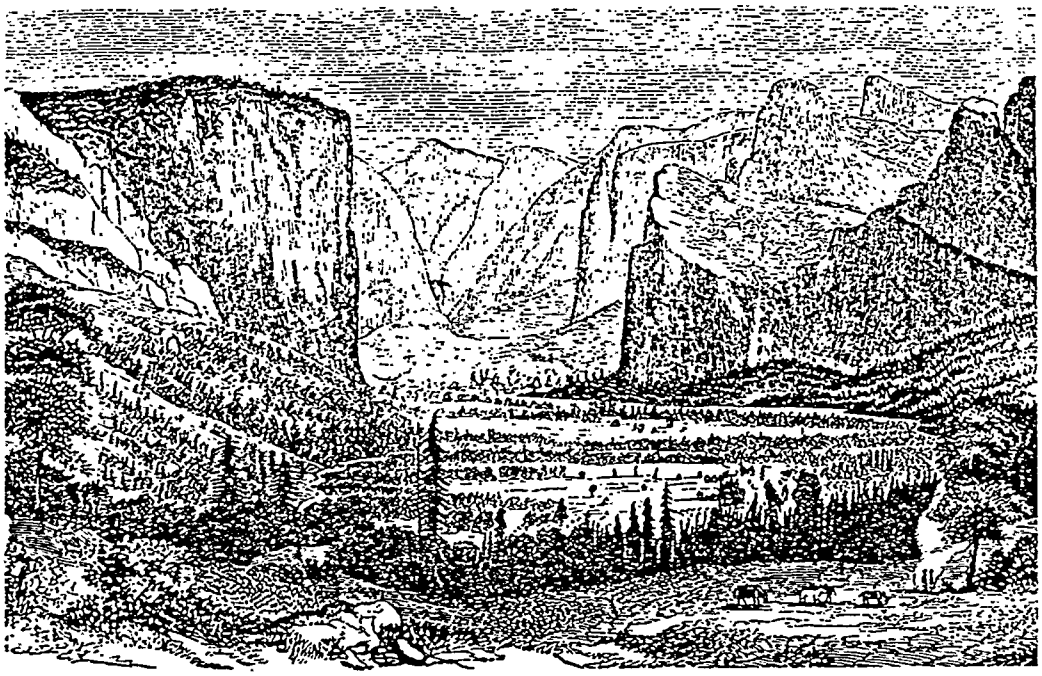
In addition, the state challenged the method used to arrive at the designations in question. It claimed the Forest Service had violated NEPA's requirement that the EIS include a detailed statement of alternatives to the proposed course of action to be followed in classifying the roadless areas. The state contended that no adequate explanation was given in the EIS of the basis for selecting these alternatives. Also, the range of alternative uses presented for the lands under consideration was unreasonable, because it was heavily skewed in favor of nonwilderness. Moreover, in violation of Council on Environmental Quality regulations, the Forest Service failed to identify its "preferred alternative" in the draft EIS, precluding public comment on the chosen course of action published in the final EIS.

Intervenor Natural Resources Defense Council (NRDC) asserted that the Forest Service's means of evaluating public comments received on the draft EIS violated NEPA's full disclosure and public participation requirements. NRDC claimed that the Forest Service evaluated the responses quantitatively rather than qualitatively, contrary to the procedure it indicated in the draft EIS that it would follow. This resulted in more weight being assigned to the more numerous form letters received, which mostly favored nonwilderness uses, than to personal letters, which mainly favored wilderness uses. NRDC asserted that consequently too many areas were assigned to nonwilderness uses.

The state claimed that the nonwilderness designations also violated NFMA. Section 6 of NFMA provides that in accordance with NEPA and MUSYA, land management plans for the National Forest system must consider wilderness along with other potential uses of lands. The state asserted that there is thus no statutory authority for the Forest Service to eliminate the wilderness option from the prescribed land management process, which it effectively did by its nonwilderness designations in California.

In addition, NFMA requires that decisions on land use allocations be made in "one integrated plan" for each national forest. The goal is to make the best possible land use allocations by considering concurrently the total resources of the forest and the multiple uses for which that forest is to be managed. NRDC asserted that the Forest Service, through the RARE II EIS, was dividing up the prescribed planning process. It was concerned only with roadless areas, rather than the total forest, and it made designations considerably in advance of the local planning effort being carried out under NFMA. Thus the EIS designations undermine the comprehensive planning purpose of NFMA and pave the way for future misallocations.

In response, the Forest Service denied all of the claims made by California and NRDC. Its basic contention was that it had not violated NEPA because RARE II had little immediate environmental impact. The Forest Service asserted that site specific impacts necessarily will be addressed in the forest management plans it will prepare pursuant to NFMA. The "first generation" of plans will be completed by 1985, and although Forest Service regulations preclude designating any area as wilderness in the first group of plans, the wilderness option will be available when the plans are revised every ten years. The Forest Service contended that in the meantime, the



roadless areas in question would be protected from harmful uses through land management plan regulations requiring the preparation of an EIS if significant changes are proposed in the present use of an area.

In a lengthy opinion granting the state's motion for summary judgment, Judge Lawrence K. Karlton accepted each basis of the state's contention that the RARE II EIS violated NEPA. For this reason, he did not find it necessary to rule on the NFMA claims. He stated that "the RARE II process largely avoids site specific wilderness analysis of the areas allocated to nonwilderness while barring such analysis in the future during the forest planning process." Therefore, the court held that the RARE II EIS violated NEPA, and it enjoined the Forest Service from developing any areas in question until it prepares EISs considering the specific impact of nonwilderness activities on these areas. The court ordered the Forest Service to consider each area specifically for wilderness designation.

In its opinion, the court emphasized the importance of including in the EIS a detailed analysis of the roadless areas and a detailed explanation of the method of analysis used to classify the areas. This would assure the public, the "ultimate owners of the land," that the agency was taking a "hard look" at the environmental effects of its actions. The court said the agency should not surrender wilderness values without revealing what it is giving up.

The RARE II decision affirms that in an age when open space and the opportunity for solitude are fast disappearing, it is increasingly important for the public to have the requisite knowledge and opportunity to balance those values against the economic needs of our growing population. The decision mandates responsible agency decisionmaking to this end.

The Forest Service will not rest with the decision, however, for the case is now under appeal.

As this action takes place in court, action is also taking place in Congress. Conservationists would like to see many of the Forest Service's nonwilderness areas given wilderness protection by Congress. Developers, on the other hand, want Congress to legislatively affirm the nonwilderness recommendations, thereby putting these areas permanently out of reach of wilderness consideration.

Bills representing both interests and limited to California roadless areas are now before Congress. HR 5586, introduced by Rep. "Bizz" Johnson, would designate as wilderness only those areas in California that the Forest Service proposed for wilderness in RARE II (900,000 acres). More importantly, the bill would require that the areas chosen for nonwilderness be managed only for uses other than wilderness.

On the other side, Rep. Philip Burton has introduced HR 5578. This bill would establish as wilderness all of the California RARE II wilderness and further planning areas (over 3 million acres) and would also provide wilderness protection for 71 areas recommended by the Forest Service for nonwilderness. Included among these are the 41 areas disputed in the lawsuit.

In addition, Rep. Tom Foley of Washington has introduced legislation (HR 6607) to deal with National Forest roadless areas for the entire nation. HR 6607 would legislatively affirm the Forest Service's wilderness and nonwilderness recommendations (12.4 and 36 million acres respectively) and would impose a deadline for congressional consideration of further planning areas.

Regardless of the final result of the RARE II lawsuit, Congress has control over what will ultimately happen. By the end of the current session, the future of roadless areas in the National Forests may be finally determined.

Walter Burton
Kathy Oliver

Constitutional Protection

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number of cubic feet per second or acre-feet per year), since by nature a riparian right permits all reasonable, beneficial uses of the property, rather than only current or certain possible uses. In support of his argument, Ramelli cited Article X, section 2, of the California Constitution which provides, in part, that " (r)iparian rights in a stream...attach to, but to no more than so much of the flow thereof as may be...used consistently with this section, for the *purposes for which such lands are, or may be made adaptable,* in view of such reasonable and beneficial uses..." [Emphasis added.]

Supporting the constitutionality of the requirement that all water rights be quantified, the Board argued that the basic mandate of Article X, section 2, of the California Constitution states that "the water resources of the State be put to beneficial use to the fullest extent of which they are capable." Accordingly, the Board contended that riparian rights are protected only to the extent that they are "consistent with this section...in view of...reasonable and beneficial uses." The Board argued that the statutory adjudication mechanism furthers the policy of the Constitution by affording a comprehensive and final determination of all rights to water in a stream system. All water users may rely on this determination in their planning of, and investment for, uses which depend upon availability of water. Thus, the Board argued, the quantification of all water rights advances the constitutional policies of preventing waste, conserving water, and promoting the reasonable and beneficial use of water in the State.

Ramelli's Position Contrary to Commission Recommendation

The Governor's Commission to Review California Water Rights Law, while recognizing the existence of the constitutional question posed by the *Ramelli* case, proposed adoption of a new Water Code section 2769.5. The new section would specifically authorize the Board to quantify riparian rights, and to "afford unexercised riparian rights priorities lower than those it accords to active uses of water if necessary" to promote the policies of Ariticle X, section 2.

The Commission's conclusions may have been the factor which led the California Supreme Court to decide to review the *Ramelli* decision. In May, 1978, the Court declined to review a decision of the First District Court of Appeal, *In re Waters of Soquel Creek Stream System* (79 Cal. App. 3d 682, 145 Cal. Rptr. 146), which ruled that unexercised riparian rights could neither be quantified nor assigned a priority lower than that assigned to currently exercised rights. The *Soquel* court avoided a finding of unconstitutionality by construing section 2769 to prohibit interference by the Board with unexercised riparian rights. The August 1978 decision of the Third District Court of Appeal in *Ramelli* , which invalidated section 2769 as conflicting with the Constitution, however, made the Court aware of the acute problems in quantifying riparian rights.

Decision of California Supreme Court

By balancing the opposing arguments of Ramelli and the Board, and by making substantial references to the recommendation of the Governor's Commission, the Court held that the Board is authorized to decide that an unexercised riparian claim loses its priority with respect to all rights currently being exercised. Future riparian rights can also be assigned a lower priority than any other uses of water authorized before those riparian rights are first exercised. The Court also held that the Board may make determinations as to the scope, nature and priority of right that are reasonably necessary to promote the State's interest in fostering the most reasonable and beneficial use of such water resources. The Court relaxed its holding somewhat by noting that that the Legislature did not intend to authorize complete extinction of any future riparian rights where water conservation policies can be promoted as effectively by placing less severe restrictions on such rights.

Therefore, while making it clear that the Board may normally not extinguish unused riparian rights, the Court gave the Board the very considerable power to severely limit such rights if it deems such limitations to be in the interests of the State.

Patricia Donovan Peterson

Santa Monica Mountains

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On September 10, 1979 the Assembly Resources, Land Use and Energy Committee voted 6-3 not to send AB 13 to the Assembly Floor for concurrence in the Senate amendment. Although the Committee agreed to reconsider the measure in 1980, negotiations between Headlands, AMH and the Coastal Commission have led to a compromise proposal under which AB 13 would be withdrawn from further consideration in exchange for Coastal Commission approval of a drastically reduced development plan. Headlands would limit its development to 500 units on 200 acres—a 75% reduction from the density originally proposed. The Coastal Commission had initially favored approval of approximately 250 units. The compromise proposal would also provide for the dedication of 1,200 acres of undisturbed open space to the State for incorporation into Topanga State Park, or to a National Recreation Area.

The Coastal Commission has indicated a willingness to permit developemnt of approximately 500 residential units on the disputed property. However, Headlands and the Commission are still at odds over the type of development to be allowed. Headlands has proposed construction of 450 single family homes and 50 condominium units. The Commission, however, favors development of 365 condominiums and only 135 single family homes. The Commission's preference is based upon the fact that construction of single family homes requires substantially more grading than construction of condominiums, and consequently has a more adverse environmental impact.

As of this writing, the Coastal Commission has not yet announced a decision on the compromise proposal. Despite the defeat of Assembly Bill 13, controversy continues to rage over development of the Santa Monica Mountains.

Mark R. Raftery
Miriam G. Raftery

In The Aggregate

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Mining has also exposed layers of impermeable clay and created an artificial gradient which causes the stream to flow at a greater than normal velocity. This higher velocity results in some loss of groundwater recharge because the water does not travel slowly enough to allow for percolation into the underground acquifer.

Higher velocity flows also increase the stream's erosive capacity. The creek's natural response is to become channelized, further lowering the streambed and increasing the stream's velocity (where streambanks are resistant) or meander and alter its natural configuration (where streambanks are easily eroded). The effects of stream channelization and meandering have been the undermining of bridge supports and loss of approximately 137 acres of prime agricultural land.

PROPOSED SOLUTIONS

At present, each of the eight producers (ranging from small family operations to large national corporations) has submitted its proposed mining and reclamation plans in order to obtain the permit now required by the County's interim ordinance. These eight separate applications propose the excavation of 2,257 acres of land, utilize fourteen different approaches to mining, seek to mine well below the theoretical thalweg, and call for the construction of nearly seventeen miles of disconnected and uncoordinated levees.

The principle solutions to achieve a coordinated approach to management of these unrelated proposals under discussion at this time are: 1) allow in-channel mining behind a network of levees constructed parallel to the stream which will form excavation cells on both sides of the streambed, 2) permit off-channel mining under agricultural land adjacent to the stream channel, or 3) utilize a combination of both of these operations. The most extreme alternatives, no regulation whatsoever or a complete prohibition upon all future mining, appear to have been rejected in favor of a compromise regulatory approach.

Whatever form the selected management policy assumes, coordinated regulation of these unrelated proposals will produce many benefits. Requiring use of stilling basins for in-channel mining could enhance groundwater recharge and provide permanent ponds for wildlife preservation. Systematic revegetation of stream banks and reclamation of mined agricultural land will help insure preservation of aesthetically pleasing and useable land. Imposing strict engineering guidelines on the construction of levees will help prevent erosion of streambanks and bridge supports. Prohibition of pit excavation below the groundwater table will reduce exposure of groundwater to contamination from agriculture chemicals. Limits on the depth of extraction will help harmonize the rate of extraction with the rate of natural replenishment (at present, sand and gravel is being removed twelve times faster than it is being replenished). Finally, adopting a regulatory system which requires an annual review of all permits will insure ongoing utilization of this precious natural resource in the public interest.

Michael Smith

our MONEYTREE

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