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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.

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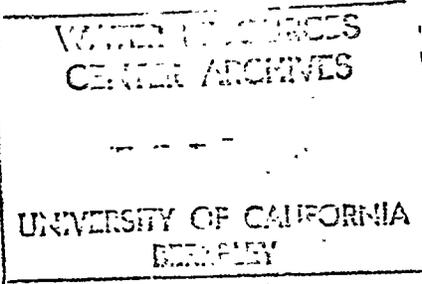
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governor's commission on water rights

The Governor's Commission To Review California Water Rights Law was created May 11, 1977, by Executive Order. The Commission's mandate is to review California water rights law, to evaluate issues and proposals for changes in the law, and to recommend appropriate legislation in an advisory report to the Governor.

- The six topics selected by the Commission for intensive review are:
- (1) the prior appropriation system for surface water,
 - (2) groundwater rights,
 - (3) the legal aspects of water conservation,
 - (4) riparian rights,
 - (5) transferability of water rights, and
 - (6) instream water uses.

For each topic a background paper is prepared which reviews the law and identifies issues. Formal consideration of each topic is initiated by a public workshop, allowing for public input and dialogue with the members of the Commission, various experts, and other interested agencies or associations.

Three papers have been published so far, authored by staff attorneys. The remaining topics will be covered in papers to be published in the next three or four months. Actual proposals or draft legislation have not yet been released.

The three topics covered so far are the prior appropriation system, groundwater rights, and legal aspects of water conservation.

Appropriative Rights To Surface Water

Appropriation of water is the capture or diversion of "public domain" water and its application to the beneficial use of the appropriator, to the exclusion of all other persons, to the extent of water appropriated.

California has a statutory method for acquiring appropriative rights to use surface water and water in subterranean streams flowing through known and definite channels. Prior to 1914, appropriative rights were obtained on a showing of "first come, first served" so long as the user demonstrated "due diligence" in the "reasonable and beneficial" use of the water.

Appropriative rights can be lost in several ways. A right may be lost if

tri-county neighbors

ENVIRONS is published three times a semester by the students of King Hall - University of California, Davis, School of Law. It is edited by members of the Environmental Law Society.

The purpose of ENVIRONS is to act as a one-stop clearinghouse for the dissemination of all environmental information relevant to the Solano-Yolo-Sacramento area. To date, there is no publication that covers the field of environmental law for these counties. We define "environmental law," in addition to its general meaning, to include topics of zoning, land use planning, agriculture, resources development and other related disciplines.

Additionally, ENVIRONS covers all significant state legislation and activities. The present scarcity of readily accessible information combined with a firm commitment to informing the public provided the catalyst for founding ENVIRONS.

ENVIRONS presents its analysis of all substantive issues by using an objective, non-partisan format. This editorial policy was selected in hopes of reaching all segments of the population. The need to know is not limited to any part of the political spectrum.

ENVIRONS has established liaisons with governmental agencies, organizations, and individuals with an environmental orientation in the state capital and tri-county area. These liaisons are the initial sources for the information found in ENVIRONS.

The problems facing the environment are multi-disciplinary. The editorial staff of ENVIRONS will be

contacting other campus departments and private individuals this year. We hope to generate articles of interest from perspectives other than "legal."

ENVIRONS was founded during the 1976-77 school year. It was partially funded through the generosity of the UC Davis Law Students Association and the Davis Chapter of the Northern California Public Interest Research Group. Two issues with an individual circulation of five hundred were produced. Each received an enthusiastic and positive response from members of both the academic and professional communities.

To date, we have secured sufficient funding from Dean Loiseau for one issue. Thus, it is necessary to make ENVIRONS self-sufficient. We need your support. Our continued existence depends upon the generosity of our neighbors.

In the back of this issue you will find a subscription form. The suggested contributions are reflective of our actual costs. We are not a "for-profit" organization.

Suggestions for improving ENVIRONS and alternative funding sources are encouraged. I will be happy to answer any questions you might have.

Thank you for reading this issue of ENVIRONS.

Sam Imperati
Editor

case note

In the latest round of the nearly 75-year-old conflict between the City of Los Angeles and residents of the Owens Valley (located on the east side of the southern Sierra Nevada) over control of the Valley's water, the California Court of Appeal (Third District) rejected City's environmental impact report (EIR) last June in *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 139 Cal. Rptr. 396 (1977) (hearing denied, - Cal. 3d -, Oct. 6, 1977). The EIR, covering City's Owens Valley groundwater extraction program, was submitted in response to a peremptory writ of mandate issued by the court in *County of Inyo v. Yorty* (1973) (*Inyo I*).

The conflict had its origins in the first years of this century, when City began to buy up virtually all of the privately-owned land (302,000 acres) and water rights in the Valley in order to secure water for its growing population. The first aqueduct was completed in 1913. More than 360 wells, several reservoirs, and numerous pumps, tunnels, and other water collection and transport facilities have been constructed. The Valley has come to supply more than 80% of City's water. At the same time, decreased availability of water for in-Valley uses has resulted in a decline in cultivated acreage in the Valley from about 60,000 acres in 1900 to about 20,000 acres in 1970; the Owens River, at one time considered one of the premier trout streams in the nation, has virtually ceased to exist at most times of the year.

At issue in *Inyo I* had been the question of whether the increased rate of City's continuing extraction was a project within the purview of the California Environmental Quality Act (CEQA). CEQA applies only to discretionary projects, undertaken after the effective date of the Act, which may have significant adverse impact on the environment. City contended that increased pumping was an integral part of a single project, the major element of which was construction of the second "barrel" of the Los Angeles Aqueduct (completed in 1970); as this project was authorized, built, and operative before the advent of CEQA, it was exempt from CEQA's requirements. The court, however, held that the two activities (pipeline construction and groundwater pumping) were in fact independent projects, since the second aqueduct could be filled with water from surface runoff, and its completion thus did not dictate any specific groundwater pumping rate. The court therefore ordered City to develop an EIR on the pumping project, and established an interim maximum pumping limit to ensure that the environmental harm foreseen by County did not occur during the pendency of the case.

Shortcomings of City's EIR

The submitted EIR failed to comply with CEQA and the court's writ in several respects:

—improperly narrow project definition

The EIR began by defining the project as the increase

(continued to page 9)

water board rejects andco proposal

Background

Faced with the possibility that the State Water Project (SWP) will not be able to supply water for irrigation in 1978 if the drought continues, the Berrenda Mesa Water District (District) has been seeking an alternative source of imported water in order to save 28,000 acres of permanent plantings in Kern County.

Anderson Farms Company (Andco) proposed to sell the District all the water pumped from 10 wells located in its fields in eastern Yolo County, over a 12 month period beginning this fall. (Staff Summary for Hearing, p. 2)

Andco's original proposal called for continuous pumping of groundwater from the 10 wells. The water was either to be released into the Sacramento River via the Cache Slough near Rio Vista or it was to be used for irrigation of Andco's fields in lieu of its normal diversions of Delta tidal water. In theory, either option would increase the Sacramento River's flow by an amount equal to the water pumped and would help control Delta salinity.

Normal releases from the Oroville Reservoir to control salinity could likewise be reduced. The water held back would be credited to the District for its use during the 1978 growing season, and would be delivered to the District from the Oroville Reservoir or the San Luis Reservoir through state facilities at the District's expense.

At the public hearing on September 2, 1977, the proposal was modified to include a 90 day test period during which scientific data could be gathered to determine the effects of extraction on the groundwater basin.

Issues

On September 22, 1977, the Board decided against the proposal and on October 20, 1977, its formal decision was issued. (SWRCB Decision 1474).

Three related issues were addressed at the hearings and in the Board's decision:

1. Would implementation of the proposal violate Section 764.20, Title 23, California Administrative Code (Emergency Delta Regulation)?

2. Would implementation of the proposal be in the public interest?

3. Would implementation of the proposal constitute a waste or unreasonable method of diversion of water within the meaning of Article X, Section 2 of the California Constitution? (Decision, p. 2)

Findings and Conclusions

1. The Emergency Delta Regulation "prohibits export of water from the Sacramento-San Joaquin Delta except to meet emergency municipal, domestic or other essential uses, and requires that any export for essential uses other than emergency municipal and domestic supplies shall be made only upon approval by the Board." (Staff Summary, p. 3) The regulation was instituted to prevent massive intrusion of seawater into the Delta due to an insufficient flow of freshwater. The Board concluded that Andco's proposal would diminish the flow and thereby constitute an export of water from the Delta within the meaning of the regulation.

Four factors supported the Board's finding that the projected yield, in terms of contribution to the flow of the Sacramento River, would be less than the amount of water pumped by Andco:

a. If Andco claims a credit for water it does not divert based upon the amount used for irrigating its fields with ground water and there is a decrease in water available for riparian uses next year, the credit it claims would be overstated in terms of what it actually would have a right to use.

b. The large cone of depression which will result from the pumping will be recharged with water from the river. Since the losses to the river from recharging will be upstream from where the proposed discharge of groundwater is to take place (near Rio Vista), the correlative rights of those upstream will be affected and the salinity problem may be exacerbated.

c. As of October 1, 1977, releases from the Oroville Reservoir will be lowered to the minimum necessary to protect fish which are located upstream from Andco's proposed discharge point. The Department of Water Resources will be precluded from reducing the releases below that minimum. If there is no water held back from normal releases, there can be no credit given to Andco.

d. Such factors as evaporation, conveyance losses, and carriage component for salinity repulsion will also reduce the projected yield in terms of the contribution to the flow of the river.

Having labelled the proposal an export under the Emergency Delta Regulation, the Board had to determine that irrigation is an "essential use" before an export for that purpose could be approved. Andco introduced no evidence relating to the availability of water from other sources and the amount of water available for emergency domestic and municipal uses. These are factors which the Board considers critical in making a case-by-case determination of what constitutes an "essential use." Unable to define irrigation as an "essential use," the Board was precluded from approving the exportation of water from the Delta.

2. It is in the public interest to put the state's waters to the fullest beneficial use. Conjunctive use of surface and ground water may be a means of accomplishing that objective but only if it does not involve unreasonable

pending legislation:

AIR POLLUTION

AJR. 12 (Calvo) - Requests Congress to investigate the equality with which the Environmental Protection Agency (EPA) enforces national air-quality standards. The resolution asserts that unequal enforcement penalizes states which have complied with the law, by giving non-complying states an economic advantage. It requests the EPA to enforce the Clean Air Act with equal stringency in all states. Stats. 1977, c. 24.

CEQA

AB 884 (McCarthy) - Streamlines EIR process by establishing deadlines for agency approvals and by requiring agencies to publish in advance the criteria on which they will judge EIRs. Stats. 1977, c. 1200.

AB 1466 (Gualco) - Exempts from CEQA requirements actions taken by a public agency regarding any power plant site or facility if the site or facility will be the subject of an EIR or negative declaration prepared by the Public Utilities or Energy Commission or by the city or county in which the plant is to be located. Stats. 1977, c. 1045.

ENERGY

AB 77 (Goggin) - Authorizes the allocation of up to one million dollars to the Energy Commission for conducting studies relating to underground siting of nuclear reactors. Stats. 1977, c. 61.

AB 985 (Kapiloff) - Requires the geothermal study task force (created by previous statute) to submit a report covering all aspects of the development of the state's geothermal resources by December 31, 1977. Stats. 1977, c. 249.

AB 1165 (Mello) - Alters the procedures whereby the Energy Commission exchanges information and views with cities and counties served by a particular power plant. Stats. 1977, c. 1038.

AB 1852 (McAlister) - Modifies the present moratorium on nuclear power plants; permits the legislature to grant an exemption to the moratorium in the case of a plant which had reached a certain point in the approval process at the time the moratorium went into effect. Stats. 1977, c. 1144.

SB 150 (Alquist) - Requires the Energy Commission to prepare data on the energy consumption associated with various lighting, space heating and cooling, water heating, and building design alternatives. On the basis of this data the Commission must prepare guidelines for designing state buildings. New state buildings must comply with these guidelines and must have solar water heating systems. Stats. 1977, c. 773.

SB 459 (Alquist) - Requires the Energy Commission to adopt regulations by July 1, 1978, prescribing standards for the insulation of residential structures. Imposes civil penalties on those who violate the standards. Stats. 1977, c. 1006.

SCA 15 (Alquist) - Authorizes the legislature to exempt from property taxes all or part of property using an alternative energy system which is not based on fossil or nuclear fuels. Stats. 1977, c. 29.

SJR 10 (Johnson) - Requests Congress to amend the Natural Gas Act to remove the controls on exploration and pricing of new natural gas so long as the price does not exceed that of fuel oil. Stats. 1977, c. 5.

FOREST AND PLANT RESOURCES

AB 452 (Keene) - Requires Director of Forestry to prepare a "forest resource assessment" every five years. The state Board of Forestry shall use the assessment to develop a statement containing its policy priorities. Stats. 1977, c. 1163.

SB 308 (Nejedly) - Brings rare and endangered plants under legislative "endangered species" protection. Stats. 1977, c. 1181.

SB 886 (Nejedly) - Requires state Board of Forestry to write rules and standards that will control decisions reviewing timber harvesting proposals. Stats. 1977, c. 930.

PARKS AND RECREATION

AB 366 (Chappie) - Gives Parks and Recreation Director criteria to follow in setting land acquisition priorities. Also appropriates money for the first wilderness trail accessible to the disabled. Stats. 1977, c. 946.

AB 1283 (Gage) - Reallocates spending formulas so as to encourage regional (as opposed to city) park development. Stats. 1977, c. 986.

SB 730 (Behr) - Removes restrictions on regional park authorities' trading a parcel of land previously dedicated for a more desirable parcel. Stats. 1977, c. 448.

PESTICIDES

AB 1307 (Torres) - Requires a physician who believes a patient is suffering from pesticide poisoning to make a report to the local health officer within 24 hours. The health officer will immediately notify the county agricultural commissioner. Also requires the State Department of Health to develop and implement a program of medical education with respect to pesticides. Stats. 1977, c. 1016.

SOLID WASTE MANAGEMENT

AB 860 (Lockyer) - Makes findings that it is in the public interest to provide grants for recycling centers and to encourage state and local agencies to aid and advise such centers. Vetoed.

WATER

AJR 14 (Lehman) - Requests the President and Congress to continue funding for the Auburn Dam in the 1977-78 fiscal year. Stats. 1977, c. 31.

WETLANDS PRESERVATION

AB 1717 (Fazio) - Suisun Marsh Preservation Act of 1977. Stats. 1977, c. 1155.

sacramento's innovative new zoning code

As concern with environmental preservation has grown, perception of the necessity for sophisticated environmental controls has correspondingly increased. Many of the communities that have chosen to implement land use controls rely upon zoning. A problem with zoning is it is often inflexible and too imprecise to incorporate social, economic, or environmental planning. Sacramento County has recently adopted a set of land use controls designed to alleviate this problem.

On July 27, 1977 the Board of Supervisors of Sacramento County enacted a new Zoning Code. The new code was drafted by the county's Advance Planning Office, with assistance from community groups and professionals. The proposals for revising the code have been enthusiastically received by all segments of the community. The Zoning Code controls land use in the ten unincorporated areas of the county, encompassing some 750 square miles and 500,000 people.

A conventional zoning ordinance provides for a number of land use districts ranging from single-family residential to industrial districts. Each district prohibits more intensive uses, but not less intensive uses than those outlined in the ordinance. A single family home could therefore be built in any zone, while a factory could be built only in certain industrial zones.

The Advance Planning Office is in the process of preparing a detailed community plan for each of the unincorporated areas. The principle change in the new code is that land use will be governed by the community plan land use categories. In each of the categories a number of specific uses will be permitted, as opposed to zoning districts which permit any uses of lesser intensity. In certain instances, the new code conditions development on the issuance of a use permit. Other provisions of the Zoning Code, such as frontage and setback requirements will be incorporated by the community plans.

The principle advantage of consolidating the Zoning Code and community plans is that it affords an opportunity to integrate any other completed planning. If an area is environmentally sensitive, such as a creek or gully, or if the area is of historical importance, the community plan is flexible enough to accommodate that characteristic. Zoning districts are often too narrowly drawn to enable the implementation of anything beyond physical planning.

Under conventional zoning, before a proposed development which does not fit within the limits of the zoning district may be approved, the parcel must be rezoned, or the developer must obtain a variance. Rezoning is an arbitrary process in that it is aimed more at facilitating a particular project than at limiting the area to its most suitable use. Rezoning is sometimes interpreted as a blank check in the developer's name. The developer can proceed to develop the parcel in any fashion consistent with the new zone. The granting of a variance is dependent upon the petitioner proving that the existing zoning creates some hardship for him. Both devices encourage piecemeal development, which is likely to bear little relationship to adjacent parcels.

Sacramento County's new code is broader than conventional zoning since a wider range of uses might be permitted in any given area. However, each of those uses is subject to review by the appropriate governmental body. This system is arguably better than traditional zoning because the body reviewing the project will have at its disposal the policies and analysis of the community plan. Planning policies have always been available in considering zoning matters, but there was not assurance that these policies were consistent with the zoning districts. The districts, or categories, are now based upon these policies.

The Approval Process

The process of developing a parcel begins with the submission of an application or plan. If the proposed project is listed as a permitted use, the applicant is given a set of regulations that apply to that specific use. The next step would be the submission of a final building plan, and the issuance of a building permit. If the intended use is listed as a permitted use subject to the issuance of a use permit, the application would be set for a hearing by the designated authority.

The new code's approval process is less cumbersome and time consuming than the rezoning process. Rezoning is legislative acts, and they entail three separate sets of hearings, culminating in an amendment to the zoning ordinance. Under the new code, only major land use changes that involve policy issues (for instance, a proposal to build a large shopping center which raises questions of the desirability of commercial development) will have to be dealt with as amendments. Most of the present zoning changes would be handled by the simpler use-permit procedure. In the estimation of one member of the Advance Planning staff, the approval process can be reduced from an average of six months per application to two or three months.

It is too early to assess and evaluate the performance of Sacramento County's revised Zoning Code. Community plans for all ten areas will be completed in twelve to eighteen months. With the adoption of those plans, the new land use zones will be phased in. Until that time, the existing districts in the Zoning Code are classified as "interim" or holding zones.

The formulation of the community plans is crucial to the ultimate utility and impact of the new code. The code will have no more flexibility than the old system unless the plans consider such questions as mixed use zones, housing types, income distribution, energy consumption patterns, etc. The success of this system is contingent upon the development and maintenance of a sophisticated planning apparatus. It would appear anomalous to replace a somewhat rigid zoning code with wide ranging land use categories unless those categories are detailed and based on sound planning criteria.

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historical preservation

On January 18, 1975 the City of Sacramento initiated a program for the preservation of historic structures in an attempt to maintain the character of the city. Significant structures, was partially included through the Listed Structures Plan.

The Old City area affected by the Sacramento River Railroad levee on the north, the Sacramento River on the south and Alhambra Boulevard on the east.

The Preservation Board adopted special rules for listed structures. A comprehensive survey of the city resulted in a final listing of seven hundred structures on July 26, 1977, forming the Register of Historic Structures.

These listed structures are subject to relocation or exterior alteration is required. The City has enacted no ordinance to prevent these structures from being demolished. Incentives exist for rehabilitation and

Federal

Any owner of a listed historical structure may apply for a Federal Register. Two Sacramento properties have been listed. The application takes approximately 30 days. The owner is entitled to apply for a 50% interest-free loan with a maximum of \$15,000 per dwelling unit. 32 days may be available under a Federal Housing Administration.

Property Tax

Under the Mills Act, Gov. Code Section 50200, "owner of historical properties" could contract with the city for the use of their properties in return for property tax restrictions. This Act has resulted in a significant amount of property tax savings.

Senate Bill 380, also sponsored by Senator Brown, adds Section 439 to the Revenue and Taxation Code for a more workable approach to historic places enforceable restrictions on capitalization of income on this statute forbids the county assess properties, whether restricted or not. Sacramento listed-structure owners who have not had their property value more than doubling after being added to the state historical register.

Senate Bill 380 also provides for the properties in the state "qualified historic county register as historical or architectural property meets specified criteria. This bill allows for contracting under the new state historical listing. According to the Preservation Board, the criteria for places are more stringent than the state criteria which

Income Tax

The Tax Reform Act of 1976 gives a special deduction for historical structures used "in trade, or for the production of income." The taxpayer may elect to deduct expenditures made after June 14, 1976. Additionally allows no deduction for an new structure placed on the site of a demolished structure. Straight-line depreciation is permitted.

into enacted Ordinance 3469 for the Old City area. This ordinance, architecturally, historically and culturally implemented by the Preservation Board

is bounded by the Southern Pacific River on the west, North Broadway the east.

ic criteria for the listing of pre-1920 a three thousand buildings resulted in s. These were adopted by the City r of Listed Structures.

iew when any permit for demolition, ed by the owner. While the City has ctures from suffering neglect, several tenance.

To qualify the site must be listed in the National Register, or be located in a Registered Historical District and certified by the Department of the Interior, or be located in an historic district designated under appropriate state or local governmental statute that has been certified by the Secretary of the Interior. At this time the City of Sacramento has not applied for certification. However, considering the stringency of the qualifying criteria for Sacramento's listed structures, certification appears to be a minor hurdle.

Patricia Connors Harbarger

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may apply for listing on the National presently listed. Applications can be l Preservation. A final determination year. Listing on the National Register ching Historic Grant in Aid. Insured ng unit for a maximum term of fifteen 4 amendment to Title I of the Federal

ncentives

50281, the owners of state "qualified ocal governing bodies to restrict the assessments based on uses permitted only one executed contract since its

Mills, and recently signed into law by venue and Taxation Code to provide l property contracting. The section cting properties, and sets the tax contracting properties. Additionally, to consider sales data on similar tax assessment will be of benefit to ve found their property value more gister.

clusion of locally designated historic erties." Property "listed on a city or y significant places" may qualify if the sion of locally-designated properties ite without qualifying separately for ichard Hastings, Director of the rt on the Sacramento Register is even a would be applied.

ncentive

ncentives to owners of preserved iness, or held for the production of ve-year write-off of rehabilitation nd before June 15, 1981. The Act molition of such structures. For any molished historical structure, only



tough new rules for federal irrigation water

In a major victory for small family farmers, the U.S. Bureau of Reclamation has proposed tough regulations on the use of federal irrigation water. The new regulations come as a result of a suit brought by National Land for People. NLP is an organization of small farmers, would-be small farmers and consumers who are pushing for enforcement of the Reclamation Act. In their suit, NLP had contended that the Bureau had failed to enforce the key provisions of the Act - the 160 acre limitation and the residency requirement. They also said they were denied the opportunity to buy land in Westlands Water District, a fertile but arid area west of Fresno in the San Joaquin Valley.

The proposed regulations follow almost exactly the original provisions of the 1902 Reclamation Act:

No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land...

43 U.S.C. §431 (1902)

Under the proposed regulations, landowners owning more than 160 acres (320 for married couples) must agree to sell off their excess land within five years. Otherwise they lose the privilege of receiving federal water. The buyers of this excess land are required to live on or within 50 miles of their land. The purpose of these requirements is to break up large landholdings, and to sell the land to small farmers who will actually live on the land. The Bureau of Reclamation will decide who the land will be sold to, and for how much.

Reclamation Commissioner R. Keith Higginson said the Bureau is also formulating regulations that would require current recipients of federal water to conform to the residency requirement.

Where Regulations Apply

The proposed regulations apply to landowners who receive federal water through state or local facilities, or non-federal water delivered by federal facilities. The impact of the proposed regulations will be enormous, since much of the West is serviced by federal water projects.

Officials are unsure of the extent to which the new regulations will apply in the Sacramento Valley. Much of the water in the Sacramento River comes from Shasta Dam, a federal facility. This federal water is "com-mingled" with state water, but is still subject to Bureau regulations. Water delivered by federal projects, such as

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water board rejects proposal

(continued from page 3)

interference with the rights of other users at the extraction or recharge stages.

No evidence on this issue was presented by the proponents. The staff geology report estimated that the proposed extraction could depress groundwater levels within a 15 mile radius of the wells. (Staff Summary p. 5) The depression will be recharged with an influx of poor quality water located near the river which has a high manganese, iron, and hydrogen sulphite content. (Staff Summary p. 5) An express policy of the state is to protect groundwater basins from water quality degradation. (Water Code Section 12922) The Board could not approve the project absent some assurance that the water quality would not suffer.

3. Article X, Section 2 of the California Constitution calls for the state's waters to be put to the fullest beneficial use and proscribes waste and unreasonable methods of diversion of water.

The Board noted that there was no evidence that the proposal was unreasonable or wasteful, given the District's urgent need for other sources of water. The problem centers on the proposed method of diversion.

a. There is a real possibility that the proposed extraction would seriously aggravate Delta conditions because too much groundwater is already being extracted in the Delta region.

b. There is a danger that water quality would suffer due to the influx of poor quality water into the depression left by the pumping.

c. There is a probability that the surrounding wells and the correlative rights of other overlying owners to use the groundwater would be adversely affected due to the decreased availability of groundwater.

d. There is a potential diminution of the Sacramento River flow.

Evidence was inconclusive as to every one of the above possibilities, but "the cumulative effect of unknowns involved prevented (the Board) from saying that the method of diversion is reasonable."

Conclusion

At the outset, the Board put interested parties on notice as to what considerations it deemed most important in resolving the controversy surrounding Andco's proposal. (Staff Summary p. 4) Primarily because of a dearth of evidence presented by the proponents of the plan, and the grave possibilities for harm raised by the opponents, the Board felt it had no choice but to refuse to approve the proposal. Its decision should not be read to reflect any predisposition or bias against innovative attempts to transfer water in times of need or against conjunctive use of surface and groundwaters to promote the fullest beneficial use of the state's waters. The Board is simply saying "that such a proposal must be well thought out and not have the potential of unreasonably harming others."

Debbie Driggs



Literature review:

The August/Sept., 1977 issue of *Environment* presents in "Unhealthy Jobs" an in-depth review of the problem of occupational accident and disease. The history, policy decisions and current issues relating to industrial hazards such as cancer are discussed.

For those interested in wildlife, *Ecology Law Quarterly*, Vol. 6, No. 2, gives a complete overview of whale, dolphin and porpoise control in "The International Management of Whales, Dolphins, and Porpoises: An Interdisciplinary Assessment (Part One)." In *Environmental Law*, Vol. 7, No. 2, the scope is narrowed in "The Porpoise-Tuna Controversy: Management of Marine Resources After *Committee for Humane Legislation, Inc. v. Richardson*." This study yields a good understanding of the Marine Mammal Protection Act of 1972 by analyzing its interpretations in recent judicial decisions.

Has President Carter retreated from his campaign promise to use nuclear power only as a "last resort"? The September 2, 1977 issue of *Environment Reporter* discusses the Carter Administration's intent to amend the Atomic Energy Act of 1954 to accelerate the licensing and construction of nuclear power plants. Coal, "the

heart of the President's proposed energy plan," is discussed in the September 9, 1977 edition of *Environment Reporter*. The articles conclude that the Carter Administration wants Congress to appropriate funds to the Environmental Protection Agency for the study of environmental problems associated with a major shift from oil to coal.

In the Guest Opinion of the September 1977 issue of the *Sierra Club Bulletin*, Representative Ryan (D-California) focuses on "Nuclear Waste - The Unanswered Question." Ryan sets forth the policy considerations and the technological and financial burdens involved in the disposal of the toxic waste produced by power reactor-generators. The plutonium wastes in "spent" fuel will remain dangerous for as long as 250,000 years. It is not yet known how the materials will ultimately be disposed of. Millions of gallons of such materials, currently in inventories in this country, are merely being "maintained" in their present state.

The Stanford Environmental Law Society offers access to a number of interesting publications including: "Interstate Environmental Problems: A Guide to Water Pollution and Water Scarcity," "A Handbook for Billboard Control," and "A Guide to the Legal Aspects of Smoking Regulations." If you are interested in a brochure write: Stanford Environmental Law Society, Stanford Law School, Stanford, Ca. 94305.

Deidre Bainbridge

case note

(continued from page 2)

to a maximum long-term average of 140 cubic feet per second, cfs) in the rate of groundwater extraction above the level prevailing on CEQA's effective date in November, 1970 (89 cfs). The project definition stated that this extra water would be applied solely to supply uses within the Owens Valley. The court ruled that the project it had ordered analyzed was the increase over the level prior to the 1970 completion of the second aqueduct (10 cfs). Because much of the water included only by the latter definition is exported to the City, this definition will compel analysis of the impacts and alternatives of not only in-Valley extraction and use, but also export to, and use in, Los Angeles.

-unstable project definition

The EIR's "recommended project" was vastly broader than the project defined at the outset, including, for example, water conservation, pipeline construction and groundwater recharge in the Los Angeles area. An inaccurate and unstable project description, the court said, prevents the EIR from successfully informing the public and permitting decision-makers to accurately evaluate and balance the benefits and environmental costs of a project.

-failure to consider appropriate alternatives

Although the EIR listed and described six alternative projects, the court found that none addressed the

required "no project" alternative, the obvious option of intense conservation went unmentioned, and the alternatives presented were not tied to a properly defined project. Thus decision-makers were denied the opportunity to compare their proposed action to a full range of alternatives.

In express dictum, the court noted that City might have CEQA obligations beyond those at issue in this case. It suggested that the EIR required by the writ might appropriately be included as an element in a larger document covering City's entire water management program.

City was directed to prepare an EIR in compliance with the writ and CEQA, and the interim limits on the rate of pumping were continued.

Temporary Modification of Interim Pumping Limit

Subsequently, City, citing the current drought, petitioned for a modification of the interim pumping limit. The court's order of July 22 permits City to pump to the capacity of its wells until March 31, 1978, subject to two conditions: City must maintain at least a 15% conservation of water as compared with consumption in the same month of the previous year, and pumping is to be from subsurface confined aquifers only, rather than from the surface aquifer on which vegetation is directly dependent.

Woody Brooks



water rights

(continued from page 1)

the water is not put to beneficial use. Rights may be lost due to nonuse for a period of three or five years, for statutory and pre-1914 rights respectively. A right may be lost by prescription: five years of continuous use that is adverse to the existing right and is open, notorious, exclusive, and under claim of right. However, rights held by public entities may not be lost by prescription.

Some of the issues are: Should the pre-1914 rights be brought into the present permit system? How should the rules for prescriptive rights be modified, if at all? Are fixed-term licenses for appropriative rights preferable to a license given in perpetuity? What are the standards for defining the public interest in the permit-license process, and how should these standards be used? How should the beneficial use requirement be changed? Should the statutory provisions for court references and statutory adjudications be modified? How can the water rights application process be streamlined? Should the water rights allocation process function in accordance with some overall water management plan?



Groundwater Rights

The geology and hydrology of groundwater basins usually are complex. Because basin characteristics vary greatly throughout California, state legislators generally were content to leave the development of groundwater law to case-by-case adjudication of the local issues and circumstances. The result is a technically complex, problematic body of law which lacks a solid framework for conservation or multi-basin management.

Some of the issues include: How may a useful and comprehensive groundwater data base be developed? What alternative approaches to groundwater planning might be adopted? When and why should overlying use be preferred to non-overlying use? Should permits be required in some or all extractions of groundwater? What is the future of the mutual prescription doctrine? What are the possibilities of creating a system for imported-water aquifer storage rights?

calendar

STATE

Nov. 30
 State Lands Commission
 Write for Location, Time and Agenda:
 Executive Office, State Lands Commission
 1807 13th St.
 Sacramento, CA 95814
 Phone 322-4107

In Nov.
 Draft Water Quality Control Plan for the Delta and Suisun Marsh will be available for public review. For a copy of the Plan and information on the Public Hearings to be held in December, write to:
 Water Resources Control Board
 P.O. Box 100
 Sacramento, CA 95801

Dec. 6
 State Lands Commission
 Public Hearings on West Coast Oil Tanker Terminal Regulations
 State Bldg., Room 1194
 455 Golden Gate Ave.
 San Francisco, CA
 10:00 a.m.

Legal Aspects Of Water Conservation

California has a constitutional provision requiring conservation and the reasonable and beneficial use of the water resources of the state for the public welfare. Nevertheless, there are historical and judicial disincentives to conservation (e.g., the "use-it-or-lose-it" prior appropriation doctrine). There is uncertainty as to the legal and economic implications of water conservation.

Some of the issues raised are: How should we redefine or revise the reasonable beneficial use requirement? Should reasonable beneficial use limitation apply to contractual water-rights holders? What are the changes and alternatives in implementing and enforcing the reasonable beneficial use requirement? Does the permit process apply to salvagers? What are the rights of downstream users to continued flows of return waters? What are other and possibly better means of effecting water conservation?

Conclusion

The Commission is halfway through the information-gathering phase. The issues and topics are complex and interrelated. The problems require meaningful input from all concerned if the Commission is to make informed suggestions for change.

In this time of drought, it is encouraging to view the beginning of the process leading to much needed reform. It is dismaying to perceive the scope of the task that remains.

Mike Boli



new rules

(continued from page 8)

the Tehama-Colusa Canal, is also subject to the Bureau's regulations. But individual contracts for water signed in the 1960's may exempt Sacramento Valley users from the proposed regulations.

Federal irrigation water is provided at unusually low prices. Some federal water is even given away free, as in the case of some Sacramento River diversions. In 1976, landowners in Westlands Water District paid \$7.50 per acre-foot for water (the amount of water needed to cover one acre to a depth of one foot). This is only a third of the cost of State Water Project water, and much less expensive than private wells.

The Act Unenforced

Although the Reclamation Act has been on the books for 75 years, it has gone unenforced. Many large landowners have been allowed to receive federal water without selling off excess acreage, and without living on or near the land. Until recently, the Bureau has contended the residency requirement was void after 1926, when Congress failed to mention it in provisions strengthening the Act.

Large landowners say it is unfair to force unexpected new regulations on them, after they had come to rely on a Bureau policy of non-enforcement. Many argue small family farms are obsolete anyway.

Small Farms v. Big Farms

Why hasn't land been sold to small farmers? Westlands landowner Russell Giffen, whose own excess land sales have been attacked, said "They didn't ask, and I think the reason is economics. You can't make it on 160 or 320 acres in Westlands." Giffen was once the largest landowner in Westlands.

Berge Bulbulian, president of National Land for People, and a small farmer himself, thinks small farms are viable. He claims large farms only appear to be more successful - "the large corporate farm is better at capturing subsidies, evading taxes and is generally more capable of farming the government than it is at farming the land." Paul Barnett, of the California Agrarian Action Project, also says small farmers can succeed. He proposes technical assistance and credit be extended to help small farmers get a start. He also suggests "farmworkers displaced by mechanization should have priority" in government sales of excess land, as should veterans and minorities.

The Future

A new wave of "homesteading" is not likely to start soon, despite the proposed regulations. The regulations may be revised before their final adoption, and their implementation may be postponed by law suits. In the meantime, the Bureau is accepting comments. Write the Commissioner in Washington, D.C., attention Code 410.

Robert Gendreau



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