The California Water Conservation Initiative

Striking a balance between conservation of California's water resources and development of those resources appears to be a key goal of the drafters of an initiative measure just submitted to the Attorney General of California. The measure would enact the Water Resources Conservation and Efficiency Act, a far-reaching plan with four central provisions. First, the Act would require interbasin transferors of large amounts of water to submit plans for water conservation to the State Water Resources Control Board. Second, the Act would require ground water management of critically overdrafted areas. Third, the Act, for the first time, would allow the Board to accept applications for instream appropriation without requiring diversion or control of water or both. Finally, the Act would provide limitations on the impoundment of water behind the New Melones Dam.

The process of qualifying the initiative should be underway before the end of November, 1981, according to a press release from the California Water Protection Council. The Council will work to collect the required 340,000 signatures before the end of April, 1982. After qualification, the Council plans to work for passage of the initiative in the November, 1982, general election.

The Council and the ad hoc group who drafted the measure are made up of individuals who have divergent points of view about the water problem in California, but who, according to Harrison C. Dunning, law professor at U.C. Davis and a drafter of this measure, are in agreement that:

> "Water management has become a source of growing concern in California in recent years. Yet, the Legislature has not been able to enact the major reforms needed to achieve a more balanced management of our water resources. The pressures on the Legislature in its attempts to deal effectively with this issue would indicate that there is no reasonable hope for meaningful legislative remedy in the foreseeable future."

Thus the drafters concluded that a water conservation measure was needed to resolve the "competition for water between urban communities, agriculture, industry, and recreation", and to manage water for present and future needs.

(See **CONSERVATION**, page 7)

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LETTER FROM THE EDITOR

Michael Endicott

Like everyone else, I have just one word for you and it is not "energy" or "plastics". It is "food". This issue addresses topics which are important to its production in one manner or another.

While it will probably be January before you will have a chance to read this issue, we delayed the deadline to wait for a news event too important to pass up. Future population growth, increased urbanization and greater irrigation demands require a comprehensive water management program. Regardless of the outcome on the Peripheral Canal vote, we must address the last water law frontier, groundwater. Our lead article examines a proposed referendum for the November, 1982 ballot. I urge you to consider it carefully.

Reclamation law is of ongoing concern and debate. Our article on reclamation law briefly updates some of the latest considerations. (For the background of the issues and arguments see *ENVIRONS*, v.5, no.1, December 1980).

The loss of prime agricultural land has been a big concern to California. Legislation subsequent to a state Supreme Court decision has clarified the legislature's intent concerning cancellation of Williamson Act contracts. It appears likely that some of those who elect to use the five month expedited cancellation procedures will face litigation.

Improper disposal of pesticides and herbicides, which are of importance to agricultural productivity, have caused problems with the pollution of our water. There are a myriad of federal and state statutes both on the books and proposed. This year has seen prolific writings concerning toxic waste issues. For those of us having trouble seeing the forest for the trees, we have presented a general overview article of the area.

Finally, our "forecast" article examines the west coast fisheries (my favorite topic). While the world hunger problem will not be satisfied by the resources of the sea, the importance of management of the ocean's wealth is being increasingly recognized. The complexities of the technical understanding of the biosphere and delicacies of international diplomacy mandate the foresight to continue funding and attention to fishery problems.

As usual we welcome suggestions, articles, and financial help. We wish to extend a special THANK YOU to the generous support of our alumni.

Reclamation Law UPDATE

Acreage and Residency Requirements

In the controversial area of federal reclamation law, Congressional and Administrative inaction has created a veritable stalemate. While a number of House bills proposing modifications to the 1902 act have been introduced during the 97th Congress, none have yet seen the light of Committee (House Committee on Insular Affairs) hearings. H.R. 160, introduced by Representative Bob Stump (D-Arizona), would eliminate any acreage or residency limitations for users of federal project water. H.R. 292, submitted by Representative George V. Hansen (R-Idaho), would increase the basic acreage ceiling from 160 to 320 acres per individual and abolish the 50-mile radius residency requirement. Any legislation will affect the future of 8.8 million irrigable acres and 126,000 landowners throughout 17 Western states.

The lack of Congressional attention to these bills can be explained in part by Secretary of the Interior Watt's early announcements that the new administration would introduce its own proposal regarding reclamation law. Secretary Watt has stated that he is sympathetic to the relaxation of the current 160 acre limitation. Months later, when it became clear that no Interior measure was in the works, various spokespersons for the Department indicated that Watt had chosen instead simply to comment upon a bill expected to be introduced by Senator James A. McClure (R-Idaho), Chairman of the Energy and Natural Resources Committee. When again nothing materialized, Representative Manuel Lujan, Jr. (R-New Mexico), ranking minority member of the Committee on Interior and

(See **RECLAMATION**, page 14)

The 200 Mile Limit — Where Are We Now

In 1976 Congress passed the Fisheries Conservation and Management Act (FCMA) which unilaterally established a 200 mile fisheries conservation zone off the United States coast. Through this Act the U.S. asserted exclusive management authority over all fish within the zone, as well as over all Continental Shelf living resources both inside and outside the zone. It also asserted exclusive management authority over anadromous species, such as salmon, throughout their entire migratory range except when the fish are found within another nation's recognized jurisdictional zones. The Act specifically excludes tuna from U.S. management authority because of its highly migratory habits.

Passage of FCMA was a politically charged issue. Many people felt such a unilateral action to be inappropriate at a time when the United Nations Conference on the Law of the Sea was attempting to develop an international treaty which would regulate the exploitation of ocean resources. But the domestic fishing industry was becoming increasingly angered by what it perceived as foreign encroachment on domestic fisheries. There was also the charge that foreign fleets were seriously overfishing several species of fish off U.S. shores and placing some fish populations in serious danger. FCMA can thus be viewed as an attempt to join the two partially contradictory goals of protecting the domestic fishing industry and assuring the rational management of what had thus far been a common property resource, while giving neither goal clear priority.

Our intention here is to examine FCMA's impact after five years, focusing on the Pacific fishery region off the California, Oregon, and Washington coasts.

The Mechanics of FCMA

FCMA was intended to allow the management of marine fisheries by regional fishery management councils operating within broad standards established by the federal government. Towards this end eight Councils were established, each comprised of voting and non-voting members chosen from the relevant state and federal agencies and interest groups. The Councils function in cooperation with the National Marine Fisheries Service (NMFS) located within the Department of Commerce. The Councils direct the administration of the fisheries management process, but rely on their member states and NMFS for much of the information and fundamental research needed to develop comprehensive management strategies. The primary responsibilities of the Councils are:

1. Establishment of fishery management plans for the species within their jurisdiction.

2. Assessment of the "optimum yield" for each species. The optimum yield reflects the maximum sustainable yield adjusted to reflect relevant economic and social considerations.

3. Determination of the appropriate level of foreign catch for each species. This level is set at the optimum yield minus what domestic fishermen are perceived as being able to catch, sometimes including a reserve cushion which allows for an increase in domestic harvesting capability over the course of the season.

The Pacific Fisheries Management Council (PFMC) is comprised of 13 voting members from California, Oregon, Washington and Idaho, and has its headquarters in Portland, Oregon. Because the allocation of voting seats is intended to allow proportional member state representation, California currently holds only three of the voting seats.

Status of the Pacific Fishery

The Pacific fisheries are not the most biologically productive in the United States. The Alaskan fisheries in the North Pacific and the Georges Bank fisheries in the Northwest Atlantic produce far greater harvests. Nevertheless, two billion pounds of fish, shellfish, and other marine resources were harvested off the Pacific coast in 1979. This catch had a dockside value of more than one billion dollars; it is clearly an important economic resource.

(See **LIMIT**, page 9)

CHANGES

□ To The □ Williamson Act

In 1965, the Legislature enacted the California Land Conservation Act (the Williamson Act) in an effort to conserve agricultural lands. By agreeing to restrict one's land to agricultural uses for a period of ten years, a contracting landowner receives a reduced tax base on his or her land. Having entered into a contract, the landowner can terminate the agreement only by filing a nonrenewal notice and waiting for the balance of the ten year period or by receiving an immediate cancellation from the city or county.

The procedures and requirements for cancellation have been the subject of recent judicial and legislative attention. In February, 1981, the state Supreme Court issued an order to vacate the partial cancellation of a contract. The Court held that nonrenewal, not cancellation, was the proper means of removing the lands in question from the agreed upon restrictions. Sierra Club v. City of Hayward , 28 Cal. 3d 840 (1981). The Legislature quickly responded to the Court's ruling by enacting amendments to the Williamson Act. These amendments codify the tests proposed by the Court, change the findings necessary for cancellation, and at the same time permit the cancellation of contracts for a five month period. This article will review theCourt's decision and examine the new requirements for cancellation that were signed into law on September 30, 1981.

The Williamson Act

In passing the Williamson Act, the Legislature specifically recognized (1) that preserving the state's agricultural land is necessary to conserve its economic resources; (2) that discouraging premature conversion of prime agricultural land to urban uses benefits urban residents by controlling the costs of discontiguous development; and (3) that agricultural lands have a public value as open space.

The Act authorizes cities and counties to establish agricultural preserves. A landowner in such a designated area may enter into a contract for a minimum of ten years; during this time the landowner is protected from rising taxes due to increases in land value associated with encroaching urbanization. While some viewed the Act as a subsidy for large agribusinesses which were not likely to convert their lands to nonagricultural uses anyway, most environmental and farming groups supported the Act. Requirements for minimum acreage or minimum agricultural income vary between counties and cities since participation is voluntary for both parties to the agreement. The contracts are automatically renewed each year unless notice of nonrenewal is filed by either party.

Approximately 16 million acres (32%) of privately owned land in California are under a Williamson Act contract or agreement. As of 1979, 9% of that land was used for trees and vines, 11% for timber, 24% for row crops, and 56% for range. Since 1966, approximately 1% of the land under contract has subsequently been removed.

The Court's ruling is based on its reading of Government Code § 51282, which states that a board or council may approve the cancellation of a contract if it finds (1) that the cancellation is not inconsistent with the purposes of the Act and (2) that the cancellation is

(See **WILLIAMSON**, page 12)

AN UPDATE

The Timebomb of Hazardous Wastes

Improper disposal of hazardous wastes poses a serious threat to human health through the contamination of critical natural resources such as ground and surface water supplies. There are a wide variety of industrial and agricultural byproducts, including petrochemicals, acids, pesticides, heavy metals and other poisons which pose a serious health hazard when disposed of improperly. However, it was not until recently that government focused its attention specifically on the problem of abandoned and improperly secured hazardous waste sites.

Source of the Problem

Post-war industrial growth and technological advances have tremendously increased the quantities and types of hazardous wastes produced each year. At the same time, lack of adequate scientific knowledge has made safe disposal particularly difficult. Some disposal methods thought to be safe twenty years ago are now known to be inappropriate. Furthermore, where industries chose to dispose of their wastes in the cheapest manner, clandestine dumping of wastes in open pits, vacant lots and farmers' fields resulted.

In August of 1977, the New York State Health Department reported that chemicals from an improperly secured Hooker Chemical disposal site were seeping into neighborhood homes in Niagara Falls, New York. Residents of the "Love Canal" area charged that numerous health problems and birth defects were attributable to the chemicals, which included trichlorophenol (often containing dioxin, one of the most toxic substances known to man) and lindane, a highly toxic pesticide product. The Love Canal discovery, together with the discovery of other imminently hazardous waste dumps around the country, aroused Congressional concern.

Congressional Response

The issue of toxic wastes was not new to Congress. For years Congress had been allocating money to local governments to assist in the upgrading of their landfills, some of which did contain hazardous wastes. In 1976 Congress went a step further with enactment of the Resource Conservation and Recovery Act (RCRA) which included a "cradle to grave" tracking system of the movement of all hazardous wastes. As the EPA developed regulations to implement the act, the complexity of the problem quickly became apparent. Even defining the term "hazardous waste" proved troublesome because almost all substances are hazardous at some concentration. The state of scientific knowledge also does not allow for conclusive statements about the future impacts of many chemicals when released into the environment at different concentrations for different lengths of time. Furthermore, the mandate that EPA accurately track hundreds of hazardous substances produced by tens of thousands of companies and transported by thousands of transport companies is overwhelming. While these problems have not been fully solved, the EPA did issue regulations in May of 1980, more than a year behind schedule. The regulations are prospective in nature, and do not apply to abandoned or closed sites unless they present an imminent and substantial danger.

In fact, Congress had not really intended to address the problem of past improper and illegal waste disposal practices by passing RCRA. However, the public outcry over Love Canal and the identification of thousands of other abandoned sites presenting untold dangers to public health resulted in Congressional hear-

ings in 1978 and 1979 which focused on the problem of abandoned and improperly secured disposal sites. It was apparent that toxic waste management required a more integrated and comprehensive national policy, since the EPA did not have the statutory authority or financial ability to adequately address the problem.

The Superfund

The closing days of the 96th Congress saw passage of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, which established the Superfund. The Superfund legislation establishes an emergency response fund from a system of fees levied on the raw materials used by companies which produce hazardous waste byproducts. These fees are to make up 87.5% of the fund with the balance coming out of U. S. general revenues. The fee system does little by itself to establish incentives against the improper disposal of toxic byproducts because the fees are levied on original feedstocks. The fee schedule also does not attempt to distinguish between companies with good and poor disposal histories. The basis for the raw materials fee system was its relative simplicity.

In Congressional hearings this year, EPA Administrator Anne Gorsuch reassured Congress that the cleanup of the thousands of abandoned waste sites has "the highest priority" at EPA under the new Administration. The EPA has inspected some 2800 of the 9600 identified abandoned sites, and has categorized one-third of them as posing a potential health hazard. On October 23, 1981, the EPA released a list of 115 sites it views as being the most important in determining the initial allocation of the $1.6 billion dollar Superfund. The list was culled from an initial list of 282 recommended sites submitted by the states and regional EPA offices. Each site was ranked on the basis of its potential threat to drinking water, other water supplies and the environment in general. The final list includes sites located in 44 states, with three sites in California. The California sites include the Aerojet site in Rancho Cordova where trichloroethylene, a suspected carcinogen, has been found in the groundwater; the Iron Mountain Mines site in Keswick where heavy metals are leeching into the Sacramento River; and the Stringfellow acid pits in Glen Avon where acids, DDT and other pesticides have been stored for 17 years.

The EPA list has already come under heavy fire. Former EPA employees who worked in the hazardous waste division question the criteria used in ranking the sites, charging that several of the most dangerous are far down the list or not on the list at all. Questions have also been raised about the use of political influence to get a site placed on the list. Legislative staff in Sacramento state that the final list is not consonant with the state's own evaluation of the relative hazards presented by different sites. Furthermore, it is asserted that some of the sites slated for cleanup with public funds are presently owned and used by companies with the resources to do the job themselves.

Actual cleanup of any of these sites is still down the road. The EPA must still determine how to cleanup each site, as well as who will do the actual cleanup and how much they will be paid. Additionally, in a bureaucratic challenge, the U. S. Army Corps of Engineers has asserted that it has much more experience in this type of contract management than the EPA and therefore is a more appropriate agency for this job.

The Future of Federal Efforts

The various federal efforts to cope with the massive problem of toxic wastes have been moving forward, if somewhat disjointedly. The current Administration professes to be strongly committed to the cleanup process, but it is simultaneously motivated by strong desires to cut the federal budget and increase states' responsibilities. Many of the key proponents of the Superfund legislation are no longer in Congress; it is unclear how strong a stand Congress would take if the Administration made efforts to postpone the cleanup process.

If federal efforts do prove to be half-hearted, the efforts of state and local governments to deal with problems within their boundaries will become even more important.

California and Hazardous Wastes

While statutory authority for a relatively comprehensive hazardous waste control system began with the 1972 enactment of the Hazardous Waste Control Law, there have been major problems in the actual implementation of the law. A major revision of the state's efforts to control hazardous wastes is now underway.

A specific Hazardous Substances Unit was not created in the California Department of Health Services (DHS) until 1978, and it has had the same difficulties as the EPA has had in grappling with the problem of hazardous wastes. While the delay may be understandable, it has not been politically acceptable to Governor Brown's administration. Last year the Governor's attempt to create a separate Department of Toxic Substances failed. He has now announced plans to establish a separate Division of Toxic Substances within DHS, which would consolidate management and research oriented activities in an effort to develop a more comprehensive regulatory strategy. The governor has labeled the development of such a strategy to be one of his top priorities.

Five million tons of hazardous wastes are disposed of in California each year, mostly in on-site dumps owned by the waste generators. A federal survey in 1979 found 177 waste sites within the state, 114

(See WASTES, page 11)

California Water Conservation Initiative

(Continued from page 1)

Conservation

The proposed Act contains provisions which promise to spark debate. A central tenet of Part 2, Water Efficiency and Conservation, appears in §15100(b):

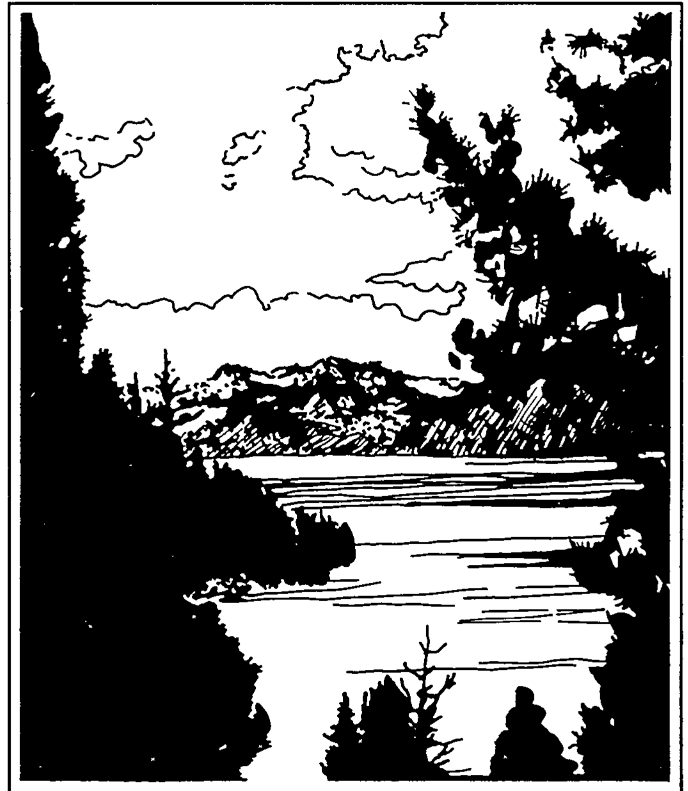
> "that those who receive water from a water project pay their full proportionate share of the costs of developing and delivering that water; that subsidies shall be discouraged; that the use of property taxes to pay for any cost of water development or delivery shall be minimized..."

The term "full proportionate share" does not include the interest cost of the water project, but it does include amounts previously deducted because of power sold from a project. For New Melones Dam, the drafters estimate that the pre-initiative, subsidized cost to farmers of an acre-foot of project water is about $3.50; if full costs were added in (including interest) that figure would rise to approximately $70.00 per acre-foot. The Act's proposed "full proportionate share" would raise the cost to $17.00 to $20.00 per acre-foot.

With the recitation of those figures, a major source of potential opposition to the initiative becomes obvious and understandable. A five-fold increase in production costs is bound to anger farmers who now buy subsidized water. The other side of the argument is that taxpayers, especially those in urban areas, currently bear a disproportionate share of these costs. This burden would decrease somewhat if the initiative were to pass, as the drafters seek to promote conservation by reducing user subsidies. The conservation theory is clear; if water costs more, users are less likely to waste it.

Perhaps equally controversial is the linking of interbasin water transfers with conservation. Section 15100(c) states "that additional water importation be considered only where economically competitive water conservation programs are developed and implemented in the importing area." The sections which follow mandate that every major interbasin transferor (of over 20,000 acre-feet/year) submit a conservation program to the Board. According to Professor Dunning, the Board would have no power of veto or review over these plans, but the teeth are provided in §15102 which states:

> After the effective date of this division, no such supplier or contractor shall make a new or increased interbasin transfer of water, regardless of the basis of water right, unless and until an adequate water conservation program has been prepared and is being adequately implemented, as determined by the board. (Emphasis added)

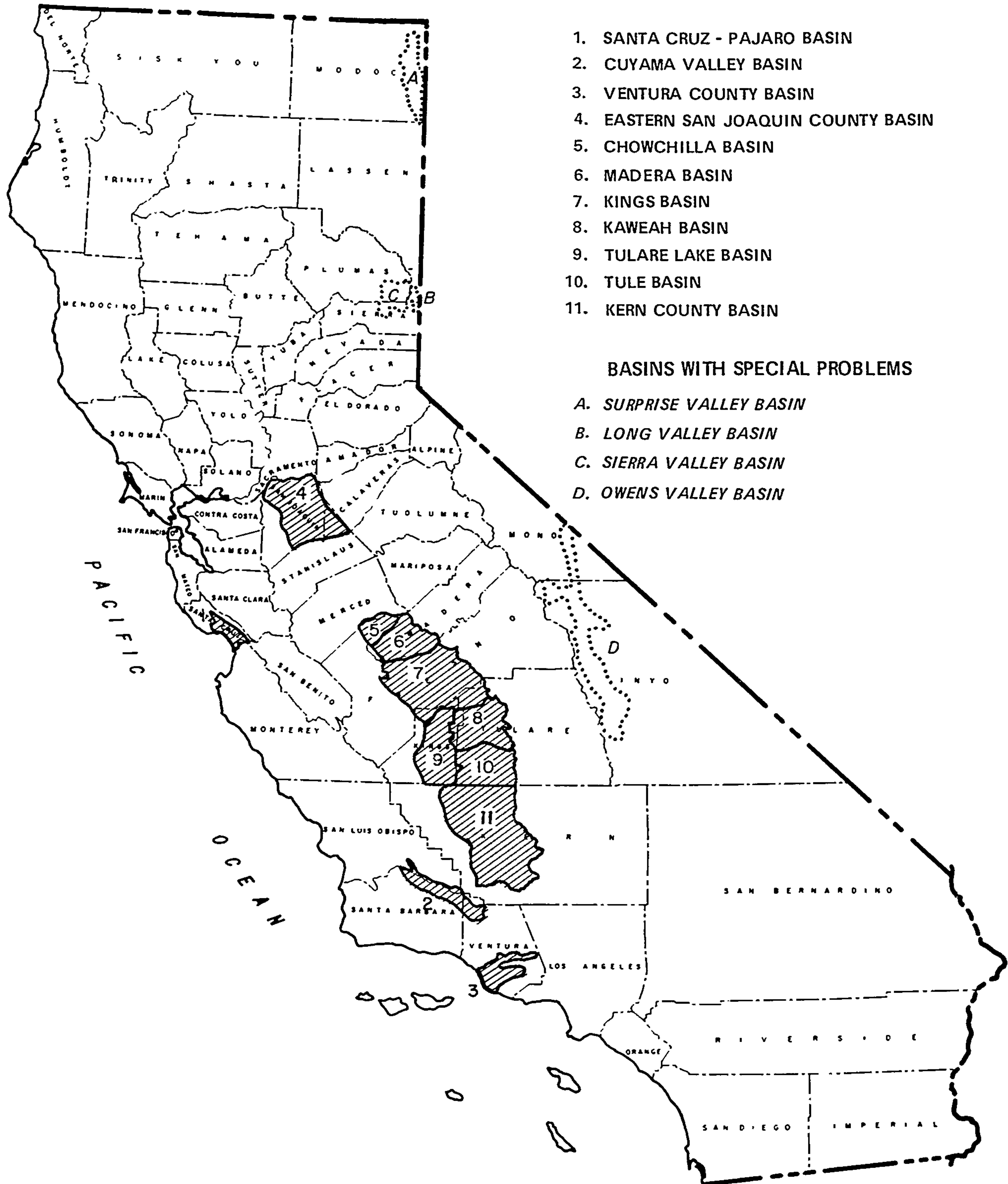


Any application for a new appropriation would also require submission of a conservation plan and any permit or license issued by the state "shall contain" a condition requiring the continued satisfactory implementation of the water conservation program." (§15103)

Section 15104 lists the requirements for the mandated conservation plans. All "reasonable" alternatives to water importation must be identified in the plan. Such alternatives include consideration of conservation possibilities and a change in the rate structure. The plan must compare costs, and where conservation is less costly than importation, conservation must be implemented first.

Instream Protection

Part 3 of the proposed measure would make two major changes in California water law concerning instream use. First, the Act would allow instream appropriation for beneficial use without a requirement that there be a diversion or an exercise of control by the appropriator. Effectively, it would overrule California Trout Inc. v. State Water Resources Control Board, 90 Cal. App. 3d (1979) and other California cases



MAJOR GROUND WATER BASINS

which have held that the appropriator must divert water in order to maintain a valid appropriation.

While this right would be of dubious utility for the protection of instream uses in streams which are already fully appropriated, it could be of great use in streams which are not yet fully appropriated.

Of even greater potential value to those who seek protection for instream uses is the mandate to the Board to condition all appropriations on the permittee's implementation of measures to offset any adverse effect of his or her appropriation on "fish or wildlife dependent on instream flow." (§15203). Currently, the Board may impose such conditions, but such action is not required.

Stanislaus River

Sections 15225 through 15229 propose a compromise in the New Melones controversy. Generally, this portion of the Act would condition full impoundment behind the dam on the obtaining of contracts for 75% of the firm yield, and agreement from the contractors to pay the less subsidized rates described above.

The initiative includes exceptions to impoundment limits for hydro-electric power generation, water quality control, vested rights and the preservation and enhancement of fish and wildlife. This chapter, however, would preclude "to the extent possible" storage for these uses above Parrott's Ferry Bridge until the contracts for 75% of the yield are signed.

The intent of the drafters is to achieve a compromise between those who would forbid any impoundment and those who want full impoundment regardless of whether the water is contracted for or not. According to Professor Dunning, the entire initiative grew out of a recognition by those who were writing a Stanislaus River Initiative that the problems which created the controversy surrounding the river and New Melones Dam stem from our system of water law which is inadequate given the contemporary pressures of competing needs.

It appears unlikely that extreme positions on either side of this issue will be strengthened by the provisions of this initiative. Whether the measure can be sold as a sound compromise remains to be seen.

Groundwater

Simply stated, this portion of the initiative (Groundwater Resources Conservation) would require that each of the eleven areas which have been identified by the State Department of Water Resources as critically overdrafted (see shaded portions of map) develop and implement a groundwater management plan. Each local area would have one year to designate

(See CONSERVATION, page 12)

200 Mile Limit

(continued from page 3)

During the decade from the early 1960's to the early 1970's, foreign fishing effort off the Pacific coast steadily increased; but for several years immediately prior to the passage of FCMA this effort actually declined as a result of bilateral agreements worked out between the United States and foreign fishing nations in an effort to protect domestic fisheries. Some species, such as the Pacific perch and the sablefish, were still being overfished by foreign fleets during the mid-1970's, but overall, the Pacific fisheries compared well to Alaskan and Atlantic waters in terms of overfishing problems and excessive foreign competition.

The relatively favorable status of the Pacific fisheries in 1976 makes it impossible to find any dramatic changes in fish stocks attributable to FCMA. Indeed it is difficult to say yet whether fish populations in any of the American fisheries are better off as a direct result of FCMA. Catches are monitored every year in relation to size and age composition, but normal population fluctuations cloud accurate estimation of FCMA's impact. It will be easier to assess FCMA's effects in several years if the trend towards the collection of better information continues.

Some impacts can be identified, however. Foreign fishing, for example, has been reduced significantly. Whiting (also called hake) is now the only species for which a foreign quota is assigned in the Pacific fishery region. All other species can be caught by foreign vessels only on an accidental basis.

The domestic harvesting of formerly underutilized species such as the whiting has been increasing slowly since the passage of FCMA. As the U.S. harvesting capability increases, the foreign quota will be reduced accordingly. Domestic harvesting for some species has been very limited because onshore processing facilities do not exist or there is no real domestic market for the species. Efforts are under way to develop domestic markets and processing capability.

Council Performance

The Pacific Fisheries Management Council has developed and implemented only two fishery management plans, those for the salmon and anchovy fisheries. A plan for the groundfish fishery is scheduled to go into effect in early 1982. The salmon plan has generated the most controversy because of the species' importance to commercial, Indian and recreational fishermen. California commercial fishermen are opposed to the plan because it cuts short the salmon fishing season in this state so as to protect Northwestern salmon runs. Indian fishermen are interested in the plan because 50% of the salmon har-

vest is now allocated to them as a result of the Boldt decision. United States v. Washington , 520 F. 2d 676 (9th Cir., 1975), cert. denied 423 U.S. 1086, 96 S. Ct. 877, 47 L. Ed. 2d 97, (1976). Ironically, the salmon harvest now relies primarily on hatchery reared fish because the wild salmon populations are in such poor condition.

The question remains as to why the Council has implemented only two management plans. The Council originally had eight plans under consideration, including proposals for shrimp, crab, abalone, mackerel and billfish. One reason for the abandonment of several of these plans was the lack of adequate financial resources. Financial support for fisheries research has not amounted to what was originally expected. Bureaucratic considerations also play a role. After a plan is developed by the Council, it must be sent to Washington, D.C., for ratification by the National Marine Fisheries Service and the Department of Commerce. It takes at least a year to finalize a plan after the Council has developed it and sent it on to Washington.

As a result of of these obstacles, the Council has been happy to delegate the responsibility for managing some species to the states. For instance, crab populations are located primarily within state territorial waters, and the Council believes they can be adequately protected under state management. Mackerel and billfish plans have been abandoned because those fisheries are important only to California, and they show no signs of excessive fishing pressure.

It is clear that Council-State cooperation has played a greater role than was originally envisioned by the proponents of federally sponsored fisheries management. Another area where this cooperation occurs is in data collection. FCMA has resulted in a significant increase in the amount and reliability of catch and effort data, and a centralized data network has been established on the Pacific coast. The first species to which the system has been applied is salmon, and fisheries managers are now able to get accurate data during the season with only a seven day lag time. With application to other species, this practice could represent a major step forward in the management of a fishery with the necessary in-season flexibility.

While the management plans have not been shown to have actually benefitted the fisheries, FCMA has certainly provided the opportunity and mandate to do serious long-term planning. This long-term focus is in marked contrast to the crisis-by-crisis approach which state management efforts have so often taken. It seems reasonable to expect that in the long term the benefits of the regional approach to the health of the fisheries will become more evident. There appears to be a consensus among academic, scientific and fishery management personnel that reversion to the system of decentralized and somewhat ad hoc methods of management would be a serious error.

Dissatisfaction with FCMA

Although progress is being made, there is little outspoken praise for FCMA's accomplishments, while outspoken criticism is not hard to find. State fishery experts find the federal bureaucracy to be monolithic and lacking the flexibility they believe is required for fisheries management. Scientists are impatient with the slow pace at which progress is being made. Economists have seen very few steps towards a more "efficient" exploitation of the fishery resource through attempts to limit fishing effort. Fishermen decry the controls on their activities which become stricter each year; they also continue to push for the complete expulsion of foreign fishing from the conservation zone.

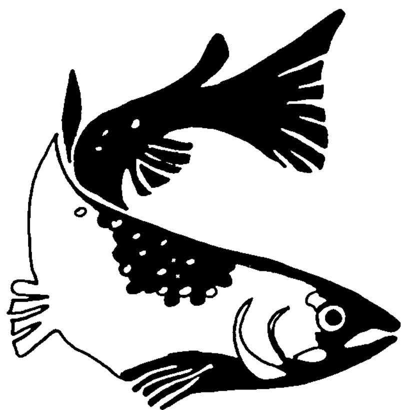
California fishermen have lobbied for the return to state control of fisheries management, or in the alternative for the establishment of a separate California Management Council. Their major grievance is that California accounts for half of the Pacific harvest, yet holds only three of the thirteen voting positions on the Pacific Council. From a political standpoint, it appears that fishing interests have lost lobbying power in the transition from state to regional control because the represented constituency is now so much larger.

The groups involved with fisheries management, including the Councils themselves, point out difficulties in implementing FCMA objectives. One of the most significant of these is the perceived lack of autonomy of the Councils. Pacific Council members and state fishery employees feel that the objective of regional management within federal standards has not been met and that, in fact, an increasing number of attempts to control the actions of the Councils are coming from the Department of Commerce. Testimony at recent Congressional hearings expressed concern about the problem, and amendments to FCMA are being considered which would delegate more decision making authority to the Councils.

Another problem is the continuing lack of a good data base for management decisions. Even given the major advances in data collection and dissemination, fishermen and others continue to legitimately question the determination of an optimum yield for a particular species. There is still simply not enough knowledge about the fish populations themselves, and how and why they fluctuate, to develop the best possible biological management plan. When one adds the complexities of economic and political considerations, the "best" plan becomes even more of a pipe dream.

But more importantly, today's climate of fiscal austerity and doubts over the appropriate role of the federal government pose the most significant threat to the concept of regional fisheries management.

The Reagan Administration has doubts as to whether the federal government should be managing the fisheries at all. According to this line of reasoning, the federal government did its part towards fisheries management by extending national jurisdiction to 200 miles and setting up a comprehensive management framework, and it is now time to turn much of the



responsibility back to the states and the fishing industry. Even if the Administration does not undertake an overt policy shift in this direction, budget cuts currently being implemented may achieve the same result. While it seems likely that the Councils themselves will not have their own funding severely cut, many of the programs upon which they rely seem slated for drastic reductions. The Coast Guard has already announced cutbacks of at least 60% in its efforts to enforce fishing regulations off the Pacific coast, and a program to put domestic observers on foreign vessels is threatened. The National Marine Fisheries Service is scheduled for severe cuts which will seriously affect its research and fishery development programs. Severe cutbacks in fisheries research will clearly delay efforts to develop comprehensive management plans, and many people involved in fisheries management believe that the rug may be pulled out from under the entire effort.

Conclusions

Budget cuts pose a serious threat to the philosophy of regional management of fisheries as incorporated into the Fisheries Conservation Management Act of 1976. The decimation of the regional management effort would be unfortunate. The science of marine fisheries management has made significant strides in the last five years, both in the areas of basic biological knowledge and in information collection, analysis and dissemination. Even though substantial problems do remain, the potential exists for long term progress.

It is to be hoped that the concept of regional management incorporated into FCMA at the domestic level can be extended to more comprehensive international efforts, possibly following the signing of a Law of the Sea Treaty next year. After nearly a decade of work, most provisions of the treaty have been agreed upon by the participants to the Conference. Some issues remain, however, particularly those involving deep seabed manganese nodule mining. These issues threaten to scuttle the signing of the treaty, provisionally set for March of 1982. Earlier this year, President Reagan announced that the Administration would conduct a full review of those provisions of the proposed treaty which would affect the United States, with a particular emphasis on the provisions involving deep seabed mining. The Departments of Commerce and State are currently conducting this review. American negotiators who have represented the U.S. in the past at the Conference believe the policy review is a dangerous step which threatens to unravel an intricately woven design for international cooperation. Indeed, many representatives to the Conference, particularly those from Third World countries, have publicly deplored the U.S. position and a number have stated they are prepared to sign the treaty with or without the United States. The consequences of such an event for the future of international cooperation are potentially very serious, and any American action which would bring about this result should be subjected to a careful study of its long-term implications.

Laura Kosloff
Mark Trexler

Timebomb of Hazardous Wastes

(Continued from page 6)

of which were still in use. The California DHS has identified 76 sites as posing imminent health hazards, and it cannot find a responsible party for 19 of the sites. The projected bill for the cleanup of the 19 sites is $57 million, while a cleanup of all 76 sites would require up to $450 million. Only three of the 76 sites are targeted for federal Superfund monies on the new EPA list.

State Efforts

As with federal legislative efforts, California waste control legislation has inadequately addressed the problem of abandoned dumpsites. A step to rectify this situation was taken on September 24, 1981, when Governor Brown signed into law the Hazardous Substances Account Act (SB 618) creating the equivalent of a state mini-Superfund. SB 618 provides $10 million per year for ten years to be divided among several uses. These uses are the cleanup of hazardous sites; the provision of the 10% matching funds required to obtain federal Superfund monies; and the provision of compensation to victims of hazardous waste accidents. The fund is to be financed through a flat fee levied on each ton of hazardous waste produced; if the appropriate fees

(See WASTES, page 15)

California Water Conservation Initiative

(continued from page 9)

a management entity and two years to submit a plan for management to the Board.

The language of the initiative would establish a legal recognition of the inextricable link between ground and surface waters. The initiative would exact an economic penalty for failure of an area to develop a management plan by banning irrigation of previously unirrigated acreage.

The initiative attempts to ensure groundwater management while maintaining a local focus and varying in specifics to meet particular circumstances; this has been the approach of the existing successful groundwater management programs of Southern California and the Santa Clara Valley. Professor Dunning explained that an earlier provision which would have required that existing management entities go through an exemption process was scrapped because it seemed to ignore both the success of the currently ongoing management efforts and the apprehension of existing entities concerning addition of even pro forma bureaucratic hurdles.

The initiative is clearly an attempt to meet varying needs and to achieve desired goals without alienating the majority of California voters. The fact remains that the specific provisions of the initiative would mandate changes in the California water law which will not be met with equanimity especially by groups who stand to lose economically or who will be satisfied with nothing less than a total cessation of development. The battle from now until November, 1982, promises to be hard fought.

Judy Clark

ERRATA

We would like to correct some errors in D. Hanlon's article (not her fault) Hydrological Hydra, *ENVIRONS*, vol. 5, no.4 (June, 1981). On page 8, the "yoke of Federalism" should have been "yoke of Federal authority" and "acre-foot (435 gallons)" should have read "acre-foot (325,000 gallons, or enough water for a family of five for one year)." Sorry Dee and readers.

Williamson Act

(continued from page 4)

in the public interest. The existence of alternative uses for the land is not sufficient reason for the cancellation of the contract, and such other uses for the land may only be considered if there is no proximate and suitable noncontracted land available for the proposed uses. Other sections require the payment of a cancellation fee and reimbursement of deferred taxes in order to recover some of the tax benefits given to the landowner in return for his or her earlier agreement not to convert the lands to nonagricultural uses.

A Supreme Court Salvo

In Hayward , ranchers who had entered into a Williamson Act contract petitioned and received a cancellation for a 93 acre parcel of the 600 acres covered by the contract. The ranchers wished to build a subdivision of upper-middle income residences. In granting the cancellation, the city council found:

> (1) The cancellation would not be inconsistent with the purpose of the Act; and
> (2) It would be in the public interest because (a) removal of the small area would not jeopardize the remaining lands as pasture; (b) the proposed subdivision was not premature or unnecessary; and (c) the retention and dedication of 30 acres to open space would preserve the aesthetic needs of all.

The Court found that there was no substantial evidence to support the council's finding that the cancellation was not inconsistent with the purposes of the Act. Even though the land was the logical site for the extension of suburban development and would not jeopardize neighboring agricultural land, nonrenewal is the method of choice for the conversion of restricted lands unless such a process would interfere with the orderly development of the city. Being aware that these lands would fall in the path of development, the ranchers had sufficient warning to terminate the contract by nonrenewal at an earlier date.

The Court also stated that the nature of the public interest which is to be considered is statewide rather than parochial. The Court held that the open space objectives must be substantially outweighed by other public concerns, but it refused to rule on the substantiality of the evidence on this point.

Additionally, the Court held that the council must specifically find that no proximate noncontracted lands are suitable for the uses proposed for the contracted land. Findings on this point were insufficient because the council would not confirm that it considered alternative uses for the restricted land only after determin-

ing that no other sites were available. Examining the meanings of the terms "proximate" and "use", the Court said that "proximate" did not mean "adjacent" and that the adequacy of proximate lands was not necessarily to be measured for an identical use but for a substantially similar use.

The Court next held that before examining the uneconomic quality of the lands for agricultural use the council must find that there is no other reasonable or comparable agricultural use to which the land may be put. In dicta, the Court noted that the land was still being used as it had been when the parties entered into the contract and that the rancher had failed to show changed conditions irrespective of the development of the surrounding lands.

This strict interpretation of the conditions necessary for a cancellation reflects the Court's feeling that "in adopting the Williamson Act, the Legislature attempted to safeguard for the citizens of our state a legacy of rich and scenic land." The Legislature quickly took action.

The Answering Shot

The Supreme Court's ruling evoked strong feelings both in support and in opposition. In April, 1981, Assemblyman Robinson introduced A.B. 2074 to expand the ability of local governments to cancel contracts under the Williamson Act. After several amendments, the bill was enacted into law in September, 1981.

Gov. Code § 51282 now only requires a finding in the alternative. The cancellation must now be consistent with the purposes of the Act or in the public interest.

In order for the cancellation to be consistent with the purposes of the act, the council or board must now find (1) that a notice of nonrenewal has been submitted for the subject land; (2) that the cancellation is not likely to result in the removal of more adjacent agricultural land; (3) that the alternative use is consistent with the local government's general plan; (4) that the cancellation will not result in discontiguous development; and (5) that there is no proximate noncontracted land which is both available and suitable for the proposed use (the Court's definitions of "proximate" and "use" were adopted for this requirement).

For the council or board to conclude that the cancellation is in the public interest it must find (1) that other public concerns substantially outweigh the objectives of the Act; and (2) that there are no suitable proximate noncontracted lands available.

Even if there are suitable proximate noncontracted lands available, the council can still grant a cancellation if it finds that the proposed change in use would provide a more contiguous pattern of urban growth. The Act as amended still provides that the economic character of the existing agricultural use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put. Any petition for cancellation must also detail the proposed alternative use of the land.

The Window

The addition of Gov. Code § 51282.1 sparked the greatest amount of controversy. The purpose of this section is to provide a one-time opportunity, a "window", for cities and landowners to cancel their contracts without making the required findings.

Under this section, the landowner has five months from the date of enactment to apply for cancellation of his or her contract. The application must include the proposed alternative use. The board or council may grant tentative approval for cancellation of the contract if it finds that the cancellation and alternative use will not result in discontiguous development and that the alternative use is consistent with the city or county general plan in effect on October 1, 1981 or amended by January 1, 1982.

The tentative grant of approval will be valid for one year and will be withdrawn unless the landowner pays the required cancellation fee. The board can extend this time period if it finds that the landowner has proceeded with due diligence and could not meet the time schedule due to circumstances beyond his or her control.

The Future

What the effects of these changes will be remains to be seen. Some argue that there will be a mass exodus of agricultural lands through the "window". Others say that the new provisions make it possible to rectify situations which no longer correspond to the patterns of growth and planning. It is clear that a major stopgap against development pressure has been temporarily removed, but cancellation fees and the high cost of building may limit the amount of land actually converted. The amendments to Gov. Code § 51282 should clarify the necessary findings for conversion once the window closes.

Michael Endicott

Reclamation Law Update

(continued from page 2)

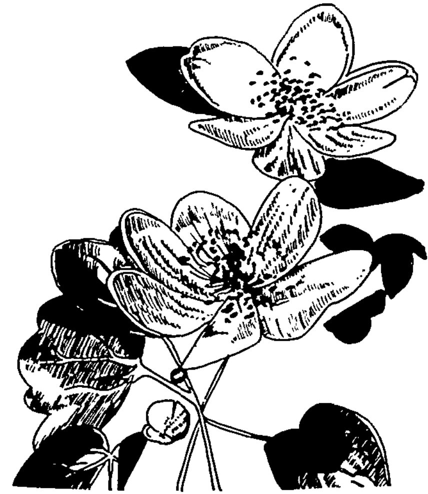
Insular Affairs (and member of the Subcommittee on Water and Power Resources), introduced H.R. 4265 in late July of this year.

Lujan's bill is unique in that it proposes a two-tiered system of acreage limitations designed to accommodate proponents of both the continued "family farm" concept and supporters of a larger allowance. Basically, H.R. 4265 offers users an option to either remain under the present ceiling of 160 acres per individual record title holder (a choice geared to the extended family) or come under a new 960 acre per farming operation ceiling (preferable for nuclear families seeking added acreage or non-family farmers). Both systems eliminate the residency requirements. A spokesperson for one of the larger growers' lobbies believes that H.R. 4265 is a good bill with which to proceed to hearings. This feeling is not universally shared, according to George Ballis of National Land for People, a non-profit organization comprised mostly of small farmers. His group continues to support a basic acreage limitation of 640 acres per farming operation, with provisions for a public lottery for parcels ranging from 20 to 640 acres and a relatively strict residency standard (within 15 miles of the nearest incorporated town).

The chances of any reclamation law modifications are slim this year in light of Congressional and Administrative preoccupation with budget cuts; in addition, the political sensitivity of this issue worries incumbents, especially in an election year. Some House members have stated that no House action will be taken until the Senate introduces its own bill and the Department of the Interior makes clear its preferences. It is likely that the Department will continue to be reluctant to promulgate new regulations despite a standing federal court order to do so, as Secretary Watt prefers revision through legislation. To complicate matters further, in June of this year the Department formally suspended sales of lands held in excess of 160 acres by any one individual receiving project water because of the confusion generated by past Bureau of Reclamation ad hoc decision-making. The net result is that consideration of the most pressing issues of reclamation law have once more been relegated to the back burner.

Water Pricing

The issue of efficient and equitable pricing of water is closely related to the acreage and residency issues. The troubling question is whether the federal government should continue to subsidize users of project water with long-term interest-free payment schedules or, instead, require "full cost" payments, which would more accurately reflect the true economic costs of such water supplies. Opinion is sharply divided as to what exactly constitutes "full cost" and when it is to be applied. For example, H.R. 4265 would require users to pay "full cost" only for water supplied to leased lands in excess of the first 960 acres under the optional expanded ownership system. Such cost would include operating and construction costs of federal irrigation facilities, with interest on both at a minimum rate of 5%. H.R. 2606, introduced by Representative George Miller (D-California), would also require recovery of project construction and operating costs, with interest calculated on both, but within the present acreage and residency framework. Current law does not provide for any interest payments in contracts between the United States and various water districts.



While "full cost" certainly would encompass some capital component subject to some rate of interest, in purely economic terms it might also include other less obvious elements, such as legislative implementation costs, engineering costs, and power subsidies. The Bureau of Reclamation has proposed an unique solution to the dilemma of water pricing with respect to its intended sale of water from the New Melones Reservoir. It would charge farmers only $3.50 per acre-foot for the water, which is the price at the reservoir, but users must transport the water themselves, at their own expense. The greatest irony behind any plan to reduce or eliminate price subsidies is that "full cost" pricing may toll the death knell of the small farmer, who cannot possibly establish the economy of scale necessary to defray increased water prices. Perhaps the answer is to retain, under any new pricing scheme, the present statutory "ability to pay" formula (43 U.S.C. 485h), which permits variances in repayment schedules and takes into account the economic status of users of project water.

David Preiss

Timebomb of Hazardous Wastes

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are to be collected, companies must accurately report the amount of waste they generate.

SB 618 was not the only bill covering hazardous waste cleanup that was introduced in the legislature this year. The California Hazardous Substances Act (AB 69) has been reported out of the Assembly but remains stalled in the Senate. AB 69 varies from SB 618 in several significant ways. It includes no sunset clause, imposes a stricter standard of liability on companies producing hazardous wastes, and uses a progressive fee structure which varies according to the degree of risk associated with a particular waste. AB 69 consequently generated far more vociferous opposition than did SB 618, and its chances of eventually being reported out of the Senate are uncertain.

Future California Efforts

SB 618 represents a step towards a more comprehensive waste management strategy, but its political viability raises some questions about its real impact. The bill specifically prohibits the use of the fund for the correction of problems such as groundwater contamination if the contamination occurred before the bill went into effect, yet it would seem that such cases would be the most deserving of immediate state intervention. The fund also cannot be used in cases where a responsible party can be identified; this raises the spectre of protracted law suits over a company's cleanup efforts while the wastes in question continue to present a serious hazard. The $10 million per year, only part of which will actually go towards cleanup efforts, is a far cry from the $57 million needed to correct already serious problems.

Yet SB 618 definitely represents a good beginning, and continued public pressure may bring about more effective implementation of state statutes already on the books.

Conclusions

Slow progress towards the development of comprehensive waste management strategies is being made at both the state and federal levels. Unfortunately, however, the potential magnitude of the problem has not been matched in degree by the federal and state actions intended to rectify it. It would be only too easy in this era of budget cutting to continue to delay the cleanup of dangerous waste dumps. While the cleanup process will be incredibly expensive, the costs of delay threaten to be far greater. It is vital that federal and state efforts be vigorously pursued.

Gerri Carr

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