

Vanity Vineyards Killing Navarro River

First of two parts

by Roanne Withers¹

Prologue

“Dear Editor,” long-time Mendocino coast resident Tom Wodetzki wrote to the *Anderson Valley Advertiser* in Boonville in September 1992, “This past weekend my partner and I went to land we own along the Navarro River in Anderson Valley to spend a couple of days swimming and relaxing, as we have in past years. We camped out but were disturbed by the noisy drone of not one, but two big pumps down in the river sucking up water for nearby vineyards and orchards or whatever.

“In the morning water was flowing in a small channel down the otherwise dry, broad riverbed. But by evening, after a whole day of seemingly nonstop pumping through six-inch hoses, that channel had dried up so that no water was flowing! The river had dried up right before our eyes.”

In 1992, Wodetzki filed complaints with State Water Resources Control Board (SWRCB) over the dewatering of the Navarro River he had witnessed. Supervised by one of the meanest nests of entrenched vipers in the arid state of California, SWRCB’s powerful Division of Water Rights (DWR) distributes much of the state’s water via decisions made “in-house” by staff.

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DWR staff, of course, ignored Tom’s complaints.

Refusing to give up, he invited preeminent attorney, Stephan Volker (then of the Sierra Club Legal Defense Fund), for a look-see at the dewatering of the Navarro. Tom connected with the newly formed Anderson Valley environmental group, Friends of the Navarro — Diane Paget, Steve Hall, Bev Dutra, later joined and headed by Dan Myers —

Winning the suit would make the state enforce its public trust responsibilities in all Northern California coastal watersheds.

concerned about the “health of the watershed” and “lack of regulation.”

Wodetzki’s actions lay groundwork for a new public trust lawsuit against vanity vineyards and the state, which seeks to end rampant water consumption by vineyard development.

The case is probably the last chance for protecting and sustaining the Navarro River and its aquatic ecosystems.

Filed June 19, 2000, in Alameda County Superior Court (where the Attorney General has an office), the Sierra Club (via its Mendocino/Lake Group), Navarro Watershed Protection Alliance (Dr. Hillary Adams), and California Sportsfishing Protection Alliance (via Bob Baiocchi) are suing the SWRCB (which oversees the staff of DWR), and Navarro tributary reservoir/water diversion applicants and vineyard owners Ted Bennett and Deborah Cahn.

After nearly a decade of deliberate DWR mismanagement of the Navarro River watershed, winning the suit would make the state enforce its public trust responsibilities in all Northern California coastal watersheds on behalf of salmon (or “salmonids,” representing a range of fish species classified as salmon varieties) and other aquatic species.

The Navarro River water lawsuit simply asserts that DWR violated the California Environmental Quality Act (CEQA), the state’s Water Code, and the Public Trust

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Arresting Developments

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Testing Area of Origins Law

Calling it a matter of sheer survival, Westlands Water District (WWD) has become the first major water agency to test California's area of origins laws with the State Water Resources Control Board (SWRCB).

The district hopes SWRCB will allow it to acquire upwards of one-third of the flow of the San Joaquin River for its prodigious irrigation needs. These flows are currently stored by the U.S. Bureau of Reclamation and diverted for use by many small irrigation districts — organized as the Friant Water Users Authority — on the east side of the San Joaquin Valley in Madera, Fresno, and Tulare counties.

California's area of origins statutes provide that no county, watershed, or "area wherein water originates, or an area immediately adjacent thereto" shall be deprived of prior rights to

water for that area's development.¹ WWD claims to SWRCB that its 600,000 acres west of the lower San Joaquin River are in an "area immediately adjacent thereto."

While much media attention focuses on how Westlands' water grab pits farmer against farmer in the Valley, WWD is trying to see if a little-used set

Worst-case scenario: the state's water systems could unravel.

of laws passed in the 1930s and 1940s to prevent Owens Valley-style water grabs, could be used to reassert a water claim made by Westlands before the federal Central Valley Project (CVP) was built. WWD sees itself squeezed for irrigation water for the foreseeable future. The district received just 50 percent of its contract amount from the CVP each of the last several years. Clearly disenchanted with CalFED gestures toward new reservoirs as well, WWD's board and management felt backed into a corner, and so prepared their area of origin claim in secret.

WWD's test poses serious long-term problems for the state's monumental water systems. Some rural areas of California that export water occasionally threaten to invoke these laws, but so far they're only threats. Worst-case scenario: the state's water systems could unravel. If WWD's test succeeds, the same law could be used by other counties to take back local water now controlled by the California State Water Project and the CVP.

Departing WWD General Manager David Orth acknowledged the possibility to the *Fresno Bee* in August, saying that Westlands officials know they someday could lose their imported Delta water because of the area of origin laws.² WWD's action also seems timed to block or disrupt a proposed water transfer/swap of supplies between the Friant Water Users Authority and the Metropolitan Water District of Southern California first proposed in the June CalFED *Framework for Action* (see "Reframing CalFED," this issue).

NOTES

1. *The county of origin law is found at California Water Code Section 10505. The area of origin law is found at Water Code Section 11460.*
2. *George Hostetter, "Both sides dig in for water war," Fresno Bee 9 August 2000.*

Don't Tread on *Mojave*⁴

Water industry officials and professional environmental groups have long favored controlling water politics so that as "stakeholders" they can fashion technical solutions that may or may not trample on existing legal, ecological, and political realities. Some call this style of politics "corporatist."

CalFED is one highly visible example of corporatist politics in California water. Another example emerged in the 1990s in the northern Mojave Desert.

A severe groundwater overdraft condition resulted in the Mojave River basin (about 60 miles northeast of downtown Los Angeles) during the

SPILLWAY California Water, Land, and People

Fall 2000

Volume 1, Number 1

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Guest opinions and unsolicited submissions are welcome. This issue went to press on September 15, 2000.

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Arresting Developments

• Newhall Ranch gets water

trough of California's last drought. The basin was also in the midst of explosive urban growth stimulated largely by aerospace and military investments (Edwards Air Force Base is in the region, for example, where the Space Shuttle sometimes lands). When urban and agricultural interests got together to divide up the groundwaters on which

Some landowners claimed their overlying water rights — not “appropriative” rights as some mainstream media news accounts depict — were ignored by the agreement.

they all depend, they negotiated an agreement (dubbed the “physical solution”) to provide equitable distribution of Mojave River waters.

Some landowners there refused to go along, claiming their overlying water rights — not “appropriative” rights as some mainstream media news accounts depict — were ignored by the agreement, and sued in Riverside County Superior Court to nullify the agreement.

While the *Mojave* trial court rejected the suit, both the appeals court and the Supreme Court this summer agreed (unanimously): overlying rights are similar to riparian rights, the courts said, in their priority over appropriative rights possessed by cities and late-coming water agencies.

The Supreme Court further affirmed in *Mojave* that the only grounds under

the California Constitution on which such water rights could be invalidated or adjusted was when the holder of these rights uses the water in a manner that is wasteful, unreasonable, or otherwise not beneficial. That was not the case in *Mojave*.

The “physical solution” used a corporatist political strategy to allocate water equitably in a basin (at least among those participating). Many media and water industry observers hoped that this political style — ignoring history and existing legal rights of others while fashioning “win-win” outcomes — would be recognized and validated by the Supreme Court. It wasn't, and California will be better off for it.

NOTES

1. City of Barstow v. Mojave Water Agency, S071728.

Newhall Ranch Gets Water After All

Newhall Ranch, a massive 22,000 housing unit, master-planned development proposed near the community of Valencia in the Santa Clarita Valley of north Los Angeles County, got a water supply after all. Ventura County, adjacent to the development, sued Los Angeles County on grounds that Newhall Ranch could not identify and procure a water supply for its plans, and won in court. The suit tested a 1995 state law requiring new developments to demonstrate a water supply before development can occur.

But not six weeks after Superior Court Judge Roger D. Randall required Newhall Ranch developers to prove they had a water supply for their

project before work could proceed, United Water Conservation District in Ventura County stepped forward with a source. United stated that the developer

It now appears the Newhall Ranch proposal will move forward, although concerns remain about groundwater exploitation.

should be allowed to divert and store storm water from nearby Castaic Creek.

It now appears that the Newhall Ranch proposal will be able to move forward, although concerns remain about groundwater exploitation.

Lynn Plambeck, spokeswoman for Santa Clarita Organization for Planning the Environment (SCOPE) and an elected member of the Newhall County Water District, said United Water's strategy was not a long-term solution.

Once Newhall Ranch is built out, the community would take more water than United Water's proposal would provide — much of it from local groundwater.

“If it enables Newhall Ranch [to proceed], then it's not a reasonable request,” said Plambeck.¹

NOTES

1. Jean Guccione, “Water Agency's Shift Could Facilitate Building of Newhall Ranch,” Los Angeles Times 30 July 2000.

Editorial

Releasing *SPILLWAY*

So, what's a newsletter covering "California Water, Land, and People" about? And why plunk down \$25 to get this newsletter from a currently moonlighting writer?

As editor, I bring to *SPILLWAY* a passion for California water issues. Born in Pasadena, raised in Redwood City, water entered my consciousness during the 1975-77 drought: my father rigged up a graywater irrigation system from my mother's washing machine. We stashed water bottles in the toilet tank, took short showers. The lawns turned brown.

I have studied and written about California's water issues since 1980; urgently since the last drought ended in 1992. I have been a practicing urban planner since 1988.

These and other experiences led me to conceive *SPILLWAY*.

I find media slanting against opposing voices in water politics, ignoring key facts of history, avoiding the workings of political and economic interests in the exploitation of water and land under the relentless spread of urban California. Water is lifeblood here in California; the single most critical ecological limiting factor as sure in its finality as an empty wallet stops a purchase.

But there's another crucial water fact that not enough Californians appreciate: every drop of water that falls here as rain, snow, fog, or hail is owned by the people of California. It is *our* resource; how well or poorly it is treated by those using it should be something as many Californians as possible should be vigilant about. Yet we're not.

"Land and people" are the places and subjects of *SPILLWAY*. Land is, after all, the rock-bottom source of wealth for a people, because if you have land, you might make a living free from another's will and control.

Land is also the stage of local politics, where issues may have roots in political, economic, and ecological conflicts over land.

Democratic and accountable control of water and land is therefore the material basis of political and economic freedom and justice, and of ecological sustainability.

I intend *SPILLWAY* for environmental and watershed activists, land owners, environmental and land use planners, water bureaucrats and lawyers, and people interested in water who want to read good and useful writing about water, non-fiction division.

Take the issue you hold in your hands: plunder of the Navarro River in Mendocino County by the rapid and unregulated development of wine grape vineyards along its

banks and tributaries is a sad but heartening tale.

Roanne Withers offers *SPILLWAY* readers glimpses into the workings of a poorly understood but terribly important agency in California government: the Division of Water Rights of the State Water Resources Control Board. A practical eco-warrior for many years on the Mendocino coast, Withers came to know environmentalist politics, water law, and the California Environmental Quality Act as few committed activists do. She passes on some of her knowledge here in *SPILLWAY*, this issue and next.

As to the second question: why mail off \$25 for a year's subscription to this newsletter? Apart from helping me recoup my production costs, subscribe to *SPILLWAY* if you care about deeper stories of California's water, land, and people. You could pay much higher subscription rates for more narrowly targeted newsletters or magazines, but *SPILLWAY* is priced — and hopefully written — accessibly to a readership broader than that of its competition.

SPILLWAY will bring you reports on who does what on public trust issues in other rivers throughout California, profiles of water rights speculators, updates on court decisions and water board hearings, groundwater, environmental

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justice in fishing the Delta and San Francisco Bay — and much more.

Water, land, and people are all bound up with the exercise of political power here. "Power veils itself," writes historian Gray Brechin, author of the recent masterpiece *Imperial San Francisco: Urban Power, Earthly Ruin*. Your subscription to *SPILLWAY* will support unveiling power in these pages.

Finally, *SPILLWAY* will dispense hope — via realistic appraisals of actual possibilities in the face of present obstacles — for democratic renewal, environmental justice, and for restoring humans within nature's economy.

Reframing CalFED's Framework

by Tim Strohane

After six years of federal, state, and local water industry officials and environmentalists planning the next thirty years of California's water future, the June 2000 release of *California's Water Future: A Framework for Action* should make all thoughtful Californians ask: what were they thinking?

The framers of the Framework — officials from the highest echelons of the California Resources Agency, the U.S. Department of the Interior, and other key water officials from around California — have doubtless created what they believe is a clever set of solutions to the problems of the long-stalled CalFED process.

At least everyone involved in the CalFED process knows better than to call the *Framework for Action* a victory for anyone. It is universally hailed as a compromise in which no one got everything they wanted. That is probably the best to be said for CalFED's work to date.

But to understand CalFED's Framework all you really need to know is this: it is about making more reliable the current statewide water system shunt water from north to south; to the extent the system faces fewer ecological and legal conflicts, more water will be available to all future water users.

All CalFED programs point toward this overriding goal. Even the "green" programs in the Framework serve this end only. From the Record of Decision, we will learn more of the devilish details about exactly how CalFED and its various state and federal agencies intend to achieve this goal. But here are some samples:

- Silicon Valley's water projects — the San Felipe Unit of the Central Valley Project, and the South Bay Aqueduct of the State Water Project (SWP) — seek their own peripheral canal, not to sweep around the Delta's east side, but to prevent mixing of California Aqueduct water with San Luis Reservoir water.
- Entire supplies of water are proposed for apparently permanent transfer in the Framework. The Metropolitan Water District of Southern California and the Friant Water Users Authority are discussing a switch of their historical supplies so MWD can radically improve its water quality by getting high-quality Sierra water that Friant's farmers now use on their orchard and field crops along the San Joaquin

River. Friant users, historically CVP customers, would get lower (but not poor) quality SWP Delta water and greater certainty about their supplies.

- Perhaps the most eyes-wide-shut proposal for transfers of supplies is the Bay Area Blending Project. Couched in rhetoric of advancing regionalism for water quality, CalFED (apparently with East Bay Municipal Utilities District's [EBMUD] enthusiastic support) proposes to blend the

The CalFED program is about making more reliable the current state-wide water system for shunting water from north to south; to the extent the system faces fewer ecological and legal conflicts, more water will be available to all future water users.

supplies of EBMUD, Contra Costa Water District, Alameda County Water District and Zone 7, and the San Francisco Water Department's (SFWD) Hetch Hetchy project. EBMUD and SFWD already get high quality Sierra water, while the other agencies receive lower quality water from the Delta. The sales pitch — better water quality for the East and South Bays.

Barry Nelson, a policy analyst with Natural Resources Defense Council in San Francisco, thinks blending is a workable regional strategy for water quality improvements. At a Water Education Foundation (WEF) meeting in Sacramento in July, he acknowledged that "it's very hard to get cooperation on this in the Bay Area." He obliquely suggests that the state consider creating a "metropolitan water district" for northern California, saying it is "something there really worth thinking about."¹

Why Peninsula and existing East Bay MUD customers might accept blending or state imposition of a region-wide water district is beyond comprehension. This proposal signals the national green groups' distrust of democracy in water issues. Instead, isn't the answer to the Delta water users' quality problems to improve Delta water quality upstream where it's first used, both north and south?

Wait, there's more.

- Together with the Bay Area Blending Project, the

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Reframing CalFED

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CalFED Water Transfers Program will create momentum to plan and construct a network of new canals that will compete with CalTrans' latticework road system on the maps of the Bay Area, the San Joaquin Valley, and the Mojave Desert. These new canals will harness groundwater aquifers (as "conjunctive use projects") to urban spigots to facilitate the creative destruction of a California-wide water market.

I'm not making this stuff up; it's in the Framework for Action.

What you won't see in the Framework is a public discussion of whether it is legal to create and operate a water market using all these public facilities. Since California's citizenry owns all the water here, how can those who hold only rights to water use legitimately profit from selling water? How can they sell what is not theirs?

As framed by CalFED, water will be mobilized as a commodity as never before in California. Keeping track of the public's top resource will be more difficult than ever, because, we should remember, water in California flows uphill to money rather than downhill to the sea.

- In the gee-whiz world of CalFED's Framework, even fish will have to have their water purchased for them through the new Environmental Water Account (EWA) if they hope to thrive. The Framework acknowledges water for fish provided by regulatory actions under the hated federal Endangered Species Act, but since these flows are not

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sufficient for restoring the battered fisheries, the EWA will be established to provide taxpayer dollars to buy water from the SWP and the CVP to get water to fish when they need it.

But the EWA is a corporate welfare program masquerading as environmental policy; agribusinesses, developers, and cities strenuously resist giving up any captured water to the state and federal Endangered Species Acts as somehow a taking of property (in the cases of agribusinesses and developers), and demand compensation for water "wasting" to the environment, even though their appropriation of water from the state's rivers is the main cause of fishery declines.

The Framework contains proposals which environmental-

ists of all hues have long rejected: increased water project pumping from the Delta, new dam projects, and canals. But they believe they will get unprecedented commitments to water conservation and efficiency measures, restoration of aquatic ecosystems, and water quality in return for their deal-making acumen.

But by agreeing to participate in the CalFED process — the mother of all environmental planning processes in

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California — the "stakeholder" environmental groups may have compromised away their commitments to oppose new dams and canals here in California, their tepid protests to the contrary notwithstanding.

"I wouldn't be the executive director of Friends of the River if I didn't say this," said Betsy Reifsnider at the WEF July confab in Sacramento, "but we don't want more dams. It's ironic that solving the Bay-Delta's problems caused by dams and canals can be solved by building more dams. Nailing down their operations will be key."² The tacit admission: sorry, folks, we're letting them have more dams, enlarged dams.

By allowing water supply reliability and ecosystem restoration to define CalFED's overriding purposes, the stakeholder greens (the Bay Institute of San Francisco, Environmental Defense, Natural Resources Defense Council, Save San Francisco Bay Association, and the Nature Conservancy, the most prominent among them) missed an historic opportunity to yoke urban growth and sprawl to the limits of water supply constraints here, for at least another generation. The CalFED Framework refuses to use water to limit growth of the state's sprawling cities; such a policy is politically out-of-bounds for the state's elites. It is also ecologically irresponsible in arid California.

Moreover, CalFED framers admitted as much in public remarks. Steve Ritchie, then acting CalFED executive director, told the WEF meeting in Sacramento, "People ask me if this plan will meet the needs of the 15 million people moving to California, to which I say, 'No.' But we must do

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Doctrine when it approved the Bennett/Cahn diversion and storage reservoir.²

Defending the Navarro's endangered salmon from the hoard of "liberal" vanity vineyard developers has not been at all easy. It is a battle — everywhere on the north coast of California — requiring us to marshal our weapons of law and science.

The Navarro River and its salmonids were almost fatally betrayed, but for efforts by one woman — Dr. Hillary Adams — to hold the line, keep people involved, and defend the Navarro River, at times singlehandedly, for nine long years.

Her unwillingness to surrender or compromise will save the Navarro River, its salmon spawning tributaries, and such salmonids that remain to spark future generations. Latecomer reinforcements such as myself, others filing protests, National Marine Fisheries Service (NMFS), and the heavy artillery from the state's science community would have nothing on the Navarro to fight with now, but for Dr. Adams' persistence.

The survival of all of the northern California endangered salmonids depends, in part, on the particular issues on the Navarro River addressed in this lawsuit.

Diversions Endangering Salmon

The Navarro River is a long-time favorite of steelhead anglers. The river's mainstem and major tributaries traverse some 50 miles from its headwaters near Ukiah, through Anderson Valley and the small towns of Yorkville, Boonville, and Philo on its way to sea 15 miles south of the coast town of Mendocino. The 323 square-mile Navarro watershed is home to about 3,500 people.

Since 1992 oak rangeland in the Navarro watershed has been rapidly logged and converted to water-intensive wine grape vineyards.

Logging impacts — such as tree canopy removal (removing shade, raising water temperatures) and sediment filled pools (gumming up spawning areas, degrading water quality) — are key reasons salmonid populations dwindled. But still the fish hung on, at least until their water began disappearing into and onto grapes.

Where the Navarro meets the sea just beyond California Highway 1, a sand bar blocks its mouth for increasingly longer periods. Lacking sufficient flows to break through, ocean salt water gets trapped in the estuary behind it. Heavy salt water sinks to the bottom, forming a lens that intensifies the sun's heat. Many swimmers three or four miles up river now experience this phenomenon: the deeper water pools,

cool on the top, are feverishly hot on the bottom.

The Navarro's deep pools were once instinctive cold water homes to migrating salmon. To survive, salmon must now swim for long periods in the cooler strata near the surface where they are easier targets for predators.

Instream gauge records and first hand observation clearly indicate the Navarro and its tributaries are over-appropriated due to a combination of unregistered riparian water owners,

Owning riparian rights does not confer the right to take or pollute all the water, or otherwise harm public trust resources downstream.

too much water granted to licence/permit holders, and the nonpermitted diverters who are illegally drafting water.

"If you fly over the valley in an airplane, you can see all of the check dams tucked in the little feeder creeks" of the Anderson Valley, Friends of Navarro's Diane Paget told the *San Francisco Chronicle* in November 1992. "There isn't any regulation of the watershed, and we think there should be."

Several Navarro species are endangered now, according to the federal government, primarily coho and steelhead salmon, but there are three listed frog species as well.³ Each has been decimated by the legal and illegal water diversions in summer and winter in the Navarro watershed. Salmon are a "keystone species," meaning their decline triggers cascading declines of many of the ecosystem's major food chains (for 137 known species).

The Navarro's Public Trust

Owners of land along streams in California also possess water rights to flows on or passing through their land under what is called a "riparian appropriation." To establish who is first in line for riparian water and how to divvie it up, DWR requires land owners wishing to divert water to file a Statement of Diversion. In some cases, diversions can be regulated through a license or permit.

Once an owner perfects the riparian right to divert water, actual diversions seldom go immediately from the stream to the spigot or crop; they must be stored. Landowners build reservoirs and ponds to hold the water for later use. These structures might be built on or off a stream channel, and are subject to regulation by DWR.

But owning riparian water rights does not confer the right

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to take or pollute all the water, or otherwise harm public trust resources downstream.

Yet DWR never considered public trust resources (fisheries, riparian access, for example) when it granted licenses and permits in the Navarro watershed, even though Anderson Creek was listed way back in 1967 as a fully appropriated stream from August 1 to September 30. DWR ignored the cumulative impact on salmonids of approving all the new water diversions on Navarro tributaries. And the illegal ones didn't seem to be on the agency's radar.

Moreover, until 1998 DWR did not even know how many licences or permits it had granted in the Navarro watershed.

Forcing DWR to determine the exact diversion situation was the first step of the Navarro Coalition.

On August 26, 1994, Stephan Volker, attorney for the Navarro Coalition filed a formal "Complaint and Petition" with the SWRCB. Under the California Water Code and CEQA, the Coalition requested that SWRCB:

- identify and take enforcement action against illegal diverters from the Navarro River and its tributaries;
- declare the Navarro River and its tributaries over-appropriated;

Until 1998 DWR did not even know how many licences or permits it had granted in the Navarro watershed.

- assure adequate stream flows bypassing storage to benefit fish; and
- adjudication of the instream water flows necessary to protect public trust resources (in which a court of law or SWRCB decides who gets how much water).

Navarro Sold Out

The California Water Code enables California citizens to file formal protests on applications for water diversions or storage. Friends of Navarro (and others) began "exhausting administrative remedies" under the Water Code in order to have later standing to sue (or as was later revealed, to create the illusion one might sue).⁴

The first water permit applicants, Scharffenberger, Hahn, Bennett/Cahn, Oswald and Savoy — "the Navarro 5" — were all vineyard owners. In the early 90s, there were a handful of similar water applications in line behind the

Navarro 5.

Separate from the Navarro groups, Hillary Adams and North Greenwood Community Association (located near the Navarro coastal estuary) also filed formal protests with DWR.

The California Department of Fish and Game (DFG) also complained to DWR over dewatering and illegal diversions and further protested the Navarro 5 applications.

Meanwhile, DWR was poised to approve the Navarro 5 water diversion/storage applications (existing illegal and

Volker advised the Navarro Coalition in late 1994: "Now is the time to sue."

proposed new), with almost zero environmental review and no review of either licensed or non-permitted diversions.⁵

Then-California water rights czar, DWR Chief Ed Anton responded in late 1994 to local protests and one from DFG by proposing "special" conditions for the Navarro 5 and all other water diversion/storage applications in the Navarro watershed. DWR also contacted Navarro water users asking that diverters voluntarily "take all reasonable steps to maintain stream flow during the course of any diversion in order to protect fishery resources."

Anton also pledged to "hold informal meetings in the area," stating, "It has been our experience that most effective solutions are produced through voluntary measures at the local level."

Attorney Volker (and dissident DWR staff) warned Friends of Navarro that SWRCB would continue to conduct "business as usual" (that is, illegal diversions would continue and water permits would be granted with no environmental review).

Volker advised the Navarro Coalition, also in late 1994: "Now is the time to sue."

But suddenly the Navarro Coalition was sold out by Friends of Navarro — through an old developer trick — due either to ignorance or deliberate intent, or perhaps both, but sold out just the same. It is a very old developer scheme: propose a much larger project than can be legitimately approved, then scale it down to appear contrite (while gaining media sympathy) for what was intended in the first place. The trick worked effectively in provincial Anderson Valley.

The first of the Navarro 5, the 1990 Scharffenberger Cellars diversion/storage applications proposed three

offstream reservoirs to store 180 acre-feet (an acre-foot is about 326,000 gallons) for irrigation and frost protection for 200 acres of wine grapes located 3/4 of a mile north of Philo. Water for this application would come from an unnamed stream feeding the Navarro.

Scharffenberger also proposed diverting 3 cfs (cubic feet per second) from Indian Creek for frost protection of his grapes.

(To give 3 cfs some context, the City of Fort Bragg pumps 2.7 cfs — up to 1.7 million gallons per day — from the Noyo River through a 10-inch pipe to supply water needs 6,000 residents and businesses.)

Scharffenberger withdrew his Indian Creek application for 3 cfs in 1992, when Connie Best of the Anderson Valley Land Trust negotiated from him a donation of water and development rights along a 3,000-foot stretch of Indian Creek to her Anderson Valley Land Trust. This grand compromise was paraded around the Anderson Valley to portray Scharffenberger (and other vineyards owners inclined to follow in his footsteps) as a concerned “steward of resources.”

But the 3 cfs application was bogus. DFG had already protested a 0.33 cfs diversion from Indian Creek in 1965, because it is an important steelhead spawning and nursery stream. Had Scharffenberger’s 3 cfs riparian diversion

“If you fly over the valley in an airplane, you can see all of the check dams tucked in the little feeder creeks” of the Anderson Valley, Friends of Navarro’s Diane Paget told the *San Francisco Chronicle*. “There isn’t any regulation of the watershed, and we think there should be.”

proceeded with DWR, DFG and State Parks would oppose it, resulting in denial by DWR, or likely defeat in court.

In Anton’s “special conditions” in late 1994, no water could be drafted from the unnamed tributary if the flow in the Navarro River measured less than 200 cfs; that the diversion would be limited to 2 cfs between November 15 and April 15; and a record of the diversion amount after it occurred would be filed with DWR.

Scharffenberger cut out one reservoir, dropping his storage capacity by half to 90 ac-ft. (He has since applied for more reservoirs and diversions in 1999, however.)

Based on DWR’s flimsy environmental review, Friends of the Navarro (Paget, Hall and Dutra) concluded refill of reservoirs only in the winter was an environmentally sound “solution” to what they narrowly saw as the only problem in the Navarro watershed — diversions during the summer and fall low flows, ignoring the fact that salmonids normally spawn upstream in the winter time.

Still, Diane Paget went to all those who had filed protests on the Scharffenberger application and convinced most to withdraw them.

Members of the Navarro Coalition who clearly understood the need for winter flows for salmonids spawning — but had not themselves protested to DWR — were not only

Propose a much larger project than can be legitimately approved, then scale it down to appear contrite (while gaining media sympathy) for what was intended in the first place.

not consulted by Friends of Navarro, they felt hoodwinked. These groups lent their names and reputations to Friends of Navarro to give the smaller, mostly unknown group some statewide clout before DWR, some support in their community, and help in obtaining a nationally-recognized powerful environmental attorney’s services.

In return, the Coalition expected that Friends of Navarro would be, at the very least, moderately responsible and forthright. They were not. Nor did they pay attorney Volker for his work.

DWR approved the Scharffenberger application in early 1995. This was a serious turning point. Friends of Navarro became hostile and secretive. Navarro Coalition members wondered: How could any environmentalist buy Anton’s winter water special conditions? Without scientific review, how could one know that drafting 2 cfs between November and April did not place all winter water in the unnamed tributary into Scharffenberger’s reservoirs? What about steelhead spawning downstream?

Opening for Vineyards

And when Anton saw how easily the Friends of Navarro “opposition” collapsed on the Scharffenberger permit, and with stalking horse Connie Best portraying vineyard owners as reasonable compromisers, he thwarted the Navarro

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Navarro River

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Coalition's 1994 complaint by further delaying the Water Board's answering it.

Vineyard owners saw their opening to cut more oak trees, plant more grapes, and install more illegal storage ponds. Withdrawal of Scharffenberger protests in the Friends of Navarro sell-out campaign, and approval of Scharffenberger's application guaranteed more water could be claimed for grapes by the time after-the-fact water applications came up for DWR review.

How many other reservoirs there were, DWR still did not know. But Dr. Adams re-doubled her efforts and Trout Unlimited's Stan Griffin started filing protests in 1995 on

Vineyard owners saw their opening to cut oak trees, plant more grapes, and install more illegal storage ponds.

Russian River tributaries to the south where vineyard development ran rampant in the 1990s.

Meanwhile, Anton's "special conditions" and the vineyard owners took some discrediting hits from these protests and needed support.

They got it from the Navarro Watershed Restoration Plan, which was drafted by the Navarro Watershed Advisory Group. One of the group's key members was Connie Best of the Anderson Valley Land Trust.^{6,7}

In the Plan's "Statement Supporting Winter Diversions" were Anton's proposed "special conditions" almost verbatim: the Watershed Advisory Group stated its support for "the efforts of [SWRCB] to facilitate permitting of ponds that meet certain requirements.... Location of ponds off-channel or on ephemeral channels where there is no impact to existing fisheries.... Water will be diverted and stored only between November 15 and April 15 and then only when discharge at the USGS Navarro River gauge is above 200 cubic feet per second."

Notice "existing" fisheries in the statement, not "historic." Meaning: if there aren't fish present now, or the fishery was completely destroyed by capturing all the water in an illegal reservoir, the vineyard owner is home free. Apparently, Connie Best's Restoration Plan never intends for the watershed's fishery restoration to occur.

NEXT ISSUE: Part 2, Marshalling science to save Navarro fisheries.

NOTES

1. This article is revised from Roanne Withers' "Last Chance for the Navarro," Anderson Valley Advertiser, July 19, 2000, pp. 1, 12.

2. In the revolutionary 1983 Mono Lake decision (National Audubon Society v. Superior Court (1983) 33 Cal. 3d 419) the Supreme Court ruled that public trust resources — fisheries, wildlife, and recreation — must be considered by DWR when granting appropriation permits for water from rivers and their water with fish and wildlife.

3. There are two federal Endangered Species Act (ESA)-listed frogs — the California Red-Legged Frog (*Rana aurora draytonii*), threatened (and a California Department of Fish and Game [DFG] species of concern); and the Foothill Yellow-Legged Frog (*Rana boylii*), species of concern (and also a DFG species of concern).

4. This larger group is called the "Navarro Coalition" here to make the important distinction between its activities and subsequent actions of some members of the local Anderson Valley environmental group, Friends of Navarro. The Navarro Coalition was composed of the Sierra Club, PCFFA, California Trout, Trout Unlimited, United Anglers, Friends of the River, and Mendocino Environmental Center.

5. Anton's actions catalyzed a mini-mutiny within DWR staff. He was publically charged through CalPEER (California Public Employees for Environmental Responsibility) that a memorandum he wrote ordered DWR staff to "ignore the California Environmental Quality Act (CEQA) and avoid written documentation of legal concerns," or else. Anton survived the charge until Gov. Davis took office, then was reassigned to a regional water quality control board. Nonetheless, Anton's horrible legacy lives on at DWR.

6. Grants were obtained by the Navarro River Watershed Advisory Group (which included Connie Best among its active members) from several governmental funding sources, including SWRCB. Several rounds of contentious meetings occurred on the watershed's environmental impact issues aside from water diversions.

7. There were many complaints at the time about the Plan's purview, its management, and methodology by its Advisory Group members, including what I can only characterize as bizarre limitations placed on some of the science it obtained (lack of peer review, for example). Most in the Advisory Group formally withdrew or simply quit attending meetings.

MWD Builds a Water Market

by Tim Strohane

As California lurches toward a water future where cutbacks and conservation could be the norm — even in wet years — corporate water speculators, free market-oriented environmental groups, the Metropolitan Water District of Southern California (MWD), and state leaders look for ways water speculators can profit from selling their water rights to thirsty urban areas in southern California.

Major water speculators in California now include Vidler Water Company (a La Jolla subsidiary of Canadian insurance company PICO Holding Co.), Western Water Company (based in Point Richmond), Azurix Corporation (an international subsidiary of energy giant Enron of Houston, Texas), and Cadiz, Inc. (in Santa Monica). These companies bet that a water transfers market will net them a tidy return. Two are highly visible in statewide politics.

Meanwhile:

- Hydrogeologists try to determine whether an underground water storage project can help southern California maintain its booming growth without further desiccating the arid Mojave desert; and
- MWD closely watches the meltdown of electric utility deregulation for lessons as it builds a water market for southern California.

Urban southern California is an ecological improbability made possible by MWD's investment in the technology of monumental water development.

The state has a solemn duty to protect water resources under the public trust doctrine, though it must be forced to every step of the way. Still, California case law shows that, “wherever the water goes, the public trust goes with it,” says Felix Smith, a retired fish and wildlife biologist and public trust advocate.

Two things are at stake: the role water marketing could play in helping southern California become less reliant on northern California water transfusions, and whether the public trust in water issues will be protected from unjust subsidies and ecologically destructive practices.

Reductions for MWD

Urban southern California is an ecological improbability made possible by MWD's investment in the technology of monumental water development.

Sixty years ago, MWD promised aspiring cities the district would “get you the water you need for development and growth” by annexing to MWD and buying water only from the district. This is how MWD became the dominant wholesaler of water in the southland, says former MWD board member Robert Gottlieb, director of Occidental College's Urban and Environmental Policy Center in Los Angeles.

“But that strategy doesn't hold any longer,” adds Gottlieb, because cheap subsidized water is no longer available, and because MWD is squeezed by endangered species restrictions (at Mono Lake and in the Bay-Delta) and competition for water as Nevada and Arizona's growing cities of Las Vegas, Tucson and Phoenix flex their economic muscles and take more of their entitlement from that river.¹

From the Colorado, MWD must reduce its annual diversions from 1.2 million acre-feet to 550,000 acre-feet by 2015.²

MWD also imports water to southern California from the vast but fragile Delta estuary where the San Joaquin and Sacramento Rivers join some 50 miles east of San Francisco. Delta water is successively lifted by pumps into the California Aqueduct which carries water over the Tehachapi range, a distance of 662 miles in all.

But what MWD does to establish a water market is probably as important as whatever makes it into CalFED's plan. Consider these facts about MWD:

- Currently MWD provides half of the drinking water to nearly 17 million people in parts of Los Angeles, Orange, San Diego, Riverside, San Bernardino, and Ventura counties, a 5,200 square mile jurisdiction. The south state's other supplies come from local wells, recycled water, and the Los Angeles Aqueduct importing water from the Owens Valley.
- Southern California's population is projected to grow to about 22.3 million people by 2020.
- MWD plans to increase its impressive conservation efforts yielding 62,000 acre-feet in savings, according to the District.³ (An acre-foot is roughly equal to 326,000 gallons.)
- MWD sits on vast cash reserves for a relatively local government agency. A state commission on government organization and economy places MWD's reserves at \$4

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billion; the District claims it has just \$900 million. Either way, it's real money for buying what it needs from a water market.⁴

If MWD stores more water south of the Tehachapis for use in dry years, the district could rely less on water from the Delta. This could help relieve pressure on endangered fish and other aquatic species there.

"Let's take water when we can" during heavy flows on the Colorado while the district still can, reasons Adan Ortega, assistant to MWD general manager Ronald Gastelum. "Then when we have disruptions — as with pumping cutbacks for the Delta smelt like we had last winter — or dry years," or when the cutbacks on the Colorado take effect, "we can take water from elsewhere.

"Local communities benefit because they have choices" in their sources of water within southern California, adds Ortega. "They increase southern California's water self-reliance, and the region is less dependent on northern California water."⁵ In dry years, that could mean more fresh water flowing to San Francisco Bay through the Sacramento-San Joaquin River Delta.

"The water market in Southern California is going to be driven by local communities looking for competitive choices," MWD general manager Ron Gastelum told a luncheon of investment bankers at Goldman, Sachs & Co. on Wall Street back in March. "These choices include water treatment technologies that improve water recycling and desalination, innovative conservation, cost-effective groundwater conjunctive use management strategies, and water transfers."⁶

Aquifer for Rent

These approaches all sound sensible, but to hear water speculators and Environmental Defense tell it, MWD and other agencies that own canals and pipelines are paleozoic, hidebound. Skeptical of MWD's environmental record, Tom Graff, senior attorney at the Oakland office of Environmental Defense, has enjoyed a long career advocating water markets while criticizing subsidized water for agribusiness. He says the new private water companies "will be more sensitive to environmental aspects of what they're doing than public agencies have been."⁷

But a groundwater project in the Mojave Desert involving MWD and Cadiz, Inc., belies his claim.

Proposed in 1998, MWD plans to rent a groundwater aquifer — geologic deposits capable of holding water in tiny pore spaces between rock grains underground — belonging

to Cadiz, Inc. in the eastern Mojave desert. California's department of water resources estimates the state has an average capacity of about 12 million acre-feet, nearly three times the volume of water the State Water Project can deliver.

Like great earthen sponges, aquifers store tremendous amounts of water. The larger the pores between rock grains in an aquifer, the faster water percolates in ("recharge"), or can be pumped out.

MWD plans to store Colorado River flood waters underground there in wet years. A 35-mile-long pipeline would be constructed from MWD's Colorado River Aqueduct to ponds where the water would percolate into Cadiz's aquifer.

During dry years, MWD would pay Cadiz to deliver the stored water to MWD and its urban customers. This approach of wet-year storage for dry-year use is called "conjunctive use" by water experts.

"The Cadiz project," says Ortega, "is part transfer and part storage project," because a private property owner will be paid to provide storage space for public water supplies.⁸

MWD and Cadiz agreed on a price of \$230 per acre-foot, and water deliveries could amount to 145,000 acre-feet per year.⁹ Cadiz's water sales to MWD could reach over \$33 million a year from this property alone.

Threat of Overdraft

But the project hit a snag last winter. Its environmental feasibility depends on pumping groundwater sustainably.

If wells, like huge straws inserted into the earthen sponge, are pumped too quickly, or water is absent too long without adequate recharge (a condition called "overdraft"), the empty pores can collapse under the weight of overlying land. Ground levels can subside (sink), damaging property — and the aquifer — permanently. In the San Joaquin Valley, some lands dropped 30 feet from sustained heavy irrigation pumping.

For the Cadiz project to be economically feasible, MWD and Cadiz believe the district needs to pump naturally existing aquifer water as well as its Colorado River reserve.

However, US Geological Survey (USGS) hydrologists warned last February that there isn't enough water in the eastern Mojave to do what MWD and Cadiz proposed. The project's environmental impact report (EIR) overestimated actual recharge to the aquifer by 5 to 25 times, fundamentally undermining the EIR's adequacy.¹⁰ Experts for San Bernardino County, where the MWD-Cadiz project is located, agreed.¹¹

The National Park Service owns and manages Mojave

National Scenic Preserve northeast of the Cadiz project site. Within the Preserve, the Fenner Valley aquifer receives groundwater recharge from snowmelt and rainfall in the Providence Mountains, joining the Cadiz aquifer 10 miles to the south.

“We’re trying to help them [MWD] design a project that will guarantee no impacts to water resources in the Mojave Preserve, or any springs in any wilderness area” adjacent to the Preserve, says Chris Stubbs of the National Park Service in Barstow.

Even at sustainable pumping levels, temporary dewatering of soils could still damage or kill vegetation and lead to severe dust storms in the Mojave preserve.¹² Prevailing winds in the area blow in the Preserve’s direction 20 percent of the time, according to the EIR. “The question is,

Tom Graff, senior attorney at Environmental Defense of Oakland, says the new private water companies “will be more sensitive to environmental aspects of what they’re doing than public agencies have been.”

how much water can you drain and not harm natural resources so that it has no impacts on air quality too?” adds Stubbs.

“There is a gap between when the water is taken out and when it goes back in,” says Desert Survivor’s Bob Ellis. “The key is how long that gap is.”¹³ These impacts are unacceptable to the Park Service, Desert Survivor, and Preserve visitors, Stubbs and Ellis agree.

Desert tortoise habitat and scenic desert vistas would be disrupted by from construction activities and power line installation on unnecessary new rights of way, says Ellis.

A Very Big “If”

With the County and federal resource agencies collaborating, MWD and Cadiz, Inc. draft a new groundwater monitoring and management program as part of a new environmental impact report on the Cadiz project planned for this fall.

To its credit, MWD acknowledges the project’s potentially fatal flaws. MWD hopes its new groundwater monitoring and management plan will make the project feasible and sustainable, says MWD senior deputy general counsel Jeff Kightlinger, adding, “if the project moves forward.”¹⁴

That represents a very big “if.” *A Los Angeles Times*

article in April reported that Cadiz is shopping its Mojave project to Azurix. Cadiz, refused comment on this “speculation.”¹⁵

Selling Water Rights

California’s citizens own all the water here; the state of California manages and regulates it in trust for all its citizens. But the state confers legal property rights to “beneficial use” of water, known as “water rights.” These rights to beneficial use are believed by many, including the state legislature, to be “transferable,” enabling Californians to talk of buying and selling water rights in a statewide market.

But under a 1990 public trust court decision on fisheries, notes Felix Smith, “the public is never to lose its power to question the beneficial uses of water.”¹⁶

Private water speculators see themselves bravely risking investment capital acquiring strategic water rights for thirsty urban water agencies, promising investors they’ll reap big dividends, someday when drought returns.

But they lack canals and aqueducts — most of which are owned by public agencies for the people of California — needed to transport water to their new customers. For a water speculator to sell its water to a buyer in southern California, the company must arrange for the water to be “wheeled” or transported through, perhaps, the California Aqueduct, the Colorado River Aqueduct, or other canals.

A 1986 state law requires public agencies to let private interests use “excess capacity” in canals and aqueducts to wheel privately sold water — as long as the agencies receive “fair compensation.”¹⁷

But what “fair compensation” means is controversial because of the technology and economics of water.

Making the “Mortgage”

“There are similarities to the telephone and power industries” with the water industry, says Steve Arakawa, head of MWD’s water resource management group. “With electrical power, there’s a grid that interconnects. The phone system has a network of lines. But for water, there are a limited number of canals. That limits the options you have of one party delivering water to another.”¹⁸

Water projects are typically financed long-term by water districts with bonds. When tax payers authorize issuance of bonds, they authorize the state to borrow large sums of money from private investors.

Water agencies make regular interest payments to bond holders who hold the “mortgage” on their projects. To avoid

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arrears, agencies must charge fees to all its usual customers — even in dry years when available water is reduced — to cover the cost of paying off the bonds when they mature.

In 1998, Western Water Company sold 1,000 acre-feet to the Santa Margarita Water District in south Orange County. From its private storage near Bakersfield, Western's water sluiced through the State Water Project, into MWD's system, to Orange County's water district before reaching the Santa Margarita Water District.

Western lost \$110,000 on the deal in part because of "conveyance fees."¹⁹

Speculators claim they cannot make a profit paying both transport and bond costs. "This is about a monopoly raising a barrier to protect itself from competition and to prevent its customers from gaining an advantage in the marketplace,"

"The Cadiz project," says Ortega, "is part transfer and part storage project," because a private property owner will be paid to provide storage space for public water supplies.

declares Michael Patrick George, president of Western Water Company, which owns water rights on the Yuba River that it plans to sell in a water market.²⁰

"I'm always happy to pay full, fair compensation for use of facilities," says George. "However, don't ask me to pay for an entire system that I don't get benefits from."

Western sued MWD over the fees and won at superior court in San Francisco. But on appeal that decision was overturned: the appeals court found that "mortgage costs" on water projects can be included in the fees MWD charges to wheel water through its system. The case may yet reach the state Supreme Court.

"What they want is to be able to get a cheaper ride on the system than anybody else — so that they can make a greater profit or pay more to farmers for their water," says MWD general manager Gastelum.²¹ MWD sells about 1.9 million acre-feet of water annually to its water district customers throughout coastal southern California.

MWD's claim to avoid speculator subsidies is "a fair request," says Brent Haddad, professor of environmental studies at the University of California, Santa Cruz and author of *Rivers of Gold: Designing Markets to Allocate Water in California*.²²

Robert Gottlieb (the ex-MWD board member) agrees, saying, "You've got to have community and public trust principles shaping how water markets work."²³

Meanwhile, Western's losses mount. Worth \$23 a share in 1996, Western's stock price now flounders at pennies a share at the beginning of September, according to CBS MarketWatch.

To bail itself out, Western turned to state senator Don Perata (D-Oakland) who sponsors Senate Bill 1973, a bill to shift the power to set water transfer "wheeling" rates for the MWD system and the California Aqueduct to the state's Public Utilities Commission from public canal and aqueduct owners.

Environmental Defense, the Natural Resources Defense Council, and the Environmental Water Caucus support subsidized wheeling of speculators' water, while MWD and other water utilities oppose Perata's bill. The bill passed the state Senate in May, but stalled in the Assembly this session.

Shed no tears for water speculators, however; they have other opportunities. MWD has received 16 proposals for dry-year water transfers through the California Aqueduct, among them proposals from Azurix, Cadiz, and Vidler. Were MWD to agree to each proposal, the district could have available upwards of 600,000 acre-feet of additional water in dry years.

Coming soon: MWD solicits bids for water from along the California Aqueduct.

NOTES

1. Robert Gottlieb, personal communication, 9 June 2000.
2. Under the latest multi-state plan for the Colorado, southern California will have 15 years to reduce its diversions from the over-committed river. Don Thompson, "New Colorado River pact hinges on California cuts," *Contra Costa Times*, May 25, 2000.
3. Metropolitan Water District of Southern California, Fact Sheet, May 2000. For example, MWD replaced 1.7 million water-wasting toilets since 1988 at a cost of \$220 million.
4. Nancy Vogel, "Special districts hoarding money, watchdog says," *Sacramento Bee* 4 May 2000.
5. Adan Ortega, personal communication, 19 May 2000.
6. Metropolitan Water District Press Release, "Metropolitan General Manager Defines Competitive Southland Water Market in Wall Street Address," 6 March 2000; and Gastelum's talking points faxed to me from Marion Mackenzie Pyle, MWD Press Office, 24 May 2000.
7. Graff quoted in Noel Brinkerhoff, "Water Marketing: Let's make a deal," *California Journal*, August 1999. Article reproduced at Western Water Company's web site, <http://www.wwtr.com/>
8. Ortega, personal communication, 19 May 2000.
9. Annual withdrawals from Table 5.5-2 of MWD and Bureau of Land Management's Cadiz Groundwater Storage and Dry-Year Water Supply Program EIR/S, SCH. No. 99021039,

November 1999, p. 5-89. Per acre-foot price obtained from Cadiz, Inc.'s 1999 10-K Report to the Securities and Exchange Commission, p. 3.

10. Memorandum from James F. Devine, Senior Advisor for Science Applications, U.S. Geological Survey, to Molly S. Brady, Field Manager, Bureau of Land Management, Needles, CA, "Review of the Cadiz Groundwater Storage and Dry-Year Supply Program Draft Environmental Planning Technical Report, Groundwater Resources, Volumes I and II," 23 February 2000. See also Marc Lifsher, "Scientists Criticize Water Plan," Wall Street Journal, 1 March 2000.

11. Letter to Jack Safely, Metropolitan Water District of Southern California, and James Williams, U.S. Bureau of Land Management from John Goss, Assistant County Administrator, San Bernardino County, California, "Comments on DEIR/DEIS for Cadiz Groundwater Storage and Dry-Year Water Supply Program," 7 March 2000, with attachments.

12. Chris Stubbs, National Park Service, Barstow, CA, personal communication, 19 May 2000.

13. Bob Ellis, Desert Survivor, personal communication, 19 May 2000.

14. Jeff Kightlinger, Metropolitan Water District of Southern California, personal communication, 19 May 2000.

15. Frank Clifford and Tony Perry, "Desert Water Entrepreneur Closely Tied to Governor," Los Angeles Times 16 April 2000.

16. Felix Smith, personal communication, 12 June 2000. The 1990 decision is CalTrout II (California Trout, Inc., et al, v. Superior Court of Sacramento County, 218 Cal. App 3d 187; 266 Cal. Rptr 788.)

17. California Water Code sections 1810 through 1814 make up the "wheeling statutes."

18. Arakawa quoted on MWD's web page on water marketing at <http://www.mwd.dst.ca.us/>

19. Narrative of Western Water's plight can be found at <http://www.mwd.dst.ca.us/>, searching for water marketing.

20. Quoted in Marc Lifsher, "Water Fight May Decide Pipeline Uses," Wall Street Journal, 7 April 1999.

21. Gastelum quoted in Tony Perry, "Appeals Court Ruling a Victory for MWD," Los Angeles Times 31 May 2000.

22. Haddad quoted in Tony Perry, "Bill Would Strip MWD of Some Rate Control," Los Angeles Times 24 April 2000.

23. Gottlieb, personal communication, 9 June 2000.

Reframing CalFED

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what's in the Plan to have a prayer of meeting their needs."³

Hardly a ringing endorsement for the CalFED plan, four years in the making. However, Ritchie's remarks acknowledge that forces larger than CalFED, indeed larger than the federal government, are responsible for the flaws in CalFED's planning efforts.

The confluence of forces is, of course, economic growth: growth of California's diversified and powerful corporate capitalist economy, drawing forth its polyglot population, its demands on nature in California, its traffic congestion, its frightening real estate values.

In the process, environmentalists agreed to give up less sexy or visible ecosystems (such as the Sites' location for a giant reservoir in the Sacramento Valley) for the hydraulically critical Bay-Delta ecosystem, all in the name of restoring and protecting the Bay-Delta's sustainability.

Sustainability of what, and for whom?

To whose water supply reliability does CalFED refer? The CalFED stakeholders' faith in water market transfers should make every rural county board of supervisors worried, because their residents' wells may no longer be a sure thing, as Madera County farmers are fast learning from multinational Azurix Corporation's proposed Madera Ranch water transfer/conjunctive use project. Interest in adopting protective groundwater management ordinances has dramatically increased in rural and Central Valley counties where groundwater regulation was once anathema.

Much of CalFED's June compromise points to this event being the nadir of the visions of California's overly admired branch offices of national environmental organizations. By hitching their fortunes to neoliberal Democratic Party free-

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Reframing CalFED

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market policies, by backing away from the economic and political implications of their environmental agenda, by acting on a misty-eyed belief that nature and corporate capitalist economics can mutually thrive — California's big

In the gee-whiz world of CalFED's Framework, fish will have to have their water purchased for them.

green stakeholders are complicit in fostering CalFED policies that will retool the state's water industry so that California capitalism (a key region of power, wealth, and sociotechnical prowess for corporate globalization) can continue its destructive expansion.

At the same time, and this is not a contradictory point, these groups' commitment to science-driven ecosystem restoration and water marketing strategies, rather than

developing an ecological and agricultural vision aiming at a more humane and well-developed rural California, could create lasting fuel for anti-green political backlash for years to come.

CalFED, the governor, the attorneys general (California and U.S.), the Solicitor General of the Department of the Interior, the Resources Agency — they've all abdicated the state's public trust responsibility to protect California's water and fisheries. If the water system is to protect the water we each own and the public trust resources we need and enjoy, then it appears Californians will have to force their leaders to do so.

NOTES

1. Barry Nelson, *Natural Resources Defense Council, remarks before the Water Education Foundation on CalFED Bay-Delta Program's Framework for Action, Sacramento, California, 24 July 2000.*
2. Betsy Reifsnider, *Executive Director of Friends of the River, ibid.*
3. Steve Ritchie, *Acting Director, CalFED Bay-Delta Program, ibid. Since then, Ritchie tendered his resignation, effective this November.*

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