CHAPTER 8
Water Policy

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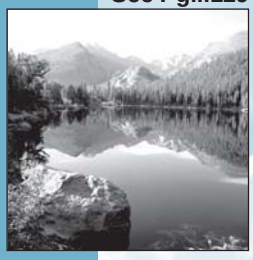

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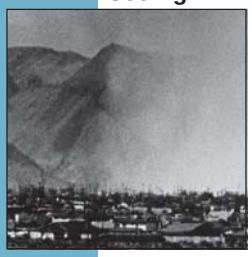

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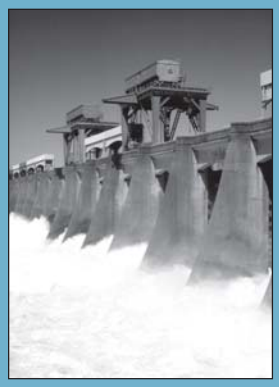

Thomas L. Taylor

CEQA Redefines California WATER LAW

By Antonio Rossmann

The State Constitution and Water Code declare that California's water is a public resource to be dedicated to public use. For more than a century, however, California water law was defined by private parties litigating their competing proprietary claims in one-dimensional judicial contests. Often the courts would eloquently introduce public policy concerns into their resolution of these private disputes, but more often maximum "development" of the resource formed the guiding judicial criterion. Even our magnificent constitutional mandate for "reasonable use" and "conservation" originated to promote more appropriation of water resources to private interests for accompanying economic expansion.

Enactment of CEQA enabled California water law to break free of its proprietary shackles, and, for the first time, allowed environmental considerations to influence and even determine water allocations. This history began in 1972 when Inyo County, owning no water rights and burdened by Los Angeles' ownership of virtually the entire Owens Valley floor, engaged CEQA to challenge Los Angeles' assertion of its "legally-protected" ownership of groundwater rights (see pg. 127).

The city's water bureaucracy gave short shrift to the high desert valley whose government and citizens owned no water rights—after all, Los Angeles had bought out the valley deliberately to eliminate competing claimants. But the Sacramento Court of Appeal found in CEQA the means to force environmental accountability on the Department of Water and Power—and ultimately replace a single owner's control with joint management of the Owens Valley water by both Inyo and Los Angeles. A young environmental law essentially reversed the outcome of the West's most celebrated water war.

The latest and equally dramatic chapter in CEQA's history is being written by our own Planning and Conservation League, again asserting only an environmental public interest to challenge the proprietary prerogative of the holders of entitlement to the State Water Project. In its 1995 CEQA case against the Department of Water Resources (DWR) and the principal state water contractors (see pg. 121 and 123), PCL was motivated by its exclusion and that of other members of the public from the contractors' secret negotiations to restructure the water project that belongs to the people of California. Representatives of the public were excluded because they technically did not have a contractual right to the water.

What began as a modest CEQA challenge to DWR's failure to write the Environmental Impact Report (EIR) on its own project was transformed by

the Sacramento Court of Appeal in 2000 into the first authoritative declaration that the State would have to live within a water project only half that promoted, and a mandate to employ realistic assessments of water availability in land use decisions. Buoyed by the court's courageous declaration of reality, the Legislature responded with mandates that henceforth all major land-use decisions be preceded by proof of reliable water availability.

But CEQA's influence on our water resources has not only resulted from contested cases. As our state and local governments have discovered long ago, CEQA can become a powerful engine of advocacy for public initiatives to improve the environment. My favorite example is Mono Lake—not the celebrated public trust case decided by the Supreme Court in 1983, but the far-less-publicized 1994 decision of the State Water Board to enter the orders that actually put water back into the lake (see pg. 125). What made

Enactment of CEQA enabled California water law to break free of its proprietary shackles.

that decision possible, in both process and substance, was the transparent preparation of an exemplary EIR by the State Water Board staff. The process brought all interested parties to the table and to the hearing room; the substance answered the hard technical questions of how to fulfill the Supreme Court's mandate for a decision that protected the lake and its wildlife while also accounting for the legitimate needs of Los Angeles water consumers.

As CEQA now enters its middle age, its qualifications to frame and influence the governance of our water resources are well-established. Given that existing fresh water resources have been rededicated to their natural use to protect the environments of the Delta, Mono Lake, and Owens Valley, while population continues to grow, CEQA must now rise to a challenge as great as any in its first third of a century: guiding the State in redistributing our consumable supplies to urban demands while protecting our agricultural economy and rural culture and the environment. Employed by progressive leaders to shape the public regulation of this great reallocation, CEQA can secure the state's water future in the 21st century.

I invite you to read the CEQA stories that follow. You'll find examples of CEQA protecting our water supply and cleaning up polluted waters. Because of California's unique reliance on groundwater, we've included a special section on protecting the quantity and quality of this essential resource. Enjoy.

Antonio Rossmann has practiced CEQA law since the early 1970s, has taught at the University of California, Berkeley (Boalt Hall) and other California law schools since 1980, and has served on the PCL board for over twenty years. Mr. Rossmann served as special counsel for 21 years to Inyo County, addressing Owens Valley water issues, and as lead counsel for PCL in the PCL v. DWR *litigation.*

Norm Fiette

Kenneth Gates, USFWS

CEQA Protects Water Supply Reliability

By Roger B. Moore

The close and sometimes tortured relationship between water and land development has been a hallmark of California history since the state's inception. Yet until recently, the prevailing approach to that relationship was founded in a virtual secular faith in the ability of water to follow development wherever it may occur. Reinforcing that "Field of Dreams" approach to water supply reliability—"if you build it, the water will come"—the state's major water providers often responded with an unyielding optimism best captured by the familiar line from speeches of former Department of Water Resources Director Harvey Banks that "we must build now and ask questions later."

These declarations of faith helped shape much of California during the twentieth century. But they stood on a collision course with California's political, environmental, and hydrologic realities at the turn of the new millennium, which found the state's major water projects, many of its groundwater basins, and the Sacramento / San Joaquin Delta overextended and facing an unsustainable future. A series of challenges, ranging from the pressures of expanding population to the onset of climate change, have raised critical questions about the sustainable use of water and left the next generation of Californians with an urgent need to understand that which their forefathers simply assumed.

CEQA has been indispensable to recent efforts in California to move from faith-based development to an approach grounded in a more realistic appraisal of available water. Recent CEQA decisions and legislative changes have begun to usher in a new sense of realism about the reliability of water supplies. Once a footnote in CEQA jurisprudence, water supply reliability has now emerged as a central theme. Assessments of the water supply available to support development decisions are germane to a wide range of CEQA issues, including the assessment and mitigation of environmental impacts, the analysis of growth inducement, the framing of the "no project" and project alternatives, and the definition of the appropriate lead agency.

A handful of CEQA decisions in the late twentieth century foreshadowed the transition toward greater realism in assessments of water supporting land uses. Inadequate water supply assessments led courts to demand a more rigorous environmental review of projects ranging from a major Kern County development in the late 1970s to an Orange County mine in the 1980s. A mid-1990s court decision prevented Stanislaus County from approving a twenty-five year residential development project based upon present assessment of only just five years of water. In these CEQA cases, decision-makers were required to assess the environmental consequences of providing all water needed for the project, as well as the infrastructure needed to supply that water.

But even after California experienced prolonged drought in the late 1980s and early 1990s, the state's historic tendency to base development decisions on wishful thinking about water proved remarkably resilient. A dispute during the 1990s between the East Bay Municipal Utility District (EBMUD) and Contra Costa County over water supplies to support the controversial Dougherty Valley development project, although eventually settled, left little doubt that the reliability of California's water supplies closely related to statewide debates over sprawl and sustainable development. Researchers at EBMUD identified more than a hundred communities throughout California that had barely considered, or even ignored, water supply issues in approving new development.

These lingering questions, linking California's future in land and water, set the stage for the 2000 Sacramento appellate ruling in *Planning and Conservation League v. Department of Water Resources*

(DWR). After years of drought, Californians faced the grim reality that the State Water Project, which supplies some water to more than two-thirds of California's population, has historically been able to deliver only half or less of its total "entitlements" to water. Agricultural and urban water contractors disputed enforcement of the provision that would have required those entitlements to be brought in line with existing supplies based upon the system's long-term inability to meet full entitlement levels. Rather than making that adjustment, DWR met secretly with a select group of contractors in Monterey, California. The resulting "Monterey Agreement" gave rise to the most drastic contractual restructuring in the State Water Project's forty-five year history. Among other major contract revisions, it deleted the permanent shortage provision.

After five years of litigation, the *PCL* decision vindicated the role of CEQA in requiring responsible and accountable discussions of water reliability. The court affirmed that DWR, as CEQA "lead agency," must conduct the programmatic study of these amendments and could not delegate that task to a local agency. It also held that the permanent shortage provision could not be eliminated without DWR first studying the consequences of its enforcement. The court spoke bluntly about the "huge gap" between entitlements and existing supplies, connecting its holding to the risk of land-use planning decisions grounded in "paper water" rather than real, deliverable water. "Paper water," the court noted, was "always an illusion," steeped in the "unfulfilled dreams" of a water culture that had fostered an inflated expectation of what could be reliably delivered.

Three developments since the *PCL* decision have bolstered hope for a new era of water realism. First, the settlement agreement in the *PCL* case deletes the term "entitlement" from key contract provisions, requires new statewide programmatic study, and requires biennial DWR reliability reports. Second, courts following *PCL* have invoked CEQA against the approval of sprawl development north of Los Angeles due to faulty reliance upon "paper water." Lastly, key legislative reforms have tightened the required nexus between water supply and development approval. These include SB 221, which requires land use agencies to verify a "sufficient water supply" before approving subdivisions exceeding 500 units; and SB 610, which requires water utilities to prepare detailed water supply assessments supporting local land use agencies' CEQA documents, and strengthens the state's Urban Water Management Plan law. These improvements are hardly a panacea against the powerful currents that marginalized the role of water in land use decisions for more than a century. But taken together, they offer promise that California's development future, unlike its past, will no longer rest on articles of faith.

Roger B. Moore is a partner at Rossmann & Moore, LLP. Mr. Moore has represented public and non-profit entities in a wide variety of cases involving CEQA, water allocation, water quality, and environmental accountability, including the landmark "Monterey Amendments" litigation and negotiations framing a later settlement agreement.

Toward Collaborative Water Supply Planning: **SB 221**

By Randele Kanouse

Historically, collaboration has been the exception rather than the rule between California's water utilities and local planning departments, leading to unsubstantiated claims of available water and poor planning decisions. SB 221 begins to reverse this trend, ensuring that water utility and city and county planners emerge from their isolated bunkers and plan together to meet future water needs.

SB 221 modifies one of the most important areas of water supply policy, the approval process for new subdivision maps. It requires that city or county determinations regarding the sufficiency of water supplies to meet local growth needs must be based on evidence in the record and verified by the water utility. This statute makes the city or county a partner in integrating land use planning with water supply considerations, and ensures that the water utility and city/county closely collaborate in order to render the joint findings to support subdivision map approval.

The jury is still out on whether SB 221 has improved planning by changing the "bunker mentality." We hope it will usher in a new era of collaborative planning for California's scarce water supplies.

Randele Kanouse is Special Assistant to the General Manager of the East Bay Municipal Utility District.

Planning and Conservation League v. Department of Water Resources:

Putting a Stop to Paper Water

By Antonio Rossmann

The California State Water Project, approved in 1960, is one of the largest publicly-funded infrastructure projects in the world, diverting millions of gallons of water to the Bay Area, the San Joaquin Valley, the Tulare Basin, and metropolitan Southern California. It has been the focus of some of the most contentious and far-reaching water policy decisions in California.

The so-called "Monterey Amendments" to the 1960 State Water Project had been negotiated in secret in 1995 by the Department of Water Resources (DWR) and a handful of the most influential contractors.

In 2000, the Sacramento Court of Appeal set aside the Environmental Impact Report (EIR) prepared to justify the so-called "Monterey Amendments" to the 1960 State Water Project, which had been negotiated in secret in 1995 by the Department of Water Resources (DWR) and a handful of the most influential contractors. *PCL* not only led to reassessment of the State Water Project with the public and environmental community at the table, but laid the foundation for realistic water-to-land-use planning statewide.

The *PCL* decision condemned the failure of the EIR to recognize the reality that the State Water Project will not be built out as anticipated in 1960 and that, because of this, its "entitlements represent nothing more than hopes, expectations, water futures, or as the parties refer to them, 'paper water.'" Of equal importance, the court connected this error to the greater risk of statewide land-use decisions based on the false expectation that the State Water Project will ultimately deliver twice as much water; that land-use decisions would be based upon paper entitlements and not actual supplies.

PCL can be seen as signaling the passage of CEQA into the ranks of fully mature statutes that frame our modern legal culture, comparable to the

Norm Flette

Constructed as part of the State Water Project, the California Aqueduct runs 444 miles, stretching from the San Francisco Bay Delta to Lake Perris in Riverside County.

The Monterey Amendments, which proposed sweeping changes to the 1960 State Water Project contracts, were drafted behind closed doors. The EIR was conducted by a single local agency with no ability to analyze the dramatic, statewide implications of the Agreements.

The original contracts required proportional reductions in so-called water "entitlements" if the State became chronically unable to deliver originally-anticipated amounts. The Monterey Amendments eliminated this safety plan, promoting the illusion that the state could divert, on average, twice or more the level of historic deliveries from Northern California rivers.

The original contracts required the State to prioritize the water needs of urban populations during temporary shortages, cutting back first on agricultural deliveries. The Amendments eliminated this.

The Amendments also gave a state-owned groundwater storage facility to the largest agricultural water contractor. This facility had received $70 million in public funds.

In *PCL v. DWR*, the Court required the state to prepare a new EIR. Through CEQA, the public will be able to examine the reasoning behind proposed changes and suggest better ways for the state to plan for droughts, manage state-owned facilities, and protect California's water resources.

Written by PCLF Staff.

Norm Flette

The "Monterey Amendments" gave rise to the most drastic contractual restructuring in the State Water Project's (SWP) forty-five year history. Among its principles was the deletion of a key provision of SWP contracts which addressed permanent water shortages in the State Water Project, further obscuring the ecological limits of California's water resources.

securities acts or antitrust laws. In natural resources administration, *PCL* marks the end of paper dreams and the restoration of reality to water and land-use planning assumptions. As many editorials proclaimed in response to the decision, finally someone in authority spoke the unspeakable truth-that the State Water Project has reached its limit. The decision not only spares communities from unsustainable development; in the end it spares the watersheds and Delta from destructive demands backed by a population created on false expectations.

By its pragmatic and realistic assessment of the State Water Project through the lens of CEQA, the Court of Appeal provoked an historic restructuring of that project and empowered a competent but historically disenfranchised public. Under a comprehensive settlement hammered out with DWR after more than two years of negotiation, the state water contracts have been amended to eliminate the misnomer "entitlement" and to require empirically-based assessments of project reliability. A "Monterey Plus" EIR is being prepared by DWR with PCL and others as advisors, which will attempt to determine how the project can be operated to improve the environment statewide.

The *PCL v. DWR* decision can be seen as signaling the passage of CEQA into the ranks of fully mature statutes that frame our modern legal culture, comparable to the securities acts or antitrust laws.

Antonio Rossmann has practiced CEQA law since the early 1970s, has taught at the University of California, Berkeley (Boalt Hall) and other California law schools since 1980, and has served on the PCL board for over twenty years. Mr. Rossmann served as lead counsel for PCL in the PCL v. DWR *litigation.*

Land Use Decisions after *PCL v. DWR*:

SCOPE & NEWHALL RANCH

By Lynne Plambeck

Months after the appellate ruling in *PCL v. DWR*, the Santa Clarita Organization for Planning the Environment (SCOPE) challenged Los Angeles County's review and approval of the Newhall Land and Farming Company's West Creek project, an extensive residential and commercial development proposed for the Santa Clarita Valley. A 2003 appellate ruling agreed with SCOPE that the Environmental Impact Report's (EIR) water supply assessment failed to satisfy CEQA because it relied heavily upon paper "entitlements" in calculating the total available water supply, and disregarded the inability of State Water Project facilities to deliver that amount.

The decision closely followed the reasoning of *PCL v. DWR*, concluding that "[t]he dream of water entitlements from the incomplete State Water Project (SWP) is no substitute for the reality of actual water the SWP can deliver." The court decertified the project EIR and required a new report on water supply consistent with the *PCL* and *SCOPE* decisions. This confirmed that *PCL* will have an important "on the ground" effect, forcing local governments to face real-world constraints on deliveries in assessing water supplies for new development.

Lynne Plambeck is president of Santa Clarita Organization for Planning and the Environment, an elected Board Member of Newhall County Water District and a small business owner.

CEQA and the RESTORATION of MONO LAKE

By Richard Roos-Collins

In the Mono Lake Cases, the State of California Water Resources Control Board limited municipal water rights in order to preserve and restore Mono Lake and its tributary streams. Decision 1631 (1994) ended more than fifteen years of litigation in federal and state courts over the novel legal issue: may the Water Board reopen valid water rights under authority of the public trust doctrine, and if so, how should municipal water supply be protected along with environmental quality? The Water Board prepared an Environmental Impact Report (EIR) under CEQA, and that systematic factual analysis of alternatives helped drive the Water Board's eventual decision.

In 1940, Los Angeles Department of Water and Power (LADWP) applied to the Water Board and obtained permits to divert waters from four streams tributary to Mono Lake, a desert lake just east of Yosemite National Park. Since local streams and aquifers were inadequate for the rapidly growing population of the Los Angeles Basin, LADWP looked several hundred miles north to the Owens and Mono Basins, rural areas with abundant waters and sparse populations, for additional supply. Though the Water Board found that the requested diversions—which would exceed natural stream flows in most months—would damage environmental quality, it regretfully issued the permits. Since municipal water supply is the highest and best use of water recognized under the State Constitution and Water Code, it concluded that it did not have any authority to require mitigation (such as a minimum flow release) in the face of LADWP's legitimate needs. LADWP rapidly completed the storage and diversion system on these streams, as well as the Los Angeles Aqueduct to deliver these waters to the Los Angeles Basin. In 1974, these permits became licenses, which are vested water rights. As a result of these diversions, the streams lost their flows in most months, along with their fisheries and riparian vegetation; and the lake declined more than forty-five feet in elevation.

Mono Lake Committee

The water levels in Mono Lake declined more than forty-five feet after the LA Department of Water and Power began diversions. Streams lost their flows in most months, along with their fisheries and riparian vegetation.

In 1979, the Mono Lake Committee sued against LADWP to compel water releases into Mono Lake. It cited the public trust doctrine. This common law had originated in Imperial Rome, been adopted in England during its Roman occupation, then migrated to our Colonies along with the English settlers before the Declaration of Independence. The common law, which now applies in all fifty states, generally provides that a State must protect fishing, navigation, and commerce on navigable waters as a public trust. In 1983 the California Supreme Court held for the first time that the Water Board must consider the public trust before issuing water rights—and indeed may reopen rights issued without such consideration—and must protect the trust uses to the extent feasible consistent with municipal water supply and other beneficial uses. California Trout and the Mono Lake Committee then successfully brought other cases under the Fish and Game Code, seeking similar results for protection of the non-navigable tributary streams. In 1989, the Court of Appeal ordered the Water Board to amend LADWP's water rights to protect Mono Lake and its tributaries to comply with all applicable laws.

The hearing lasted forty days, one of the longest in the history of the Water Board. More than 125 experts testified, and the parties submitted more than 1,000 exhibits. The hearing record alone fills several filing cabinets. The EIR addressed a multitude of factual disputes framed but not necessarily

resolved by this partisan evidence. In sum, the EIR answered the question: what is the most feasible means to restore Mono Lake while protecting LADWP's reliable and economical water supply?

The State Water Board prepared the EIR in a collaborative manner. It convened technical advisory groups to frame issues and sort through the library of scientific and other studies compiled since the Mono Lake Cases began. All parties participated in some way in these groups. To prepare the actual EIR, the Water Board engaged and supervised a consulting firm, under a contract paid-for by LADWP. The consultant undertook new studies as necessary to supplement the existing information.

The resulting EIR is a systematic analysis of how LADWP's diversions had lowered the lake level and degraded environmental conditions that had existed in the Mono Basin in 1940. It predicted that the trend will continue, in the absence of amendment to water rights. The analysis differentiated impacts by resource, including migratory waterfowl, trout, brine shrimp, and air quality. More importantly, it evaluated a series of alternative scenarios for lake level: how much should the lake rise towards its pre-1940 condition, which was elevation 6,417 Mean Sea Level (MSL)? These scenarios assumed increasingly strict limitations on LADWP's diversions. The EIR evaluated the municipal impacts of these alternatives—what is the incremental risk of supply shortage, taking into account all of LADWP's sources?—and the feasibility of replacement supply, such as reclamation of municipal wastewater.

The final EIR recommended the alternative lake level of 6,392 MSL which, over the long term, will permit LADWP to divert roughly twenty-five percent of the waters controlled by the 1940 permits, using feasible alternative sources to make-up the supply deficit. Decision 1631 adopted that recommendation. No party appealed, ending the Mono Lake Cases. The EIR was critical to persuading LADWP and other parties and, more importantly, the affected public that the State had diligently studied the problem and found the best balance of protection both of municipal water supply and the public trust. Today, Mono Lake and its streams are returning to good condition.

Mono Lake Committee

Through the CEQA process, the State was able to find the best balance of protection both of the municipal water supply and the public trust.

Richard Roos-Collins is Senior Staff Attorney for the Natural Heritage Institute. Mr. Roos-Collins was trial counsel for California Trout in the Mono Lake cases.

Frances Spivy-Weber became Executive Director of the Mono Lake Committee in 1997, after the State Water Board's decision to require LADWP to restore Mono Lake. She and the Mono Lake Committee staff and Board knew that a decision, even one as dramatic as D1631, was a beginning, not an end. The Committee, she maintains, must focus on future challenges:

"LADWP will need decades to carry out the restoration plan developed after the Water Board decision. The Committee's on-the-ground presence at Mono Lake is critical for monitoring the decision and raising red flags, when necessary."

Fran is active in statewide water policy decisions promoting programs that will stretch California's water supplies to meet urban, agricultural, and environmental needs. "Already, LADWP replaces the water it is using to restore Mono Lake with water conservation and recycling. My highest priority is to enhance these programs statewide so there can be more 'Mono Lake / Los Angeles' success stories."

Sam Wasson is a long-time resident of the Owens Valley:

"I remember as a child visiting my Uncle in Keeler. This would have been the forties, just after World War II. Keeler was sort of a mining town then, of about 100 people, right next to the Owens Lake bed. The wind would whip dust in all directions as the storms moved in, creating huge, billowing clouds of white dust. 'The Keeler Fog,' that's what people called it. The dust would get in your hair and clothes, sinuses, everything. At times you couldn't see more than 100 feet.

"The dust was just something you accepted. Everyone knew water was being diverted, but what could they do about it? However, in the fifties and sixties, people started getting more environmentally conscious. And in the eighties there were real concerns about the health effects of PM10, arsenic, cadmium, and boron particles. As people became more aware, they wanted something done. We're talking about 60,000 people, in Inyo and Kern counties.

"Since the City of Los Angeles accepted responsibility for the problem, over 80 percent of the emissive lakebed areas have been mitigated using a combination of shallow flood irrigation and experimental farming. And the Keeler

Continued on the following page.

Los Angeles & the Owens Valley:
CEQA Rewrites Water History

By Antonio Rossmann and Theodore Schade

In the late 1800s, Owens Lake was one of the largest natural lakes in California. With a surface area of more than 110 square miles and an average depth of twenty to thirty feet, Owens Lake supported two steamships transporting silver ingots from the mines in the Inyo Mountains destined for the growing city and port of Los Angeles. With regard to wildlife, an early settler reports that the lake was once "alive with wild fowl, from the swift flying Teel to the honker goose…. Ducks were by the square mile, millions of them. When they rose in flight, the roar of their wings…could be heard on the mountain top at Cerro Gordo, ten miles away…."

But, the fate of Owens Lake was sealed in 1913 when the City of Los Angeles completed construction of the Los Angeles Aqueduct. This marvel of modern engineering intercepted the Eastern Sierra snowmelt that previously kept Owens Lake full and diverted the water south 223 miles to the growing City of Los Angeles. By the mid-1920s, Owens Lake had all but disappeared. The lake became a lifeless, hypersaline brine pool that, depending on rainfall, varies in size from zero to about forty square miles.

Owens Lake is the largest single source of air pollution in the U.S. in terms of total tons of air pollutants emitted per year and in terms of the levels of standard exceedances.

With the lake nearly gone, over sixty square miles of saline lake bed was suddenly exposed, resulting in dust storms of fine salt and soil particles that truly have to be seen to be believed. The largest dust storms in the U.S. occur at Owens Lake. Owens Lake is the largest single source of air pollution in the United States in terms of total tons of air pollutants emitted per year and in terms of the levels of standard exceedances.

Fortunately, a CEQA suit filed in 1972 has begun to change all that, though it took more than a quarter-century of litigation. The day after the *Friends of Mammoth* decision, Inyo County District Attorney Frank Fowles woke up to learn that there was a California Environmental Quality Act, and that it required an Environmental Impact Report (EIR) before carrying out an environmentally-threatening project.

Frank began to wonder if that law might apply to Los Angeles' groundwater pumping in the Owens Valley, which had been expanding since the Second Los Angeles Aqueduct was placed in use in June 1970, and whose impact on the valley was now being discerned. On November 15, 1972, nine days after Mammoth's finality, Frank walked next door from his office in the Inyo

County Courthouse and filed *County of Inyo v. Yorty* (later *County of Inyo v. City of Los Angeles*).

This suit would ultimately result in six published and a few unpublished opinions before its dismissal 25 years later. Los Angeles was required to prepare an EIR. The court declared its power to enjoin groundwater pumping—even though LA's water rights remained unchallenged—required for the first time that the EIR prepared actually be reviewed for adequacy, demanded that the city adopt mandatory water conservation for the first time in its history, and rejected LA's EIR's not once but twice because contrived project descriptions (while not concealing environmental impacts) evaded a choice between increased groundwater pumping in Inyo and constitutionally-preferred water conservation in Los Angeles. Finally, the court authorized the parties to experiment with joint decision-making and assessment, but not in derogation of the larger public's right to an adequate EIR that lays the foundation for meaningful mitigation.

In discharging its writ in 1997, the court of appeal signaled its satisfaction with these legal requirements of CEQA, and brought into force the permanent water management plan whereby Inyo and Los Angeles jointly decide the annual allocation of the Owens Valley's water resources, and whereby Los Angeles has committed to mitigation of past impacts that will include the rewatering of the Owens River for the first time since 1913.

In 1998, the City of Los Angeles and the Great Basin Air Pollution Control District entered into an historic agreement that provides for the dust problem to be solved by 2006. Los Angeles has finally acknowledged that the air pollution from Owens Lake is caused by their water diversions and the city has begun a costly and enormous undertaking to solve the problem.

In the first three quarters of the twentieth century, Owens Valley had come to symbolize deceit, colonialism, and exploitation. By the judicial enforcement of CEQA in *Inyo*, in the last quarter of the century the Owens Valley came to stand for integrity and honesty in public decisions, self-determination by the people of Inyo, water conservation in Los Angeles, and ultimately joint city-county governance of the valley's water resources to reclaim their environment. The promise of CEQA in this case is best summed up in an old battle cry redefined as a positive mandate: "Remember the Owens Valley!"

Antonio Rossmann has practiced CEQA law since the early 1970s, has taught at the University of California, Berkeley (Boalt Hall) and other California law schools since 1980, and has served on the PCL board for over twenty years. Mr. Rossmann served as special counsel for 21 years to Inyo County, addressing Owens Valley water issues.

Theodore Schade is a civil engineer and Air Pollution Control Officer at the Great Basin Air Pollution Control District in Bishop, California. Mr. Schade has worked on the dust problems at Owens and Mono Lakes since 1990.

Continued from the previous page.

Fog—the dust plumes that used to stretch over the lakebed and beyond—is gone.

"The great thing about CEQA is that the stakeholders are involved and informed from the beginning. It promotes the consideration of alternatives that often end up being both cost-effective and better for the environment. Having participated in the commenting process, I've seen how diverse interests can come together to shape a solution that is better for everyone.

"CEQA is about the big picture, about looking at a project from all perspectives. The Owens Lake dust mitigation measures were simply better because issues of land use, air and water quality, and the environment were considered together."

Sam Wasson, worked for the LA Dept. of Water and Power for 36 years, retiring as a Transmission and Distribution Superintendent. Since settling permanently in Keeler, CA, Mr. Wasson has been an active participant in several regional issues. He is also currently a member of the Inyo County Planning Commission.

Theodore Schade

A dust storm originating in the Owens Lake bed strikes the town of Inyokern, approximately fifty miles south.

FROM GRIDLOCK TO AGREEMENT:
The Sacramento Water Forum Story

By Curtis E. Alling

Contention, conflict, and court cases typified the Sacramento region's water supply decisions in the two decades prior to the 1990s. Recognizing that substantial growth was planned over the next thirty years and that water supply decision-making had reached gridlock, a diverse group of business and agricultural leaders, citizens groups, environmentalists, water managers, and local governments created the *Water Forum* to develop a long-term, regional, water supply plan that considered all these stakeholders' needs. This group devoted tens of thousands of hours researching the causes of the gridlock, agreeing on the principles to guide development of a regional solution, and negotiating the *Water Forum Agreement*, which was successfully adopted in 2000 and still guides regional water supply decisions today. The agreement was founded upon the co-equal objectives of "providing a reliable and safe water supply for the region's economic health and planned development to the year 2030 and preserving the fishery, wildlife, recreational, and aesthetic values of the Lower American River," a riverine jewel in the heart of Sacramento.

Recognizing that substantial growth was planned over the next thirty years and that water supply decision-making had reached gridlock, a diverse group of business and agricultural leaders, citizens groups, environmentalists, water managers, and local governments created the *Water Forum* to develop a long-term, regional, water supply plan.

Integration of CEQA into the Stakeholder Process

The stakeholders making up the *Water Forum* included citizen groups and environmentalists, who represented important public constituencies that watched over the region's natural resources, and water managers and local governments, who are CEQA lead agencies responsible for approving land use developments and the water supply projects supporting them. Representatives of business and developers, who must pay for the CEQA documents prepared by lead agencies for their projects, were also fully involved. While a legal argument could have been made that the *Water Forum Agreement* was not a "project" under CEQA, all supported the premise that it would be treated as a project, and an Environmental Impact Report (EIR) would be prepared along with the agreement. Integrating the CEQA process into the *Water Forum Agreement* negotiations proved to be invaluable in accomplishing the objective of reaching a regional water supply agreement.

Sacramento Water Forum

The Sacramento Water Forum's Stakeholders Group used the CEQA process to develop a long-term regional water supply plan that considered the needs of all involved parties.

A Program EIR was initiated in August 1995, while the stakeholder process was concluding its research phase and beginning to define its guiding principles, well before the agreement began to take shape. The EIR's impact assessment and public review process were fully interwoven with the agreement negotiation process, yet CEQA's independence

was purposefully maintained by prohibiting "negotiation" of environmental issues addressed and impact conclusions determined. The Notice of Preparation and EIR scoping helped advise the public about the *Water Forum* process and sought input on key environmental issues. Preliminary environmental impact findings helped guide development of elements to preserve the American River's resources. The Draft EIR was released for public review in early 1999 along with a draft of the *Water Forum Agreement*, providing the primary vehicle for public review of the draft solution. The Final EIR was certified later that year by the County of Sacramento and City of Sacramento, serving as co-lead agencies with staff support by the City-County Office of Metropolitan Water Planning.

Values CEQA Brought to the *Water Forum Agreement*

CEQA played several distinctly different, but consistently valuable, roles in the development of the agreement, as viewed by the various stakeholders.

Environmentalists sought preparation of an EIR, as a condition of their participation in the stakeholder process, to help provide assurances that measures protecting the Lower American River and other sensitive resources would indeed be implemented. The EIR enabled the consequences of the water supply plan to be fully scrutinized by the public. It also determined mitigation commitments to protect resources that were incorporated as conditions of approval of the agreement and included in a CEQA-required, Mitigation Monitoring and Reporting Program, formally adopted by the co-lead agencies.

Business interests and water managers needed certainty that projects consistent with the agreement would not be subject to the repetitive environmental documents, so that the safe and reliable water supply objective could be more economically achieved. The Program EIR developed a fully comprehensive cumulative impact analysis of the entire Central Valley Project and State Water Project and a detailed alternatives analysis. While individual projects necessarily have their own CEQA reviews, this approach was intended to streamline the later environmental reviews of water projects by providing the opportunity to rely on the EIR's cumulative impact and alternatives analyses, an incentive for projects to be developed consistently with the *Water Forum Agreement.*

Integrating the CEQA process into the *Water Forum Agreement* negotiations proved to be invaluable in accomplishing the objective of reaching a regional water supply agreement.

For the City and County co-lead agencies, as well as State responsible and trustee agencies that must approve later permits for water supply projects, the EIR's technical analysis, conducted iteratively with formulation of agreement elements, provided critical environmental information and mitigation options as input to stakeholder discussions and feedback about effects of potential agreement features. Temperature and fishery impact models helped define in-stream flow requirements and dam release schedules. Biological impact assessment led to formulation of the agreement's Habitat Management Element in which habitat mitigation commitments were defined. Water recreation impact assessment helped determine how to reduce and compensate for Folsom Reservoir boating impacts from changing reservoir levels. Without the iterative understanding of impacts and mitigation provided by the fully integrated EIR evaluations, the agreement could have been turned on its head late in the process by unanticipated environmental impacts.

As a result of these multi-faceted values of the EIR process, CEQA became an essential component of success in reaching the landmark *Water Forum Agreement.*

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