

Senate Confirms Regulators who Excuse Polluters from Clean Water Law

BY ALAN WADE

It was August 6, with just two weeks left in the 2012-2014 California legislative session. A three-hour session confirming gubernatorial appointments by the Senate Rules Committee had just adjourned.

Senate Pro Tem Darrell Steinberg, termed out and only two weeks removed from the end of his legislative career, had to leave the hearing a few minutes early for a 4:00 p.m. meeting with the governor. The hearing room had been crowded for the first item on the agenda, the confirmation of Michael Picker as chair of the scandal-ridden Public Utilities Commission. That portion of the proceedings had gone smoothly, with no opposition, a few softball questions from the senators, and a general mood of affability.

This second item would not have required a hearing, except for the written opposition of the Save the American River Association to the governor's reappointment of Karl Longley and Carmen Ramirez to the Central Valley Regional Water Quality Control Board. Longley, appointed by the previous governor, had served for several years as Regional

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State Enforcement of Water Law is Worse than Lax

BY STEPHEN GREEN

"The right to water ... shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water."

— *California Constitution, Article 10*

Illegal water diversions for marijuana cultivation represent an "unreasonable" use. But as far as state regulators are concerned, pot farmers get a pass.

California's pot farms require significant water use — 60 million gallons per day during the peak growing season, according to an estimate by federal investigators. That's double the daily amount consumed by the City San Francisco.

Last summer, 24 California streams went dry and some rivers were reduced to a succession of ponds. The drought, of course, was a major factor in depleting waterways. But illegal water diversions also had significant impact. In Mendocino County, pot growers were stealing water from fire hydrants in the middle of the night.

The enforcement staff of the State Water Resources Control Board is charged with policing those illegal diversions. They have the authority to

cite growers, levy fines and confiscate crops. But they weren't out last summer inspecting dried up or low-flowing waterways.

In January, they began making some limited inspections for illegal diversions. When violations are found, however, there is no enforcement action. Instead, they give the growers a "report" detailing what they can do to comply with the law.

Pot farmers also use large amounts of toxic rodenticides and other chemicals on their grows. Inevitably, some of those chemicals drain into streams and rivers where they harm aquatic life. State officials also can take enforcement actions in those cases. But they don't.

"We seek voluntary compliance with the law," said the Water Board's chair, Felicia Marcus.

Marcus chairs a board that has given local water agencies authority to assess fines and cease and desist orders against residences and businesses. But she won't take the same action against people who illegally divert water nor is she willing to undertake meaningful regulation of

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those who deplete groundwater basins.

Gov. Jerry Brown's executive order on the drought was aimed at conservation measures for residential and urban areas. But there was little in the order to mandate conservation by agribiz which uses 80 percent of California water.

"While urban water conservation measures are desperately needed, Gov. Brown is not calling for shared sacrifice," said Barbara Barrigan-Parrilla, executive director of Restore the Delta.

Adam Scow, California Director of Food & Water Watch, added that for decades "poor decisions have been made about irrigating farmland that we simply do not have the water to support. These operations are now consuming vast amounts of groundwater at alarming rates."

A National Aeronautics and Space Administration study found that California has lost nearly 12 million

acre-feet of groundwater in the last three years — enough to supply San Diego, Los Angeles and San Francisco for 12 years. Most of the depletion was in the Central Valley.

"Climate conditions have exposed our house of cards," said Jay Famiglietti, a NASA scientist in Pasadena who studies water supplies in California and elsewhere. "The withdrawals far outstrip the replenishment. We can't keep doing this."

Under the Doctrine of the Public Trust, governments have a fundamental duty of environmental stewardship to maintain and sustain natural resources amenities for the general welfare of our society.

In urban areas, there also is limited state enforcement of water law. Last summer, representatives of Save the American River Association gave a state enforcement team a tour of facilities in the City of Folsom where sewers are known to overflow during rainy periods. Sewage flows thru storm drains, down streets and thru porous soils to Lake Natoma. The enforcement team sent inquiries to city officials to which there has been no response. The enforcement team has taken no other actions.

The situation is much worse in Kern County where a survey found more than 300 unlined oil wastewater pits operating without permits. Wastewater also is being pumped back into the ground where it poses a threat to drinking water aquifers.

The waste pits are long, shallow troughs in fields that hold wastewater from fracking and other oil drilling operations. The water is heavily saline and often contains benzene and other natural toxic compounds. Many of the pits have no covers or netting and present a threat to birds and other wildlife.

The problem dates from the early 1980s when the U.S. Environmental Protection Agency gave the State Division of Oil, Gas and Geothermal Resources authority to enforce the federal Safe Drinking Water Act. But the division and the State Water Resources Control Board never seriously monitored the oil operations. Some monitoring got underway last year when federal officials directed the state agencies to begin inspection and enforcement actions. To date, some injection wells have been closed and pit operators have been cited.

"Our goal is not to shut anybody



Photo by Guy Galante

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down,” said Clay Rodgers, assistant executive officer of the Water Board’s Fresno office. “Our goal is to protect water quality.”

Andrew Grinberg of Clean Water Action wasn’t surprised when the lack of regulation was disclosed. “The state doesn’t seem to be willing to put the protection of groundwater and water quality ahead of the oil industry being able to do business as usual,” he said.

State officials have figures on the amount of oil wastewater produced annually, but they are not consider credible. Oil companies are allowed to do self-reporting. There is agreement, however, that California is the nation’s third largest oil producer after Texas and North Dakota. And about 80% of California’s oil comes from Kern County.

State officials don’t lack the legal tools to take enforcement actions.

In 1983, the Supreme Court ruled in *National Audubon Society v. Superior Court* that protecting the Public Trust is an affirmative duty, one that government cannot repudiate or deny. It is not optional, it is a mandatory duty. There, under the Doctrine of the Public Trust, governments have a fundamental duty of environmental stewardship to maintain and sustain natural resources amenities for the general welfare of our society.

In 1908, the Supreme Court stated that the public is not to lose its rights (to clean water) through the negligence of its agents, nor because it has not chosen to resist an encroachment by one of its own number, whose duty it was, as much at that of every citizen, to protect the state in its rights (*People v. Kerber*).

State officials are ignoring their legal mandate. ■

Regulators

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Board chair. We opposed his confirmation because of the dramatic decline in the Board’s record of enforcement of federal and state clean water laws in the huge area under the Central Valley Board’s jurisdiction. We (SARA) have regularly monitored its work for a decade and a half and have been dismayed at the decline in the board’s willingness to enforce the law.

We had not planned to oppose Ms. Ramirez’ reappointment, as there had been little of note to set her apart from others on the Board—all routinely support Chair Longley and the Executive Director, Pamela Creedon. Little, that is, until her testimony in this hearing. When asked about her motivation for serving on the Regional Board, she replied that her major interest was in “protecting the rights of the regulated community.” Even Republican jaws dropped at that admission, which led to intensive though gentle questions (Ramirez is designated as a “public” member.)

Karl Longley is retired as Dean of Engineering at CSU Fresno, and has long and deep ties to Central Valley industry and agriculture. He said little in support of his confirmation, and was asked only a few questions. One was in response to an example I had provided of the Board’s laxity — repeated forgiveness of over a million dollars in fines brought against the City of Colfax for many years of illegal discharges into a tributary of the North Fork of the American River. When asked about that by the Chairman (Steinberg), Longley’s reply was to the effect that there was very little pollution and that dilution takes care of the problem. I already had spoken, and of course could not reply. It seemed that the Rules Committee saw Longley’s response as rather weak, but no additional questions were asked of him.

In addition to the Colfax travesty (that

city is known to have been in violation of Federal and State law since 1975), my comments included the following:

- Quotations from a study by Richard McHenry, a retired Water Board engineer, asserting that under Longley’s guidance the Board has moved “to significantly modify its approach for issuing wastewater discharge permits pursuant to the National Pollutants Discharge Elimination System (“NPDES”), leading to an approach which fails to comply with explicit state and federal regulatory requirements.” Thus, we pointed out, the Longley administration has encouraged a relaxation of standards which make it easier and cheaper for dischargers to comply.
- Citations from a Board internal report which revealed that although hundreds of letters, notices, warnings, orders and etc. were addressed to the regulated community from 2007-2012, only two referrals were directed to the Attorney General for enforcement action. (Steinberg asked, “if this were true,” did the other eight Regional Boards have similar data?).
- Information from SARA’s fifteen years of monitoring the Board’s laxness in investigating the demonstrated capacity deficits in the City of Folsom’s sewage collection system, the explosive growth of the city with little or no additions to capacity, and the frequent dismissal of SARA’s concerns by Chair Longley.

The hearing ended with a continuance of the Longley and Ramirez confirmation to a future hearing. But that didn’t happen. The following week, both were confirmed by a vote of the full Senate without any further public input. ■

Dan Bacher Inducted into the California Outdoors Hall of Fame

Dan Bacher, a member of the Save the American River Association Advisory Council, was inducted into the California Outdoors Hall of Fame in January during a ceremony at Cal Expo.

For 30 years, Bacher has edited the Fish Sniffer, a biweekly newspaper

for anglers that includes a column that also appears on websites and newspapers in western states.

Bacher is "California's foremost 'watchdog' journalist for fisheries and conservation," said San Francisco Chronicle Columnist Tom Stienstra. "He takes on politicians, government agencies and their appointed directors, corporate agribusiness interests and big oil companies — anybody who does harm to California's natural resources and fisheries."

Bacher has fished hundreds of lakes and waterways from Canada to Central America where he catches and releases. ■



Dan Bacher with an American River catch

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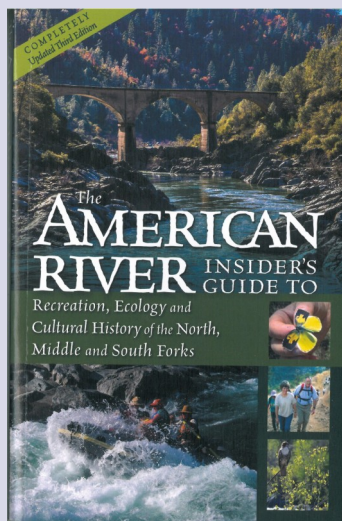
- Online through the Sacramento County Web site www.co.sacramento.ca.us
- At REI stores in Sacramento, Roseville and Folsom
- Patriot Cycles in Fair Oaks
- Effie Yeaw Nature Center at Ancil Hoffman Park
- Regional Park offices and park kiosks
- American River Parkway Foundation Office at the William B. Pond Recreation Area

Book Review

THE AMERICAN RIVER: INSIDER'S GUIDE TO RECREATION, ECOLOGY AND CULTURAL HISTORY OF THE NORTH, MIDDLE AND SOUTH FORKS,"

Published by Protect American River Canyons, \$24.95.

Several dozen writers and photographers contributed to this Third Edition of the Insider's Guide. In addition to outstanding editorial content and photos, there are numerous maps of hiking and horse trails, and historical sites. Descriptions of whitewater routes include safety and difficulty ratings.



Many readers will learn of places they have never been but would be worthy of a visit. There are descriptions of the flora and fauna, where one tends to see various wildlife, and where fossils of

have been found, including those of saber-toothed cats. There's also a chapter on the decades-long fight over the Auburn Dam.

There are numerous historical vignettes on the gold rush, robbers, early settlement, toll roads and the native people.

Books may be purchased at local

stores or Protect American River Canyons website: www.parc-auburn.org. ■

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SARA appreciates the support of our generous members. Without your support, SARA would not be able to continue our role as *Guardians of the American River and Parkway since 1961*. New and renewing members are listed in *Riverwatch* according to their preference (indicated on the SARA membership/renewal form).

In Memoriam

Save the American River Association has received donations honoring the memory of the following friends:

Janet Baker

Julia S. Meier

Stroube Richardson

Save the American River Association frequently receives donations in memory of lost loved ones, many of whom were users and supporters of the American River Parkway. Some donors give names. Others prefer to remain anonymous.

SARA notifies family members when donations are made and those people are always very appreciative. The money is used to further SARA's advocacy work on behalf of the Parkway. Contributions may be made by check, Visa or MasterCard. A form for contributions appears on the last page of this newsletter.

SARA also has a Legacy program. For information on the program, please call the SARA office (916) 482-2551. ■

Sacramento Bans Plastic Bags

Sacramento's city council has voted to join more than 130 other California jurisdictions in banning single-use plastic bags. The vote was unanimous.

As of next Jan. 1, shoppers at Sacramento grocery stores, pharmacies and convenience stores will have the option of bringing their own bags or

paying 10 cents per bag to pack goods in recycled paper bags or reusable bags.

The action was taken after a statewide ban on single-use plastic bags approved by the Legislature last year. But out-of-state plastic bag manufacturer gathered enough signatures to put a measure repealing the statewide ban on the November 2016 ballot. That had the effect of putting the statewide ban on hold.

Sacramento officials decided not to wait and approved a ban that closely mirrors the one imposed by the legislature last year. California retailers distribute some 19 billion bags per year or 522 per person. It's estimated that 14 billion of those bags are thrown away every year. ■

We've Lost the Delta Smelt

Early in March, scientists spent five days trawling for delta smelt in the Sacramento-San Joaquin River Delta — the tiny fish considered an indicator species of the health of the largest estuary on the West Coast of The Americas.

They netted only six of the iridescent, finger-sized fish.

“The low catches mean we should prepare for imminent extinction of the delta smelt, which has long been in decline,” said Peter Moyle, distinguished professor of wildlife, fish and conservation biology at the University of California, Davis.

“Longfin smelt, winter- and spring-run Chinook salmon, green sturgeon, among others are not far from the edge of extinction,” Moyle warned. “We should focus more on preventing these species from becoming cliffhangers like the delta smelt.

Meanwhile, scientists at the Nimbus Fish Hatchery on the Lower American River are chronicling the worst steelhead trout run on record.

Delta smelt are found only in that estuary. Federal officials listed it as “threatened” in 1993. In 2009, it was classified as “endangered” under the California Endangered Species Act.

The collapse of the species is part of a larger ecosystem decline since the State Water Project started pumping massive volumes of water south of The Delta in 1967. The pumps chew

up fish and reduce the amount of fresh water, changing the estuarine hydrodynamics. That has reduced the Delta’s habitat and food supply, allowed more predation of fish larvae, encouraged the spread of invasive aquatic species, and increased the density of contaminants such as ammonium and fertilizers in the water.

Last year, the State Water Resources Control Board relaxed

The collapse of the species is part of a larger ecosystem decline since the State Water Project started pumping massive volumes of water south of The Delta in 1967.

environmental protections for fish so that more water could be exported to cities and farms south of The Delta.

Reduction of water in the ecosystem during drought has costs, Moyle said, including:

- Potential direct harm to fish in the short term, and in the longer term, severely reducing native fish populations and sometimes making it easier for invasive species to become established.
- Risks that additional native fish or other aquatic species will become



Photo by Peter Johnson, USFWS

legally listed as threatened or endangered, which can reduce long-term water withdrawals for economic water uses.

- Encouraging water fights, rather than using negotiation or markets to rebalance and reallocate water.

“This situation is preventable and state and federal agencies failed to prevent it,” said Barbara Barrigan-Parrilla, executive director of Restore The Delta. “Mismanagement of our water resources by the State of California and federal government are sending both the endangered salmon and delta smelt to extinction. Their political favoring of billionaire growers over the rest of us is finishing off the fish...(They) are failing to enforce laws to protect fisheries.”

Dan Bacher, editor of the Fish Sniffer, added: “Remember - extinction is forever.” ■

American River Parkway Safety Coalition Revived

BY WARREN V. TRUITT

HISTORY

The American River Parkway Safety Coalition (ARPSC) was formed in 2000, in response to occasional serious crimes on the American River Parkway.

Bob Hanna, a member of the Save the American River Association (SARA) Board of Directors at the time, proposed that SARA and other Parkway stakeholder organizations, functioning as the ARPSC, establish and fund a reward program.

In response to a serious Parkway crime — an immoral, illegal or criminal action, such as an assault, battery, rape, or armed robbery — it was proposed the ARPSC would post a reward to bring attention to the crime, and pay a reward if information provided led to a conviction. A reward posting is triggered by a call from the Chief Ranger of Sacramento County Regional Parks, to the ARPSC coordinator. The coordinator, in turn, polls the other contributing stakeholder organization's representatives to approve a reward posting. Majority vote rules!

The ARPSC meets once annually, usually in the first quarter. The meeting is open to the public and invitations are sent to more than 90 individuals associated with Parkway stakeholder organizations. Bob Hanna served as the ARPSC coordinator for the first 14 years and stepped down in 2013. An annual meeting was not held in 2014. SARA provides administrative support to the Safety Coalition. SARA vice president, Warren Truitt, agreed to serve as coordinator and Pam Goodley, of the Buffalo Chips Running Club, agreed to serve as secretary, for 2015.

REWARD FUNDING AND POSTING

To initiate the program and seed the reward fund, a total of \$3,500 was contributed by six Parkway stakeholder

organizations. SARA contributed \$1,000 to get the program started, and five other Parkway stakeholder organizations each contributed \$500. The organizations are: Buffalo Chips Running Club; Lake Natoma Neighborhood Task Force; River City Paddlers; Sacramento Area Bicycle Advocates (SABA), and; Sacramento Wheelmen Cycling Club. Past reward postings have been in the amount of \$1,000.

2015 ARPSC ANNUAL MEETING

The 2015 ARPSC Annual Meeting was held on March 26th at County Parks Ranger H.Q. on Bradshaw Road. Attendees included representatives from Parkway recreation, support and adjacent neighborhood stakeholder organizations, and included representatives from seven law enforcement agencies who respond to, and/or are affected by, Parkway criminal activity. Agencies represented included: California State Parks Rangers; CSUS Police; Folsom City Police; Sacramento City Police; Sacramento City Park Rangers; Sacramento County Sheriff's Department, and, of course; Sacramento County Park Rangers, represented by Chief Ranger, John Havicon. John's presence was especially appreciated as the evening meeting was his very last responsibility before retiring, after 30 years of service to Sacramento County Regional Parks.

It was proposed for consideration that the Mission Statement of the ARPSC read: *Promoting Safety Within the American River Parkway*. In addition, the purpose of the Coalition was shared:

1. To promote communications between Parkway recreational users and law enforcement agencies...to assist law enforcement to have more complete information of trouble areas...
2. To prepare and submit through appropriate channels, written briefs to encourage penalties for persons convicted...of serious crimes within the Parkway...

3. Offer rewards for information leading to the arrest and conviction of person responsible for selected serious crimes.

It also was proposed that once a reward is approved for posting, not only will postings be made along the Parkway, but the reward posting will be forwarded to all stakeholder representatives on the ARPSC Alert List, including member law enforcement agencies. Where appropriate, member stakeholder organizations are encouraged to forward the reward posting to all of their respective e-list recipients. The intent is to maximize knowledge of the alleged crime to have the best possible, and quickest, response to the crime triggering the posting.

Attendees from the law enforcement community were very interested in improving communications between agencies regarding criminal activity on the Parkway, and were receptive to meeting together sometime later in 2015 to discuss ways to enhance communications. The ARPSC coordinator will follow-up with John Havicon's successor, once selected and on-the-job regarding such a meeting.

Representatives from other organizations present at the annual meeting advised they were going to follow-up with their leadership to suggest their organization make a donation to the ARPSC Reward Posting Fund. Contributions of any amount are welcome. Organizations making contributions of \$500 or more would have a vote when a reward posting is requested. As part of its administrative responsibilities, SARA holds the funds for the Reward Posting account. Any contributions to the ARPSC Reward Posting account should be sent to: ARPSC Reward Postings, c/o SARA, 4441 Auburn Blvd., Ste. H, Sacramento, CA 95841-4139. ■



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