



Fresno judge tapping into state's looming water crisis

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Rain and snowfall may have been a little light in the last few years in California but the drought that may hit the state this week won't be due to a lack of precipitation. It will be a court-ordered drought emanating from a judge's chamber in Fresno where Judge Oliver Wanger is about to rule on a multitude of issues involving water projects and endangered species.

At stake are water exports to Southern California and Central Valley farmers and protection of fish habitat. While there has been popular support for protecting the crashing delta smelt fish population, the public may balk if Wanger threatens the state's economic vitality by causing a more massive reduction in pumping.

Evidence before the court includes the usual suspects in a water case. But some new characters have also slipped in, including the Zebra and Quagga mussel species. As usual the court's issues include the problem of polluted agriculture water return flows, inadequately treated sewage, unpredictable changes in water temperature/salinity, and long-term climate variability all complicated by local encroachment and urban development in the delta itself.

An important litigation milestone will occur this week when judge Wanger rules on the state's request for a permit to regulate the flows of the State Water Project which have been reduced up to 30 percent recently. Regardless of the judge's decision on the new permit, we predict an immediate challenge by the same interests that

initiated the legal action that curtailed the pumps some 21 months ago. In essence Judge Wanger has become water master to the state of California forever.

The catch-22 nature of the clash between the water issues and judicial uncertainty is due to the fact that all estuarine-river systems are fundamentally complex and chaotic, so much so that no expert can realistically hope to accurately predict the impact of multiple human activities on the delta habitat. Despite the complex environment north of the state pumps at Tracy, water exportation has been singled out as a guilty fish killer. The goal the law requires the judge to reach is "reasonableness."

If Judge Wanger fails the case will revert for review to a group of top federal officials called the "God Squad." The God Squad committee will likely not be a useful tool for resolving these Endangered Species Act conflicts because it is such a cumbersome and time-consuming process. Litigants on both sides seem happy to remain immersed in the Wanger process because they believe they have received a fair hearing and because all parties agree that the Ninth Circuit Court of Appeal is a too dangerous, dysfunctional minefield.

Yet the complexity of the case issues truly defy any judicially reached decision. Even Solomon in all his wisdom would have no hope of approving a perfect biological opinion.

But the future of the State Water Project does depend on a perfect biological opinion. The many theories and dueling experts will likely guarantee that the future will become more problematical than the present.

One solution, increased water conservation pressure, is a given.

Locally we are primed to react to the Wanger process as follows. The drought management mode will include immediate changes in our water-rate structure. That will force universal implementation of the increasing block rate, multi-tiered price structure that has been so successful in Orange County's Irvine Ranch Water District.

But the knottiest problem is that all responsible parties to the problem have not been named in the lawsuit. For example, local land-use decisions are controlled by municipalities that have not a clue about what is required to deliver a gallon of water to the many Central Valley farms and to new developments that have been approved beyond the boundaries of the existing delta primary zone.

If in the end water conservation fails and Wanger's decision greatly curtails pumping into the State Water Project, we are faced with our old standby solution, "Toilet-to-Tap" water purification technologies.

The grave consequences of the current litigation nightmare guarantee that legislative inaction, which has been the case in Sacramento for some time, will be replaced by rushed and sloppy efforts to resolve the crisis.

Unless Judge Wanger rises to the occasion, California may soon be standing in line behind the banking and auto industries of this country seeking a multi-billion dollar bailout caused by a fish that most Californians will never see.

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