

Sound Decisions on Water

Water wars do not always have to end in blood on the barroom floor with one party, or more, sorely aggrieved. In recent weeks, there have been two notable decisions that promise to end long, rancorous disputes with relative amity. One is in Northern California, but is likely to have an effect on the entire state. The other is in Nevada, but also is of interest to Californians. Each outcome provides strong environmental protection while continuing necessary supplies to traditional users.

In Alameda County, Superior Court Judge Richard A. Hodge relied heavily on the state's evolving public-trust doctrine in reaching a preliminary decision on conditions under which the East Bay Municipal Utilities District could import water from the American River watershed to its Oakland-area service territory. Although East Bay has had a contract with the U.S. Bureau of Reclamation for the water, environmental organizations and the County of Sacramento have battled the utility in the courts for 17 years, wanting to force the diversion from the Sacramento River rather than the American. The opponents contended the project would severely deplete flows in the lower American, damaging fish and wildlife and recreation opportunities. East Bay argued that the Sacramento River—from which Southern California gets much of its supplies—was too contaminated.

Hodge overruled the environmentalists by allowing East Bay to take the water from the American. At the same time, however, he set strict flow standards that prevent the utility from diverting any water during dry periods in order to keep plenty of water in the river for spawning salmon and for recreational uses. The judge discussed at length the merits of the public trust

doctrine, which was ratified by the state Supreme Court in the Audubon Society suit against the Los Angeles Department of Water and Power over depletion of Mono Lake. The doctrine provides that societal demands for water must be balanced by protection of natural in-stream uses such as fisheries. While Hodge refused to make the East Bay take water from the Sacramento River, where there was less danger of environmental degradation, he said that the "public-trust doctrine occupies an exalted position in any judicial or administrative determination of water-resource allocation."

While neither side was entirely happy with the decision, both indicated they could live with it. Further details are to be negotiated before the judge renders a final decision.

The Nevada agreement, orchestrated by Democratic Sen. Harry Reid, appears to settle court battles stretching back half a century over use of the Truckee River, which rises at Lake Tahoe and ends in Pyramid Lake north of Reno. The pact will provide water to the Pyramid Lake Indians to maintain their fishery, which is a critical part of the tribe's economic base, and also will give the Westpac utility new reservoir storage that will protect its service to the Reno area during droughts. The Reno Gazette-Journal described the agreement as a "truly monumental achievement."

Perhaps such cases will encourage other warring parties to see the benefits of negotiation. In Alameda County, Judge Hodge said he hoped to produce a decision that would allow all sides to declare victory. While he seemed to succeed in that goal, he also achieved an even higher priority: "The intention of this decision is to protect the river."