



THE TRIBUNE

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Oakland, California

A victory for all

In a decision worthy of Solomon, Alameda County Superior Court Judge Richard Hodge managed a perfect balancing act in yesterday's ruling regarding claims by the East Bay Municipal Utility District to water from the American River.

In 1972, the Environmental Defense Fund sued to block EBMUD from fulfilling its federal contract to take American River water as a supplement to its normal supplies from the Mokelumne River. Charging that the diversion would cause serious and irreparable harm to fisheries, vegetation and recreation along the river, the EDF and other plaintiffs fought the case up to the U.S. Supreme Court and twice before the California Supreme Court.

Now, after this endless legal battle, comes a decision that everyone should be able to live with. The environmental community and City of Sacramento win remarkable new protections for water flows on the American. And EBMUD wins both judicial recognition of the importance of clean drinking water supplies and the right to exercise its contract so long as it respects the other valid uses of the river.

Judge Hodge minced few words in acknowledging the special importance of the American River as a public treasure. He termed the river and parkway "a public recreational resource of great value and significance" and detailed the value of its fisheries, wildlife and vegetation.

But, siding with EBMUD, he also stressed the "strong societal interest in obtaining high quality drinking water from uncontaminated sources." The water district maintains that to take its water from the river below Sacramento, with all the added municipal

and agricultural pollutants, would pose unnecessary risks to public health and add tens of millions of dollars to treatment costs.

One foundation of modern water law in California is the weighing of various and sometimes rival public uses. Faced with these competing claims to the American, Judge Hodge performed that balancing act with the highest discretion.

By granting EBMUD's contractual right, he assured Eastbay customers of another high-quality, safe source of drinking water to meet future needs.

And by setting minimum flow standards for the river at more than twice their previous level, Hodge struck a blow for the interests of boaters, fishing enthusiasts and wildlife along the river. The environmental community should applaud this victory and accept the ruling.

For EBMUD, the implications of the verdict will depend greatly on how Judge Hodge fine-tunes his decision in the months to come. If strict application of his judgment means that the district cannot divert water in dry years, EBMUD will enjoy little gain, mainly a chance to fill up district reservoirs a little faster in wet periods. If so, the district will have to weigh carefully the limited benefits against the \$100 million cost of building new plumbing to take the water. On the other hand, if the judge allows more flexibility, the river could help tide the district through dry years.

In either case, the district will need ample storage to cope with future drought and Delta emergencies. But now, if EBMUD does tap the American River, it can do so in good conscience, knowing that the vital interests of other state residents are amply protected.