

The song—"Cheedle cheedle chee? Cheedle cheedle chew!"—hadn't been heard in the San Joaquin Valley for decades. But PRBO Conservation Science field biologist Linette Lina had heard it before, in Orange County and Morongo Valley. Lina phoned her supervisor, Julian Wood:



"Do you guys get least Bell's vireo here? There's one singing." While waiting for Wood to arrive at the restored riparian area in the San Joaquin River National Wildlife Refuge that she had been monitoring, Lina watched a male and female Vireo *bellii pusillus* mating. Wood got there in time to see the pair feeding recently fledged juveniles. "I was in a state of shock for the rest of the day," Wood recalls.

That was June 10. Three weeks later, Wood found the pair's second nest, low in an arroyo willow screened by mugwort. The male vireo led him to the spot. Wood froze in place while the male sang on the nest, then settled in for 15 minutes of incubation. After the female relieved him and both had taken a break, the PRBO biologist found two featherless young and two eggs in the nest.

The restoration, funded by a three-year CALFED grant (see "Bunnies and Birds Get a (Levee) Break," ESTUARY, December 2004), was a partnership among Chico-based River Partners, PRBO (founded as Point Reyes Bird Observatory), the Endangered Species Recovery Program, and U.S. Fish & Wildlife. At PRBO's recommendation, River Partners built a herbaceous understory—mugwort, gumplant, mulefat, creeping wildrye—into its planting plan for the 800-acre project to provide songbird habitat and help control weeds. No one expected the endangered least Bell's vireo to move in.

The small olive-drab bird, once common in the Central Valley, was hard hit by brown-headed cowbird nest parasitism and loss of riparian habitat. The Valley's last confirmed breeding record was in 1919. At its lowest ebb, the subspecies was down to 300 breeding pairs, mostly in San Diego County; the closest known breeding population (to the San Joaquin Refuge) was in Santa Barbara County. Cowbird control and riparian restoration gave them a boost, and they've begun reclaiming their old range. "Given half a chance, they'll come back," says Fish & Wildlife ornithologist Loren Hays.

U.S. Geological Survey research ecologist Barbara Kus, who works with the vireos in

continued page 2



Selenium Back to Bite

Twenty years ago, birds missing eyes and legs were found at the Kesterson National Wildlife Refuge, then the dead-end of the San Luis Drain. The deformed wildlife tugged at heartstrings and put a feathery face on the problems caused by irrigating some 379,000 acres of selenium-laden soils in the western San Joaquin Valley. The deformities, caused by selenium's biomagnification in the food web, prompted BurRec officials to shut down 85 miles of the drain. But a later agreement reached between BurRec and enviros re-opened a 28-mile section, sending drainage from 100,000 of the 379,000 acres—under strict limits on selenium concentrations—to tributaries of the San Joaquin River and ultimately to the Bay-Delta Estuary.

Ordered by the court (as a result of irrigation district lawsuits) to provide drainage for the remaining acreage under the San Luis Act, BurRec recently released a draft environmental impact statement that presents seven alternatives for disposing of the wastewater.

One alternative—of four that discuss in-valley solutions—would retire all drainage-impaired lands within the Westlands Water District, plus acreage Westlands recently acquired from Broadview—approximately 308,000 acres. But this alternative would still leave in production approximately 71,000 acres of impaired lands in the Grassland Drainage area, which includes the water districts of Panoche and Pacheco. And that would mean building treatment facilities and evaporation ponds, an option that concerns scientists who were at Kesterson in the 1980s.

The other in-valley alternatives also propose building evaporation ponds. Ponds like these

attract birds and have also caused wildlife deformities in the Tulare Basin, yet BurRec's Mike Delamore says if any alternative involving evaporation ponds is selected, his agency will work to make the new ponds unattractive to wildlife—by constructing vertical walls to prevent birds from nesting, for example. And before the drainage water goes to an evaporation pond, says Delamore, it would be sent to a reverse osmosis facility to reduce the volume of water requiring disposal, which would in turn reduce the size and number of evaporation ponds needed. Water left over from the reverse osmosis process would be

biotreated before being discharged into the ponds. Pilot tests done for the draft EIS estimate that reverse osmosis/biotreatment could bring the selenium level down to less than 10 parts per billion (ppb).

But some scientists are skeptical. "There are just multiple problems with [reverse osmosis] based on how we've used it in the past," says Theresa Presser of the U.S. Geological Survey.

Presser, who cut her teeth as a government scientist at Kesterson, says that getting selenium levels down to 10 ppb through reverse osmosis simply won't keep pace with the amount of wastewater produced in the San Joaquin Valley. "You're going to get reject water that's highly concentrated and a huge pile of salt that may or may not have toxic elements that has to go somewhere," she says.

U.S. EPA's Eugenia McNaughton concurs, noting that both reverse osmosis and biotreatment are very costly. There's the constant need for reverse osmosis membrane replacement, microbes for the biotreatment, and finally disposal of the waste product. "You need a whole train of processes to get you where you want to go," says McNaughton. "And then you have to

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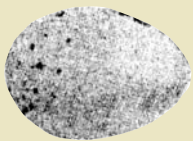
Stilt chick born without eyes at an evaporation pond. Photo by Scott Anger.

BUILD IT CONTINUED

Southern California, says the birds tend to return to the same nesting territory. "They can make it back to the same shrub." She's thrilled by the prospect of a new San Joaquin Valley population. "If half the young survive and return, and if even one male fledgling can attract a new female, that would be an incredible step." Kus has found that the birds, preferring early successional habitat, are attracted to three- to five-year-old restoration sites. Given that restoration at the refuge began in 2002, the colonizing pair is right on schedule.

"The presence of mugwort and other shrub understory was the key to the vireos nesting here," says Wood. He adds that cowbirds inhabit the refuge, and control may become an issue if the vireos return. But he and the other restoration partners would rather use restoration to create cowbird-unfriendly habitat.

Monitoring—the work Lina was doing when she heard the least Bell's vireo sing—is critical. "We haven't had the money or staff to do intensive monitoring until the CALFED grant," says refuge manager Kim Forrest. "You're not going to see the birds if you're not out looking for them." This is the last year of the grant, though Wood is hoping for additional funding so biologists can follow any returning vireos through another season.



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PEOPLE

GREEN POWERHOUSE



The "grande dame" of California water who keeps policy wonks and decision-makers on their toes, activist Dorothy Green shares her views on the Bay-Delta—and the state's water future—with Marc Beyerle.

Green helped establish

the nonprofit Heal the Bay in 1985, served for 3½ years on the Los Angeles Department of Water and Power Commission, and helped start the influential Public Officials for Water and Environmental Reform (POWER). In 1995-1996, she helped form the Los Angeles-San Gabriel Rivers Watershed Council, and in 2001, the California Water Impact Network. She is working on a book about California water issues that will be published by U.C. Press.

MB: When and how did you get started in water issues?

DG: I was active in environmental issues, including nuclear power and campaign finance reform, for a long time. Water issues evolved when a friend who had just been appointed to the MWD [Metropolitan Water District] Board asked for help understanding why the Met was as powerful as it is. The Peripheral Canal being put on the ballot led to my involvement as one of the three main activists in Southern California opposed to the Canal. I quickly learned that water was a big issue for California, directly responsible for its wealth and growth, which were based on water transfers.

You are part of a generation of grassroots activist women environmentalists who led the movement for a long time. What did/do you all have in common?

At that time, many women did not work for a living outside the home. We had financial resources behind us so that we could work on the issues we held important. Today, many women struggle to balance family and community work with making a living. For many women, this balance has become a paying job working on environmental issues.

You are a Southern Californian, but a vocal and consistent advocate for protecting the San Francisco Bay Delta. Why?

I firmly believe that one cannot be an environmentalist and be focused totally on local issues. We all need to have a global view since most

issues are much larger than of local concern. Also, I have self-interest too, as Southern California is dependent upon the Northern California water resource base and its water quality.

What is POWER?

POWER is composed of water officials and former water officials who are also environmentalists. The Annual California Water Policy Conference, now in its 15th year, is our principle activity. It is held in the fall in Los Angeles, where knowledge of water issues is not as strong as in the Bay Area. We have also held workshops at the tail end of ACWA conferences (anti-ACWA), and have initiated several Assembly Process conferences to work out answers to difficult water issues that do not lend themselves to easy answers.

Why do you think CALFED is so vulnerable these days?

CALFED has always been vulnerable. The water industry was never going to allow full protection of the Delta as is evidenced by its secret meetings. Activists lacked a realistic view of what the industry would do for the environment without compensation. The Monterey amendments to the SWP contracts were designed to privatize the people's water, to give the industry firm contracts for water, among other things. These amendments are now under environmental review because of a lawsuit brought by the Planning and Conservation League, Santa Barbara Citizens Planning Association, and Plumas County, a contractor that had been left out of Monterey. The water industry tried to do it again when it met in Napa to plan how to pump an additional million acre-feet of water out of the Delta despite the dire straits this ecosystem is in.

The computer model used by DWR to determine how much water is in the state and where just doesn't work. A recent peer review blasted it since, among other things, it assumes that groundwater is infinite. The industry will never change this behavior. Nor will it agree to be taxed for the improvements that are important to all of the state, despite agreement that users pay.

What do you think of the Environmental Water Account?

The Environmental Water Account is a blatant move on the part of agricultural interests to turn their service contract water into profit by selling the water back to the state. We should not have to buy water for fish. This should be a part of the public trust. Other efforts at privatizing our water resources are German and French multinational corporations that are buying water companies all over California. Water belongs to all of us. Water is not a property right.

What can Northern California learn from Southern California about water conservation, quality, and supply?

A lot. Southern California is way ahead in terms of water conservation, reuse, and groundwater management because we've had to do it. The Los Angeles basin only produces about one-third of the water needed; the rest is imported. Without imports, the L.A. basin would only support about 400,000 people; with water imports, it currently supports about four million people in the city of Los Angeles alone, and about nine million in Los Angeles county.

Because of lawsuits to protect Mono Lake and the Owens Valley, L.A. has left behind about one-third of the water it historically took from these environments in the eastern Sierra. Replacement water was negotiated with the Mono Lake Committee through the installation of low-flow toilets and showerheads and reusing treated wastewater for recharging the groundwater supply. Other conservation examples include a study led by the Los Angeles & San Gabriel Rivers Watershed Council with the Bureau of Reclamation and eight other partners on how best to capture rainwater for groundwater recharge, especially in a place like L.A., where 80% of the city's surface is paved and there is little soft-surfaced land to absorb rainfall.

Which do you think are the most critical water issues facing California today?

We must find a way to require that water be used as efficiently as we know how to use it. There is enough water in the state to meet the needs of our growing population, serve agriculture, and restore much of the environment, if there is the political will to do so. A recent bill sponsored by Sheila Kuehl (SB 820) required conservation to qualify for state funding, but that portion of the bill was pulled out first during review. The California Urban Water Conservation Council has signed up almost 200 agencies, which have agreed to use the best management practices the Council adopted. Yet not all of them are reporting what they are doing, and of those that are reporting what they are doing, fewer still are actually implementing all of the BMPs.

The history of gardening in this state is to bring in exotic species from all over the world and grow them here, regardless of what their water needs might be—so that we all use much too much irrigation water on our gardens. By installing automatic sprinkler controllers connected to the state weather station, and programming the sprinkler controller to optimize the landscaping that already exists, the City of Los Angeles has been able to save between 27-29% of the water it used for landscaping. MWD has mounted a campaign to promote California native or California-friendly plants as an alternative to all the exotics.

Water is managed in very fragmented ways in California. There are five different kinds of water agencies and multiples within each kind. Each kind was established to deal with a specific issue: water supply, water quality, stormwater management, groundwater management, and wastewater management. Nowhere in the law are they required to talk with each other, or to plan in a coherent manner. For California to develop anything like a comprehensive and integrated water policy, it is necessary for them to work together, and perhaps to consolidate many of them.

Can the water wars between Northern California and Southern California be resolved, and if so, how?

The so-called "water wars" between Northern and Southern California aren't real. The water wars have morphed into those who want to sell water so as to profit from the sale vs. all Californians. The California Water Impact Network is taking on the issues of privatization and paper water (water that exists in SPW contracts but not in reality) and has the networking potential to build coalitions of nonprofits, to organize the state around these issues, and to be effective. The way to address these issues and not piecemeal them is embodied in the "16 Principles for a Sustainable Water Future" adopted by the Network (<http://calwaterimpact.net>).

All of the organizations that you've founded seem to be stable and thriving. Do you have any advice for the rest of the environmental community on how to do this?

Our philosophy (mine and Felicia Marcus') was never to say "no" to business, industry, or the various bureaucracies we dealt with but rather to show that there's a better way to do it. We've tried not to be obstructionist but to work cooperatively with others, presenting alternatives to the standard way of thinking, and developing relationships with others who have the authority and responsibility to implement our better way.

How is the environmental movement different today, and what do you think about the recent talk about the environmental movement being dead?

The biggest change is the professionalization of the movement. This is both good and bad. Depending on volunteers can be difficult when they have many other commitments to work and family. Now, we have the ability to do more and better quality research. But I think that there's been a loss of edge, maybe because it is all run by professionals now. There are more organizations, which I view as a good thing, because we need lots of different voices saying similar things from different perspectives. We can be more effective if we are diverse.

HOW I SEE IT

FISH ADVISORIES ARE NOT ENOUGH



Mike Connor

On almost every pier along the Bay, you're likely to find a rusted sign where people have hung their jackets or leaned their fishing rods. These signs—often in English, Spanish, Chinese, Korean, Laotian, and Cambodian—warn people not to eat more than two meals per month of certain sport fish caught in the Bay. The legacy of historic mercury discharges from the gold mining era and of PCBs and chlorinated pesticides from the 1940s to the 1970s is still apparent in the fish that have bio-accumulated these persistent contaminants.

Despite all the signs, people catch and eat fish from all over the Bay. Even the warnings are ambiguous—they are "interim guidance" that has been in place for an "interim" of about 10 years. At the same time, Cal Fish & Game issues 300,000 striped bass stamps each year—striped bass have some of the highest mercury concentrations of fish in the Bay. Is there a better response to this issue? Should we spend resources doing more of the same—more fish monitoring, more advisories, more signs in more languages? Why do we think more of the same will work?

We need a new strategy, and the place to start is with mercury. Progress has been made in reducing mercury discharges, but short of dredging all the sediment from the Bay, it will take several decades before the fish advisories can be removed. It's time to identify who's at risk, and get to work reducing their risk. The model for a workable strategy is our success in reducing the exposure of children to lead. Regulatory bans and controlling pollutant sources helped reduce lead levels in the environment. In addition, doctors screened children for lead exposure and provided treatment to those most at risk. Children's blood or hair can be screened for mercury for about the same cost as for lead. Alternatively, screening could be limited to those children who exhibit early symptoms of mercury toxicity.

Screening data would also help us identify the best way to protect public health. Consumption of Bay fish is only a small part of the total problem. The biggest source of mercury to the diet is probably from canned

ENVIROCLIP



TIDE TURNS AT MOFFETT

Five years ago, the Navy planned to clean up some of the DDT, PCBs, zinc, and lead from a large stormwater pond at the former Moffett Field Naval Air Station, a 260-acre Superfund site in Mountain View. But the cleanup would have left a portion of the pollutants behind and rendered the site hazardous for many saltwater marsh species. Says Save the Bay's David Lewis, "That's when we began our offensive along with a broad coalition of community organizations. We devised a blueprint for a full cleanup, then staged rallies at Navy events and launched a letter-writing campaign that inspired more than 2,000 letters and emails, some from elected officials—city council members, U.S. Senator Barbara Boxer, and U.S. Representative Anna Eshoo. We even had the EPA and the Water Board behind us." The Navy changed its position, which is very unusual, says Lewis, and now the site can be restored to tidal marsh for threatened wildlife, among them the clapper rail and Alameda song sparrow.

Lenny Siegel of Public Environmental Oversight says, "The local activists had more knowledge about the site than the military officials. Many of us had been on the Restoration Advisory Board there for years and had learned about the technical issues and rules guiding Navy decisions." Navy spokesman Rick Weissenborn acknowledges they hadn't realized that the Mid-Peninsula Regional Open Space District owns one-quarter of the site and had planned for years to restore it to tidal marsh. "After learning that, the Navy saw things differently," he says.

Problems still beleague the cleanup plans, however. PCBs in the pond have been traced back to NASA's blimp hangar, a gargantuan landmark built in 1935 and readily visible from Highway 101. Scientists will have to determine how to interrupt the flow of leachate from fibers in the hangar's wells.

Still, Lewis is confident that the cleanup will happen and expects community pressure to hold sway with NASA, the site's current owner and the organization responsible for restoration. "NASA must get the message by now that we won't take no for an answer."

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RESTORATION

IS BIGGER BETTER?

For years, while dreams of suburban "Mc-Mansions" danced in developers' heads, environmentalists and resource managers were having visions of a different kind—of a large home, or many small ones, for fish and wildlife, to be created on a former dairy farm known as Dutch Slough. In 2003, the Department of Water Resources convinced the landowners to sell the 1,166-acre property on the Delta near Oakley. Now the Department, CALFED, the Coastal Conservancy, the Natural Heritage Institute, and the City of Oakley are planning one of the largest freshwater tidal wetlands restoration projects in the western United States, as well as groundbreaking research on how best to restore Delta marshes.

Says the Institute's John Cain, "The property is in the middle of a huge [home] construction zone, so DWR was lucky to get it. In 1999, environmental agencies earmarked Dutch Slough as one of the most restorable sites around the Delta." Located at the mouth of Marsh Creek, Dutch Slough gets sediment deposits that limit subsidence to a relatively modest 0 to 10 feet, while surrounding acreage has subsided at least 20 feet, making it much more difficult to restore.

Project designers hope to create a mosaic of wetland and upland habitat types, among them intertidal wetlands. With elevations poised between the high and low tide lines, these marshes drain and flood daily, keeping exotic predator fish out and providing an ideal refuge each spring for juvenile chinook salmon and Sacramento splittail. Intertidal marshes are generally dominated by tules, so the invasive Brazilian water weed can't get a toehold, and they provide homes for California black rails, giant garter snakes, and Western pond turtles.

Another goal is to study the effects of different restoration strategies on wildlife, especially salmon, by implementing an adaptive management plan—meaning that the early restoration phases will be monitored carefully and the findings will guide later phases. U.S. EPA's Bruce Herbold explains that research at Dutch Slough will pose two questions with broad applicability to other ecosystem restorations around the Delta: How large does a marsh need to be and at what elevation to create the

maximum benefit for salmon, to ensure that they survive and bulk up before heading out to sea?

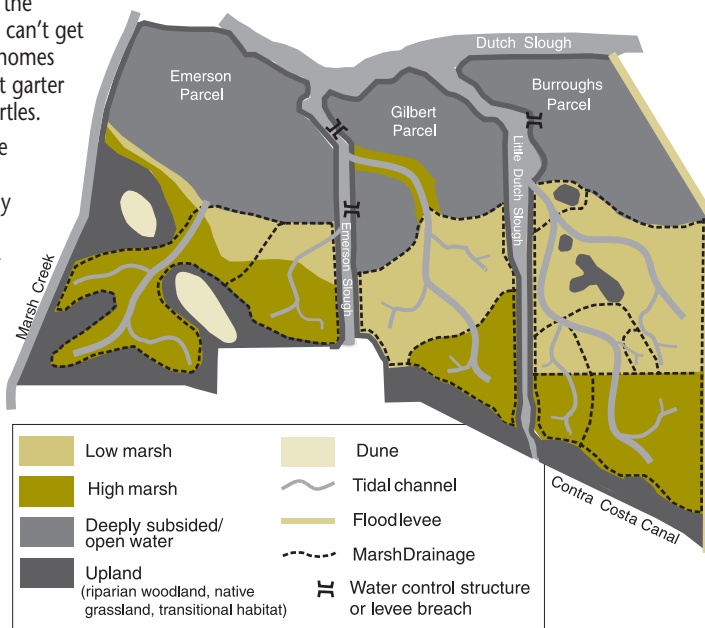
To answer the size question, scientists will divide the eastern and central tracts of Dutch Slough into three cells of varying sizes—approximately three, 30, or 300 acres—then compare them over time. "Many sites being restored now are small, just a few acres," says Herbold. "The Dutch Slough study results will tell us whether we should focus on many scattered small restoration sites or a few large ones at key points."

The EIR, underway soon, will explore five alternatives that examine how much of the property should be devoted to research and "how much do we restore in the way we think best even though we don't know much about marsh restoration?" says Cain. Then a preferred alternative will be selected, and the document finished in spring 2006. Next, if construction funding is available, crews will excavate upland areas and use the dirt to fill in subsided parts of the property. The second phase will begin six months to a year later and consist of more detailed grading, channel creation, levee breaching, and inundation.

Funding could be a major constraint, says Herbold. "All the good design and cooperation could be for naught if funding is lackluster. And that would be unfortunate. This project could provide guidance for future restorations by providing habitat values for various species at a site that is particularly valuable by virtue of its locale, size, and topography."

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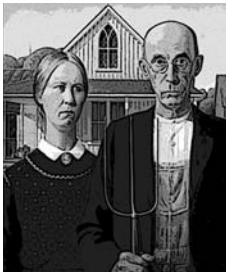
ONE POSSIBLE DESIGN ALTERNATIVE



Source: PWA

LAND USE

NAPA PEASANTS TAKE UP PITCHFORKS



In the bucolic flat-lands and rolling hills of Napa County, citizens are gearing up for battle. The Napa Valley Land Stewards Alliance wants to change the way the county does business with landowners by putting an initiative on the ballot to force government to pay up or lay off when new land use restrictions, such as no-growth ordinances or stream setbacks impacting where crops can be planted, could lower property values.

Environmental groups like the Sierra Club and the Greenbelt Alliance say that making the county pay for potential lost property value will freeze environmental protection and land use policy and open the county up to fast-paced development.

Both sides claim as their chief goal the protection of a rural way of life, with property rights vs. government regulation in the two corners of the ring.

"The initiative will cut down county government," says the Napa Sierra Club's Genji Schmeder. "It will make it impossible to issue any new decisions affecting land use."

But the Land Stewards' Mike Rodrigues says the initiative will not stop the county from enacting new land use restrictions for public benefit. "We're not trying to hamstring the county," he says, but "it is a way to make the supervisors more carefully consider what they are doing."

The Land Stewards recently submitted more than 10,000 signatures to the county registrar of voters with the aim of qualifying two ballot initiatives for county-wide election. One initiative requires that county supervisors "read and understand" any new law before they vote on it. The other—the Fair Payment for Public Benefit Act—would require the county to either compensate landowners or grant them waivers when new restrictions on land use affect their property values.

The "fair pay" initiative, modeled on an Oregon state law known as Measure 37, would apply only to "new Napa County land use restrictions." Still, critics like Schmeder say that even though the initiative is not retroactive, it could undermine existing regulation. "If development applications are turned down, that could be interpreted as a new restriction, and the county would have to face it in court," he says. According to the Audubon Society of Portland's Bob Sallinger, Measure 37 has had a chilling effect on land use regulation in Oregon.

While the Land Stewards based their initiative on the Oregon law, they got their political inspiration from a water quality proposal on the

county ballot in 2004 that would have limited development—residential or agricultural—near streams. The Stream Setback Ordinance, which sought to limit pollution runoff into the Napa River by establishing setbacks of up to 150 feet, exempted growers who already had crops planted near streams. Small landowners like Rodrigues who owns 11 acres, about 5 of which are suitable for cultivation he says, saw the stream setbacks as "rendering the property essentially useless."

Dubbed "peasants with pitchforks," the small landowners formed the Napa Valley Land Stewards Alliance to campaign against Measure P. Their efforts paid off: the measure was voted down by 65 percent of the voters, and the Land Stewards boosted their membership from a dozen to over 1,100.

Now they are on the offensive.

Rodrigues is quick to point out that the Land Stewards do not have complaints with existing regulations, and notes that the spectacular beauty of so much of the county is a direct outcome of regulatory protections. The objective of the Land Stewards, he says, is to make sure the costs of future regulations for public benefit, whether for environmental or aesthetic reasons, are spread out evenly across the public.

"We're saying, look, if you want to come and deprive us of the use of our property for public benefit, whether it's for a hiking trail or a conservation easement, then we think it is only reasonable that we be compensated for the loss of the property," he says, "and the county's position is, no, not unless we take it all, and by the way, here's your tax bill."

Schmeder says this is an odd way to look at environmental regulation. "The initiative is imbalanced," he says. "If the county does something to increase the value of property, there is no payment to the public."

He also argues that discretionary land use decisions could be interpreted as new restrictions since county officials had a choice. "There is no way the county can afford this kind of initiative," Schmeder says. "The county will either give in to powerful people who threaten to sue, or it will pay. It would be the end of land use planning in Napa County."

As ESTUARY went to press, the registrar of voters was taking its report on the validity of the signatures to the county supervisors. If the initiatives reach the required 3,668 signatures, the board of supervisors can adopt the measures or put them on the ballot for either the special election in November or the primary election in June 2006.

See: <http://www.landstewards.org/fairPayment/initiative.htm>

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BURNINGISSUE

ENDANGERED ACT

Environmentalists are up in arms about a bill that, according to its author Congressman Richard Pombo (R-CA), does not exist.

At least not yet.

In early July, someone with connections to the Republican-controlled House Committee on Resources leaked a 73-page "staff discussion draft" of a bill seeking to substantially amend the Endangered Species Act of 1973. This leak followed the June 28 leak of a draft outline. Within days of the documents' circulation, environmental organizations from coast to coast issued press releases and analyses decrying the draft bill as an attempt to eviscerate the 32-year-old species protection law.

"I think it is telling that critics are talking about the bill, when there is no bill," says Brian Kennedy, spokesman for the House Committee on Resources, whose staff prepared the 73-page draft. Kennedy says that the leaked document was an "old draft" that "continues to evolve."

Kieran Suckling, with the Center for Biological Diversity, says that Congressman Pombo has tried to step away from the leaked draft due to the adverse public reaction. "Anyone who spends as much time running from his bill as Pombo does clearly has a terrible bill, and all of America should be running from it," he says.

The Endangered Species Act (ESA) is perhaps the strongest federal environmental law, with a broad and powerful mandate "to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction." Yet the law has angered landowners and industry for years by placing limits on actions that threaten species listed under the act. The American Policy Center, a Washington, D.C.-based conservative think tank, recently sent a letter to the Committee on Resources referring to the 32-year tenure of the ESA as a "reign of terror" for property rights.

The Bush administration has shown particular hostility to the ESA, according to environmental organizations and a host of



continued page 6

recent newspaper editorials. *The New York Times* recently editorialized that Bush officials have tried to undermine the law through administrative policy changes and legal briefs. "They have slowed the process by which species are listed as threatened or endangered, cut scientists out of important wildlife decisions, encouraged and then sided with industry lawsuits against habitat designation, and tortured the very meaning of the act to evade its obligations," the *Times* wrote in its July 5 paper.

Kennedy says that Pombo and his colleagues on the committee want to improve the act, not eviscerate it as critics claim. He listed four principle issues that the bill, tentatively scheduled for release in September, will address: strengthening the scientific standards; improving the critical habitat designation process; creating incentives for private landowners to participate in species recovery programs; and generally focusing on species recovery.

"Ten out of 1,300 listed species have recovered and been removed from the list; that's less than a 1% success rate," Kennedy says. "After three decades, there is no evidence of species recovery. This is not a successful law."

But without it?

According to U.S. Fish & Wildlife's Web site, over 65% of the species listed under the ESA were added to the list in the past 15 years, which can encompass a few generations for endangered species like winter-run chinook salmon, or a single generation for species like the bighorn sheep and the peregrine falcon.

Fifteen years is not adequate time to gauge the act's results, says the Bay Institute's Christina Swanson. The problem with low recovery numbers, Swanson says, is that "critical habitat has not been designated; thus specific protection measures have yet to be identified and implemented."

Just what should be considered good science is itself at the center of the debate over the ESA. Kennedy says that ESA science is not up to par with that of other environmental laws like the Clean Water Act which requires that all science must be peer reviewed and based on solid evidence.

Swanson says the most scientifically advanced way of gauging the vulnerability of a species is through "viability modeling and extinction risk modeling," both forms of statistical analysis that would be excluded if the ESA allowed only evidentiary science.

continued page 8

SELENIUM CONTINUED

deal with what you get at the end. And traditionally in all water treatment projects, that's what gets ignored, and that's what comes back to bite you."

The remaining three options take the wastewater out of the valley, routing it either to the ocean at Morro Bay or to the Estuary. Two of those alternatives propose sending the drainage into the Delta via a pipeline running from the San Joaquin Valley to either Chipps Island or the Carquinez Strait. Selenium concentrations in the Estuary were last surveyed in the mid-1990s, when they were found to be below the water quality protection guidelines of 2 to 5 ppb. Modeling in the draft EIS shows that Bay-Delta Estuary drainage options would result in selenium levels below these guidelines as well. Yet, says Presser, "It's such a productive estuary that when you put in selenium, you get bioaccumulation in the food web."

BurRec did not indicate a preferred alternative in the EIS. "When we looked at the cost and impacts, there was no clearly superior alternative," says BurRec's Delamore.

But Environmental Defense's Terry Young, who worked on Kesterson, believes there is a good option—one that didn't make it into the draft EIR. "The obvious option that's not being looked at is to retire enough land to bring us to zero discharge from drainage—to avoid either discharging into one of the waterways or on land," she says. Another troubling omission in BurRec's draft, she adds, is a proposal to address the risks of unplanned disasters at the reuse areas or evaporation ponds. "If you think about putting a dollar value on the risk and throwing that into the cost-benefit analysis, every option comes out more negative than it is now," explains Young.

Lloyd Carter, a professor of water law who covered the Kesterson disaster as a reporter, says that even without factoring in the risks, the costs are too high. "Never has so much been spent for so few for so little benefit to society," says Carter. "'Kesterson redux' will cost three-quarters of a billion dollars to implement, plus another \$92 million every four years for maintenance, all for the benefit of just 600 growers."

As ESTUARY went to press, the period for public comment on the draft EIS was extended to September 1. At the same

time, the public comment period for another draft document—the CVP contract renewal for Westlands Water District—closed. Both processes appear to be moving ahead, each in its own parallel universe, making some suspect that land retirement is not a serious option—otherwise, why the need for all the water? Felix Smith, a retired Fish & Wildlife biologist and one of the original whistleblowers on Kesterson, suspects that Westlands wants the water to sell to buyers in the south. But he also worries that some of the most troublesome land—the upslope areas that are also high in selenium—will not be retired, and will continue to drain into the flatlands, perpetuating the disaster. "The people who are creating the problem need to fix it," says Smith. "They need to not make it in the first place. If the selenium ends up in those bottom lands, it's going to be a violation of the Migratory Bird Treaty Act."

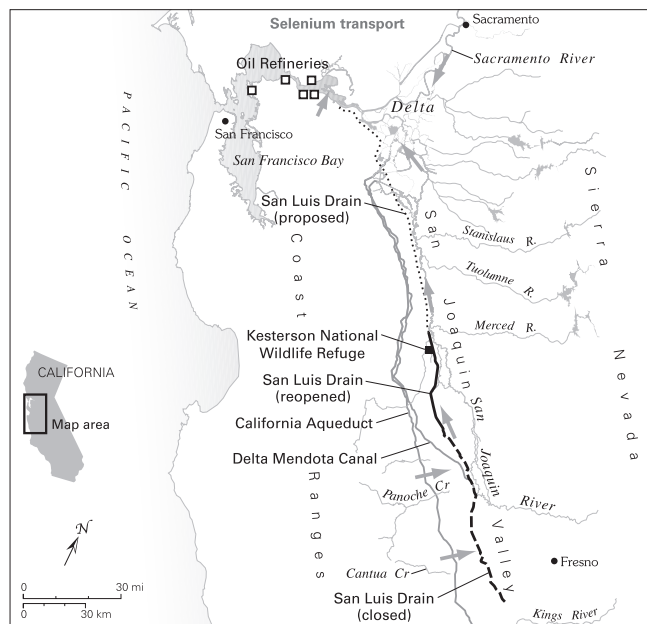
BurRec's Joe Thompson says his agency is required to provide drainage and to provide water. "We're obliged to renew contracts—that's the law," he explains. "At this time, Reclamation has not determined a date by which federal drainage service will be provided. But we are working toward that goal."

The draft EIS is available at:
http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=61

Email comments to [cjacquemin@mp.usbr.gov](mailto:cjacquemine@mp.usbr.gov).

Contact: Mike Delamore (559)487-5039; Joe Thompson (559)487-5179; Terry Young (510)658-8008 **KC/LOV**

ONE PROPOSED DRAINAGE ROUTE



Map courtesy of USGS.

PLACES TO GO & THINGS TO DO



WORKSHOPS & CONFERENCES

SEPT 7-9

WEDS.-FRI

PLASTIC DEBRIS, RIVERS TO SEA CONFERENCE

TOPIC: Findings on plastics in the marine environment; fostering action to stem the flow of plastics from urban areas to it.

LOCATION: Redondo Beach

SPONSORS: Algalita Marine Research Institute, California Coastal Commission & others
Miriam Gordon, (415)904-5214 or mgordon@coastal.ca.gov
http://www.algalita.org/rivers_to_sea_conference.html

SEPT 11-15

SUN.-THURS

AMERICAN FISHERIES SOCIETY 135TH ANNUAL MEETING

TOPIC: Creating a fisheries mosaic: connections across jurisdictions, disciplines, and cultures.

LOCATION: Anchorage, Alaska

SPONSOR: American Fisheries Society
Anne Grist, (703)433-9435; grist@letsmeet.net

SEPT 14

WEDNESDAY

TRAINING FOR TRAINERS

TOPIC: Master teacher course to assist public health agencies, community groups, health care providers, and others in educating the public about fish contamination issues.

LOCATION: Sacramento

SPONSOR: Delta Watershed Fish Project
Sun Lee, slee@dhs.ca.gov

SEPT 27

TUESDAY

WAVES, WETLANDS & WATERSHEDS

TUESDAY, SEPTEMBER 27, 2005

TOPIC: Workshop to train teachers in classroom activities addressing coastal and marine issues.

LOCATION: Alameda

SPONSOR: California Coastal Commission

Annie Kohut Frankel, (415)597-5888; afrankel@coastal.ca.gov
<http://www.coastal.ca.gov/publiced/pendx.html>

SEPT 28

WEDNESDAY

2005 CALIFORNIA WATERSHED FORUM

TOPIC: Agency and legislative representatives will gather with watershed advocates to discuss how to develop an effective and successful watershed program for California.

LOCATION: Sacramento

SPONSORS: California Watershed Network & Salmonid Restoration Federation

Mary Lee Knecht, mlknecht@comcast.net
<http://www.sacriver.org/events/index.php?action=ShowEvent&eventid=157>

NOV 17-18

THURS.-FRI

WATER POLICY CONFERENCE 15

TOPIC: Escaping constraints to effective water policy.

LOCATION: Hollywood

SPONSOR: Public Officials for Water & Environmental Reform
<http://www.cawaterpolicy.org/> or (858)272-9627



HANDS ON

SEPT 17

SATURDAY

COASTAL CLEAN-UP DAY

TOPIC: Be part of the international effort to clean up beaches, bays, and waterways.

LOCATIONS: Berkeley, San Mateo, San Francisco & other coastal areas

SPONSORS: California Coastal Commission
<http://www.coastal.ca.gov/publiced/ccd/ccd.html>
1(800)COAST-4U; coast4u@coastal.ca.gov

SEPT-OCT 29-31

THURSDAY

SATURDAY

2005 ROAD RALLY

TOPIC: Test drive hydrogen-powered fuel cell vehicles and learn about Bay Area hydrogen fueling stations during this annual three-day event.

LOCATIONS: Berkeley, Oakland, San Jose, Palo Alto & San Francisco

SPONSOR: California Fuel Cell Partnership
<http://www.fuelcellpartnership.org/events.html> or (916)371-2780

RECOGNITION DEADLINE: FRIDAY, SEPT. 9, 2005

Organizers for the California Water Policy 15 Conference are now accepting nominations for awards that will honor individuals, public and nonprofit agencies, and private companies that have voluntarily broken through constraints and overcome obstacles to move California water policy forward.

Contact Debbi Dodson, (858)272-9627; ddotson@san.rr.com.
<http://www.cawaterpolicy.org/awards.htm>

Save the Date!

SEVENTH ANNUAL STATE OF THE ESTUARY CONFERENCE: CELEBRATING SCIENCE & STEWARDSHIP

OCTOBER 4-6, 2005

Henry J. Kaiser Convention Center
www.abag.ca.gov/events/estuary

Topics include—but are not limited to—habitat restoration, estuarine water supplies, and estuarine water quality.

INVASIVE SPECIES

TINY TERRORISTS

Visitors to Alameda's Crown Beach felt the effect of invasive exotic marine organisms in the Bay this June when an outbreak of cercarial dermatitis ("swimmer's itch") left them with a week-long itchy red rash. While the immediate culprit is a larval schistosome flatworm, the background is a tangled tale of aquaculture and parasitism.

Between 1869 and the 1890s, Atlantic oysters were introduced to S.F. Bay. A mollusk called *Ilyanassa obsoleta*, the eastern mud snail, came with them; it's now the most abundant snail on the Bay's mudflats. And the snail brought its flatworm parasites, including *Austrobilharzia variglandis*. The snail is only an intermediate host for the flatworm, which needs to enter the blood vessels of a bird in order to reproduce. But cercaria—larval flatworms—may blunder into humans while searching for a bird, and get under their skin instead.

Those eastern shellfish were brought in to replace the Bay's native oysters (*Ostrea conchaphila*). Four years ago, efforts to bring back the native oyster began in Richardson Bay and elsewhere, expanding into a NOAA Fisheries pilot project in 2004. Bags of oyster shells have been placed in shallow water, creating instant reefs where larval oysters can settle down.

Despite promising early results, another alien may threaten the oyster restoration project: the sea squirt *Didemnum* (see "Slime Fest," ESTUARY, December 2004). It's a problem in northern Europe, New England (where it covers a 40-square-mile area of Georges Bank), and New Zealand. The colonial organism fouls rocks, docks, piers, and the rafts where mussels and oysters are grown. Last year's rapid assessment survey didn't detect it in Richardson Bay, but it's occurred as close as Sausalito in the past. And biologist Andrew Cohen says *Didemnum* could also jeopardize oyster farms in Tomales Bay and Drakes Estero, as well as rocky reef habitat offshore.

If you want to see what *Didemnum* and *Ilyanassa* look like, see www.exoticsguide.org, a handy online guide to the Bay's rogue's gallery of invasives, with detailed information on natural history and environmental impacts. With new species turning up all the time, it's likely to be a work in progress.

Contact: Andrew Cohen acohen@sfei.org. JE



HOW I SEE IT CONTINUED

tuna fish. Levels of mercury in tuna can be higher than those in Bay fish, and the total consumption of tuna is 10-100 times that of striped bass, the fish of most concern in the Bay. Just as signs around the Bay warn people about consuming too many fish, many stores and restaurants also issue warnings. But screening is necessary to understand whether we should be prioritizing our public health funds to protect people catching wild fish or purchasing their fish in stores. And screening quickly identifies who needs treatment so the patterns of mercury toxicity can be reversed.

U.S. EPA assessment models suggest that nationwide, 15% of newborns are at risk from high mercury exposure. If 15% of newborns are at risk, we need to find them and treat them. Let's pilot-test some solutions to evaluate how to better address this problem.

—Mike Connor is Executive Director of the S.F. Estuary Institute.

BURNING ISSUE CONTINUED

"If they want to rely exclusively on evidentiary analysis, then the only way to gauge a species' vulnerability would be when it is gone," she says.

Environmentalists claim that raising the scientific standards is in fact a ruse for creating obstacles for listing species as endangered. Suckling says that the Pombo bill as drafted "creates Byzantine processes and massive paperwork requirements that will essentially chain agency biologists to Xerox machines for a decade."

In a recent television interview, Pombo responded to this criticism. "We are not raising the bar for listing species. What we are saying is: The science that is used in determining whether or not a species is listed or not should be raised. That does not raise the bar; either a species is endangered or it is threatened or it is not."

See:
<http://www.eswr.com/605/pombodraftbill.pdf>

Contact: House Committee on Resources (202)225-2761; Kieran Suckling (520)275-5960 JG

GRANTS DEADLINE:
FRIDAY, OCT. 14, 2005

The California Environmental Protection Agency is pleased to announce the EJ Small Grants Program to assist eligible community-based grassroots nonprofit entities with federal Internal Revenue Code 501(c)(3) status, and federally recognized tribal governments to address environmental justice issues as authorized by California law. Two hundred and fifty thousand dollars (\$250,000) in grant funds are available for this grant cycle. Projects may be funded with a maximum amount of \$20,000 per project.

Applications are available on the Cal EPA Web site:

www.calepa.ca.gov/EnvJustice/Funding/SmallGrants.htm

Steve Hui, (916)324-5826;
hui@calepa.ca.gov, or Malinda Dumisani,
(916)445-9480; mdumisani@calepa.ca.gov

YOUR INDEPENDENT SOURCE FOR BAY-DELTA NEWS & VIEWS



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