

WB-DWR-Bay-Delta

From: Michael Warburton <warburto@sonic.net>
Sent: Tuesday, April 23, 2013 11:55 AM
To: WB-DWR-Bay-Delta
Subject: Science, Flows and Management Under Uncertainty

Dear Water Boards,

Thank you for extending the comment period on your next steps in managing the update of the Bay-Delta Water Quality Control Plan. Our organization, The Public Trust Alliance, has been concentrating recent efforts on rivers not connected to the Delta (the Carmel and Salinas, mostly in Monterey County), but we hope that our experience and comments will be useful to your current work. We continue to believe that the State Water Boards' unique position as legal Trustees managing key public resources for common benefit (including, most importantly, future generations of Californians, who will be managing and using those resources long into the future), provides key guideposts for making appropriate public decisions. We urge you not to disregard either your legal duties or your commensurate authorities in this area because they point to realistic opportunities for responsible public action.

The words "co-equal goals" included in 2009 legislation did not revoke, or even drastically amend, the California Public Trust Doctrine; the law still requires trustees to "protect trust resources when feasible." We are deeply grateful that the official report of public workshops included so much attention to the terms of public debate about the appropriate role and authority of "science" in determining appropriate public action. We join with other stakeholders in recognizing such independent analysis as vital to informed public decision making. We think we can find even more common ground with other parties if additional effort is put on exploratory rather than adversary approaches to understanding the "natural" constraints we are confronting, as well as the complex social, economic, cultural and institutional forces which play such prominent roles in shaping and defining our "environment."

We have come to see the public trust doctrine as key "adaptive tissue" in our institutional infrastructure (this mixing of biological and physical metaphors is deliberate). Clearly, decision makers and community members have a lot of learning to do on any realistic path to consensus. We all have heard that our Constitution is "not a suicide pact" but we don't seem to have taken it to heart. Policy gridlock is neither an inevitable nor a legally acceptable strategy for Public Trustees dealing with California Water problems. The law requires reasonable and timely action based on the best information available. Human beings, in fact, have been making decisions and taking action on the basis of "incomplete" information for thousands of years. CEQA and Water Boards are comparatively recent institutional innovations while the legal contours of the Public Trust have been shaped over millennia. The Byzantine Emperor Justinian's legal advisors recognized Centuries of prior authority that limited potential acts of even the most powerful political actors because some things are just so valuable for public use that they cannot be treated as private property.

Perhaps the most salient feature of the public trust is that public rights and duties move with the water, and not with socially determined boundaries. As climate change shifts relationships between land, water and place, the changing public trust provides key opportunities for adaptation, both physically and institutionally. The flow criteria that the public is entrusting you to enact and enforce for the San Francisco Bay Delta should be both ecologically and socially "sustainable." The conventions and practices suggested by the California Public Trust Doctrine are important components of your "tool kit."

The people and methodologies described in the excellent workshop report make this topic a very personal

one for me. Thirty two years ago, I arrived as a new member of the scientific staff of the International Institute for Applied Systems Analysis to work on a "Discussion Paper" for an Interagency Meeting of United Nations Agencies engaged in "Environment and Development" work in the Himalayan Foothills. The Canadian Ecologist, C.S. Holling, was the Institute's Director, and fisheries biologist Carl Walters was just putting his theory of "Adaptive Management" together. I even think I met Ray Hilborn on a brief trip through U.B.C in Vancouver a couple of years later. In any case, there was a very deep discussion transpiring regarding what "science" should and should not claim authority for in managing complex ecosystems. And what are appropriate roles for various disciplines in collaborating on credible and useful policy recommendations?

We looked especially at policy issues characterized by "Uncertainty" and long periods of gridlock. Our Himalayan work was originally published as several academic papers and then, in 1986, as Uncertainty On A Himalayan Scale: An Institutional Theory of Environmental Perception and a Strategic Framework for the Sustainable Development of the Himalayas (Ethnographica, London). It was republished in 2007 with collaboration of the Peter Martin Center at Oxford Business School and Himal Press of Kathmandu, with a new Introduction by British Anthropologist, Michael Thompson and the Former Minister of Water Resources for Nepal. The title of that introduction was "The Triumph of Hype Over Experience," and I think it offers many useful suggestions for breaking out of "War of Experts" situations. There is actually a fairly longstanding scientific literature and associated methodological recommendations for dealing with "wicked problems" and your Board might find this useful in formulating next steps.

Thanks again for this extended period to comment.

Sincerely,
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