

Valley

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Friant lawsuit reappears

Water rights, fishery butt heads again

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Worried about its impact on the pending California Water Project vote, Gov. Edmund G. "Pat" Brown 30 years ago killed a last-minute environmental lawsuit by the state Department of Fish and Game, which contained damaging information about his administration's water policies.

Brown, 83, confirmed in an interview by telephone last week that he wanted his administration, not the courts, to settle the dispute created when the construction of Friant Dam on the San Joaquin River near Fresno destroyed the river's salmon runs and downstream fishery. Only a trickle of water is released from the dam during normal or dry years.

Many of the issues that would have been raised in that 1959 environmental lawsuit are the subject of a federal court lawsuit filed in Sacramento by the Natural Resources Defense Council, a 40,000-member citizens' national environmental group, against the Bureau of Reclamation, the federal agency that operates Friant Dam.

The suit is over the reclamation bureau's proposal to renew 40-year contracts with San Joaquin Valley irrigation districts for the water stored behind Friant.

Thursday, U.S. District Judge Lawrence K. Karlton issued a temporary restraining order on renewing a 40-year water contract for the Orange Cove Irrigation District, which serves about 500 farms in Fresno and Tulare counties and is the first to come up for renewal.

Karlton said his order stemmed from unresolved questions about whether federal agencies adequately studied the effects on endangered species caused by diverting massive quantities of water from the San Joaquin River. He asked both sides for written arguments and scheduled another hearing for March 17.

In the earlier case, Brown

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ordered attorney Wilmer Morse to drop Fish and Game's planned legal appeal of a ruling June 2, 1959, by the State Water Rights Board upholding the right of the bureau to divert virtually all of the water stored at Friant to farmers.

"I can remember I felt it should be decided by the executive branch of government rather than the courts," Brown recalled. "We wanted to build the California Water Project and then work with the federal Bureau of Reclamation and so I didn't want any confusion about it."

The California Water Project, a joint federal-state project to build the state aqueduct, storage reservoirs and pumping plants, was narrowly approved by state voters in 1960. The aqueduct supplies water for western San Joaquin Valley farms and municipal supplies for Southern California.

Brown's action killing the lawsuit triggered bitter reaction from veteran Fish and Game employees who thought the state's wildlife resources were being destroyed by ambitious dam and canal projects promoted by agriculture and supported by shaky legal opinions from the state.

"I now regret that I didn't have the guts to blow the whole rotten business sky-high," said Jack Fraser, 67, who served as Fish and Game's deputy director in the late 1950s and is retired in Fountain Hills, Ariz., "but I'm sure I would not have prevailed. The big guns were all lined up on the other side. So much for the political process. The salmon were denied their day in court. It was a tragic case."

Fraser said Brown had been lobbied heavily by farm interests and bureau officials to prevent Fish and Game from filing the suit, which accused Water Rights Board Chairman Henry Holsinger of conflict of interest.

The suit also alleged that Brown and Holsinger acted to circumvent Fish and Game codes protecting fish as early as 1951 when Brown was state attorney general and he and Holsinger issued an opinion that the bureau did not have to preserve the fishery below Friant.

Morse, now retired in Carmichael, said that when Brown told

him to drop the suit, "I was so concerned and so upset that I couldn't believe my ears. I didn't care. He [Brown] could fire me. He could do anything he wanted to. I was going to tell him what I thought of this whole situation."

Morse said he argued heatedly with Brown and Brown's legal advisers, who contended the governor could work out the dispute with the bureau over whether the federal agency should release more water from the dam to sustain the downstream fishery.

"I remember saying to him, [Governor, why don't we file the action and let it pend while you're working out all of your problems?]" Morse said. "And he said, 'Oh, we'll work it out.'"

"But I said, 'You're giving away all your ammunition by destroying this case.' And he said, 'Well, I think I can work with the Bureau of Reclamation, I think we can work this thing out.'"

But Morse notes that the bureau never took any action to increase releases from Friant Dam. He said he thought the suit would have reached the U.S. Supreme Court.

Brown's Fish and Game director in 1959, Bill Warne, now 83 and retired in Sacramento, said Thursday that he didn't remember the 1959 argument over the proposed lawsuit.

Warne had served as an assistant commissioner of the Bureau of Reclamation before taking the Fish and Game job and later served as state director of agriculture and head of the Department of Water Resources.

Brown defends his action 30 years ago, saying he always tried to balance water development and fishery needs. He says if California voters had yet another big state canal — the so-called peripheral canal to move Northern California water south — it would have helped the fishery.

Morse said he still hoped that the San Joaquin fall and spring salmon runs could be restored.

"They can start that fishery up any time. They really can," he says. "And you wouldn't believe the size of those salmon that came up that river. Some of them were as high as 50 pounds."

"They had tremendous, beautiful salmon runs before that dam was put in. They killed the fish off."