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## **Governor's Commission to Review California Water Rights Law: Twenty-Five Years Later**

Arliss Ungar\*

When the phone rang, I was in bed feeling miserable with a bad case of the flu. The caller, from Governor Jerry Brown's appointments office, asked if I would serve on the Governor's Commission to Review California Water Rights Law. "I know very little about water law," I told her. "I will have to think about it. Call me back in a few days when I am feeling better." She did call back, and I agreed to serve. I am embarrassed now when I think about how casually I treated this invitation to serve on what, at the time, was the hottest new committee on the California water scene.

It was less than five years since I had begun to develop any knowledge of water issues in California. I had no formal training in law, water resources planning, or water engineering. However, I had been on the Board of Directors of the League of Women Voters of California, serving as their water and solid waste chair. Additionally, I had served on the Governor's Delta Environmental Advisory Committee ("DEAC"). DEAC was composed primarily of representatives from state and federal agencies, academia, and the environmental community. In those days, people from the various water interests rarely sat down to talk with one another!

Both of these groups provided good background for working on the Water Rights Commission. From DEAC, I had experience working with people with differing, strongly held opinions on water issues. From my work with the League of Women Voters of California, I had gained a broad overview of water issues in California. While I certainly did not know much about water rights law, I did have some understanding of environmental water problems in California, especially as they affected the Sacramento-San Joaquin Delta. In 1977, a severe drought highlighted the water shortage in California. My identity as an active volunteer with the League of Women Voters brought "credentials" as someone who would consider the issues carefully, and speak out for water conservation and responsible environmental protections while trying to balance them with other beneficial uses. I learned to listen carefully, to do my homework, to ask pertinent questions, and to serve as a bridge between differing, sometimes conflicting interests. While I was an environmentalist, it was also helpful that I had no special constituency, no one looking over my shoulder.

Twenty-five years ago, there were few women working on water issues, especially professionally. At the first water conference I attended, I was directed

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to the wives' tea down the hall! The location of a luncheon meeting at a Sacramento restaurant had to be moved hastily, because the restaurant did not allow women at lunchtime. But I felt that the water rights law commissioners were usually willing to listen to and consider what I had to say. I was delighted that two of the attorneys who wrote background papers were very competent women.

It was rumored that former California Supreme Court Chief Justice Donald Wright had been appointed chair to be a "figurehead" to lend credibility to the work of the Commission. It soon became clear that Justice Wright intended to participate fully in the process. He was an excellent chair and commission member.

The staff was outstanding. Our director, Harrison "Hap" Dunning, kept us and the staff attorneys on time and on target. The researchers did an outstanding job providing six clearly written, detailed, background documents on the laws and issues we should consider. These were especially helpful to me with my lack of background in water law. About a thousand copies of these documents were distributed, providing education for many Californians.

The Commission established the areas of California water law on which we would concentrate: appropriative, riparian and groundwater rights; effective management of groundwater resources; the legal aspects of instream uses of water and of water conservation; and the transfer of water rights. We decided not to deal with federal law as it affects California water rights, or with state policy on water development projects.

Like almost every water commission or task force that I have served on over the years, the commissioners started by expounding their particular interests or biases. But after we gave our "hard line" positions, we settled down to listen carefully to other points of view. Sometimes we agreed, often we could come to a compromise position. But in the end, two commissioners exercised their right to write dissenting comments and cautions.

A rumor spread in parts of Northern California that the Commission was just the Governor's sham to take groundwater away from Northern California and send it south. Tensions were running high. I had agreed long before my appointment to the Commission to address the annual meeting of the League of Women Voters of Chico. When the public learned that a member of the Commission was speaking in Chico, the dinner reservations quickly sold out. Local farming interests offered to fly me to Chico in a small plane. I was met on my arrival by television cameras from the local station. I had my fifteen minutes of fame! I tried my best to alleviate some of their fears and debunk the conspiracy theories. I think perhaps it helped a bit.

The Commission held seven public workshops and four public hearings on the draft. I especially remember a hearing in the Central Valley. Most large farming interests there were hostile to the idea of "outside" groundwater regulations. Their presentations were very well organized. We sat for hours listening to folks express their concerns. It soon became clear that many of them

were speaking to these issues one by one, in order from a list that had been provided them. We listened carefully at these workshops and hearings, and made changes where we felt it was appropriate.

The Final Report of the Commission to Review Water Rights Law contained an analysis of existing California water rights law and recommendations for modifications, including proposed statutes. The summary explains that the report deals with proposals “to bring greater certainty in water rights, to improve efficiency in water use, to improve the protection of instream uses of water, and to provide for effective management of groundwater resources.”<sup>1</sup> The Final Report was presented to Governor Jerry Brown in his office in Sacramento. I am not sure why I still remember the Governor’s bicycle standing in the corner. The press and TV cameras were there, and the presentation had coverage (for a few minutes) on the evening news. Copies of the Final Report and its summary were widely distributed. While, to my knowledge, many of our recommendations have not been implemented, the document and the background papers have served to educate many people on major water problems in California, and possible laws to alleviate them. Perhaps a better understanding of the issues, and of the magnitude of the problem of trying to adjudicate California water rights, helped to pave the way for some later cooperation among and between state and federal agencies and water users.

Water issues today are much the same as they were 25 years ago. We have better technology now for tracking and understanding water needs for the environment, groundwater management, water conservation and reuse, and transfer of water rights. But we still don’t know for sure what it takes to save the environment of our rivers and deltas, or how to assure that we get such protection. Adequate instream water rights have not been implemented. Meaningful groundwater regulation is still needed in many areas. Despite legal requirements, many concerned with protection of the environment feel that adequate freshwater flows to the Delta have not been provided. We still need greater certainty with respect to water supplies for cities, industries, and farming; and/or ways to implement even greater water conservation and reuse. But I still like to think that our water rights background information and recommendations have helped, and that with a careful new look, will continue to do so.

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1. GOVERNOR’S COMMISSION TO REVIEW CALIFORNIA WATER RIGHTS LAW, SUMMARY FINAL REPORT 1 (Dec. 1978).

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