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The Governor's Commission: A Reminiscence

Ronald B. Robie *

During the years I served as staff to the Assembly Water Committee, I became increasingly concerned over what I perceived was the failure of water rights and water quality law to change to meet the needs of twentieth century California. Of particular concern was the failure of water rights law to include environmental considerations¹ and to fully consider water quality considerations.

My concern over water quality (which was shared by the legislature's acknowledged leader on water matters, Committee Chair, Assembly Member Carley V. Porter of Compton) resulted in the creation of the State Water Resources Control Board ("SWRCB") in 1967.² This new entity provided a coordinated consideration of water quality and water rights, an especially critical issue in this state due to the major diversions by the California State Water Project and the Federal Central Valley Project from the Sacramento San Joaquin Delta and the resulting negative water quality impacts.³

Shortly after its creation, Assembly Member Porter wrote to the SWRCB requesting that it establish a high-level study project to update and revise California's water quality law. This effort resulted in the unanimous passage of the Porter-Cologne Water Quality Control Act in 1969.⁴

When I became Director of Water Resources in 1975, the need to modernize water rights law was still on my mind. Of particular concern were: (1) incorporating environmental concerns, including provision for instream flows for fish and recreation; (2) bringing pre-1914 appropriative rights and riparian rights into the state regulatory program in some manner; (3) providing some kind of regulation for California's ground water; and (4) providing a legal structure for water transfers.

In 1976 and 1977, California suffered the worst drought in history at that time. As director, I tried to transfer water to areas of need and to develop instant institutions to accomplish a myriad of programs to ameliorate the drought. This struggle served to bring home again the failure of our water laws to fully meet the needs of modern California.

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1. See, e.g., Ronald B. Robie, *Some Reflections on Environmental Considerations in Water Rights Administration*, 2 *ECOLOGY L.Q.* 695 (1972); Ronald B. Robie, *Modernizing State Water Rights Laws: Some Suggestions for New Directions*, 4 *UTAH L. REV.* 760 (1974).

2. See ASSEMBLY INTERIM COMM. ON WATER, A PROPOSED WATER RESOURCES CONTROL BOARD FOR CALIFORNIA 29-30 (1966).

3. See Ronald B. Robie, *The Delta Decisions: The Quiet Revolution in California Water Rights*, 19 *PAC. L.J.* 1111 (1988).

4. Codified as amended at CAL. WATER CODE §§ 13000-14958 (West 1992 & Supp. 2004). For an analysis of the law and a description of the study project, see Ronald B. Robie, *Water Pollution: An Affirmative Response by the California Legislature*, 1 *PAC. L.J.* 2 (1970).

In view of the considerable success of the water quality study project, and in the hope of repeating that accomplishment, I joined with the Chair of the SWRCB, John Bryson (my successor as the attorney member of the Board), and recommended to Governor Edmund G. Brown, Jr. that he establish a broad-based commission to review California water rights law.⁵ In the early years of his administration, in particular, Governor Brown sincerely supported change and reform in California institutions. We warned him that many interests had historically supported the status quo in water rights. We hoped the prestige of a blue-ribbon commission would help us obtain public and water community support and thus, convince the legislature to act. The Governor decided to proceed.

It was most important that the Commission be a high-level body, and selection of a chair was especially significant. I suggested Donald Wright, recently retired Chief Justice of California and a Republican. In addition to having a formidable reputation as a jurist, he had authored one of the most important ground water decisions in many years, *City of Los Angeles v. City of San Fernando*.⁶ When I called the Chief Justice, he was reluctant to take on the task. When I suggested that the *San Fernando* case and the need to consider ground water issues tied together very well, he modestly said that he really did not know anything about water. Also, he was somewhat miffed at Governor Brown for taking so long to name his successor, Rose Bird, causing the transition to be less smooth. Nevertheless, when the Governor called, he accepted.⁷

The Governor agreed to locate the Commission administratively within the SWRCB. The next task was to select members. I suggested members based on my past experience. With an eye on eventually presenting the Commission's recommendations to the legislature, I suggested Appellate Justice James A. Cobey of the Second Appellate District who served many years as a State Senator from Merced. He had served as Chair of the Senate Water Resources Committee and had worked with Mr. Porter and me on major water legislation. Another former Senator was Virgil O'Sullivan (1958-1966), from Williams in the Sacramento Valley and also an attorney. I remembered an extraordinary public member who participated in the water quality study project, Arliss L. Ungar of Lafayette, a long-time water consultant to the League of Women Voters of California. She provided a link between the two projects and much valuable insight as a public member. At the Department of Water Resources ("DWR"), Mary Anne Mark, a civil engineer with the U.S. Army Corps of Engineers and a Sierra Club official, had served as an advisor to me.⁸ She provided an unusual set

5. We served as ex-officio members of the Commission.

6. 537 P.2d 1250 (Cal. 1975).

7. The Commission was established by Executive Order on May 11, 1977. Cal. Exec. Order No. B-26-77 (May 11, 1977).

8. The Governor later named her one of my Deputy Directors at the Department, the first woman ever to hold the position.

of qualifications. Ira J. (“Jack”) Chrisman from Visalia had been a long-time Chair of the Department’s California Water Commission. He was revered by the water community and brought decades of wisdom and water experience to the group.

Two well-known water attorneys from areas important to water law were Thomas L. Zuckerman of Stockton and Arthur L. Littleworth of Riverside. Tom had represented many Delta interests in lengthy hearings before the SWRCB and he impressed me greatly. Art was one of the most distinguished of Southern California water lawyers and had appeared before the SWRCB on many occasions and also represented State Water Contractors before the DWR.

From the academic world, Stanford Law School Dean Charles J. Meyers was named Vice Chairman. I was familiar with Dean Meyers from use of his casebook on water law in my classes at the McGeorge School of Law. David E. Hansen was an Associate Professor of Agricultural Economics at the University of California at Davis and an appointee of Governor Brown to the State Board of Food and Agriculture.

We felt the Commission fairly represented water law experts from different areas, the interests of agriculture, the environment, and the public.

University of California at Davis Professor Harrison (“Hap”) Dunning served as Staff Director, and a staff of bright young attorneys prepared a series of background papers which provided a wealth of material on California water law. Others in this issue of the *McGeorge Law Review* will be writing about the Commission’s recommendations and what happened to them. My greatest regret is that the Legislature turned a deaf ear to so many of the Commission’s sound recommendations.

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