

PROTECTED WATERWAYS AND WILD AND SCENIC RIVERS

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Six months ago the State of California embarked on a totally new program regarding its waterways. Last December, Governor Reagan signed new legislation that gives a new outlook and dimension to that existing -- very new -- program. The Resources Agency is now in the process of determining how that recent legislation shall be implemented properly. My purpose today will be to explain how and why both of those events or programs occurred, what they mean, and where we might possibly be going in the near future. To do that, however, I must recap some earlier events to provide a sound background and understanding for you.

The Federal Act

Perhaps the best place to start is to refer to the Federal Wild and Scenic Rivers Act which became law in 1968. That bill was passed after at least two years of discussion and consideration by the Congress. It is important to realize that the wild and scenic rivers program is relatively new, roughly four to five years. The original concepts were developed about four years earlier, but it took several years for the ideas to be converted to concrete legislation.

The first thing that should be clarified regarding the Federal Wild and Scenic Rivers Act, other than the fact that California has but one river in the federal system, the Middle Fork of the Feather River, is that the definitions of wild, scenic and recreational rivers are very different. Furthermore, people that work in this field commonly use the words "wild river" when most of the time what they really mean is, "a wild river, a scenic river, and/or a recreational river." I think you will agree it is too much of a mouthful to repeat every time the subject is mentioned. This, of course, upsets many listeners because: (1) they usually misunderstand the definition of the word "wild" and (2) they believe the individual using that word has nothing on his mind other than the definition that the listener has in mind. This is simply not the case. The simplest definition for the three words is that a wild river has the least human development and access, a scenic river has more, and a recreational river has considerably more. Furthermore, the term "wild" is never to be defined as "a wildly churning, tumultuous, horrendous, terrifying flood of rampaging water." (This approximates the definition used sometimes by the news media.) The main consideration in the term "wild" is that the river represents a vestige

of primitive America or primitive California, and in fact it may not be as pristine as an actual wilderness area that we have in many of our national forests and national parks.

The California Protected Waterways Act

Also in 1968, the same year the federal act was passed, the California Protected Waterways Act became law. That act did five things:

- (1) It required the Resources Agency to identify the waterways of the State that possessed extraordinary scenic, fishery, wildlife or outdoor recreation values.
- (2) The various demands made upon those waterways were to be identified.
- (3) Various problems confronting those waterways were to be identified.
- (4) A plan which would extend long-range protection to those extraordinary waterways was to be developed.
- (5) Waterways which merited priority action because of the nature of their resources and/or the degree of public interest in those resources and the potential detrimental effects were to be identified.

I was assigned to lead the group that conducted the work required by the Protected Waterways Act. In 1971, we submitted the results of that work to the Legislature and the Governor in the form of the California Protected Waterways Plan. We felt that we had complied to the letter with the requirements of the Protected Waterways Act.

The Waterways Management Planning Program -- SB 1285

Upon submitting the Protected Waterways Plan to the Legislature, we then awaited action to implement the plan, since for all intents and purposes, the Protected Waterways Act was terminated at that time. Just about this time, the issues revolving around Dos Rios Dam on the Eel River came, or had come, to the forefront of the public's interest. A great deal of public interest generated by this issue resulted in the introduction in 1971 of SB 107 by Senator Behr, the Wild and Scenic Rivers Act, and SB 1285 by Senator Collier. Both of these bills, as a result of the Dos Rios issue, identified specific rivers in the State for which management plans were to be prepared and/or which were included in the State system. SB 107 was defeated, and SB 1285 was passed. What SB 1285 said, in effect, was, the concepts and ideas set forth in the Protected Waterways Act were good, and the Protected Waterways Management Plans described and recommended in that plan should be developed. Further, the Resources Agency, in cooperation with affected local agencies, should prepare detailed waterway management plans for twenty rivers in Northwestern California.

Money was appropriated to initiate the program, and the Agency was directed to apply for federal grant funds to defray costs of preparing such plans. The money became available in July, 1972. So, for the past six months, the Resources Agency, and I was asked to head the program, has been working to carry out SB 1285. The basic content of the plans to be developed under SB 1285 was that they should include provisions for necessary and desirable flood control, water conservation, recreation, fish and wildlife preservation and enhancement, water quality protection and enhancement, streamflow augmentation, and free-flowing rivers.

A brief summary of what we have accomplished during the past six months in implementing SB 1285 may be helpful.

The first few months were spent arranging office space and facilities and obtaining full-time personnel assistance. As of September 1st, the full complement of the program was on board and operating. The program consists of Mr. Glenn Delisle, from the Department of Fish and Game, a secretary, an engineer from the Department of Water Resources (R. A. Williams), a Park and Recreation Specialist from the Department of Parks and Recreation (James M. Doyle), and a Forester, Land-Use Planner from the Division of Forestry (Paul Cox). The program staff made several trips to the North Coast rivers during which time they met

with local and county representatives, discussed the program and obtained ideas on issues, problems and solutions. The staff also met with several state and federal agencies to learn of their activities and future plans concerning those waterways. Based on those trips, meetings, and other information, the program developed a course to commence preparing plans for three rivers concurrently -- the Eel, Russian, and Smith. The preliminary expectation is to complete those in reverse order (Smith -- January 1974; Russian -- June 1974; Eel -- January 1975). Based on that schedule and the foregoing, personnel have prepared program budget statements, budgets and work activity schedules. An application for federal grant funds was submitted to the Office of Planning and Research. The application seeks reimbursement to the State for two-thirds of the program for 1973-74. A Resources Agency policy committee has been designated by the various departments to help provide guidance and direction to the program staff.

The California Wild and Scenic Rivers Act -- SB 107

In 1972, Senator Behr reintroduced his SB 107 of 1971. Senator Collier also introduced another bill, SB 4. Both bills were amended significantly and frequently during the legislative session. Both bills were passed by the Legislature and sent to the Governor. The Governor signed SB 107 on December 20, 1972, and vetoed SB 4.

SB 107 is more difficult to explain than SB 1285 because for one thing, SB 107 fills three and a half pages, whereas SB 1285 covers less than one page; furthermore, we have had SB 107 before us for only a few weeks, and it differs greatly from its initial structure.

It also says and does several things which generate many as yet unanswered questions. Therefore, I will not be able to give a precise picture of what it means, especially with regard to SB 1285 and for the future. However, all is not lost on that subject because we have been analyzing the bill as it passed through the legislative process. Both SB 107 and SB 1285 have similarities and differences. By reviewing the requirements of one and relating them to the other, we should be able to gain some idea of the implications, where we are heading, and what we may be involved with in the future.

One point I want to make clear is that I am not an attorney, and we have not as yet solicited any legal opinions regarding SB 107. Therefore, some of the conclusions and comments I make may eventually prove not to be 100% correct.

Very briefly, SB 107 creates a California Wild and Scenic Rivers System; designates immediate inclusion of five major rivers (four of which are included in SB 1285); requires the Resources Agency to classify the rivers and develop management plans; directs the Agency to administer the system; and finally it sets various restrictions on the construction of dams and other structures and perhaps on various other resource uses.

Another thing to keep in mind is that the basic premise, or intent, of SB 107 was "to stop dam construction." This it does in rather strong language. But, and this is an oversimplification, and also not meant to be derisive, it does little else than that. Let me give some examples of what I'm trying to say.

A major difference between SB 1285 and SB 107 is that SB 107 requires the administration of a State Wild and Scenic Rivers System. No such system exists to be administered in SB 1285.

The administration of the system by the Resources Agency includes the following:

- (1) Each river in the system is to be administered so as to protect and enhance the values for which it was included in the system, without unreasonably limiting other resource uses, where such uses do not conflict with public use and enjoyment of these values.
- (2) Every proposal to construct a water diversion facility must be reviewed by the Secretary for Resources. The Secretary may approve such facility only if it (a) is needed for domestic water in the county and (b) is determined the facility will not adversely affect the free-flowing and natural character.

(3) The Secretary for Resources must see that no dam, reservoir, or other water impoundment facility is constructed on, or directly affecting, any of the rivers in the act (excluding the Eel River).

(4) The Secretary for Resources must insure that no state agency shall assist or cooperate in any fashion with any federal, state, or local agency in the planning or construction of any project that could have an adverse effect on the free-flowing, natural condition of the rivers in the system (apparently excluding the Eel River).

(5) The Resources Agency must see that all local and state agencies exercise their powers in a manner consistent with the provisions of this law. Further, the Resources Agency must cooperate with the water quality control agencies to eliminate or diminish the pollution of waters in the system.

Those appear to be the major activities in administering the new State Wild and Scenic Rivers Act. Specific activities or requirements can be summarized as follows:

(1) The Resources Agency is to determine the classification for each river segment, e.g., wild, scenic, or recreational, and the Agency must then prepare a management plan for the rivers and adjacent lands in accord with such classification. This is somewhat similar to the requirement of SB 1285, except that the plans required under SB 107 are obviously not as comprehensive as those in SB 1285.

(2) The plans are to be developed in cooperation with the affected counties and public hearings must be held in each county to obtain their views. There is a similar requirement in SB 1285.

(3) The Agency must then adopt or approve the recommended plan and submit it to the Legislature for approval. This is likewise similar to SB 1285.

Those are some of the differences and similarities. Now, to speak to the question of flood control on the Eel River. SB 107 requires the Department of Water Resources to report to the Legislature in 12 years as to the need for water supply and flood control projects on the Eel, and subsequently the Legislature shall hold public hearings to determine which, if any, segment of the Eel should be deleted from the system. During this 12-year period, the Department of Water Resources is authorized to conduct geological, hydrological, economic, or any other technical studies deemed necessary or desirable to determine the feasibility of alternate dam sites on the Eel River.

One final item that may be of interest to you is that SB 107 creates new policy to help guide future water development. For example, it is now state policy that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state together with their immediate environment for the benefit and enjoyment of the people. It is further state policy that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 3 of Article XIV of the State Constitution.