Ralph Nader's Study Group Report on Land Use in California

POLITICS OF LAND

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Grossman Publishers New York 1973

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unto Chaplin E. Collins, Esquire, and Security Title Insurance Company of California, . . . any right, title and interest it might claim . . . to . . . certain real property. . . ." The bill then lists over 1,200 full sections and additional partial sections. At 640 acres each, this is a gift of over *750,000* acres. A quitclaim grant would cede *any* claim the government might have to this land. All of this land is clearly within the ownership of the federal government under the management and jurisdiction of the Department of the Interior. The former Senator's claim that the bill was a routine favor to allow Congressional review of a private claim is belied by two facts. First, the normal procedure to accomplish this is to refer such cases to the Court of Claims, which Senator Murphy had done on numerous previous occasions. Second, the Senator refused to reveal the identity of the actual claimant behind the title insurance dummy. How a person is going to argue his right to federal land before Congress or elsewhere without identifying himself is unclear.

Lake Berryessa

Lake Berryessa is a creation of the Solano Project, a Bureau of Reclamation project authorized in 1948 and constructed in the 1950s to provide for flood control, and to supply water for irrigated, municipal, and industrial portions of Solano County. Impounded by Monticello Dam, the lake inundates Berryessa Valley, measures twenty-two and a half by three miles, and has a storage capacity of 1,600,000 acre-feet, making it the second largest in the state. The total federal ownership is approximately 26,250 acres, of which 19,250 is water surface area at maximum water level; 7,000 acres lie above the maximum pool to form the perimeter of the immediate project area. At this maximum level, the lake has a shoreline length of approximately 170 miles.

The lake area is also a valuable asset as a wildlife habitat and as open space and grazing lands; it is surrounded by scenic hills covered with verdant woodlands and brush which contribute to the lake's function of watershed collection. Located approximately seventy miles from San Francisco and fifty miles from Sacramento, Lake Berryessa would provide unlimited recreational opportunities for the growing urban populations, especially for one-day and weekend trips.

Because of very stringent policies of land acquisition and

maintenance around federal water projects during the Eisenhower administration, the authority under which the dam and lake were created did not provide for recreation. Then, as now, the Bureau of Reclamation was not seen as being in the recreation business, and it was expected that some other public body would assume responsibility for developing the recreational potential of the area. Soon after construction was completed, the public began using the area, producing problems of sanitation, safety, pollution, traffic, and the like. Need for some sort of responsible administration in the area was recognized. The National Park Service was cool to the idea of assuming this responsibility, because of its low-profile emphasis on recreation at the time and because of budgetary pressures. Similarly, the then State Division of Beaches and Parks had its own budget limitations and resented having such a responsibility thrust upon it by the federal government without benefit of previous planning.

The Bureau was forced to turn to Napa County. The county was averse to the idea of assuming the administrative responsibilities alone, but agreed to do so if Yolo and Solano counties helped shoulder the burden. An arrangement was worked out in mid-1958, followed in early 1962 by another agreement, the controlling document to this time. Under it, the federal government transferred to the county (while recognizing the primary jurisdiction of the federal government over the project area) responsibility for the development, administration, and maintenance of the recreational and other land uses involved. The county would be permitted to lease various lands to private concessions for recreational purposes for a period of thirty years, plus two ten-year options to renew.

In 1959, the National Park Service had prepared a comprehensive multi-use Public Use Plan for the Lake Berryessa federal lands, and the agreement stipulated that the county and the concessions were to use the plan as a guide in developing the area. The emphasis in the plan was on day and weekend use, with facilities for camping and *very* few facilities for temporary mobile-home trailer parking. All licenses, permits, and contracts let by the county were to be approved by the federal government before issuance. The concessionaires were to agree to develop the area leased to them in accordance with the use designation given that area in the Public Use Plan. The federal government has a

ninety-day termination right which may be exercised for certain reasons, including the failure of the county to comply with the agreement.

All plans and specifications of all improvements were to be approved in advance by the county and the County Park Director, and they were to be subject to approval by the Bureau of Reclamation if necessary. All such development was also to be in compliance with county requirements. A land management plan was developed by the county and approved by the Bureau.

Sophisticated plans and the review by local and federal bodies seemed to guarantee the responsible addition of an invaluable and much needed public asset. Checks for protection of the environment were plentiful. People envisioned a sparkling lake, with public access for fishing and boating, picnic facilities, and sophisticated sewage and water-quality controls.

In the early 1960s, the county noted that it might not follow the Public Use Plan too closely, since it needed to develop overnight accommodations to create a vacation area as well as a day-use area. A policy-making Park Commission was created and a park director appointed, along with ancillary staff, to be in charge of administration of the area. They were directly responsible to the County Board of Supervisors.

At the time the county picked up the recreational management responsibility under the above arrangements, it pleaded limited financial resources and anticipated heavy usage by noncounty residents to justify relying on revenue-producing concession operations for development of "most" public-use facilities to be provided during the "initial" years of operation. It was then hoped that the county would accrue funds through the concessionaires and use them to develop additional public-use facilities.*

A decade has passed. "The lakeline area has become a private residential area instead of a public recreational area as intended in the 1959 public use plan," says a County Planning Department report. The Department has recognized that neither the county nor the concessionaires has followed the Public Use Plan, that the concessions have developed into private areas with quasi-permanent mobile homes strung along miles of the shoreline for profits, and that the private sublessees and concessionaires have been "slow" to meet their "legal and moral obligations" to provide safe swimming areas, beaches, lifeguard service, inexpensive picnic areas, campsites, and other such public facilities. Federally owned lakeline has been ingeniously turned into a private mobile-home residential area. "Campers" come and stay for years, constructing permanent "mobile" homes and claiming the land as private domain. There are seven concessions and approximately 1,600 permanent "mobile" homes. There is now only one "public" area free of the exorbitant rates charged in the resorts. The only facilities provided—a few trash barrels and two chemical toilets—are in one wholly unimproved area. There is no water provided, no picnic tables or barbeque facilities, no parking facilities for the public other than an extended shoulder of the public highway, no lifeguard services (there have been eighty drownings up to 1970), very little in the way of shade, and no landscaping whatsoever.

* The concessions pay the county 3% of their gross receipts plus a possessory interest tax, which in 1969 amounted to $127,000. The east shore of the lake was precluded from development and is used today for private grazing purposes. These private lands on the east shore above the lakeline are serviced by a federally constructed and maintained road, for reasons that are unclear.

A warning sign identifies the area as "Bureau of Reclamation Land" and announces "camping only in authorized resort areas." Within walking distance down the highway is a chained-off road with a large "Do Not Enter" sign, which leads down to a delightfully landscaped, watered area with flowers and picnic and barbeque facilities and a lawn being watered almost continuously. This is the county's "Park Headquarters," which serves as an occasional gathering place for county employees' outings to the lake. The public is not admitted to this oasis, but can gain limited access to the resort areas for fees far in excess of any public recreational area elsewhere in California. One can occasionally find a picnic table and extremely limited camping facilities. These expensive "public" provisions are consistently in the least desirable areas. Tents are pitched out on the asphalt or on dusty parking lots, next to boat trailers, truck-campers, and automobiles.

The emphasis is on the "mobile" homes which range from spacious three-bedroom, two-bath sixty- by twenty-foot doubles with redwood siding to smaller, less affluent boxes. Most of the trailers are surrounded by landscaping, per-

manent decks, concrete driveways, and patios installed by the "tenants," as well as by fences down to the lake shore and private docks. Sea walls spread along the shore, some to protect against high lake waters, others to terrace the steep slopes for sundecks, gardens, and cabanas. There are vegetable gardens and chicken coops. A General Motors vice-president has one of the nicest of these residences, a trailer-house that would in no way suggest that it might be a trailer except for two trailer hitches behind some high flowers, and ancient license plates.

One resort was peppered with signs boldly announcing: "Private Property—$100 Reward—Arrest and Conviction of Anyone Molesting or Trespassing."

New bids for concessions have been precluded: one newcomer was told outright that the present concessionaires had been assured that they would suffer no competition. When a resident asked to see the Lake Berryessa Land Management Plan in order to establish his grounds for a possible complaint against a resort owner, he was told that the only way he could see it would be "by a court order." He was eventually able to secure a copy by writing to the Department of the Interior in Washington, D.C.

The owners have managed to get their resorts exempted from a recent moratorium on all mobile-home park development in Napa County, pending a study and introduction of regulation ordinances—in spite of the fact that they could reasonably be viewed as the worst offenders, by any norms, of mobile-home abuse, specifically with regard to density and setbacks.

In addition to the private appropriation of public land and aesthetic and recreational loss, there is also a serious problem at Lake Berryessa with sanitation and water pollution. There has been a long history of sewage-treatment deficiencies at most concessions. The installations are poorly designed and constructed and are inadequate to handle the peak loads of the summer months. The common method of disposal is by "spray evaporation" on hillside areas; the sewage is of course carried off into the lake by rain runoff. Recently, the County's Department of Public Health designed facilities for three of the resorts at no cost to the resorts, and yet not one of them used this design, apparently because of the cost of the recommended facility.

Sewage-retention ponds are used for the disposal of chemical toilet waste, and the lake is rapidly approaching a

lifeless, eutrophic state. Human waste is sometimes dumped directly into the lake and its feeder streams. At some of the resorts there are neither fencing nor posting to keep hikers and children from nearing the sewage ponds or spray areas, and no storage or power supply to prevent overflows during power shutdowns.

Other sources of pollution include the heavy development of trailer homesites on steep slopes, causing soil erosion and siltation pollution. There are also existing and abandoned road and gravel operations (necessary for road-building and construction materials) which have already destroyed the spawning grounds of steelhead trout in one of the tributary creeks.

The County Department of Public Health has submitted many reports on existing deficiencies and recommendations of proposed projects with noticeable deficiencies. These reports and recommendations have been ignored or overridden by public officials, including the Director of the Lake Berryessa Park Commission. The Health Department does not appear to have this difficulty in enforcing sewage ordinances on private lands.

Recently a number of concerned property owners outside the lakeline have organized themselves to effect some changes on the federal lands, especially with regard to access to the lake, planning for the area, and the murky politics which they feel to be pervasive. Several business people who had joined or shown sympathy were promptly threatened with a boycott of their goods or services by all of the resorts unless they desisted. Similar threats and pressures have been brought to bear on local businessmen and shopkeepers who had advertised in a new local weekly newspaper that has assumed a critical editorial posture regarding the conditions at the lake. The threats seem to have been almost completely effective.

The Bureau of Reclamation does not govern, it defers to the county. Remarked one top official: "They've got the contract, let 'em administer it. . . . At least there's something there." One official in the Sacramento Bureau Office, whose efforts to alter the Berryessa situation have been rejected by his superiors, admitted that the Bureau had abdicated its responsibility there, banking on empty promises from the concessionaires and the county that the public interests would soon be better served. Yet when his superior was asked about the need for improved public-

use areas, he replied, "The county says they don't have the money for expanded facilities." Upon receiving complaints about conditions at the lake, the Bureau asks the county to investigate the matter and furnish a report, and then answers the complaints on the basis of the county's response.

That the county does not take the Bureau seriously is not surprising. A review of the Bureau's confidential files and the lake area indicates that, repeatedly, areas within the resorts which had been promised as public day-use and camping areas had in short order ended up packed with mobile homes. In response to Bureau "encouragement" that the county provide for short-term public users, the county consistently replied that it did not want to get into the camping and day-use business and thus compete with the concessions, and that the "concessionaires would provide" for those persons desiring such facilities. They never have, to the mildly expressed consternation of the Bureau.

It is curious that the Bureau has not seen fit to encourage the county to take one simple step toward remedying their alleged shortage of cash with which to develop public-use facilities—by increasing the 3% franchise tax on the resorts. This suggestion was made in an internal memorandum at one time, and it was pointed out that doubling or even tripling the tax would be consistent with what is done in other comparable areas and arrangements. Concessionaires at state parks pay a 10% tax on gross receipts.

The National Park Service is also supposed to review the Berryessa situation, but it too pleads inadequate staffing. "We've never had the staff to keep on top of all this crap that is going on," complained a key Park Service official. "It's the way the whole goddamn government works; it's a quagmire and you can't get a damned thing done. I even laid out a trailer park for them and they just laughed at me. I'm so damned frustrated about the whole damn thing that I'm speechless. We've got so much else to do—even though nobody listens to us—that I just decided it was a dog, a dead dog, and we might as well forget it. To hell with it. Sacramento defaults on their arguments, then makes new ones, and all we can do is concur in them. It's a real dead dog—you'd need a federal employee living there fulltime and then they'd probably

still ignore us. The thing has so deteriorated I don't know what to do."

In mid-June of 1970, Mike Morford, a hopeful and courageous biologist in the Fish and Wildlife Service of the Department of the Interior stationed in Sacramento, sent a memo to then Secretary Hickel under the Department's new "Early Environmental Warning System." In it he detailed some of the more glaring and "self-evident" abuses at Lake Berryessa. His opening remarks included the statement that "the recreation developments appear to be geared to benefit a very few with apparent disregard for the needs of the general public." A responding memo from the regional director of the Bureau of Reclamation was basically an apologia for the concessions, although acknowledging that there had been some "growing pains" and that there was a need for further expansion of the facilities. He insisted that "we have continuously worked with the County and the concessionaires toward the development of additional facilities for the 'short-time' recreationist." He further stated that "there are *no areas* [emphasis his] which are given over to the exclusive use of individuals or groups." One wonders if he had ever been to Lake Berryessa.

The regional coordinator of the Department of the Interior forwarded the two memos to Washington with an accompanying memo of his own, which identified them as describing "a rather messy and complicated situation." He extended the Department's thanks to the Fish and Wildlife biologist "for his diligent effort and for calling the Lake Berryessa situation to the attention of the Department." He went on: "I plan no further action at this level on the problem unless you provide instructions for such action." The matter still stands, despite increased discussion and planning, as it has for almost a decade. The deterioration and need for public recreation increases.

The Lake Berryessa fiasco initially grew out of inadequate policies of land acquisition and maintenance. According to federal officials, the same thing has happened at numerous other federal multipurpose water resource projects. Under Public Law 89–72, passed in 1965, the federal government can still enter into the same sort of agreements with "local bodies" as were made at Berryessa. In the federal water development agencies, the pressures are still to seek a local agency to manage the recreation

facilities, and the projects are most often found in poor, rural counties which see in the given reservoir a cash register for the county or for themselves, rather than an opportunity for recreation for all people in the region.

Upper Newport Bay

According to the *National Estuary Study*, "Upper Newport Bay is the last major baylike body of water remaining in a fairly pristine condition along 400 miles of coast between Morro Bay and Estero de Punta Banda in Mexico." Located in Orange County, it is the third largest natural bay in southern California. Lower Newport Bay has been fully developed into a marina-residential complex and is, as the California Department of Fish and Game has noted in a classic understatement, now "of little value to wildlife."

In 1919, the state of California granted by statute tidelands and submerged lands bordering upon Newport Bay to Orange County to be held in trust, with the understanding that a public harbor would be developed. In 1957 the governor signed a bill authorizing the exchange of state tidelands in Orange County for privately owned lands, subject to the approval of the State Lands Commission (since state-owned tidelands were involved). This so-called Enabling Act, State Statute 2044, required that the State Lands Commission make certain findings prior to approval of any such exchange. Section 3 states

> that the lands located in the area commonly known as Upper Newport Bay which are to be exchanged are no longer useful for navigation, commerce, and fishing, and that the lands to be received in exchange are at least of equal value thereof.

In 1963, the Irvine Company, the county's largest landowner, offered to give up some uplands and an island (totaling 292.7 acres) in exchange for 151.8 acres of filled tidelands in the Upper Bay. After several modifications, the proposal that finally emerged involved Irvine's giving up 447 acres of islands and uplands, and in exchange receiving 157 acres of filled tidelands. This plan was submitted by the Orange County Harbor District to the county's Board of Supervisors, who approved the land-exchange plan in 1964. In January of 1965, the county and Irvine

signed a "Dredging and Land Fill Agreement" * and a separate "Agreement" spelling out the terms of the land exchange.

The plan still had to be approved by the State Lands Commission (among others). In August, 1966, the Commission voted to withhold approval of the exchange, stating that it did not appear to be in the greatest "statewide interest" because "the project would create commercial areas completely privately controlled which could add to the preponderant private domination of the bay." The Commission suggested that alternative solutions for the bay's development be explored.

In 1967, with a new administration in power, the new Commission completely reversed itself and approved the exchange on the same terms. This approval was given despite the opposition of many local residents and conservationists. The minutes of the meeting reveal no significant change in facts to warrant reversal, nor does it appear that the parties involved made any real effort to devise alternative plans.

As for the required finding of "equal value," the Commission accepted the findings of an independent appraiser showing an $8 million advantage to the county. The appraiser found that the filled tidelands that Irvine was to receive had a value of $11 million (based on per-acre evaluation). The appraiser stated that the county would receive lands worth $19 million, of which the three islands in the bay constituted $14 million. The accuracy of these findings has been severely criticized by many, including the current County Assessor. The value of the islands under this estimate, for example, is over *100 times* their recent assessed valuation.

The tidelands to be received by Irvine were evaluated on a per-acre basis. Another method, probably the more realistic one, evaluates shoreline ownership on a lineal-footage basis. After the trade, Irvine will hold title to filled tidelands with about 30,000 to 35,000 feet of natural shore. By "fingering" (i.e., creating artificial inlets and peninsulas

* This Agreement contained a provision that any of the parties could withdraw if certain conditions had not been met within a three-year period from the date of signing. One of these conditions was approval of new harbor lines by the Army Corps of Engineers. This was not done within three years.