

July 14, 1966

To: The Editor, Editorial Page

Subject: Dispute between Four Water Districts on Kern River
and Bureau of Reclamation Regarding Application of
160-acre Limitation: Isabella Reservoir

The attached news release, letter from the Bureau of Reclamation, responding letter from the water districts named therein, and excerpts from a report of the Corps of Engineers are sent to you regarding the dispute and to give you the factual background for the editorial support we earnestly solicit. Kern County Land Company is vitally interested in this dispute, because it has land holdings and private and public utility canal operations in the area served by the water districts.

Authorization and Purpose (flood control and incidental irrigation)

As indicated in the attached excerpts, the Isabella Dam on the Kern River was authorized by the Flood Control Act of 1944 "for flood control and other purposes". (Key points are underlined for your convenience.)

Flood control is the primary consideration in the operation of the Isabella Reservoir, and irrigation use is subordinate to the requirements of flood control. Irrigation users participating in the project are allowed "to store their water in the reservoir and have it released on demand, so long as such storage does not conflict with flood-control reservations or operation".

Allocation of Cost (U.S. paid for flood control; irrigation users paid for irrigation)

The cost of the project was to be borne jointly by the United States (for flood protection) and water users (for irrigation) "in accordance with the policy indicated by existing legislation". After completion, the irrigation users were to be required to pay the United States for the use of the storage capacity. The United States computed that the irrigation users should pay \$4,537,000 and the United States should pay \$16.5 million. The users and the Bureau agreed that the users would pay their share in full upon execution of a contract setting forth their permanent storage rights. The users did pay the \$4,537,000 in cash on the very day their contract became binding on the Government.

Completion of Dam (1954)

The dam was completed in 1954 at a cost of \$21 million.

Acreage Limitation

A consistent administrative practice followed by the Department of the Interior in some 60 contracts for projects in various States has been that acreage limitations terminate when payments are completed by the irrigation users. Notwithstanding this administrative practice, Secretary Udall decided in 1961 that the acreage limitation be applied to the Isabella project.

Contract Provision Regarding Acreage Limitation

Consequently, Article 24 was added to the Contract. This Article provides acreage limitations, but provides in effect that

it is void and of no effect if the law did not prohibit delivery of water to landowners of "excess land" who had not executed a recordable contract.

Water Rights

The Bureau does not dispute that the flow of the river belongs to the water users, since there is no Federal water involved.

Bureau Contention

The Bureau contends that the use of Federal funds in the construction of the dam makes applicable the acreage provisions of the Reclamation Law -- even though no subsidy to irrigation is involved.

Water Districts' Contentions

1. The acreage limitations of Reclamation Law are not applicable to flood control projects in which irrigation users pay their full share of the allocated cost of irrigation. (See attached letter from water districts to Pafford of the Bureau of Reclamation in Sacramento.)
2. That the Isabella Project does not store government water, involves no reclamation of government land, and provides no interest-free government financing or any other form of government subsidy for the irrigation water users.
3. That the Isabella Project was authorized for flood control purposes, and the districts have paid to the Bureau the full amount of the cost of the project allocated to the incidental

the Bureau's contentions prevail, it would be a hollow victory for

function of storing the districts' water.

4. That according the long-established Bureau of Reclamation policy and practice, acreage limitations have not applied to projects such as Isabella; therefore, the Bureau's attempt to change this long-standing policy is without justification.

5. That 160 acres is too small to be economically farmed and is far less than the size of the present farms which the districts provide with irrigation water.

Significance of Dispute

If the 160-acre limitation is applied, each of the approximately 1,000 landowners who use Kern River for irrigation would be deprived of his right, like any other business, to expand his farming operations. The 160-acre limitation places an artificial limitation on growth in our free competitive society and would penalize individual initiative and success. In the irrigation service area, there are 34 landowners who have between 320 and 1,000 acres and 17 others who have 1,000 acres or more.

There are some 60 contracts in effect in other States that contain provisions similar to those the Kern River interests have been seeking. These contracts, which represent more than 50 years of consistent administrative practice with the implied approval of Congress, give strong support to our position.

Implications of Dispute

If the dispute is finally settled in the Courts, and should the Bureau's contentions prevail, it would be a hollow victory for

the government. Any landowner who now uses Isabella-stored water on his lands in excess of 160 acres would be forced to find other means of preserving and using "his" water from the natural river flow, or he could sign a recordable contract. In signing a recordable contract a landowner would agree to dispose of his lands receiving stored water in excess of 160 acres within ten years at a price approved by the Bureau.

Sidelight

It is the storage of irrigation water which made Lake Isabella the largest and most popular recreational lake area in Southern California. If the dam were operated only for flood control with no storage of irrigation water, the Lake would be only a fraction of its present size and thousands of citizens would be without the recreational activities they now enjoy.

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If you desire good background information on the adverse effects of current government efforts in forcing the acreage limitation laws, conceived in the 19th Century, on the vastly different farming conditions in the 20th Century to the detriment of the public interest and stifling initiative and freedom of farmers, please let me know. We can supply copies of the following:

- "Acreage Discrimination", by Burnham Enersen, San Francisco attorney and noted water law expert.
- "Agrarian Reform Through Federal Limitation of Water", by Charles Rummel, General Counsel, Cal-Farm Life Insurance Company.
- "What's Wrong with Acreage Limitation?", by Robert Durbrow, Executive Secretary, Irrigation Districts Association of California.

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