VOLUME TWO

Appendix to the Journal of the Assembly

LEGISLATURE OF THE STATE OF CALIFORNIA

1961 REGULAR SESSION

REPORTS

January 2, 1961—June 16, 1961

HON RALPH M BROWN
Speaker

HON. WILLIAM A MUNNELL
Majority Floor Leader

HON CARLOS BEE
Speaker pro Tempore

HON JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk of the Assembly

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ASSEMBLY INTERIM COMMITTEE REPORTS
1959-1960

VOLUME 18 NUMBER 3

FINAL REPORT
of the

ASSEMBLY INTERIM COMMITTEE ON LIVESTOCK AND DAIRIES

to the

CALIFORNIA LEGISLATURE
(House Resolution No. 326-13, 1959)

MEMBERS OF THE COMMITTEE

FRANK P BELOTTI, *Chairman*
LEVERETTE D HOUSE, *Vice Chairman*

CARL A. BRITSCHGI
RICHARD H McCOLLISTER
ALAN G PATTEE
CHARLES H. WILSON
CARLEY V. PORTER

Published by the
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OF THE STATE OF CALIFORNIA

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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON LIVESTOCK AND DAIRIES
SACRAMENTO, January 2, 1961

HON. RALPH M BROWN, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN Enclosed is the report of the Assembly Interim Committee on Livestock and Dairies pursuant to and in conformance with provisions of House Resolution 326-13 of the 1959 General Session.

Since June 19, 1959, this committee has held ten hearings throughout the State on a variety of proposals to amend the Milk Control Act. We have gathered and examined information from industry sources as well as from the Department of Agriculture to supplement data submitted in testimony. A summary of our interim activities is included as Chapter Four of the report. The results of that activity are summarized in the findings and recommendations listed in preface to the body of the report

The committee expresses its gratitude to the California Legislative Internship Program for making available the services of Mr. Robert P. Judd who was subsequently retained as consultant to prepare this report

Respectfully submitted,

FRANK P BELOTTI, *Chairman*
LEVERETTE D HOUSE, *Vice Chairman*
CARL A BRITSCHGI
RICHARD H. MCCOLLISTER
ALAN G PATTEE
CARLEY V. PORTER
CHARLES H WILSON

HOUSE RESOLUTION No. 326

Relative to constituting certain standing committees of the Assembly as interim committees

Resolved by the Assembly of the State of California, As follows:

1 The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution, (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative.

* * * * *

(m) The Committee on Livestock and Dairies is assigned the subject matter of livestock, poultry, dairies, and dairy products in the Agricultural Code, uncodified laws relating thereto, and other matters relating to livestock and dairies

* * * * *

2 Each of the above committees shall consist of the members of the Assembly Standing Committee on the same subject for the 1959 Regular Session The chairman and vice chairman shall be the chairman and vice chairman of the standing committee Vacancies occurring in the membership of the committee shall be filled by the appointing power

3 Each committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the commencement of the 1961 Regular Session, with authority to file its final report not later than the fifth calendar day of that session All reports shall be printed out of the funds allocated to said committee and shall be in the form prescribed by the Rules of the Assembly and the Committee on Rules

4 Each committee and its members shall have and exercise all the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and of the Standing Rules of the Assembly as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to this committee and its members

5 Each committee has the following additional powers and duties

(a) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

(b) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investi-

gating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas, orders and other process issued by the committee

(c) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided

(d) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution

6 No subcommittee chairman shall be appointed by the chairman of any interim committee or otherwise except upon prior written consent of the Committee on Rules or the Speaker

7 No consultants, staff members, or other employees may be employed by any interim committee except upon prior written approval of the Committee on Rules

8 No contracts for goods or services or otherwise may be negotiated or entered into by any interim committee without the prior written approval of the Committee on Rules

9 No committee or any member or employee thereof may travel outside the State on committee business without the prior written consent of the Committee on Rules or the Speaker in each case

10 Within 30 days after the adoption of this resolution, each interim committee shall file with the Rules Committee a proposed work schedule program report setting forth the specific matters it is contemplated the committee shall study and report upon, which program may be supplemented from time to time, and which report shall also contain the personnel or staff needed for said committee and the estimated expenses of said committee for the period June 19, 1959 to March 19, 1960

11 In order to prevent duplication and overlapping of interim studies between the various interim committees herein created, no committee shall commence the study of any subject or matter not specifically authorized herein or assigned to it unless and until prior written approval thereof has been obtained from the Committee on Rules or the Speaker

12 Each interim committee shall file with the Assembly a brief general preliminary or progress report of its activities on or before the twentieth calendar day of the 1960 Budget Session of the Legislature

13 Each interim committee shall file its final report with the Assembly on or before the fifth calendar day of the 1961 Regular Session of the Legislature

14 The sum of four hundred fifty thousand dollars ($450,000) or so much thereof as may be necessary is hereby made available from the Contingent Fund of the Assembly for the expenses of the above committees and their members and for any charges, expenses or claims they may incur under this resolution The Committee on Rules shall allocate from the above sum to each committee created by this resolu-

tion such amount as the Committee on Rules from time to time deems appropriate and sufficient to carry out the duties assigned to each such committee After allocations have been made by the Committee on Rules to a committee pursuant to this resolution, the Committee on Rules shall not thereafter reduce or revert any funds or portions thereof so allocated The original amount so allocated shall be for expenses for the period June 20, 1959, to March 20, 1960 Funds not to exceed the amount so allocated shall be paid from the said Contingent Fund and disbursed, after certification by the Chairman of the respective committees, upon warrants drawn by the State Controller upon the State Treasurer.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

A. MILK DEPOTS AND PLANT DOCKS

Findings

1 Traditionally, consumers have paid less for finished products when available at the farm or at the processing plant The difference between the farm or plant price and the retail or delivered price traditionally and essentially represents a difference in costs for service performed Definitions in the Milk Control Act (Secs 4216-4218, Ag Code) and price-fixing criteria (Secs 4350-4363, Ag Code) thereof seem to require distinctions in price representative of distinctions in cost

2 Price differentials for ranch plants, milk depots and plant docks exist in 18 of the 28 milk marketing areas and range from 1 to 2½ cents a quart Volume sales from depots and docks have almost doubled in the past two years and substantial volume shifts, from grocery or home delivery routes to the new outlets, have occurred in the two marketing areas with the greater differential

3. The rapid and widespread development of such outlets, from three in 1940 to 360 in 1960, concerns the entire California dairy industry. The question is: Does the Milk Control Act permit the Director of Agriculture to recognize different methods of distribution which reflect differences in costs of operation? The problem is complicated by (1) market competition, (2) distribution methods, (3) contractual dislocations and (4) administration of the law

4 The most crucial issue of administering the law lies in the definition and application of the term "natural growth" by the Bureau of Milk Stabilization to milk depots and plant docks so as to preserve stability in milk marketing A wide differential, predicated upon costs alone, seems to result in a faster growth than does a narrower differential of 1 cent a quart Modifications in Bureau practices, relying more on stability than costs as determined by auditing surveys, have followed judicial decisions in several marketing areas and a case testing the Bureau's authority to recognize different methods of distribution based on differences in costs is presently under submission to the California Supreme Court

5. The Supreme Court's decision in the Misasi case may establish with finality whether the Bureau has the authority under the present law to apply price-fixing criteria and legal definitions of stability to marketing areas where depots and docks operate to preserve, as the Legislature intended, an adequate supply of milk and dairy products at reasonable prices to consumers and reasonable profits to producers and distributors

Recommendation

The committee recommends that the Legislature await the Supreme Court's decision in the Misasi case before considering any further proposals to amend the provisions of the Milk Control Act in regard to

ranch plants, milk depots and plant docks Upon the Court's action, the Legislature may wish to consider certain proposals to substantiate, with an additional declaration of legislative intent, the Bureau's discretionary use of the state's police power in milk marketing If so, the committee would recommend that such proposals be given additional intensive and objective consideration.

B. MANUFACTURING MILK PROBLEMS

Findings

1 Manufacturing milk, unregulated by the Milk Control Act, amounted to 55 percent of total milk production in the state in 1937 and amounted to 18 per cent of total milk production in California in 1959 The number of manufacturing milk producers has steadily declined because of (1) conversion of many such producers to market milk production, (2) conversion to other farm enterprises, or (3) conversion to nonagricultural pursuits Estimates of production cost range from 55 cents to $1 above prevailing subsidized prices for manufacturing milk

2 Declining per capita consumption and greater production efficiencies have caused an increase of market milk supplies Such excess milk competes directly with manufacturing milk in the production of finished dairy products and byproducts Imports of milkfat, amounting to 37 6 percent of total in-state requirements and apparently caused by local high production costs, further impair the health of the manufacturing milk segment of the California dairy industry

3 Merchandising practices, such as brand and institutional advertising, appear to be minimal, the total advertising and promotional costs to all segments of the dairy industry amounted to $6,582,292 or 43 cents per capita while farm earnings, without normal wholesale and retail markups, from dairy products amounted to $24 60 per capita in California in 1959 In comparison, the distilled spirits industry spent an estimated $20,677,440 or $1 35 per capita in California in 1959 and California cling peach producers, with much lower total earnings than dairymen, spent $1,582,992 or 10 3 cents per capita in fiscal 1959-60 Unfortunate publicity about cholesterol and wax from milk containers, coupled with other competitive forces, have obviously caused a decline in milk consumption per capita which might have been otherwise increased by vigorous merchandising

4 The most salient feature of the complex economic problems which beset California's dairy industry, and its manufacturing milk production segment particularly, is how best to accommodate production to consumption or, put another way, how to adjust supply and demand. The point at issue is whether a marketing law for manufacturing milk will foreclose California manufactured dairy products from local markets

5 Disruptions in the production sector of California dairying might be overcome by any one of several alternatives including. (1) revision and standardization of milk purchase contracts, as presently considered by four industry committees in cooperation with the State Department of Agriculture, (2) a marketing law for manufacturing milk to guar-

antee producers a nominal return, (3) a federal pricing order for manufacturing milk producers in California or various parts of the state; (4) production cutbacks in both market and manufacturing milk, or (5) the encouragement of increasingly significant efforts in merchandising by all dairy industry segments

Recommendation

The committee recommends that each of these and any other alternatives be thoroughly and objectively studied by the appropriate public and private agencies and that such agencies subsequently take vigorous action on which ever seem most desirable It appears that only through a united and cooperative effort can California's milk industry maintain the degree of stability and growth necessary to ensure the state's rapidly expanding population its future dairy supply

C. CONTRACTS

Findings

1 Contractual arrangements are crucial to the orderly production and marketing of milk Contract guarantees conform to usage patterns according to diverse consumer demands as classified by definitive sections of the Milk Control Act Such guarantees ensure payment for classified usage and, to some extent, may affect production efficiency and amounts

2 Principles for milk purchase contracts are now being intensively studied by four industry committees, composed of 48 representatives of all segments of the dairy industry, under the auspices of the Department of Agriculture Findings and recommendations of the study committees will be submitted to the State Board of Agriculture for consideration; if approved, they will be submitted to the Governor and subsequently to the Legislature if necessary However, substantial revision and standardization of milk purchase contracts, especially with regard to language and terms, may be best accomplished through the efforts of dairy industry leaders with the advice of Department and industry experts

Recommendation

The committee recommends that the Legislature await the reports of the industry study committees and subsequently objectively consider any proposals for legislation necessary to implement their findings Furthermore, the committee heartily commends the work initiated by the study committees and departmental staff with the hope that their efforts will benefit the public welfare

D. UPGRADING BUTTERMILK

Findings

1. Upgrading dairy products is a means of improving product quality and thereby increasing the consumer price and the income of the producer. Reduced demand for fluid milk and concomitant increased supplies of fluid milk reserves have resulted in diversion of such milk into low-recovery byproducts "Blend" prices to producers would be

increased by requiring the use of market milk in the manufacture of cultured buttermilk as proposed

2 Such action, if necessary, might be taken by administrative regulation to establish differentials based on the various recovery prices for classifications of milk usages Precedents for such action exist in (1) bonus payments for tank shipments of Grade B milk, (2) a 20-cent per hundredweight differential over Class 3 prices for Grade A milk shipped in bulk and used for Class 2 products, and (3) an 11-cent per hundredweight difference in bulk handling discounts on milk shipped through country plants

Recommendation

The committee recommends that the Department of Agriculture Milk Study Committees be continued indefinitely to consider principles for the establishment of these and other differentials to producers for the various usages based on differences in recovery prices and bulk handling Criteria for the establishment of such differentials should be clearly defined and approved by industry leaders in concert through unrestricted and and cooperative discussion and study.

E. COUNTRY PLANT CHARGES

Findings

1 Some 22 country plants in the Central Valley serve as assembly and transshipment points for fluid milk between remote farm and city market; most have also been useful as production units for manufactured dairy products Until 1958, distributors operating such plants deducted 27 cents per hundredweight for all Grade A milk transshipped through such plants from payments to producers but after public hearings, the Bureau of Milk Stabilization reduced the deductions for bulk shipments to 15 cents per hundredweight.

2. The elimination of the bulk handling deduction, as proposed, would further increase the "blend" price to producers without affecting the 26-cent per hundredweight deduction for shipments in milk cans However, it might severely impair the profits of some country plants and force them to close, thus jeopardizing the only available outlets for some other producers despite the fact that only 15 percent of Central Valley Grade A milk shipments need to pass through such plants.

Recommendation

The committee recommends, as stated previously, that criteria for the establishment of all such differentials should be clearly defined and approved by industry leaders as represented by the four Department of Agriculture milk study committees before any legislative action may be deemed necessary. Additional factors with regard to country plant deductions should include· (1) volume of Grade A milk still being shipped in cans in the Central Valley; (2) the number and location of country plants most needed for marketing and manufacturing; and (3) the periods of most vital need for such plants.

F. TRANSPORTATION CHARGES

Findings

1 In recent years, many California milk producers have converted to refrigerated holding tanks from cans for shipping their milk. Many such conversions were financed, at least in part, by distributors interested in increasing total efficiency But such innovations require capital outlay and increase the farmer's investment per gallon of production and therefore he is naturally interested in increasing his return on such investments

2 Surpluses of Grade A milk since 1957 have caused more and more surplus milk to be diverted from fluid to manufacturing uses in Classes 2 and 3 Class 3 prices are based on "last recovery" prices for manufactured products such as butter and nonfat dry milk and Class 2 prices are presumably based on higher recovery prices for manufactured products such as ice cream, cottage cheese and buttermilk

3 In 1958, the Bureau of Milk Stabilization, after public hearings, set a 20-cent per hundredweight differential for Class 2 milk on payments to Grade A producers shipping in bulk tanks All but two companies buying milk in the Central Valley complied with the order and action was proposed in the 1960 Budget Session and initiated by the Attorney General However, the two companies indicated they had misunderstood the order and made retroactive payments totaling $28,000 to producers before court action was completed

Recommendation

The committee recommends, as previously, that criteria for the establishment of all such differentials be clearly defined and approved by industry leaders as represented by the four Department of Agriculture milk study committees before any further legislative action may be deemed necessary Furthermore, the committee recommends that current transportation practices in milk marketing be considered by industry leaders with a view toward the establishment of criteria to regulate lease arrangements

G. MILK STUDY COMMITTEES

Findings

1. In April, 1960, at the request of Governor Edmund G Brown, Director William E Warne of the Department of Agriculture appointed the first of four dairy industry study committees to discuss and study problems affecting milk production and marketing These committees are composed of 11 Grade A producers, 11 Grade B producers, 16 representatives of processors and distributors of market milk, and 10 representatives of processors and distributors of manufacturing milk. Assistant Agriculture Director William Kuhrt acts as chairman of all four committees.

2. Most of the work done by the committees at this writing has been concerned with principles governing contract relations. Subcommittees of three of the committees have proposed certain principles which have subsequently been discussed, both in general application and in specific

detail, at least four times by members of all the committees meeting jointly One possible result of that effort will be a standardization of contract relations, flexible enough to meet the diverse and complex requirements of the entire industry but definitive and inclusive enough to alleviate several current problems Such problems include. (1) increasing surpluses of Grade A milk resulting from more efficient production methods and continued conversion of Grade B producers to Grade A production on low-guarantee contracts, (2) declining per capita consumption resulting from more sophisticated consumer buying habits and great competition for the consumer dollars from an increasing array of consumer goods and services, and (3) the disparity between farm costs and farm prices resulting from international monetary inflation and domestic overproduction More specifically, the study committees have been most interested in (1) how to control and what to do with the Grade A milk surplus, (2) how to improve the economic position of all California milk producers and (3) how to improve the administration of the Milk Control Act

3 Expansion of the Bureau of Milk Stabilization was effected September 1, 1960 by the addition of a third control area and 14 new personnel positions including enforcement investigators and auditors without an increase in the industry assessment of 2 cents per pound of milkfat for administration

Recommendation

The committee recommends that the four study committees be continued indefinitely to work with the Department of Agriculture staff in discussing and considering problems affecting California's dairy industry Current studies are the first major evidence that spokesmen for all segments of the dairy industry are willing to co-operate for effective results since the Dairy Council, now defunct, was established 41 years ago Moreover, the committee believes that continuing such studies is vitally necessary to the growth of California's agricultural economy in general and dairy industry in particular The committee commends Director Warne, his staff and the 48 members of the industry committees for their efforts

General Conclusion

Finally, it must be said that the Legislature has always recognized the fact that the California dairy industry is a dynamic and complex economic institution in which constant adjustments are necessary to conform with constantly changing conditions and practices. Thus, over the years, the Milk Control Act has been, and will continue to be, subject to constant revision and amendment However, the committee has no current recommendations to revise or amend the Act at this time because of two reasons made clear by the previously-listed findings· (1) current litigations in milk marketing; and (2) the studies being made by four industry committees That is, action now by this committee is precluded by current industry action in the courts and in conference rooms.

CHAPTER ONE

MILK DEPOTS AND PLANT DOCKS
(A.B. 2319, Porter—1959)

DEFINITIONS

It might best serve the purposes of this report if the several kinds of retail milk sales were briefly described at the outset. Such sales involve several relationship which obviously pertain to the simplest form of the modern market mechanism: producer to processor to distributor to consumer. Put another way: raw product to processed product to consumed product. A simple and graphic way to define terms in this context, cow to consumer, follows.

1 Ranch sales
Producer/processor to consumer

2 Plant dock sales
Producer to processor/distributor to consumer

3. Depot sales
Producer to processor to consumer.

4 Grocery sales
a/ Producer to processor/wholesale distributor to store to consumer.
b/ Producer to (processor/store) to consumer.
c/ Producer to (processor/wholesale distributor/store) to consumer.

5 Home delivery sales
a/ Producer to processor/distributor to consumer
b/ Producer to processor/distributor to sub-distributor to consumer

Despite the gross over-simplification the above outline includes all present distinctive distributive methods in fluid milk marketing. The similarity between the plant dock (2) and traditional home delivery (5a) is only apparent, the consumer performs a distribution function by going to the plant dock which is performed for her by the processor/distributor when milk is delivered to the doorstep Likewise, the distinction between the plant dock (2) and the depot (3) is only apparent; the consumer performs a distribution function by going to either one although the dock may be at a plant which wholesales milk to groceries and/or subdistributors and retails milk to doorsteps while the depot, as such, has no alternative outlets It may be, however, that dock sales have grown to the point where alternate outlets represent only a small part of total plant volume [1] Traditional grocery stores sales (4a) have led

[1] See transcript, Committee hearing, Paramount, California, November 12, 1959, pp. 117-133.

to "captive integration" (4b) such as Safeway Stores' Lucerne Dairy Division or "captive stores" (4c) such as Arden Farms' Mayfair Markets in Los Angeles Two other examples of operations not illustrated above are: cooperative milk wholesale purchases whereby several grocers may buy their milk supplies jointly in volume at lower prices for quantity, and restricted purchases whereby a grocery chain may buy only one or a few brands Home delivery has also grown more complex from the ladling of raw milk from the producer's can into the consumer's jar at the doorstep, nowadays subdistributors or peddlers (5b) compete successfully in some areas by selling milk bottled under their own label by a major processor/distributor

Although confusion may be caused by the variety of apparently synonymous terms, characteristic differences seem to distinguish one kind of operation from another. For example· the ranch processor-distributor by definition is a farm operation where cows are milked and the milk is processed, packaged and sold direct to consumers The plant dock usually may be only one sales outlet for a distributor who may have other sales outlets including wholesale and home delivery routes The depot, conversely, has neither cows present nor alternate sales outlets. The conventional distributor usually merchandises milk through retail outlets such as restaurants, groceries and home delivery routes. It is common and confusing to call both plant docks and depots "drive-ins" or to refer to ranch, dock and depot outlets as "cash-and-carry." Whatever the labels, prevailing legal and administrative precedents seem to differentiate among distributive methods about in the manner described [2] Until modified by legislation or adjudications in current or subsequent litigations, such precedents and standards are likely to continue to prevail

HISTORY OF GROWTH

Historically, the farmer has sold his output to consumers at the farm gate at prices less than those paid in the marketplace or at the doorstep The obvious reason is the difference in transportation costs incurred by the farmer In 1940, after nearly three years of administrative experience with the resale provisions of the Milk Control Act, the Bureau of Milk Stabilization authorized dairymen to sell milk processed at the farm for less than grocery carry-out and home delivery prices; the spread was called the "ranch differential" and such authorization then controlled prices for only a limited percentage of the total fluid milk volume sold in the state [3] Processing plant operators and grocers were already authorized to sell fluid milk for less than it was delivered to the doorstep As a result, there were four basic resale prices—at the ranch, at the plant, at the grocery and at the home—which seemed to reflect substantative differences in the costs of distribution That is, if the consumer choose to perform a part of distribution, she was entitled to buy for proportionately less Until 1952, the plant resale prices were generally only 1 cent a quart under the grocery carry-out price but then,

[2] D A Weinland 'Marketing of Fluid Milk Under Price-Fixing Statutes" California Department of Agriculture, 1954, 6p Cf transcript, Committee hearing, Sacramento, California, January 20, 1960, pp 18-52

[3] Estimated by Bureau of Milk Stabilization officials never to have exceeded 2% of total fluid milk volume sold at retail in the state

in Stockton, after cost surveys and a public hearing, the bureau authorized one plant to sell fluid milk from its dock at 2 cents a quart less than the grocery store carry-out price Subsequently, a new processing plant was built and shortly thereafter the San Joaquin marketing area had several other similar depot operations A similar 2 cents a quart differential was granted in the Sacramento marketing area and reliable witnesses have estimated that depots in both the San Joaquin and Sacramento marketing areas now sell approximately 15 percent of the total fluid milk volume in each area [4] Other differentials in Northern California range from 1 cent in the Monterey marketing area to 1½ cents in the Alameda-Contra Costa marketing area; that means that depots or docks in those areas are selling fluid milk at prices below the grocer carry-out price Still other marketing areas in the north part of the state do not have differentials even though depots are operating Under the differentials, however, depots are selling as much as 10 percent of the total fluid milk market volume in some areas [5] In general, throughout Northern California the depot operation, characterized by easy automobile access, single brand bottled in glass and limited merchandise prevails over the plant dock operation

In Southern California, however, there are three kinds of consumer purchases at the plant, at ranch processing plants; at plant docks which usually distribute by other methods as well; and at depots Prices of fluid milk at the ranch are 2 cents a quart and prices at plant docks and depots are 1 cent a quart below the grocery carry-out price although some docks and depots have not taken advantage of the available 1 cent differential under the area marketing order [6]

In sum, consumers have traditionally paid less for finished products when available at the farm or at the processing plant The difference between the farm or plant price and the retail or delivered price traditionally and essentially represents a difference in service performed; if the consumer performs part of distribution, she is entitled to a lower product price This common sense approach to marketing has led, under price control of milk by the state, to milk marketing orders which fixed prices lower than those for normal resale distribution and perhaps thus has enabled some milk producers and some milk processors to sell at a competitive advantage predicated upon lower costs Definitions in the law, Sections 4216-18 of the Agricultural Code, and price-fixing criteria, Sections 4350-4363 of the Agricultural Code, seem to require distinctions in price representative of distinctions in cost; at least that has been the interpretation of persons charged with administering the law and, in general, courts have upheld their interpretation [7]

STATEMENT OF THE PROBLEM

The rapid and widespread development of milk depot sales in Northern California and of ranch, dock and depot sales in Southern California in the past five years has been a cause of great concern

[4] See transcript, Committee hearing, San Francisco, California, November 10, 1959, p 115

[5] *Ibid*

[6] Charts indicating the number and location of docks and depots and the various differentials are appended

[7] For a discussion of applicable judicial decisions, see the following section on litigations

throughout the California dairy industry. On one side, most conventional distributors are of the opinion that such sales, unless severely restricted, will lead to the eventual collapse of the Milk Control Act. On the other side, ranch, dock and depot operators insist that the law is intended to include manifold price differentials predicated upon cost differences. As usual, the producers are in the middle and more generally concerned with other problems such as depressed farm prices and rising farm costs, the Grade A surplus, poor contract relations and constantly changing consumer buying habits As usual too, the consumer appears to care little except about obtaining the most quantity and best quality at the lowest feasible price.

The overriding concern of the Legislature when it enacted the Milk Control Act in the middle thirties was market stability to protect all such diverse interests. Although the law necessarily declines to precisely define what constitutes such stability, it has been interpreted by administrative action and judicial decision to mean, with respect to prices especially, low enough prices to encourage consumption but high enough prices to ensure a plentiful supply from reasonably efficient production and distribution The legislative mandate is to guarantee consumers a good quality product at a price they can afford to pay but which also ensures producers and distributors a fair return on their investments. It is obvious therefore that the Legislature intended the law to be flexible enough to meet the fluctuations of supply and demand.

Succinctly, the basic problem seems to be: Does the Milk Control Act contemplate and permit the Director of Agriculture to recognize different methods of distribution which reflect differences in cost of operation?

Conventional distributors say emphatically "no." Ranch, dock and depot operators say "yes" with equal zeal.

However, the problem appears to be complicated by several other factors among which are: (1) market competition, (2) distribution methods, (3) contractual dislocations and (4) administration of the law. Obviously, competition increases in a market where supply outstrips demand. Dairy product distributors of all kinds compete for the consumer's shrinking milk dollar which is able to buy, and is buying, a more diversified array of dairy products than ever before. Market competition affects all parts of the industry but most especially the merchandiser because he must secure the consumer dollar upon which the producer and processor are dependent. Distribution methods have changed very little in the past 50 years although there have been some startling technological innovations such as more efficient processing and bottling machines, refrigerated holding tanks and tank trucks.[8] As retail volume declines because of either general consumer reluctance or changes in purchase patterns, investment equities increase. For instance, distributors in the Alameda-Contra Costa marketing area requested and received a ½ cent a quart retail increase in November,

[8] For a detailed analysis see D A Clarke, Jr, "Milk Delivery Costs and Volume Pricing Procedures," Bulletin 757, California Agricultural Experiment Station, December, 1956, 78p.

1959 because of increased investments due to volume losses[9] A similar increase was granted this year because of increased labor costs. It is obvious, however, that agricultural production generally has improved its efficiency at a greater and faster rate than has distribution in the past few years and nowhere is the case in point more true than in California Contractual dislocations between most distributors and their producers have undoubtely been a factor in the growth of depots and docks. Low Class 1 guarantees, conversion of Grade B producers to Grade A production, financing of farm improvements for some producers and not for others, cancelled contracts and diversion to other producers have caused some producers to turn from conventional distribution methods to alternate outlets Poor contract relations generally tend to increase the chances that both contractual parties will consistently overlook long-term mutual goals—such as a growing market, greater total efficiency and expanding profit structures—while protecting their individual interests The most crucial issue of administering the law to include docks and depots lies in the definition and application of the term "natural growth" by the Bureau of Milk Stabilization. The law charges the Director (Bureau) to set prices sufficiently high to cover enumerated costs and return a reasonable profit on investment (8 percent annually) although the Director may set prices lower than cost when necessary to maintain market stability Since 1955 no prices have been set lower than costs and several current legal actions against the Director contend that prices were set too high[10] As noted above, a 2 cent a quart differential in two marketing areas has apparently caused a 15 percent change in distribution volume in the past 4 years in those areas In brief, what may appear to be "natural growth" for a depot may, on the other hand, be an "unnatural decline" for the conventional distributor in the same area

In sum, the problem of market stability underlies the problem of ranch, dock and depot sales In a market already marked by protected competition, these relatively new and growing distributive systems have added another competitive factor which obviously threatens the continued applicability of the Milk Control Act And as such is the case, the problem thus embraces the interest of all sectors of the California dairy industry as well as the duty of the Legislature to ensure California consumers a continuous supply of fresh, wholesome milk and dairy products at fair prices

THE PROPOSAL

Assembly Bill 2319 (Porter—1959) would have amended definitive sections of the Agricultural Code to include plant docks and milk depots as retail stores with sales limited from such outlets to milk and dairy products; it would have permitted the continuation of a differential for ranch processing plants where cows are present provided no other commodities except those produced on such ranch are sold direct to consumers It was sponsored by the Dairy Institute of California and

[9] See Alameda-Contra Costa marketing order 60 as amended Witnesses at a Bureau hearing September 25, 1959 in Berkeley said costs had increased investment in one year about $17 50 to an average $85 per daily gallon processed in the marketing area

[10] For a discussion of such cases see the following section on litigations

the California Grocers' Association It was heard before the Assembly Committee on Livestock and Dairies twice during the 1959 General Session and failed of passage both times It has been heard five times before this committee since June 19, 1959

THE ARGUMENTS

The central point at issue between the "cash-and-carry" operators and conventional distributors is whether a dock or a depot is a distributor (See 4216, Ag Code) or a retail store (See 4218, Ag Code) As distributors with evident lower prices, dock and depot operators have been granted a price lower than those charged by grocery and home delivery retailers; as retail stores, they would have to charge the same price as other retail outlets.

Aligned with the "cash-and-carry" operators in this dispute is the Bureau of Milk Stabilization for its decision to grant a differential predicated upon lower costs is reliant upon its broad discretionary powers to administer the Milk Control Act Aligned with conventional distributors on the other side are the grocers whose daily milk sales has been severely jeopardized by docks and depots

The principal arguments made at hearings before this committee, in discussions by the milk study committees of the Department of Agriculture, and in legal briefs submitted in various litigations to be discussed later may be summarized as follows·

1 Conventional distributors contend that docks and depots are retail stores in fact because of the number of food items they stock in addition to milk and dairy products and because of the manner in which they merchandise "Cash-and-carry" operators contend that the presence of processing facilities at the sales location makes them a distributor and they sell only a limited amount of "dairy-related" food items such as bread, eggs, cookies and fruit juices whereas groceries sell upwards of 8,000 separate items

2. Conventional distributors contend that marketing order provisions granting a dock differential except for traditional ranch sales, in the several marketing areas are void *per se* because the director is prohibited from establishing separate prices for retail sales regardless of cost; they cite the Challenge case in 1943 which listed methods of distribution "Cash-and-carry" operators counter that Section 4360 of the Agricultural Code permits the director discretionary power to establish prices for other methods when justified by costs and that such provisions are therefor not void

3. Conventional distributors contend that such provisions are void because they violate the unfair practices section (Article 2, Chapter 16 of the Agricultural Code and especially Section 4141) of the Milk Control Act and discriminatorily prevent competitors from meeting competitive prices in good faith "Cash-and-carry" operators contend that nothing in the law prevents grocers from building processing plants at store locations to qualify as a separate method of distribution and sell at the plant dock differential

4 Conventional distributors contend that substantial shifts in retail volume from groceries to depots, ranging from 10 percent to 15 percent of total average monthly sales, have severely disrupted the normal flow

of milk and threaten the existence of the Milk Control Act, they add that lost volume by groceries causes price increases which mean, in effect, that grocery milk customers subsidize dock and depot milk customers "Cash-and-carry" operators counter that grocers did precisely the same thing to home delivery routes when a price differential was introduced in milk marketing prior to the Milk Control Act which then took cognizance of the difference when enacted; they add that the law should not foreclose any new venture which increases efficient distribution

5 Conventional distributors contend that differences in transportation costs, as defined in the law, allow the Director to set a lower resale price for ranch sales but do not permit him to set lower prices for other "retail" outlets "Cash-and-carry" operators reply that such transportation costs as incurred by plant docks and depots are paid by the farmer and are not reflected in their processing costs; they say that both plant docks and depots have precisely the same range of processing costs as ranch sales and are therefore entitled to even lower differentials

Subsidiary contentions on the part of conventional distributors include (1) the differential serves as an "umbrella" for inefficient operators; (2) home delivery routes are jeopardized by dock and depot differentials, (3) the jobs of thousands of distributor employees are threatened because each "cash-and-carry" operation replaces 12 men in another plant, (4) although milk represents only 8 percent of the average total daily grocery sales, it is a "traffic-builder" and some grocers have lost as much as 50 percent of their daily milk volume to nearby depots, and (5) some integrated or "captive" grocery operations could sell below present dock and depot differentials and still make money but they would rather not disrupt stability. "Cash-and-carry" operators answer (1) lower costs based on different transportation requirements indicate that docks and depots are more efficient than other methods of distribution, (2) home delivery routes were severely curtailed by the grocers' previous differential, (3) docks and depots can absorb most of the displaced employees, (4) milk would be sold as a "loss leader" to build customer traffic if grocers were permitted to meet dock prices, (5) such "captive" or integrated operations are still conventional distributors and if granted a differential solely on costs would cause the extinction of the smaller, less efficient "mama-and-papa" grocers

Producers, as noted above, seem to be in the middle and some appear eager to help reconcile both sides Some producers apparently believe that docks and depots give one producer's milk a price advantage over another producer's,[11] others apparently believe that conventional distributors have discriminated against them and forced them to seek other means of marketing their milk[12] But most representatives of producer groups seem to favor a minor change in the law—similar to Senate Bill 917 (Shaw—1959)—to allow the director somewhat greater discretion in setting differentials higher or lower than costs indicate in order to ensure market stability

[11] See transcript, Committee hearing, Stockton, California, November 9, 1959, pp 101-106

[12] *Ibid*, pp 139-142, pp 147-149

A Department of Agriculture spokesman enumerated four approaches to differential pricing (1) Assembly Bill 2319 which would have eliminated dock and depot differentials entirely except for ranch "cash-and-carry"; (2) legislation to authorize the director to set resale prices on costs alone, (3) repeal of the Desmond Act, or resale, provisions of the Milk Control Act entirely as proposed in Assembly Bill 2852 (Britschgi—1959); or (4) letting the present law stand to allow the director limited discretion in setting prices.[13]

JUDICIAL HISTORY AND CURRENT LITIGATIONS *

California's Milk Control Act has been scrutinized and interpreted by judicial review almost continuously since its enactment 25 years ago so, in addition to periodic legislative revision and amendment, the regulation of milk prices has been dynamic in the State. Therefore, it appears necessary to briefly list the most relevant cases adjudicated in the past 25 years before discussing several current and pending actions which test the Agriculture Director's authority to establish price differentials for ranch sales, plant docks and milk depots.

Of central importance, of course, are the constitutional cases adjudicated by the California Supreme Court.

1. *In re Walling* (12 Cal 2d 591, 1939) involved a producer-distributor who had not obtained a license to retail milk The Court held, among other things, that a processing plant owned by a person who also retailed milk was a separate business enterprise subject to license requirements

2 *Jersey Maid Milk Products Co* v *Brock* (13 Cal 2d 620, 1939) involved a distributor who refused to abide by a marketing area price order The Court held, among other things, that the Legislature may delegate to an administrative agency the power to judge the facts of a case to which a particular statute applies

3 *Ray* v *Parker* (15 Cal 2d 275, 1940) involved a distributor who violated pricing provisions of a marketing order The Court held duly-founded legislative power could be delegated but similar judicial power could not be delegated to an administrative agency. However, Justice Edmonds dissented by saying, at page 318, that such agency should substantiate proof of findings by submitting factual data at public hearings

4 *Challenge Cream & Butter Association* v *Parker* (23 Cal. 2d 137, 1943) involved a distributor who sold milk in glass containers at less than set minimum prices The Court held that prices should be uniform for like quantities regardless of container Incidentally, the Court defined three methods of distribution as wholesale, retail carry-out and retail home delivery [14]

* Incorporated here only to illustrate the direction of the law and not intended to be either comprehensive or indicative None of these is concerned with the current controversy between the state and the federal governments about contract sales on bid to the numerous military bases in California, see Chapter 3, section on milk study committees

[13] See transcript, Committee hearing, Sacramento, California, September 4, 1959, pp 42-43

[14] At page 141, the court defined market stability as a condition under which " the people shall be able to purchase milk at the lowest price at which enough distributors operating with reasonable efficiency will be able to do business at a reasonable profit so as to supply the demand of all the consumers in the marketing area."

5 *Knudsen Creamery Co* v *Brock* (37 Cal 2d 485, 1951) involved violations of minimum prices paid producers The Court held, at page 490, that the Milk Control Act is "aimed primarily at what the producer shall receive, and not at what the dealer or consumer shall pay"

6. *Misasi* v *Jacobsen* is now under submission to the State Supreme Court. Oral arguments were heard at a hearing in bank on November 1, 1960 in Sacramento and the Court may be expected to have rendered its decision by the time this report is published At issue in the appeal is whether the Director of Agriculture has the power to sub-classify methods of distribution without legislation Initiated in 1956, the case involves the setting of a price differential of 2 cents a quart for plant dock and milk depots in the San Joaquin marketing area, lower courts have held that lower costs, predicated upon distinctions in service rendered consumers, indicate docks and depots are a "separate and distinct method of distribution" as implied by Section 4360 of the Agriculture Code [15]

Appellate court decisions have had considerable influence in California milk marketing·

1. *United Milk Producers* v. *Cecil* (47 Cal App 2d 758, 1941) involved a distributor cooperative which argued the Cooperative Marketing Act invalidated provisions of the Milk Control Act The court rejected the contention.

2 *Marin Dairymen's Milk Co* v. *Brock* (100 Cal App 2d 686, 1950) involved a distributor who refused to pay producers a Class 1 minimum price for milk which had been declared used for Class 4 purposes when, in fact, it had been used for Class 1. The court found against the distributor

3 *Sentell* v *Jacobsen* (163 Cal App 2d 748, 1958) involved a distributor who complained that his costs, for selling milk in glass, were lower and he was therefore entitled to a lower resale price than the minimum set. The court held against the distributor.

4 *Wendel Farms, Inc* v *Jacobsen* is on appeal to the Third District Court of Appeals. Respondents' briefs were filed October 24, 1960 in Sacramento and the court may be expected to hear oral arguments shortly after the Legislature convenes pending the Supreme Court's decision in the Misasi case At issue in the case, the first of two actions between the two parties, is whether the Director of Agriculture can set a dock or depot price at a grocery carry-out level without previously auditing costs The lower court in Sonoma County held against the director Initiated in 1959, the case involves a depot operation selling milk at 2 cents a quart below the established minimum price set for depots and groceries; the director asked for an injunction enjoining Wendel Farms because cost surveys could not be made until the depot had been in operation

In addition to the *Misasi* case before the Supreme Court and the first *Wendel Farms* case before the appellate court, there are several other depot cases pending in lower courts For instance, in Sonoma County the second *Wendel Farms* case involves an action by Wendel against

[15] Excerpts from the opinion of Justice Van Dyke, Third District Court of Appeals are appended

the director in which Wendel complains that the Bureau of Milk Stabilization's cost surveys showed lower costs which they contend justifies a 2 cent a quart differential instead of the 1 cent a quart granted A similar action is pending in Stanislaus County with the complainant being Lafayette Dairy but seven other cases there and one in Contra Costa County involve allegedly illegal refunds on glass bottles which, in effect, permit the distributor to sell fluid milk below set minimums; defendants in those actions include Lafayette Dairy, Milk Co-op of California, Johnson Dairy Delivery Co and W H Markley in Stanislaus County and Ace Dairy Co in Contra Costa County. Prior to the lower court finding in the first *Wendel Farms* case, the director set a similar resale minimum (for ranch and depot sales at the prevailing grocery carry-out price) in Santa Clara County where, in actions between Milkhorn Dairy Drive-in and the director, the lower court held that such a pricing provision was invalid because no actual cost surveys including the depot operation had been made Subsequently, in Monterey County the director permitted a depot to open without setting a depot price and then auditing the operation The depot was selling 2 cents a quart below the prevailing grocery price After a hearing, the price was set 1 cent a quart below the new grocery carry-out price and complainant Etap Farms, Inc asked an injunction against the director to enjoin the pricing provision The court found for the director No legal actions in Southern California have been reported

In 1953 Safeway Stores, Inc initiated an action in Kings County concerning a marketing order, in brief, Safeway sought a lower price predicated upon the lower costs of their highly integrated dairy division, Lucerne After a lengthy presentation by both sides, the superior court judge took the case under submission but died before rendering any decision and the case was subsequently never reopened

It may be observed that since the inception of the *Misasi* case, the Department of Agriculture (specifically, the Bureau of Milk Stabilization) has altered its practices in setting resale prices for plant docks and depots Until 1952, the pricing provisions for plant docks in marketing area resale orders established prices only 1 cent a quart below grocery carry-out price levels Since then the 2 cent a quart differential in two marketing areas and consequent large shifts in volume from conventional to dock and depot distributors in those areas have perhaps demonstrated to bureau officials that wide differentials tend to disrupt normal market transitions and tend, furthermore, to lead to expensive litigations which might have been avoided if narrower differentials had been established Under recent court decisions, the bureau has tended to set and maintain a 1 cent a quart differential for plant docks and depots after cost surveys were made during operational periods rather than follow two alternative practices: (1) setting a 2 cent a quart differential solely on costs which has subsequently threatened market stability or (2) setting the dock and depot price at the grocery carry-out price before depots began operating so that cost surveys could be made during normal distributing operations Although litigations continue, perhaps the current practice, exemplified in the *Etap Farms* case, is the best assurance for market stability and the "natural growth" of docks and depots in the unsettled transitional period now apparent in California milk marketing.

CHAPTER TWO

MANUFACTURING MILK PROBLEMS

(S B. 1167, Cobey—1959)

DEFINITIONS

Again, it may best serve the purposes of the following discussion if the terms are defined at the outset

Manufacturing or Grade B milk is defined by Section 452 of the Agricultural Code which says, in part, that it is milk "which does not conform to the requirements of market milk" Some of the requirements for market or Grade A milk to which Grade B milk producers do not have to conform are contained in subsequent sections of the code and may be summarized as follows (1) bimonthly inspection of herd, (2) rigid sanitation standards on the farm and in the plant, (3) processing by certified personnel, and (4) building construction standards Another distinctive difference is that manufacturing or Grade B milk producers are subsidized by federal price support on milkfat at 59 6 cents a pound and on fluid skim milk in bulk at $3 22 a hundredweight However, the price to producers of market or Grade A milk set by the State has been predicated in part on the price paid for Grade B milk at the ranch under Section 4281 of the Agricultural Code so that, by law, an economic relationship exists between the two grades of milk Perhaps the most comprehensible distinction lies in the definitive classifications of the uses to which Grade A milk may be put under Sections 4226-28 of the Agricultural Code They may be summarized thus (1) Class 1 milk is all fluid bottle products, (2) Class 2 milk is all market-grade milk used in the manufacture of ice cream mix, cottage cheese and buttermilk, (3) Class 3 milk is all market-grade milk used in the manufacture of hard or processed cheese, butter, dried skim or nonfat milk, defatted milk solids and dried buttermilk

Since 1935, prices to producers of market milk have been controlled by the State under the Milk Control Act and since 1937 wholesale and resale prices to processors and distributors of fluid milk products have been similarly fixed Because nonfluid products may be made from either market or manufacturing milk, the State does not control resale prices for those commodities although it does control the price to producers of market milk whose excess fluid production is diverted to manufacturing uses as classified above The Milk Control Act does not apply to either raw or finished product prices for manufacturing milk

HISTORY AND STATEMENT OF THE PROBLEM

It was relatively a short time ago that milkshed meant the immediate dairy production area surrounding a city But since cities began growing quickly into metropolitan centers, stretching their suburbs out to occupy farm and dairy lands, milksheds have grown proportionately

fast and far California cities have grown faster and spread further than any other comparable areas in the country in the 15 years since the end of World War II Obviously, such growth has had repercussions far beyond the last new house in the latest subdivision because the growing pains of California's cities reverberate the length of the State with increased land values, higher prices and higher costs and more people

High production standards brought on by the war have been maintained because investments had to be maintained and even increased in a high-consumption, high-competition economy Nowhere has agricultural production increased in the past 25 years so spectacularly as in the California dairy industry. During the period 1937-1959, total milk production in California increased 85 5 percent from 4,297,000 to 7,974,000 pounds annually, average production per milk cow increased almost 28 percent from 6,550 to 8,950 pounds annually and total cash receipts from farm marketing of dairy products increased 314 percent from $90,758,000 to $375,943,000 [1] But when resale provisions for market milk were incorporated into the Milk Control Act by passage of the Desmond bill (S B. 100, Chapter 3, Statutes of 1937), nearly 55 percent of all milk produced in California came from manufacturing milk producers and 10 years later, in 1947, such producers were selling 37 percent of the total volume [2] In 1959, manufacturing milk producers produced only 18 percent of the total volume in the state [3] Moreover, since the peak year of 1952, the average annual price paid to market milk producers has declined 90 cents to $4 74 a hundredweight at the same time the price to manufacturing milk producers was declining $1 13 to $3 28 a hundredweight [4] Estimates of the cost of production for a hundredweight of manufacturing milk range from 55 cents to nearly $1 more than the competitive subsidized price [5] And one witness told this Committee that 1,223 of the 10,002 manufacturing milk producers quit milk production in 1958 [6] There are approximately 8,800 manufacturing milk dairies with an average herd of 25 to 30 cows each and 4,200 market milk dairies with an average herd of 175 to 185 cows each in California, according to recent industry estimates.

Briefly, the problem appears to be can anything be done to help preserve and protect all segments of the California dairy industry without sacrificing one or another segment?

Most manufacturing milk producers seem to emphatically agree that something can, and should, be done and the sooner the better Many market milk producers, looking to the competition between their surplus production and manufacturing milk are not sure what can or ought to be done. Most processors and distributors also looking to their competition in the market place are apparently not ready to agree that anything needs to be done except to permit the market to adjust itself.

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[1] Computed from California Dairy Industry Statistics for 1959, Special Bulletin 280, California Crop and Livestock Reporting Service, Table 1, p 7 See production rates chart appended

[2] California Legislature, Joint Committee on Agriculture and Livestock Problems, Report on Fixing the Price of Fluid Milk in California, September 1, 1958, p 3

[3] See footnote 1 above

[4] *Ibid*, Tables 21 and 23, p 34

[5] See transcript, Committee Hearing, Fresno, California, June 29, 1960, p 76 and pp 89-90 Cf transcript, Committee Hearing, Modesto, California, May 10, 1960, p 106 et seq

[6] *Ibid*, p 77

Three basic factors seem to seriously affect the predicament of manufacturing milk producers in California (1) the excess of market milk, brought on (as suggested in other chapters of this report) by increasing production efficiencies and declining per capita consumption of milk and dairy products, (2) the economic squeeze of rising farm costs and declining farm prices; and (3) competition which must include the danger of low-cost dairy imports from other states, contractual arrangements which encourage producers to compete with each other, and merchandising practices We need not dwell here on the problem of excess market milk being diverted from fluid use because of depressed consumption to manufactured use and the concomitant competition it forces on manufacturing milk, such problem is discussed in Chapter 3 in the section on contracts, guarantees and quotas

Per capita consumption of all milk and dairy products continues to show slight decline throughout the United States despite manifest population gains in most metropolitan areas and increased total consumption [7] In California, population increased 3 6 percent in 1959 while per capita consumption of fluid milk products declined an average of 1 4 percent; total sales of Class 1 products between July, 1959 and July, 1960 were off 0 7 percent while sales increased for concentrated fluid milk 10 8 percent, fluid skim 6 8 percent, sour cream 14 4 percent and other fluid cream 2 2 percent [8] Total sales in Class 1 jumped 3 percent from July, 1958 to July, 1960 in California but population increased an estimated 6 percent during the same two years while personal income continued to climb [9] Market milk available for manufacturing purposes rose from 39 6 percent to 40 6 percent of all commercial milk production in the state in one year, July 1959 to July 1960 [10] While it is obvious that the consuming housewife is buying a greater variety of milk and dairy products for her family in larger proportions than ever before, her family's total use of milk has declined gradually A partial answer for the decline in total family use of milk is the fact that a greater array of products, both durable and nondurable, are competing for the consumer dollar and real income is not keeping pace with higher wages and salaries because commodity prices are outstripping wages; another way of saying it is that the cost-of-living is increasing, especially in the western United States. Another partial answer is that milk processors are providing a greater array of products, including concentrated fluid milk, filled milk, nonfat dry milk, imitation ice cream and ice milk, which obviously compete at generally lower prices with traditional dairy products The consumer, always careful of her dollar purchases, is more often than not deciding to buy the cheaper product

The economic squeeze throughout American agriculture is evident from the vast stockpiles of butter and grains in federal warehouses, subsidies and acreage allocations for many food and fiber crops and

[7] USDA Agricultural Marketing Service, Crop Reporting Board, Fluid Milk and Cream Consumption in Selected Marketing Areas, 1956-58, January 3, 1960
[8] California Crop and Livestock Reporting Service, Dairy Information Bulletin, Vol XVII, No 7, October, 1960, p 2
[9] *Ibid*, Table 11, p 13 Population estimates from the Department of Finance See chart and data appended.
[10] *Ibid*, p 2

the declining farm population, such evidence has been thoroughly discussed and documented elsewhere [11] California has been least susceptible to the squeeze because great agricultural diversity results not only from scientific land utilization, long production cycles and a high degree of mechanization but also from skillful farm management However, the manifestation of an alarming situation for the manufacturing milk producer is perhaps an indication that California agriculture may soon lose its favored position High and increasing land values, with semi-arid farm land in the Central Valley selling at a reported $825 an acre, mean even more planned utilization of land and water Milk producers have had to increase their efficient use of land, water, feeds and livestock at ever faster rates to stay in business and still many manufacturing milk producers have quit or turned their land to raise cotton and grain Many such producers have increased their herd size at considerable cost and, still unable to make money, have turned pasture into crop land so they can continue to produce milk. The average number of milk cows on California farms between 1930 and 1939 was 664,000 and each cost $60 10 on the average, in 1958, there was a total of 945,000 milk cows worth an average $255 each on California farms [12] Yet the price of manufacturing milk has continued to fluctuate every two years from as much as $1 23 to as little as 9 cents a hundredweight, market milk prices, on the other hand, dropped $1 02 from 1952 to 1954 and have since increased slightly [13]

The cost-price farm squeeze is apparent in competition between areas within the state and between California milk producers and producers in other states High-cost production in the metropolitan Los Angeles area has made it necessary for producers there to increase their total efficiency and production quality Some processors have been forced to obtain quantities of lower-cost market milk from the San Joaquin Valley where labor and feed costs are apt to be slightly cheaper and forced feeding of livestock is unnecessary But high feed costs in areas of relatively cheap labor, in the northern San Joaquin for instance, cut into net margins, especially when coupled with low equities in and high interest on new mechanical equipment designed to foster greater efficiency The marginal producer increases his volume and efficiency to diminish his costs per unit and thus hopes to stabilize or increase his income However, in some areas of the Central Valley, greater efficiency has become prohibitively expensive and the marginal producer is thus forced to stabilize his output at a point where his income must gradually decline or eventually disappear Labor costs in some midwestern states are either so low or non-existent that dairy products, particularly milkfat, can be imported and sold in California cheaper than it can be produced and sold here One reliable witness estimated that 59,000,000 pounds, or 20 percent of in-state production,

[11] See United States Department of Agriculture Agricultural Statistics for 1959 and preliminary reports from the U S Bureau of the Census for 1960 See also, for example, James G Patton, *The Case for Farmers*, Washington Public Affairs Press, 1959, 62 p

[12] California Annual Livestock Report, Summary for 1958, California Crop and Livestock Reporting Service, Tables 1 and 2, p 5

[13] California Dairy Industry Statistics for 1959, California Crop and Livestock Reporting Service, Tables 21 and 22, p 34 See chart and data appended

of milkfat was imported in 1959 [14] Data regarding total dairy imports into California are not officially reported but reliable industry spokesmen have privately estimated that processors here import 37 6 percent of the total milkfat requirements in California merely because it is cheaper to buy and ship in some products That does not necessarily mean that California is a deficit dairy state despite its large and growing population; it does mean, however, that California dairymen must face the peril of low-cost competition from areas of highly specialized dairy production

Merchandising practices by California dairy industry segments may be divided into two categories (1) brand advertising and marketing by processors and distributors through normal trade outlets such as milk cartons, billboards, media space and time and point-of-sales, (2) institutional advertising and marketing by producers through cooperative educational and promotional programs In the first instance, Bureau of Milk Stabilization officials estimate that $5½ million was spent in California in calendar 1959, bureau personnel allocate 1¼ percent of total sales to advertising in cost surveys In the second instance, such organizations as the California Dairy Industry Advisory board, the American Dairy Association of California and six local milk councils spent an estimated total of $1,082,292 in 1959. Thus, the total advertising and promotional campaigns of all segments of California's dairy industry cost roughly $6,582,292 last year With a population of 15,280,000 on July 1, 1959, that is only 43 cents spent per capita by the entire dairy industry during the whole year and farm earnings from dairy products alone were an average $24 60 from each Californian in the same period [15] That seems an infinitesimal investment for advertising and a relatively large return for California's second largest industry whose total earnings, at farm and store, reached an estimated $1 billion last year [16] Albeit that these figures may grossly overstate the case, they are nonetheless an indication of what is being done in milk merchandizing One may ask, is it enough?

In comparison, advertising for distilled spirits, not including beer and wine, in California (with about 12 percent of national consumption) amounted to an estimated $20,677,440, or $1 35 per capita, in 1959 On the other hand, nonbrand advertising for cling peaches, another perishable agricultural commodity like milk, amounted to $1,582,992, or 10 3 cents per capita, in California in fiscal 1959-60 [16 5] Of course, total farm earnings for cling peaches are considerably less than similar earnings for milk in the state

There is no way to estimate the total damage to dairy sales caused by the unfortunate, and largely unfounded, publicity about cholesterol in milkfat and injurious wax from milk containers Undoubtely, such publicity has been a factor in the decline of per capita consumption of milk, it has been a factor, moreover, of competition in the pursuit

[14] See transcript, Committee hearing, Fresno, California, June 29, 1960, p 4

[15] Computed from population and dairy farm earnings as reported in California Dairy Industry Statistics for 1959 and cited previously

[16] Computed from normal wholesale and resale markups of farm cash receipts for milk and dairy products as cited previously

[16 5] Distilled spirits advertising amount from *Printer's Ink*, Sept 9, 1960, computed in conjunction with national consumption figures from the *Liquor Handbook for 1960* published by Gavin-Jobson, Inc, New York, cling peach advertising amount from the Division of Marketing, California Department of Agriculture

for the consumer dollar. Sales of milk substitutes and milk imitations have boomed in the past several months To offset such publicity, the American Dairy Association has inaugurated and sponsored a series of research projects (seven in 1959 alone) to determine if cholesterol is detrimental to health as claimed by many doctors; preliminary investigations indicate that it is not However, a vigorous educational campaign by the entire American dairy industry is apparently necessary In addition, and until such findings are available for an educational campaign, an even more vigorous advertising and promitional effort appears necessary if milk is to regain its favor in the diet of Californians The California Consumer Counsel recently told a Southern California group of producers that consumers needed and wanted to know about other healthful components of milk such as protein and carbohydrates to stimulate their purchases of milk and dairy products Some industry spokesmen have indicated privately that they believe the Milk Control Act has inhibited imaginative and vigorous merchandising by the California dairy industry; some have even intimated that, from a merchandising standpoint, the Legislature might do well to repeal the Desmond resale provisions and thus encourage better salesmanship in an unprotected market

In sum, the problem of manufacturing milk producers in California is only one significant factor in the complex economic problems facing agriculture in general and the dairy industry in particular Perhaps the most salient feature of that larger problem is how production may be accommodated to consumption or, put another way, how to best adjust supply and demand It appears clear that, in addition to other kinds of action, more vigorous merchandising is desirable but even that, of itself, may not be enough to assure and maintain future stability in a growing economy beset with an increasing array of products seeking markets ever more competitively

THE PROPOSAL

Senate Bill 1167 (Cobey—1959) would have established a stabilization and marketing law for manufacturing milk producers similar to the one established for market milk producers by passage of the Young Act 25 years ago, it would have permitted the establishment of marketing areas and equalization pools, required minimum prices to producers based on national market prices and state market fluctuations for manufacturing milk and required public hearings and cost surveys to establish such minimum prices in the various marketing areas It was sponsored by the Western Dairymen's Association. It was heard twice before the Assembly Committee on Livestock and Dairies during the 1959 General Session and refused passage both times. It has been heard before this committee once since June 19, 1959

THE ARGUMENTS

The crucial point at issue between manufacturing milk producers and distributors is whether a marketing law for such milk will foreclose California manufactured dairy products from local markets. The

principal arguments heard before this committee may be summarized as follows.

1. Producer spokesmen contend that such a marketing law would guarantee an adequate supply of manufactured dairy products at reasonably uniform and stable prices to consumers Distributor representatives contend that it would raise the consumer prices on such products because there are no resale pricing provisions in the proposal

2 Producer spokesmen contend that such a law would help eliminate competition between surplus market milk and manufacturing milk and discourage unfair trade practices [17] Distributor representatives rejoin that increases in the in-state raw product price would encourage additional purchases of out-of-state supplies to the detriment of California producers They add that price-fixing standards in the proposal are too general; that is, one of the present Milk Control Act pricing standards is the market relationship between market milk and manufacturing milk prices and distributors contend that if the Director of Agriculture fixes the price of manufacturing milk too, it will eliminate that standard in the present Milk Control Act as being unreasonable.

3 Producer spokesmen contend that such a law is necessary to preserve and protect the entire California dairy industry Distributor representatives rejoin that there are no legal or constitutional precedents for a marketing law for manufacturing milk producers

Subsidiary contentions by producer spokesmen include (1) such a law would give producers the right to negotiate for better prices, (2) it would equalize all milk prices at all levels and thus prevent inequities among producers, (3) it would prevent distributors from subsidizing their fluid markets with manufactured products; (4) without such a law, some Central Valley manufacturing milk producers might seek economic protection under a Federal pricing order, and (5) the consuming public is entitled to an assured supply of high-quality dairy products Distributor representatives answer (1) producers exercise the right to negotiate for prices in an uncontrolled economy without legal sanctions; (2) resale prices on all milk and dairy products in California would increase, (4) distributors are concerned with increasing total sales volume and not necessarily with particular product sales; and (5) the California consuming public is already getting top-quality dairy products at prices lower than national averages.

As noted in the next chapter, market milk producers are interested in increasing their "blend" price That is, the income of every market milk producer is a combination of prices returned from the products made from his production as used in the classifications outlined earlier in this chapter. Thus, the lower the classified use, the lower the com-

[17] See transcript, Committee hearing, Fresno, California, June 29, 1960, pp 21-23, where a witness describes two such practices as (1) "Pacific Tel and Tel" marketing whereby milk buyers pre-set the raw product price in collusion by telephone before making purchases, and (2) "split-the-pie" whereby producers are assigned to ship to specific processors by geographical areas At pp 49-50, an expert witness explains "split-the-pie" as a logical means to avoid duplicated milk collection routes by tank trucks

bined return or "blend" to the producer. A simple and graphic way to illustrate this point might be:

Total Production

Class 1 fluid products (bottle milk and cream)	Class 2 fluid by-products (ice cream, cottage cheese, etc.)	Class 3 manufactured products (butter, hard cheese, skim and dry milk)
best return	good return 'Blend' Price	fair to poor return

Some market milk producers apparently support this proposal without reservation as a means to increase their "blend" price because they believe it would eliminate competition between their surplus production and manufacturing milk [18] The principal proponent of this proposal said recently that the average Grade A "blend" price in the northern San Joaquin Valley is $3 74 a hundredweight, or about $1 below the official estimates for the state average Grade A "blend" [19] Other such producers decline to support it because they apparently believe the problem will be naturally alleviated or eliminated within 10 years [20] Still other market milk producers have reserved their judgment in the belief that current industry studies of milk purchase contracts will disclose a more amenable solution such as an industry-wide agreement to standardize contractual terms [21]

A Department of Agriculture spokesman has said that such a law is feasible and can be administered without greatly increasing the size and operating costs of the Bureau of Milk Stabilization [22] Another said bureau surveys indicated that 2 percent of total market milk production is purchased and handled as manufacturing milk and that such milk amounts to 10 percent of all surplus market milk produced in the state; he added that the proposed legislation embodied in S B 1167 would effectively control such milk purchases through price regulation [23]

It is obvious that the production sector of California's dairy industry has been severely disrupted by continued high production at levels which, in the main, were required by emergency conditions long since past but which continue largely because of competitive factors Furthermore, it is obvious that producers of both market and manufacturing milk are vitally if not unanimously concerned with finding solutions to the problem of over-production. One possible answer may result from the studies by joint producer-distributor groups regarding contracts; such studies are discussed and summarized in the following chapter Another possible answer may result from the passage of a bill similar to the one here discussed, Senator Cobey has said he intends to introduce such a bill at the 1961 General Session A third possible solution may obtain from a vote by San Joaquin Valley manufacturing milk producers at some future date to secure a Federal pricing order

[18] See transcript, Committee hearing, Fresno, California, June 29, 1960, pp 5-6 and pp 75-79
[19] Joseph F Branco, State President, Western Dairymen's Association, at the 24th annual convention of the group at Merced, California on October 17, 1960
[20] See transcript, Committee hearing, Fresno, California, June 29, 1960, p 65
[21] *Ibid*, p 24
[22] *Ibid*, pp 89-93
[23] *Ibid.*, pp 94-95. See chart and data appended.

or, as an alternative, a vote to further consolidate Grade A marketing areas in that region; one such consolidation was recently approved by market milk producers in Kings and Tulare counties[24] Still another possible answer may result from concerted efforts by milk purchasers to encourage production cut-backs as was reportedly done in the lower San Joaquin Valley recently[25] However, each of these alternatives requires a degree of unanimity among producers as well as cooperation between producers and distributors which may not be easily obtainable in an industry as diverse, complex and competitive as California dairying Therefore, it may be desirable to encourage increasingly significant efforts in brand and institutional advertising by all industry segments One obvious and desirable objective would be to educate consumers to use milk and dairy products in greater quantities and in a variety of new ways; another equally obvious and desirable objective would be to stimulate total consumer sales of milk and dairy products and thus expand markets to meet present and future production levels.

In sum, a number of alternative but partial solutions to the problem of over-production and its concomitant complexities, including the plight of manufacturing milk producers, are available Some may require legislation and others may be attained through coordinated industry planning and effort in the Dairy Industry Advisory Board and the six regional or local milk councils On the whole, however, it appears that only through a united and cooperative effort can California's milk industry maintain the degree of stability and growth necessary to ensure the state's rapidly expanding population its future dairy supply Present disruptions, as illustrated by the problem in manufacturing milk, will continue to plague and jeopardize orderly milk marketing in California unless substantial efforts by industry are made soon

[24] Press release, California Department of Agriculture, August 17, 1960

[25] Martin H Blank told the recent annual convention of the Western Dairymen's Association in Merced that certain distributors had succeeded in persuading some Valley producers to cut production as much as 6 percent in the previous four months

CHAPTER THREE

OTHER PROBLEMS

CONTRACTS, GUARANTEES AND QUOTAS

(S.B. 1442, Donnelly—1959)

Contractual arrangements between milk producers and milk distributors are critically important in the marketing of milk and dairy products for they establish the terms by which milk is produced, processed and sold Milk purchase contracts vary widely throughout the state in form, guarantees and language dependent upon several factors which include (1) composition of milk supplied, (2) uses to which it is put, (3) distance to resale markets, (4) production efficiencies, (5) distributive methods and (6) traditional seller-buyer relations

Contracts for the purchase of Grade A milk have become increasingly complex as supply and demand patterns have changed to conform with technological advances, population growth and consumer buying habits Normally, Grade A milk purchase contracts include provisions for usage, assigning certain proportions of volume to different kinds of fluid and finished dairy products For example:

Total Production
(gallonage or pounds of milk components)

Class 1 guarantee	Class 2 and 3 usage	Standby

The Class 1 guarantee is about 65 percent, Class 2 and 3 usage is about 22 percent and legally-required standby is about 13 percent of total production and the contract is legitimately called a "sixty-five percent" contract However, there is another "sixty-five percent" contract:

Total Production

Contract Amount			Excess
Class 1 guarantee	Class 2 and 3 usage	Standby	

In this example the Class 1 guarantee is about 65 percent of the contract amount but only about 30 percent of total production, the total contract amount is only about 75 percent of total production.

Technological advances, such as more modern equipment and management and scientific breeding and feeding programs, have greatly increased milk production [1] Population growth in California has been great, especially in urban areas, and consumer buying habits have become more sophisticated [2] One of the obvious causes for milk purchase

[1] Since 1935, the number of cows milked has increased by 264,000, the total production of milk has increased by 3,823,000 pounds and the average production per cow has increased 2,320 pounds California Crop and Livestock Reporting Service, Dairy Information Bulletin, Vol 17, No 2, May 1960, p 20

[2] More products compete for the consumer dollar and consumers generally are highly selective in their purchases as every trade publication is quick to point out

contracts as illustrated in the second example is the disparity between increasing milk production and declining per capita consumption of milk and milk products; although Californians are buying more dairy foods than ever before, they are not consuming as much milk per person and total demand has not increased as rapidly as supply. Consequently, there is an excess of high-quality milk [3]

Another factor in the over-supply of high-quality milk distinctly related to contractual arrangements is the conversion of many Grade B herds to Grade A production in the San Joaquin Valley [4] Many Grade B producers are apparently induced to convert their production by a desire for greater financial security. The estimated cost of Grade B milk production is about $1 more than the market price according to reliable witnesses [5] As mentioned previously, the problem of the dairy farmer's cost-price squeeze is accentuated because the excess Grade A production is being diverted to manufacturing usages in Classes 2 and 3 where it competes directly with Grade B milk

The proposal by Senator Donnelly (S B 1442) in 1959 was sponsored by California Dairymen, Inc of which Herman Grabow, Escalon, is president If approved, it would have instituted a uniform contract form for all Grade A milk purchase contracts in the state with minimum Class 1 guarantees of 80 percent for deliveries to city plants and 70 percent for deliveries to country plants

The principal proponent said the bill would outlaw "contract favoritism" but other producer representatives suggested it be given further study. Proponent argued that minimum guarantees could vary according to distribution needs in the several marketing areas if each producer in such areas were guaranteed a share of the market He implied such guarantees would, in effect, establish producer quotas in market-wide equalization pools. The principal opponent said if high guarantees were mandatory, distributors would have to lower contract amounts or cancel some contracts entirely He argued that usage, rather than guarantee, is the basis for contract payment. And he implied that distributors would refuse to assign quotas to individual producers and then guarantee payment on minimum quotas

Witnesses at one hearing said production quotas for milk are necessary or will be eventually demanded in order to alleviate or rectify preferential producer treatment by some distributors [6] Complaints about contract inequities which force producers to compete with one another have been voiced at nearly all Committee hearings However, Section 4296 of the Agricultural Code specifically prohibits production limitations.

UPGRADING BUTTERMILK
(S.B. 890, Donnelly—1959)

Improving product quality by raising the quality standards for products has traditionally been a means to raise the product price and thus increase the income of the producer provided, of course, per unit costs remained relatively stable or increased only slightly

[3] An expert in the Bureau of Milk Stabilization has estimated that currently as much as 25 percent of total Grade A production is being diverted to manufacturing usages

[4] See transcript, Committee hearing, Modesto, California, May 10, 1960

[5] Ibid

[6] See transcript, Committee hearing, Modesto, California, May 10, 1960, pp 54-60.

Greatly increased consumer demand for fluid milk by-products such as ice cream, cottage cheese, sour cream and yogurt and the increased supply of fluid milk reserves have resulted in diversion of such reserves to those high-recovery products However, as supply outstripped demand, more and more fluid milk has found its way into lower recovery products such as hard cheese, non-fat milk. condensed and evaporated canned milk, dry skim and cultured buttermilk For instance, 88 7 percent of the milkfat derived from fluid whole milk was used for Class 1 processing and buttermilk in 1956, 78 7 percent of such milkfat was used for the same purposes in 1959 [7] Put another way, 10 percent of the available Grade A milkfat has been diverted to nonbottled, lower recovery products.

Three factors have apparently encouraged processors to divert fluid milk reserves to the manufacture of cultured buttermilk (1) the severe decline in the butter market in the past ten years coupled with the increasing popularity of buttermilk, especially during summer months; (2) substantial differences in price for butter, with federal supports, and for other higher cost milk products which return a higher proportion of income to the processor, and (3) the surfeit of high quality fluid milk in competition with Grade B milk normally used for butter manufacture

Cultured buttermilk, it should be noted. is manufactured from milk components and usually contains from 1 percent to 2 percent milkfat whereas buttermilk is a natural by-product of butter manufacture normally containing about the same small proportion of milkfat Cultured buttermilk is so called because additional bacteria are introduced to change the chemical composition of fatty acids as is naturally accomplished in butter processing

"Blend price," as previously noted, is the income of producers compounded from the sale of all the various milk products derived from their milk Most Grade A producers are eager to increase the price of all uncontrolled products, such as buttermilk, normally made from Grade B milk but now manufactured from Grade A components, and thus increase the amount of their "blend price" Moreover, producers are interested in obtaining an equitable return for their Grade A milk used for high recovery products For instance, buttermilk made from Grade B milk, selling at $3 25 a hundredweight, might retail for 19 cents a quart but cultured buttermilk, made from Grade A milk, selling at $5 25 a hundredweight for Class 1 usage, might retail for the same price in Class 3 usage, thus reducing the "blend" to the producer If a large proportion of his daily volume were going into such usage, his "blend" would be thus severely reduced Upgrading that portion of his Grade A volume used for buttermilk to Class 1 usage would obviously increase his "blend" and thus raise his income

The proposal by Senator Donnelly (S B 890) in 1959 was sponsored by the California Milk Producers' Federation, an organization of Northern California Grade A milk producer groups If approved, it would have required the use of market (Grade A) milk in the manufacture of cultured buttermilk and the Bureau of Milk Stabilization to set minimum resale prices on the product as fluid milk.

[7] Figures derived from data published in several recent Dairy Information Bulletins by the California Crop and Livestock Reporting Service

Principal proponent said cultured buttermilk is essentially a fluid product in Class 1 usage and ought to return a Class 1 price to producers He argued that an increased return to producers would not necessarily increase the resale price to consumers because, he said, distributors could absorb the cost in their net margins He implied that distributors' net margins on cultured buttermilk were too high Two representatives of other producer groups testified similarly but another said the bill would cause Grade B producers additional harm by further reducing their markets and another said several questions about the bill's probable effects needed to be answered before his group endorsed it Principal opponent said there was no public health reason to make cultured buttermilk from Grade A milk. He argued that the bill would require distributors to increase their standby reserves at added costs and increased prices would depress the consumer demand. Another opponent emphasized the lack of evidence regarding a public health need for such upgrading

One witness said the price for buttermilk varied from 6½ cents a quart at commissaries on military bases to 20½ cents a quart at some civilian markets.[8] He thus implied a substantial cost differential exists It is possible that administrative action could be taken to allow a higher return to producers for those portions of production used for high recovery by-products such as was taken to establish a 20-cent a hundredweight differential on bulk shipments in tanks instead of cans Such action could, in effect, establish a sub-classification in Class 2 with concomitant higher "blends" to producers without substantial reduction in distributor net margins

COUNTRY PLANT CHARGES
(A B. 2412, Garrigus—1959)

Country plants have traditionally served as assembly and transshipment points for fluid milk between remote farm and city market In addition, many have been useful as production units for manufactured by-products For example, one plant may assemble fluid whole milk into bulk lots for carload shipment to a city plant for processing; another may separate milkfat from fluid whole milk, ship the milkfat to a city plant for blending into fluid products and keep the skim for drying, butter or cottage cheese manufacture

Until about a decade ago, most dairy farmers shipped their milk in cans and some of them still do Country plants to handle such shipments are necessary in order to avoid costly double hauling of the cans from farm to dairy and return However, the recent conversion of many milk producers from cans to refrigerated farm holding tanks and of many milk distributors to refrigerated tank trucks has considerably lessened the importance of this country plant function In the southern San Joaquin Valley, for instance, it is possible to ship directly from farm to city by using modern refrigeration equipment. It has been estimated that 85 percent of San Joaquin Valley Grade A milk is thus handled directly.[9]

[8] See transcript, Committee hearing, Fresno, California, June 29, 1960, p 5
[9] See transcript, Committee hearing, Fresno, California, June 28, 1960, p 13

Under Section 4231 of the Agricultural Code, the Bureau of Milk Stabilization is required to deduct "plant and transportation service" charges from Grade A producer receipts Until two years ago, such deductions were 27 cents a hundredweight Because many producers had invested in refrigerated holding tanks to facilitate bulk shipment and had, thereby, lowered costs, some Valley producers requested a reduction in the handling assessment for bulk shipments The bureau held a series of hearings and promulgated a new deduction schedule which set a maximum charge of 15 cents a hundredweight for bulk shipments and 26 cents a hundredweight for can shipments

There are, according to bureau figures, 22 country plants operating in the San Joaquin Valley, the traditional production area most remote from Los Angeles and San Francisco Bay area markets. The chief of the bureau estimates that only three handle can shipments in any volume

The proposal by Assemblyman Garrigus (A B 2412) in 1959 was sponsored by Allied Dairymen, Inc, formerly the Central Valley Milk Marketing Association Noel Diamond of Tulare is general manager. If approved, it would have eliminated the 15 cents a hundredweight deduction for Grade A bulk shipments in tanks

Principal proponents said service charges on bulk milk handled at country plants for transshipment should be added to the consumer price or absorbed in distributor gross margins They argued that such costs are distributor plant costs and not logically attributable to the producer One witness said that he knew one distributor who transferred bulk milk from truck to plant and back to truck only to assess the charge against producers [10] Another said he would have to pay $288 a month for such services which he did not need if he were not shipping directly to city plant [11] Another producer group representative said country plants were necessary, another said some distant producers might be squeezed out of remote markets if country plants were forced to close, still another said changes in allocating costs should be done administratively

Principal opponents said the bureau had studied country plant operations and found them a necessary part of the milk marketing apparatus with necessary costs and if such costs had to be absorbed, some country plants would either lose money or shut down and cause the loss of market to some producers They argued the bureau had sufficient authority to adjust charges to conform with marketing practices

One expert witness said if handling costs were passed along to consumers it would put country plant operators at a competitive disadvantage and disrupt marketing He admitted that country plant service charges should be allocated equally to producers and distributors but he could see no practical way to do it Another expert said the bureau's 1958 survey showed service costs ranging from 8 44 cents to 18 5 cents a hundredweight while distributor exhibits submitted at hearings showed such costs to range from 20 63 cents to 32 79 cents a hundredweight [12]

[10] See transcript, Committee hearing, Fresno, California, June 28, 1960, p 9
[11] Ibid, p 20
[12] See transcript, committee hearing, Fresno, California, June 28, 1960, p 62

It is obvious that the San Joaquin Valley is, and has long been, the milk production reserve for both major metropolitan areas of the state. But it is also apparent that modern technology, particularly in handling, has changed the composition of and requirements for Valley production drastically in the past few years, nowadays fluid milk can move into either Los Angeles or San Francisco from anywhere between Bakersfield and Redding Additionally, it is apparent that A B 2412 was intended as a means to increase the "blend" to some Valley producers who, in general, need relief, as previously noted, from the cost-price squeeze felt most acutely by the single-unit marginal farmer

However, additional factors might be considered in order to resolve this particular country plant problem to the satisfaction of both producers and distributors These might include (1) the volume of Grade A milk still being shipped in cans in the San Joaquin-Sacramento Valleys; (2) the number and location of country plants most needed for: (a) marketing and (b) manufacturing, and (3) the periods of most vital need for such plants.

TRANSPORTATION CHARGES
(A.C.R. 34, Biddick—1960)

Farmers have always borne the cost of transporting their produce from farm to market but modern technology and management practices, both on the farm and in the market, have compounded to complicate a once-simple phase of marketing. Constant adjustments appear necessary to assure economic equality and just treatment.

Innovations in milk handling methods on the farm, particularly the conversion from cans to bulk holding tanks, have facilitated the assembly, processing and distribution of both Grade A and Grade B milk Such devices as automatic feeders, semiautomatic milk houses, direct pipelines from milking machines to holding tank are important recent innovations which, in addition to modern breeding and feeding techniques, have resulted in greater efficiencies and higher production But such innovations require capital outlay and increase the farmer's investment per gallon of production He is naturally interested in obtaining a return on his investment which may or may not have been financed, at least in part, by the buyer of his product who is naturally interested in increasing efficiency

Surpluses of Grade A milk since 1957 have caused more and more of such milk to be diverted from fluid to manufacturing uses (see footnote 3) in Classes 2 and 3 Prices for Class 3, sometimes called the "last recovery" class, are related specifically to the uncontrolled price of Grade B or manufacturing milk, f.o b ranch, which is set competitively by the buyer although the Federal government has set a price floor with supports for butter and fluid manufacturing milk. Presumably, Class 2 has yielded a higher return than Class 3 to producers because, by legal definitions of the Desmond Act (Sections 4226-28, Agricultural Code), it is used for high recovery by-products of fluid milk Retail prices for such products are not controlled as they are for Class 1 fluid, bottled products.

However, in 1958 some distributors began paying a 25 cents a hundredweight bonus for Grade B milk handled in bulk That is, Grade B producers who invested in farm holding tanks received 25 cents more a hundredweight than did such producers who continued to ship in cans Naturally encouraged to make such an investment, many Grade B producers did so to take advantage of the differential, moreover, it has been alleged that some distributors completely financed conversions for many farmers One obvious effect of these conversions was to further encourage competition between mounting surpluses of Grade A milk and available Grade B milk to the detriment of the producers of both Subsequently, in the spring of 1959, some Grade A producers in the San Joaquin Valley requested the Bureau of Milk Stabilization to adjust transportation charges for Grade A milk handled in bulk and used for manufacturing purposes The bureau held a series of hearings and, in July, 1959, issued marketing orders in the Stanislaus, San Joaquin and Merced-Madera marketing areas requiring distributors to pay 20 cents a hundredweight more than the Class 3 price for all Grade A milk handled in bulk and used for Class 2 Most distributors complied with the new orders but two partially refused and, according to reliable witnesses, reclassified over-contract milk as Grade B and paid for it at the prevailing manufacturing milk price

A remedy was sought in the form of the proposal by Assemblyman Biddick (A C R 34) in 1960. It was sponsored by the California Milk Producers' Federation and one of its large affiliated organizations If approved, it would have required the Bureau of Milk Stabilization to "vigorously enforce" the marketing orders governing such purchases of Grade A milk used in Class 2

Principal proponents said a higher return on Class 2 by-products was necessary in a market where competition among producers had been encouraged by financing of bulk handling tanks and conversion of Grade B producers to Grade A production They said there should be no inducement for producers to increase output over required standby reserves and another said the 20-cent differential was necessary to increase "blend" payments in the face of rising costs and added investments They argued that the bureau lacked aggressiveness in enforcing the marketing orders and they would support an increase in the service assessment (to the legal limit of .2 cent per pound milkfat) if additional bureau personnel were necessary to enforce the orders.

One producer said all dairymen should be treated equally and another said distributors were only doing to producers what they, in turn, would do to distributors if they could

Principal opponents said "the basic problem arises because producers want to grow faster than consumers will absorb the supply on a price basis satisfactory to producers " They said the two offending distributors had misunderstood the order but were willing to comply with its provisions

A spokesman for the Department of Agriculture said a suit was being prepared by the State Attorney General to recover retroactive payments of the 20-cent differential from the two alleged offenders.

Subsequent to the Committee hearing, the Director of Agriculture announced that the pending suit had been settled when the two companies made partial settlements totaling $28,000 [13]

The solution of this particular problem without further legislation is gratifying but it is obvious that the underlying causes will continue indefinitely Those causes concern the entire dairy industry—producer, distributor, consumer—and include these three apparently related factors (1) increasing surpluses of Grade A milk resulting from (a) more efficient production methods and (b) continued conversion of Grade B producers to Grade A production, (2) declining per capita consumption of dairy products resulting from (a) more sophisticated consumer buying habits and (b) great competition for the consumer dollar from producers of all other consumer good and services, (3) the disparity between farm costs and farm prices resulting, at least in part, from (a) international monetary inflation and (b) domestic over-production Other factors, such as statutory law, administrative practices, economic sanctions and societal changes, undoubtedly impinge on the causes which from time to time disrupt milk marketing in California

MILK STUDY COMMITTEES

William E Warne was appointed Director of Agriculture effective January 1, 1960 and, according to his public statements, became immediately aware of the increasingly complex problem facing the California dairy industry At the request of Governor Edmund G Brown, the following April he began to do something about it with the appointment of the first of four industry committees The first group was composed of 11 Grade A producers from all parts of the state, their first meeting was April 26 and to the date of this writing they have met eight times In late May a 11-man Grade B committee was appointed, they first met on June 22 and to date have met six times In mid-June a committee composed of 16 representatives of processors and distributors was appointed; their first meeting was June 30 and they have met five times since [14] In early November a committee composed of 10 representatives of manufacturing milk processors and distributors was appointed; to this writing they have held one meeting

Assistant Director William Kuhrt acts as chairman of all four committees and has been influential in directing the discussion toward practical, positive ends For instance, the Grade A committee appointed a subcommittee to list and discuss principles which should govern seller-buyer relationships, coincidentally a group of producers, represented by the California Farm Bureau Federation, met with a group of distributors, represented by the Dairy Institute of California, to discuss similar issues These separate discussions have resulted in the appointment of a joint producer-distributor subcommittee composed of seven distributor, four Grade A and three Grade B producer representatives to discuss and settle differences in principle One probably and singularly important result may be the revision and standardization of milk purchase contracts in California

[13] Department of Agriculture press release, dated July 29, 1960
[14] A list of the study committees' members is appended

All four study committees have, to a large extent, been most interested in two problems (1) how to control and what to do with the Grade A surplus and, secondarily, how to improve the economic position of Grade B producers, and (2) how to improve administration of the Milk Control Act

As indicated, the Grade A producers committee has spent considerable time and effort in attempting to find a solution to the Grade A surplus problem in contractual revision and standardization Members agreed early in their discussions that, in large measure, the surplus has been caused by forced over-production resulting from various kinds of contractual provisions and practices They requested and obtained a bureau study of variations in Class 1 guarantees and usage which indicated apparent preferential treatment of producers in all areas of the State.[15] Then the subcommittee considered certain contractual principles and prepared a sample contract which was presented at a joint meeting of all three committees October 6 in Sacramento Members of the processor-distributor committee also presented a summary of their study of contracts at the same meeting and a joint subcommittee was appointed to discuss the principal differences and prepare a list of common principles upon which producers and distributors could mutually agree; that subcommitte met for the first time October 24 in Sacramento [16]

The Grade B producers committee has given considerable attention to finding means to solve their economic plight In doing so, they have received bureau statistical analyses and discussed legal and extra-legal remedies, especially Grade A contractual arrangements, cooperative marketing, federal pricing orders and Senate Bill 1167 (Cobey—1959) which was reported in a previous chapter of this report The committee has apparently assumed that at least part of the economic difficulties affecting Grade B producers will be alleviated by revision and standardization of Grade A contracts Some members apparently believe more aggressive cooperative marketing would help ease the disparity between costs and prices It is apparent, however, that some of them would support the introduction of a federal marketing order, with fixed producer prices and quotas in area pools, for the Central Valley or portions thereof in case legislation for a Grade B marketing law is defeated in the 1961 General Session It should be clearly stated again that many Grade B producers, judging from study committee meetings and testimony before this committee, obviously believe they have been discriminated against both legally, without a marketing law similar to the Milk Control Act, and economically, with induced over-production of Grade A milk which competes directly with their product

The processors-distributors committee has studied the Grade A surplus problem, particularly as it affects marketing, milk depots and plant docks, milk sales on bid to public agencies and administration of

[15] Data showed that average Class 1 guarantees for 25 Northern California plants ranged from 70 percent (1) to 100 percent (8), for 22 San Joaquin-Sacramento Valley plants from 48 percent (1) to 100 percent (2) and for 39 Southern California plants from 60 percent (1) to 100 percent (17), the average Class 1 usage for 25 Northern California plants ranged from 72 percent (1) to 100 percent (11), for 22 San Joaquin-Sacramento Valley plants from 43 percent (1) to 100 percent (7) and for 39 Southern California plants from 69 percent (1) to 100 percent (26)

[16] A summary of salient differences between these two proposals is appended

the Milk Control Act As mentioned above, Dairy Institute representatives met with Farm Bureau representatives to discuss producer-distributor relations, although such meetings were held without the express approval of the study committee it quickly acceded to the findings of those meetings and adopted the principles as reflecting the thinking of the committee majority In regard to milk sales to military bases, Department of Agriculture spokesmen explained the controversy involved sales on bids below minimum price levels established by Bureau of Milk Stabilization marketing orders They said several suits were pending and, upon the advice of the State Attorney General, had determined that the State has jurisdiction over such sales contracts; in a letter to distributors, dated September 14, 1960, the bureau chief said sales at Castle Air Force Base, Merced County, were being made at prevailing minimum wholesale prices (It has been estimated that 70 percent of all commissary sales are for off-base consumption.) In San Diego County, Allied Dairymen, Inc lost and have appealed their suit The state courts have upheld the Director of Agriculture in setting state minimum wholesale prices on such bid sales but on November 30, 1960, the Federal District Court in San Francisco enjoined the state from doing so The State Attorney General has been asked to appeal to the United States Supreme Court In jeopardy, of course, is market stability which may suffer from severe disruption in those areas where milk is sold for 12 cents a quart from military base commissaries and 24 cents a quart from civilian groceries In regard to milk sales to public and private schools, a subcommittee was appointed to study and make recommendations on a similar problem involving below-minimum bids Department spokesmen also explained the reorganization of the Bureau of Milk Stabilization, effective September 1, 1960, which created a third control area with headquarters in Sacramento and added 14 new personnel positions They said the present assessment level of 0 2 cents per pound of milkfat is adequate to pay salaries and buy necessary equipment, in fact, they said, a surplus of $92,820 accumulated in fiscal 1959 Committee discussions of depot and plant dock sales were reported in a previous chapter

Finally, it must be said that this committee commends the work being done by these study committees and the initiative shown by Director Warne and his staff in organizing and directing that work. The effort made by these experienced and astute agricultural and industrial leaders in these important studies is an encouraging signal that the present problems of California's vital and dynamic dairy industry may be soon if not completely and permanently resolved We congratulate Director Warne, his staff and the 48 members of these committees on their interest and diligence and we look forward, as do the people of California, to the fruitful conclusions they must reach.

CHAPTER FOUR

COMMITTEE ACTIVITIES

HISTORY OF HEARINGS

During the interim, from June 19, 1959, through January 2, 1961, your Committee on Livestock and Dairies has met 10 times Half of our meetings were held in regard to the problem of milk depots and plant docks, the subject matter of Assembly Bill 2319 (Porter—1959)

On August 5, 1959, your committee met in Sacramento to organize for interim work The committee decided to first undertake a study of A B. 2319 because of the controversy stirred by the proposed amendment to the Milk Stabilization and Control Act during the last General Session The committee also decided to participate in the California Legislative Internship Program

On September 4, 1959, your committee met again in Sacramento to hear witnesses from the State Department of Agriculture discuss administrative problems relating to resale milk pricing, especially those affecting depots and docks, under the Milk Control Act The meeting was held jointly with the Senate Fact-Finding Committee on Agriculture, Senator Paul Byrne, Chairman, and two departmental spokesmen were heard during the two-hour session

On November 9, 1959, your committee met in Stockton to obtain testimony from dairy industry leaders relating to A B 2319 Seventeen witnesses testified during the 6½-hour session and the meeting was very well attended

On November 10, 1959, your committee met in San Francisco and obtained testimony from 15 witnesses relating to A B 2319 during the 4½-hour session which was well attended

On November 12, 1959, your committee met in Paramount, Los Angeles County, and obtained testimony from 28 witnesses on A B 2319 during the 7½-hour hearing which was very well attended

On January 20, 1960, your committee met again in Sacramento to conclude its planned hearing schedule on A B 2319 and heard 12 witnesses during the 5½-hour session It was well attended

In all, the committee heard 74 witnesses testify on A B 2319 during 26 hours at five consecutive meetings

Your committee was not activated during the Budget Session, February 1, 1960, through April 8, 1960, and consequently held no hearings during that period [1]

On May 10, 1960, your committee met in Modesto to obtain testimony from 19 witnesses during a six-hour session on freight differentials for Grade A milk handled in bulk, Assembly Concurrent Resolution 34 (Biddick—1960) Other matters discussed included the Grade

[1] See Progress Report, Assembly Interim Committee on Livestock and Dairies, Assembly Daily Journal, March 15, 1960, pp 330-32

A surplus, contractual arrangements, Grade B problems, federal marketing orders and country plant charges

On June 28-29, 1960, your committee met jointly with the Senate Fact-Finding Committee on Agriculture in Fresno to hear testimony on four legislative proposals A B 2412 (Garrigus—1959) on transportation service charges at country plants, S B 890 (Donnelly—1959) on upgrading cultured buttermilk; S B 1167 (Cobey—1959) on a marketing law for Grade B milk, and S B 1442 (Donnelly—1959) on a uniform milk purchase contract law The committees heard 39 witnesses during the 9½-hour sessions which were very well attended.

On November 17, 1960, your committee met again in Sacramento to review its final report and discuss findings and recommendations

In sum, your committee has met 10 times and heard 132 witnesses during nearly 50 hours of session in six California cities It has met jointly with the Senate Fact-Finding Committee on Agriculture on three occasions with your chairman presiding It has taken testimony on the following proposals.

1 A B 2319 (Porter—1959) on depots and plant docks, five hearings including one joint meeting,

2 A C. R. 34 (Biddick—1960) on milk hauling differentials, one hearing,

3. A B. 2412 (Garrigus—1959) on country plant service charges, one hearing,

4. S B 1167 (Cobey—1959) on a Grade B marketing law, one hearing;

5 S B 890 (Donnelly—1959) on upgrading buttermilk, one hearing, and

6 S B 1442 (Donnelly—1959) on uniform milk purchase contracts, one hearing

Other bills referred to this committee were not heard because (1) the respective authors did not want them heard, or (2) subject matter was sufficiently covered by other hearings, or (3) other agencies or committees were considering similar subject matter, or (4) neither sufficient time nor sufficient funds were available For instance, the Senate Fact-Finding Committee on Agriculture has held a hearing and has made a study of milk inspection fees about which Assembly Bill 2307 (Pattee—1959) is concerned.[2] Likewise, the Department of Agriculture Milk Study Committees, as indicated previously, have exerted considerable effort to find solutions to the contract problems perplexing the California dairy industry and thus obviated any necessity for your committee to fully consider the proposal by Senator Donnelly, S. B 1442.

STAFF RESEARCH

In addition to following a full hearing schedule, your committee, through its chairman, made use of its staff, including secretary and

[2] See hearing transcript, Senate Fact-Finding Committee on Agriculture, September 6-7, 1960

consultant,[3] to gather and report information, co-operate with various state agencies and industry groups and co-ordinate interim activities. For instance, staff members have arranged and prepared hearing agenda, edited and distributed transcripts, written and distributed background reports and hearing summaries They have attended other committee and departmental meetings They have attended conventions and met frequently with state personnel, dairy industry representatives and private individuals They have made field trips to two dairy farms, a commercial creamery and a milk depot They have answered and made numerous requests, both oral and postal, for information and reports They have spent numerous man-hours in research, including interviews, data analysis and reading

ACKNOWLEDGMENTS

The committee would like to acknowledge its debt to various organizations and individuals for their unfailing cooperation and assistance in the accumulation of the data and testimony represented by this report. We are indebted to Agriculture Director William E. Warne and his predecessor, William C. Jacobsen, for the help which their staff, including Deputy Director Charles V. Dick, Assistant Director William J. Kuhrt, Chief Donald A Weinland and Assistant Chief Louis C. Shafer of the Bureau of Milk Stabilization, has given this committee in the past 18 months. We are also indebted to the following for their cooperation and assistance· Dairy Institute of California, California Milk Producers' Federation, California Farm Bureau Federation, California Grange, Western Dairymen's Association, California Grocers' Association, Southern California Producers' Association, Cash-and-Carry Dairy Association of California, Cash-and-Carry Drive-in Association of California, California Dairymen, Inc, Associated Dairymen, Inc, Allied Dairymen, Inc, American Dairy Association of California and numerous individuals associated with or independent of these groups who came before us voluntarily. We are also grateful for the continued assistance of the Legislative Counsel and his staff and the staff of the Legislative Reference Library.

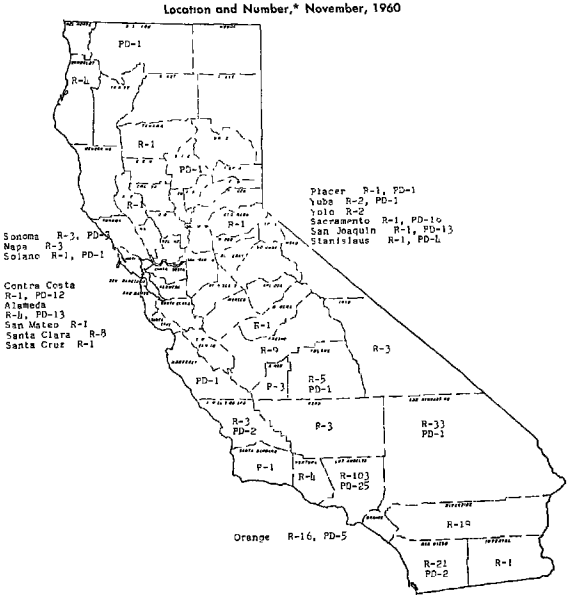
[3] The Legislative Intern was employed as Legislative Assistant on July 1, 1960 pursuant to H R 326, paragraph 7, 1959, and with the approval of the Committee on Rules as granted June 22 1960

APPENDIX

APPENDIX 1

"CASH-AND-CARRY" DAIRY OPERATIONS

Location and Number,* November, 1960



* Data from Bureau of Milk Stabilization on the next page Key R number of ranch operations, PD number of plant docks

"CASH-AND-CARRY" DAIRY OPERATIONS

Location and Number, November, 1960

County	*Ranch*	*Plant dock*
Alameda	4	13
Butte		1
Contra Costa	1	12
El Dorado	1	
Fresno	9	
Humboldt	4	
Imperial	1	
Inyo	3	
Kern	3	
Kings	3	
Lake	1	
Los Angeles	103	25
Madera	1	
Monterey		1
Napa	3	
Orange	16	5
Placer	1	1
Riverside	19	
Sacramento	1	16
San Bernardino	33	1
San Diego	21	2
San Joaquin	1	13
San Luis Obispo	3	2
San Mateo	1	
Santa Barbara	1	
Santa Clara	8	
Santa Cruz	1	
Siskiyou		1
Solano	1	1
Sonoma	3	3
Stanislaus	1	4
Tehama	1	
Tulare	5	1
Ventura	4	
Yolo		2
Yuba	2	1
Total	260	100

(NOTE There is no way to distinguish milk depots from the available data Presumably, a number of these 360 operations could be characteristically defined as *milk depots as in the text*)

APPENDIX 2

Processing Plant Differentials and Fluid Milk Sales (Gallons) by Marketing Area

Marketing area	*Differential per quart*	*May 1958*	*May 1959*	*May 1960*
Alameda-Contra Costa	1½¢	75,687	194,943	261,761
Butte-Glenn	1¢	18	20	4,057
Imperial	1¢	n/r	n/r	n/r
Kern	1¢	162	145	200
Kings-Tulare	1¢	n/r	111	31
Los Angeles	1¢	183,577	207,557	317,704
Monterey-Santa Cruz [1]	1¢	600	n/r	3,704
Napa-Sonoma (Redwood Zone 1)	1¢	n/r	6,351	8,600
Sacramento Zone 1	2¢	93,411	119,422	133,119
San Bernardino-Riverside	1¢	n/r	n/r	n/r
San Diego	1¢	n/r	n/r	2,990
San Joaquin	2¢	69,227	74,980	88,814
San Luis Obispo	2½¢ [2]	8,284	13,007	14,452
Santa Barbara-Ventura	1¢	n/r	n/r	n/r
Santa Clara	1¢	5,852	8,252	8,428
Siskiyou	1¢	n/r	n/r	n/r
Solano	1¢	n/r	n/r	7,949
Stanislaus	1¢	36,555	48,328	41,815 [3]
18	Total	473,373	673,116	893,408

n/r Not reported
[1] Plant dock opened May 2, 1960
[2] Computed from 10¢ a gallon differential on gallon container sales only
[3] Estimated by bureau officials from incomplete reports

APPENDIX 3

Excerpts from the Opinion of Justice Van Dyke, Third District Court of Appeals in *Misasi v. Jacobsen* (3d Civil 9615)

On April 15, 1960, in the court's decision to affirm the judgment of the Superior Court.

"There has been and will be varying methods of distribution, wholesale and retail, and these methods will, from time to time, change as conditions change . . Methods of distribution in one area may differ from those that predominate in another" (p 3)

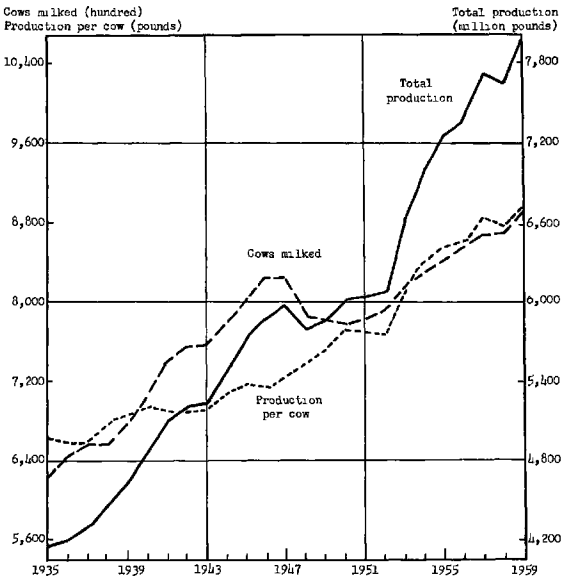
"The fact that at one point, that is, when the retail sale is made to consumers, there is a great similarity in what is done will not justify a holding that the same method of distribution is being used" (p 5)

On May 11, 1960, in the court's decision to deny petition for rehearing.

"Nothing in the opinion was intended to deny or disparage the authority of the director under Section 4360 of the Agricultural Code in fixing minimum prices to depart from ascertained costs, according to method of distribution and reasonable return on capital investment if the statutory conditions for such departure are found to exist"

APPENDIX 4

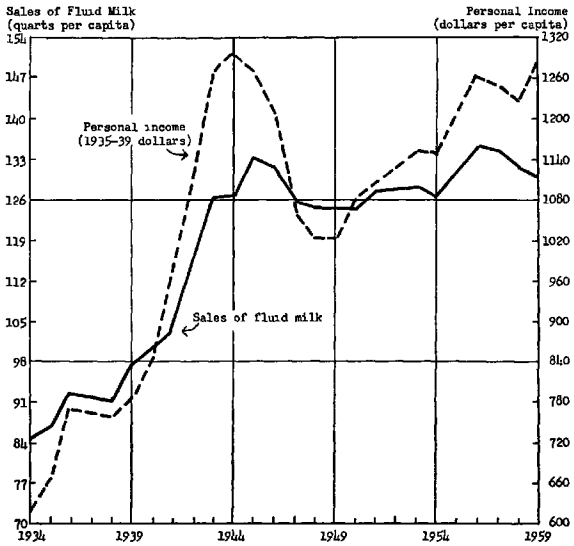
Chart taken from Dairy Information Bulletin, Vol XVII, No 2, May, 1960, California Crop and Livestock Reporting Service



Average Number of Cows Milked, Average Production of Milk per Cow, and Total Production of Milk on Farms, California, 1935-1959

APPENDIX 5

Chart taken from Dairy Information Bulletin, Vol XVII, No 7, October, 1960, California Crop and Livestock Reporting Service Data for chart may be found on the next page



Sales of Fluid Milk and Personal Income, Per Capita, California, 1934-1959

APPENDIX 5—Continued

Year	Estimated population, California July 1 (thousands)	Total sales of fluid milk, California		Sales of fluid milk per capita (quarts)	Personal income per capita, California (dollars)	Cost of living, U S (1935-39 =100)	Personal income per capita, California (1935-39 dollars)
		Thousand gallons	Thousand quarts				
1934	6,060	128,155	512,620	84 6	592	96	617
1935	6,175	133,442	533,768	86 4	651	98	664
1936	6 341	146,223	584,892	92 2	760	99	768
1937	6,528	149,024	596,096	91 3	786	103	763
1938	6,656	151,829	607,316	91 2	764	101	756
1939	6,795	164,631	658,524	97 1	775	99	783
1940	6,950	173 464	693,856	99 8	840	100	840
1941	7,237	186,035	744,140	102 8	1,013	105	965
1942	7,735	219 668	878,672	113 6	1,294	117	1,106
1943	8,506	267,504	1,070,016	125 8	1,561	124	1,259
1944	8,945	282,347	1,129,388	126 3	1,638	126	1,300
1945	9,444	311,107	1,244,428	133 2	1,626	128	1,270
1946	9,559	314,372	1,257,488	131 6	1,683	139	1,211
1947	9,832	309,953	1,239,812	126 1	1,692	159	1,064
1948	10,064	314,243	1,256,972	124 9	1,730	171	1,023
1949	10,337	321,557	1,286,228	124 4	1,725	169	1,021
1950	10,600	330,741	1,322,964	124 7	1,850	171	1,082
1951	11,058	352,817	1,411,268	127 6	2,055	186	1,105
1952	11,743	375 564	1,502,256	127 9	2,137	190	1,125
1953	12,168	389,028	1,556,112	127 9	2,190	190	1,153
1954	12,595	398,069	1,592,276	126 4	2,178	190	1,146
1955	13,035	424,621	1,698,484	130 3	2,319	191	1,214
1956	13,594	458,246	1,833,184	134 9	2,438	194	1,252
1957	14,190	477,664	1,910,653	134 6	2,508	201	1,218
1958	14,752	485,273	1,941,092	131 6	2,517	206	1,222
1959	15,280	496,516	1,986,064	130 0	2,609	208	1,283

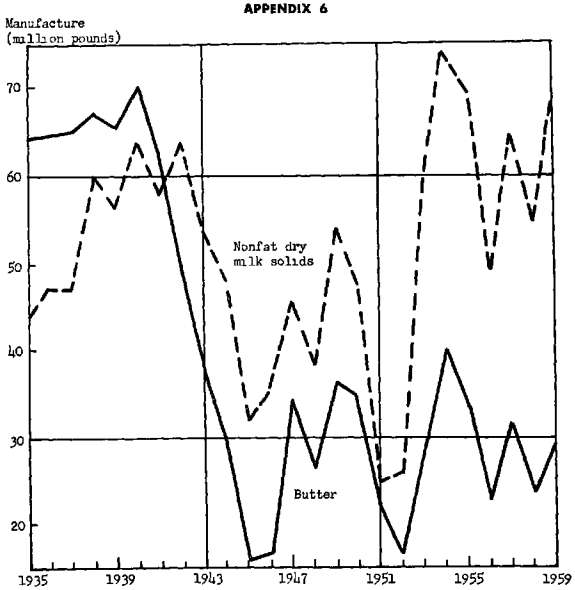
SOURCES OF DATA

Estimated population, California, July 1, 1934-1939 United States Department of Commerce, Bureau of the Census, 1940-1959 California Department of Finance

Personal incomes, California United States Department of Commerce, Bureau of Foreign and Domestic Commerce

Cost of Living, United States United States Department of Labor, Bureau of Labor Statistics

APPENDIX 6



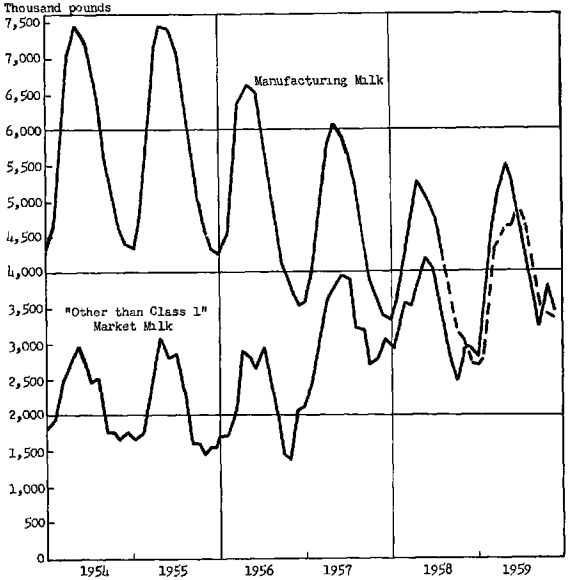
Manufacture of Butter and Nonfat Dry Milk Solids (Powdered Skim Milk) in California, 1935-1959

Year	Butter	Nonfat dry milk solids	Year	Butter	Nonfat dry milk solids
1935	64,144	44,242	1948	26,264	37,545
1936	64,311	47,108	1949	36,734	53,686
1937	65,194	47,120	1950	34,623	47,063
1938	67,083	59,038	1951	21,846	24,687
1939	65,254	55,797	1952	16,676	25,901
1940	59,865	61,466	1953	28,489	36,700
1941	62,676	57,812	1954	39,887	73,570
1942	49,412	64,742	1955	33,540	69,506
1943	37,523	53,453	1956	22,713	49,204
1944	29,566	48,005	1957	31,550	64,090
1945	18,700	32,116	1958	23,604	54,157
1946	16,819	34,885	1959	29,457	67,809
1947	33,892	46,394			

Chart and data taken from Dairy Information Bulletin, Vol XVII, No 3, June, 1960, California Crop and Livestock Reporting Service

APPENDIX 7

Chart taken from Dairy Information Bulletin, Vol XVI, No 12, March 1960, California Crop and Livestock Reporting Service



Average Daily Production of Manufacturing Milk, and "Other than Class 1" Market Milk Available for Manufacture, in California, by Months, 1954-1959

Production of Manufacturing Milk

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
1954	4,371	4 774	5 860	7,030	7,425	7,230	6,942	6 397	5 597	5,057	4,647	4,410
1955	4,392	4,511	5,902	7,099	7,408	7,397	7,101	6 504	5,681	4,985	4,554	4,302
1956	4,259	4 573	5,492	6,342	6,655	6,539	6,224	5,630	4,800	4,182	3,772	3,568
1957	3,582	3,943	4,784	5,736	6,040	5 906	5,714	5 197	4,491	3,914	3,609	3,401
1958	4,470	4,684	4 383	4 839	5,234	5,102	4,871	4,400	3,755	3 245	3,006	2,742
1959	2,671	2,829	3,533	4,461	4,686	4,618	4,571	4,665	3,872	3,438	3,230	3,307

"Other than Class 1" Market Milk

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
1954	1,915	1,957	2,490	3,812	2 931	2,743	2,425	2,516	1,751	1,758	1,644	1,751
1955	1,675	1,737	2,090	2,694	3,074	2,815	2,810	2,281	1,586	1,570	1,424	1,559
1956	1,702	1,703	2,069	2,908	2,788	2,600	2,946	2,475	2,028	1,409	1,361	2,007
1957	2,114	2,383	2 975	3,604	3,774	3,960	3,882	3,224	3,182	2,591	2,678	3,049
1958	2,943	3,175	3,377	3,528	3,728	4,173	4,064	3,391	2,808	2,441	2,908	3,038
1959	2,828	3,402	4,472	5,110	5,403	5,244	4,838	4,443	3,790	3,253	3,793	3,449

APPENDIX 8

MEMBERS OF THE MILK STUDY COMMITTEES, STATE DEPARTMENT OF AGRICULTURE

Grade A Committee

Joseph F Branco, Los Banos
State President, Western Dairymen's Association, Merced

Dewey W Buckel, San Diego
Chairman, San Diego Milk Producers' Council

Harry Corea, Los Angeles
Manager, Los Angeles Mutual Dairymen's Association

Levi Hubble, Tulare
Manager, Tulare County Consolidated Milk Producers' Association

James E Maino, San Luis Obispo
President, California Milk Producers' Federation, Sacramento

John Perez, Anderson
Chairman, Northern Valley Regional Producer Control Board

*Fred Rau, Fresno
District President, American Dairy Association

Wesley N Sawyer, Waterford
Vice President, California Milk Producers' Federation, Sacramento

Gerald Van Horn, Bakersfield
Chairman, Southern San Joaquin Regional Producer Control Board

John Watson, Petaluma
President, State Board of Agriculture

Albert E Weber, Paramount
Manager, Protected Milk Producers' Association, Paramount

*vice Reynold Thompson, Fresno, Member, San Joaquin Regional Producer Control Board, who resigned

Grade B Committee

Joseph Bono, Tulare
William E Bragga, Petaluma
Albert Enos, Orland
Earl Francis, Escalon
Wallace Garcia, Patterson
Joseph J Mello, Orland
Roy Miller, Galt
Chris H Rasmussen, Ferndale
George Sheldon, Laton
Bob Sherman, Newman
Joe A Silva, Los Banos

Processors-Distributors Committee

Kenneth L Ball, Whittier
Whittier Sanitary Dairy Company

G H Brockmeyer, Los Angeles
Vice President, Arden Farms Company

Ray Bush, Oakland
Lucerne Milk Division, Safeway Stores, Inc

Les Evans, Los Angeles
General Manager, Challenge Cream and Butter Association

John Fitzpatrick, Redding
McCall's Dairy Products Company

Merle J Goddard, San Francisco
Assistant Secretary, California Grocers Association.

Vernon Hansen, Sacramento
Crystal Cream and Butter Company

Donald M. Hardie, Modesto
Manager, Central California Milk Producers' Association

Processors—Distributors Committee—Continued

Fred Morrill, San Francisco
President, Borden's Dairy Delivery Company

Burt Mosher, San Francisco
Market Coordinator, Foremost-Golden State Company

Milton Natapoff, Los Angeles
General Manager, Avalon Farms, Inc

Harlan Nissen, Pasadena
Meadow Gold Division, Beatrice Foods Company

Charles Noell, Los Angeles
Carnation Company.

R E Osborne, Los Angeles
President, Knudsen Creamery Company

Leonard Pores, Stockton
Manager, Lucky Milk and Ice Cream Company

Larry Shehadey, Fresno
Producers Dairy Delivery Company

Joint Subcommittee on Contracts

Distributors: Ray Bush, Safeway; Les Evans, Challenge; Vernon Hansen, Crystal, Don Hardie, Milk Producers' Association, Fred Morrill, Borden's; Burt Mosher, Foremost-Golden State, R. E Osborne, Knudsen Advisers are Martin H Blank, consultant economist to the Dairy Institute, and Laurence Maes, economist for the Alameda-Contra Costa Milk Dealers' Association

Grade A Producers: Joseph Branco, Los Banos, Levi Hubble, Tulare, James Mano, San Luis Obispo; Albert E Weber, Paramount Advisers are William Hunt, Jr, Manager, California Milk Producers' Federation, and Russell Richards, assistant secretary, California Farm Bureau Federation

Grade B Producers. Wallace Garcia, Patterson, Roy Miller, Galt; Joe A Silva, Los Banos

Grade B Processors Committee

Gene Benedetti, Petaluma
Manager, Petaluma Co-operative Creamery

George DeMadeiras, Tulare
Manager, Dairymen's Co-operative Creamery, Tulare

Robert Edwards, Gustine
Plant Manager, Carnation Company

John Haley, Gustine
Plant Manager, The Borden Company

Carson Keith, Tipton
Plant Manager, Arden Farms, Inc

Fred Olsson, Visalia
Plant Manager, Knudsen Milk Products Company

Ray Rumiano, Willows
President, Rumiano Bros, Inc, Willows

E L Scaramella, Fresno
General Manager, Danish Creamery, Fresno

Marty Walters, Oakland
Manager, Foremost Food & Chemical Company, Hughson.

George White, Los Banos
Manager, Los Banos Dairymen's Co-operative Creamery.

APPENDIX 9

NOTE The following summary is derived from "working papers" assigned to the Joint Subcommittee on Contracts of the Milk Study Committees and in no way is intended to represent the recommendations of that subcommittee or conclusions reached by the Study Committees It is appended merely to indicate the scope of the discussion undertaken by the joint subcommittee and to familiarize members of the Legislature with points of controversy affecting milk purchase contracts in California.

Summary of Proposed Principles for Milk Purchase Contracts

Grade A Committee	Processors-Distributors Committee
Contract Amounts specified in pounds and defined for periods (daily, monthly) and kinds (milkfat, skim) of purchase	should be the quantity which the distributor can reasonably handle as Classes 1 and 2, under quota production reasonably tolerated
Class 1 Guarantees in pounds of milkfat and skim	no 100% Class 1 guarantees
Changes in Contract Amounts at option of buyer when less than guarantee delivered for 30 days but increased guarantee if usage exceeds contract for 60 days	adjustments should be made in the event of unusual sales fluctuations
Grade A Over-Contract: not to exceed 20% for sale to buyer at option with guaranteed Class 2 usage within contract; deliveries at less than Class 3 at seller's option	deliveries at option of buyers, specific limits may be desirable
Prices fixed according to usage and at buyer's option if sold outside marketing area but seller not obligated to deliver for such sale	not covered.
Payment Due: from usage in pools of milkfat and skim and classified subpools for Class 1 guarantees; producer-distributor should be required to pool his milk with purchased supply for usage.	not covered.
Passage of Title: at ranch unless seller hauls at his option, provides for maximum deduction for transport.	not covered.
Payment Period: twice monthly	not covered
Quality to comply with state and local standards; provides for dumping of adulterated milk at seller's expense unless already processed.	failure to meet standards to be sufficient reason to cancel contract.
Inspection and Tests: buyer may examine dairy and test milk, seller may examine tests	not covered
Transfer of Contract: personal to seller, unassignable without permission, buyer bound	not to be cancelled because of merger or purchase by another distributor
Assignment of Monies: seller may assign any or all but not to another distributor without buyer's consent	number should be limited.

Summary of Proposed Principles—Continued

	Grade A Committee	Processors-Distributors Committee
Non-performance	permitted in case of natural disasters, labor troubles, riot, war and rebellion unless condition lasts 30 days upon which optional cancellation by either party	termination for specified cause only.
Amendments	only on 30 days written notice	adjustments should be made in the event of unusual sales fluctuations
Term	termination only on 90 days written notice	long-term contracts whenever practical.
Uniformity	required on Class 1 guarantee on all contracts with same plant, contract amounts to vary.	distributor to obtain extra supplies from contracted sellers, including converted producers, whenever practical.
Producer Organizations	not covered.	requires sellers not to join any organization in competition with buyer
Notice of Intent	not covered	intent to cancel should be given as far in advance as is practical.
Simplicity	not covered.	contracts should be kept as simple as possible

Members of subcommittees which drafted these proposed principles to govern producer-distributor contract relations were

Grade A Committee

Albert E Weber, Chairman
Joseph F. Branco
Levi Hubble
James E. Maino

Processors-Distributors Committee

Dairy Institute
Charles J Noell, Chairman
J C Urquhart
Burt Mosher
Robert J Beckus
John Gilmore
Martin H. Blank, adviser
Laurence Maes, adviser
Farm Bureau Federation
Russell Richards
Allen Grant
Ned Clinton
Ray Hansen
Al Clark

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ASSEMBLY INTERIM COMMITTEE REPORTS
1959-1960

REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON SOCIAL WELFARE

MEMBERS OF THE COMMITTEE

PHILLIP BURTON, *Chairman*
EDWARD E ELLIOTT, *Vice Chairman*

ERNEST R GEDDES
AUGUSTUS HAWKINS
JOSEPH M KENNICK
VERNON KILPATRICK
JOHN A O'CONNELL

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HON. WILLIAM A. MUNNELL
Majority Floor Leader

HON. JOSEPH C SHELL
Minority Floor Leader

ARTHUR A. OHNIMUS
Chief Clerk

LETTER OF TRANSMITTAL

January 2, 1961

Honorable Ralph M Brown, *Speaker*, and
Members of the Assembly
State Capitol, Sacramento, California

GENTLEMEN The Interim Committee on Social Welfare, created by House Resolution 326, adopted June 18, 1959, herewith respectfully submits its final report based upon verbatim testimony given in public hearings.

The report was prepared under the direction of the Chairman, Hon. Philip Burton, and was adopted by the committee on December 8, 1960.

Respectfully submitted,

PHILLIP BURTON, *Chairman*
EDWARD E. ELLIOTT, *Vice Chairman*

ERNEST R GEDDES
AUGUSTUS HAWKINS
JOSEPH M KENNICK
VERNON KILPATRICK
JOHN A O'CONNELL

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FOREWORD

This committee, charged with the responsibility of reviewing social welfare legislation, has done so with the end in mind of how best might the interests of the people of California be served.

Firm in the conviction of the equality of men and their inalienable rights to life, liberty and the pursuit of happiness, we have viewed the complex problems of the needs of our fellow man with objectivity but not indifference, with a critical eye but not a hardness of heart.

We have acted upon the premise that if the children, disabled, blind or aged of our State are ill clothed, ill fed, ill sheltered or lack adequate or proper medical care, then this is a problem in whose solution we must all share.

This committee gratefully acknowledges the assistance and co-operation of John M Wedemeyer, Director, State Department of Social Welfare; Arthur Potts, Bureau of Aid to Needy Children, State Department of Social Welfare, and Mrs Elizabeth MacLatchie, Chief, Division of Social Security, State Department of Social Welfare; Carel E. Mulder, Chief, Division of Medical Care, Department of Social Welfare; Philip E Keller, Bureau of Research, Department of Social Welfare, Vincent S Dalsimer, Director, Department of Professional and Vocational Standards, and the staff members of the committee. Frank J. Kieliger, Committee Consultant, Steven Warshaw, Special Consultant, John Carmack, Committee Intern, and Anabel Whang, Committee Secretary

AID TO THE PERMANENTLY AND TOTALLY DISABLED

The Assembly Interim Committee on Social Welfare met in Los Angeles on August 30, 1960, to explore areas of improved co-operation and co-ordination of the efforts of public and private agencies and the development of recommendations for state action at the next session of the Legislature

The APTD Program was established in 1950 by the United States Congress in amendments to the Social Security Act The State Legislature in California did not act to make this program available to the disabled in California until the 1957 Session

Disability as defined by the Department of Social Welfare originally limited eligibility to individuals needing help with at least two of the three major activities of daily living Regulations have since been liberalized to include those needing help with one of the major activities of daily living Effective September 1, 1960, the Social Welfare Board adopted a revision in regulations which drops the concept of activities of daily living and substitutes for it a need for supervision or regular assistance of another person in maintaining the daily regimen

The recipients of Aid to the Disabled are among the most needy in our State. Less than 10 percent own their own homes and less than 25 percent have any personal property Thirty to thirty-five percent of the APTD recipients come from the General Assistance roles.

While the 1959 Legislature provided medical care for the APTD program, with a premium payment of $6 per recipient, testimony indicates that proper Medical Care and Functional Improvement Service require an expenditure of from $10 to $12 by the State per recipient

Specific emphasis was placed on the problem of Attendant Care by those who testified before the committee The 1959 Legislature allowed Attendant Care on a need basis, so long as the average statewide grant does not exceed $98 This became effective January 1, 1960, at a time when the average grant was $86

Recent Department of Social Welfare figures (July-December 1959) indicate that the number of APTD recipients who are institutionalized has dropped from 35 percent to 19 percent, while people living alone or in hotels has jumped from 6 percent to 23 percent

Studies of the Department of Social Welfare indicate that as high as 20 percent of the APTD caseload is in need of attendant care This same study showed that in some cases, the cost of attendant care is greater than the amount permitted by the existing regulation

The Department of Social Welfare on October 21, 1960, took immediate steps to make attendant care more readily available. The maximum per month per recipient was increased from $100 to $150 and the $40 ceiling on part-time care was eliminated. Provision was made for approving, on a prior authorization basis, expenditures for severely disabled, such as polio cases, of as much as $300 per month, where there is demonstrated need

It should be noted again, that the present law permits payment of attendant service only so long as the average grant does not exceed $98. The average grant in July 1960 had reached $88.34.

The Committee Recommends That the State Legislature Take the Necessary and Appropriate Action to Insure:

1. A more liberal definition of disability, with primary emphasis on employability.

2 Increase in the average grant to APTD recipients

3. The modification of present economic tests with respect to attendant care in the APTD Program.

4. The expansion of the Functional Improvement Service and the Vocational Rehabilitation Service as a sound investment of tax dollars which converts dependent tax-users to taxpayers.

5. The restriction of the use of recovery liens as prejudicial to the incentives for rehabilitation.

6. The modification of residence and citizenship requirements, as well as elimination of the Responsible Relatives Law as applied to the APTD Program

RESPONSIBLE RELATIVES

On January 27, 1960, the Assembly Interim Committee on Social Welfare met in Long Beach to hear testimony relating to relatives' responsibility requirements. The meeting was chaired by Assemblyman Joseph M. Kennick.

Although attempts were made in the 1959 Regular (General) Session of the California Legislature through S B. 711 (Senator Richards, Dem, Los Angeles) and A B 1076 (Assemblyman Burton, Dem, San Francisco) to modify the existing relatives' responsibility scale, no cost of living revision of the scale of contributions has been made since 1950. This scale has not taken into account the steady inflationary trends of the past 11 years The two bills, A.B 1076 and S B. 711, not only attempted to revise the contribution scale but to shift the emphasis of the law to one of co-operation and encouragement to contribute

The existing law is applied in a discriminatory manner. Under the present law, for example, only adult children living in California are held to be legally responsible and a married adult daughter is required to contribute less than a single daughter or a married adult son

It is felt by social workers that the present law through mandatory investigations and assessments of contributions, aggravates existing family tensions and tends to precipitate conflict by taking away the individual's initiative in planning for the support of parents Further, mandatory enforcement of relatives' responsibility inject public scrutiny into the private lives of the applicant and his family.

The question of a child's responsibility to assist an aged parent was never an issue in the course of the testimony There was a general agreement that a moral obligation exists in this regard but that the existing mandatory contribution scale should be made a voluntary scale and that the scale should be changed to take into account changes in the cost of living and increase in accepted standard of living

In the course of testimony, it was pointed out that the contributions of sons and daughters to aged parents who are pensioners, do not give added benefits to the parents but are subtracted from the recipients' basic grant

Testimony before the committee developed the following information:

(a) That a modification of the Responsible Relatives Law received the approval of the State Senate, and of the Assembly Committee on Social Welfare, but the bill was held up the last week in the Assembly Committee on Ways and Means, due to the budget problems anticipated for the fiscal year 1959-60.

(b) That the total cost to the State for a full fiscal year of adopting a modification in the responsible relatives' contribution scale would be about $3,000,000 (see estimates received from the Department of Social Welfare for costs of various changes in the contribution scale):

2—L-2148

ESTIMATES OF COST OF REVISING OAS RESPONSIBLE RELATIVE'S SCALE SO THAT LIABILITY BEGINS AT $301, $401, $501, ETC., OF NET INCOME

	Total	*State*	*County*
$301	$3,207,600	$2,800,800	$466,800
$401	3,302,500	2,830,700	471,800
$501	3,598,700	3,084,600	514,100
$601	3,655,900	3,133,600	522,300
$701	3,672,200	3,147,600	524,600
$801, $901, $1,001	Same as $701		

(c) That the 400,000 plus potentially responsible relatives living in California are entitled to have a modification in their contribution scale, which has not been revised since 1950

(d) The overwhelming weight of the testimony from private and public agencies, labor as well as business, indicated that some modification of this scale is in order.

It is the Recommendation of the Committee That the State Legislature Take the Necessary and Appropriate Action to Insure:

1. Revision of the relatives' responsibility contribution scales to exempt an additional $800 in monthly income, and changes net income ranges on which contributions are based accordingly The committee favors the eventual abolition of the Responsible Relatives Law

2 An increase of the standard deduction allowed relatives from 20 percent to 25 percent of gross income, and inclusion within standard deduction, expenses necessary to produce income, as well as specified taxes.

3. That the State Social Welfare Board devise a simple reporting form for use of responsible relatives whose gross income is less than the minimum net income level for which a single person is required to make a contribution

YOUTH PROBLEMS

The purpose of the two hearings on problems of youth, was to study a proposal which would create a California Youth Commission and provide allocations to local governmental agencies, to aid in youth welfare activities

The first hearing held in Los Angeles on January 26, 1960, was chaired by Assemblyman Edward E Elliott, author of legislation (A B 245) on this subject The second hearing was held in Long Beach on October 5, 1960, and was chaired by Assemblyman Joseph M Kennick

Witnesses uniformly pointed to the increased incidence of juvenile delinquency and the growing complexity of the causes of delinquent action among youth

While witnesses addressed their remarks to the need of prevention and control of delinquency, many placed primary emphasis on the necessity of early detection of youth who are potentially behavior problems.

Governmental agencies, state and local, together with a multiplicity of private agencies are directly or indirectly involved in the field of working with youth Much of this effort is currently directed toward correction

The problem of delinquency is a problem to be coped with by parents, teachers, religious leaders, the police, the courts, sociologists, social workers, psychologists, psychiatrists, public health workers, educators, community leaders as well as neighborhood and community service groups Yet with all of these interested groups there exists at the state level, no central agency for the co-ordination of the efforts of these groups to grapple with the complex problems of youth

A recent study by the County of Los Angeles Department of Community Co-ordinating Counsels and the Los Angeles County Youth Committee points to the need for more specific information on youth groups and a co-ordination of services relating to delinquency prevention and control, almost universally, witnesses reasserted the twin needs for information and co-ordination

The Committee Recommends That the State Legislature Take Necessary and Appropriate Action to Insure:

1 The establishment of a Youth Commission as envisioned in A B. 245.

2 That the Youth Commission be appropriately financed to encourage local participation

PROPOSED LEGISLATION

An act to add Article 6 (commencing with Section 1800) to Chapter 1 of Division 2.5 of the Welfare and Institutions Code, relating to juvenile delinquency and the prevention thereof, creating the California Youth Commission and prescribing its powers and duties, and making an appropriation.

The people of the State of California do enact as follows:

SECTION 1 Article 6 is added to Chapter 1 of Division 2 5 of the Welfare and Institutions Code, to read

Article 6 Prevention of Juvenile Delinquency

1800 There is created in the State Government the California Youth Commission, composed of five members appointed by the Governor with the advice and consent of the Senate for terms of four years and until the appointment and qualification of their successors Members shall be eligible for reappointment

The terms of three of the members first appointed shall expire on March 15, 1963, and of two of such members on March 15, 1965 Their successors shall hold office for terms of four years, each term to commence on the expiration date of the term of the predecessor. The Governor shall fill every vacancy for the balance of the unexpired term Each member of the commission shall be paid the sum of fifty dollars ($50) per diem for every meeting of the commission which he attends and in addition shall be reimbursed for his traveling expenses necessarily incurred in the performance of his duties

1801. The commission may appoint a full-time executive secretary and such other necessary employees as are approved by the Director of Finance The compensation of the executive secretary shall be fixed by the State Personnel Board.

The commission shall report its findings, conclusions and recommendations to the Governor at such times as he may require, and to the Legislature at each general session.

There shall be an Advisory Board to the California Youth Commission, consisting of the Lieutenant Governor, Superintendent of Public Instruction, and directors of Departments of Corrections, Youth Authority, Employment, Mental Hygiene and Social Welfare, or their duly selected representatives.

1802. The commission shall have the power and it shall be the duty of the commission to.

(a) Stimulate the more effective use of existing community resources and services for youth;

(b) Promote co-operation of departments of the State, its political subdivisions and municipalities and co-operate with public and private agencies and departments and voluntary local committees throughout the State in order to carry out the purposes of this article,

(c) Encourage closer co-operation locally so as to stimulate employment for youth at fair wages and encourage sound youth programs on the basis of community planning;

(d) Obtain, assemble and develop statistical records and data that shall, among other things, reflect the incidence and trends of delinquency and youthful crimes and offenses in the State

(e) Foster educational programs in connection with youth and delinquency.

(f) Create such regional offices as it may deem advisable.

(g) Appoint such advisory groups and committees as it deems necessary to carry out the purposes and objectives of this article;

(h) Receive federal moneys and private grants and expend the same upon approval of the Director of Finance;

(i) Do all things necessary and desirable to carry out the powers and duties granted to it, including publishing reports of its findings and recommendations

1803 The commission shall also have the power and it shall be the duty of the commission to make necessary studies and analyses and to conduct research with respect to

(a) The prevention of delinquency, crime and neglect among young persons, and the problems of youth guidance;

(b) The operation and enforcement of local and state laws as they concern the protection and welfare of youth;

(c) The operation of similar laws in other states and the federal jurisdiction;

(d) Guidance, treatment, techniques of and facilities for rehabilitation of adjudicated juvenile delinquents, neglected children, youthful offenders, wayward minors, and youth convicted of crime, with the advice and consent of the interdepartmental committee;

(e) The operation, statutes, rules and policies of courts having jurisdiction over youth,

(f) The operation of probation, parole, institutional and other corrective treatment of youth, with the advice and consent of the interdepartmental committee,

(g) Parent and adult education in relation to prevention of crime, neglect and delinquency;

(h) Recreation for youth in relation to prevention of crime, neglect and delinquency,

(i) Suitable training and scholarship programs for personnel engaged in the prevention of delinquency and youth crime,

(j) Assisting in the development and establishment of uniform statistics and reporting of youth crime, delinquency and neglect,

(k) Development of a program for allocation of state financial and other aid to counties, cities, and cities and counties so as to serve most effectively the purpose of this article,

(l) Available and needed facilities and services, private as well as governmental, for youth in the State;

(m) Such other matters as the commission deems relevant and desirable

2 The commission shall have the power to recommend legislative and administrative changes and otherwise to provide policy guidance with respect to any of the matters specified in this section

1804 (1) The amount of fifteen thousand dollars ($15,000) is appropriated from the General Fund to the California Youth Commission for its support during the 1961-1962 fiscal year

AID TO NEEDY CHILDREN

The committee met in Sacramento on June 21, 1960, to review the recommendations of the Department of Social Welfare's Special Study Commission on Aid to Needy Children

The state Aid to Needy Children program has been the subject of widespread criticism by grand juries, boards of supervisors, representatives of taxpayer associations, chambers of commerce, and others. Isolated examples of fraud and statements concerning illegitimacy and immorality have been used to give weight to the position of those who advocate a restriction of the ANC program

This committee in reviewing ANC has taken the position that no investigation of this program can be undertaken with a predisposition to restrict nor can the cost of the program be considered without also considering the substantial social good which is done by the program

While expenditures in the ANC program rose from $6 million in 1951 to $11 million in 1959 and the number of families served by the program rose from 57,000 in 1951 to 71,000 in 1959, these increases are comparable to increases in other large states

PERCENTAGE INCREASE IN NUMBER OF ADC FAMILIES, JUNE 1955 TO JUNE 1959, IN UNITED STATES AND EIGHT STATES WITH LARGEST NUMBER OF ADC FAMILIES

State	*Number of Families June 1955*	*June 1959*	*Percentage Increase 1955-1959*
United States	620,349	777,680	25 4
California	56,066	71,468	27 5
Florida	21,153	27,692	30 9
Illinois	20,936	34,310	63 9
Michigan	20,464	27,534	34 5
Missouri	22,109	25,983	17 5
New York	54,287	66,145	21 8
North Carolina	19,756	26,565	34 5
Pennsylvania	29,886	44,631	49 3

A study of this chart indicates that California's percentage increase in the number of families on ANC in the past five years, while slightly above the national average (by 2 1%) ranks fifth when viewed in comparison with the states listed

California's rapid growth should also be taken into consideration when citing the increases in the ANC caseload While our national population was growing from 147,578,000 in 1949 to 174,566,000 in 1959, a growth rate over the 1949 figure of 18 3 percent, California grew from 10,161,000 to 14,960,000 in the same period for a growth rate of 47 2 percent

A look that the population at risk figures, that is, the increase of children under 18, is even more startling In 1949, there were 45,775,000 children under 18 years of age in the United States and 2,745,000 of these in California By 1958, the national figure had risen to 61,238,000 an increase of 33 8 percent and the California figure had risen to 4,946,000 for an increase of 80 2 percent.

The committee recommends "The Road Ahead for California's Needy Children" prepared by the State Department of Social Welfare and the "Study of Administration . . . Aid to Needy Children Program" a report to the Public Welfare Department of San Francisco by Dr Kermit T Wiltse to those who would view this problem in perspective In studying the ANC program, the committee found the above cited material to be very helpful.

In viewing the specific allegations which are made against the ANC program, the committee found witnesses readily asserted that *ANC as a causal relationship of illegitimacy apparently does not exist.*

Various attempts have been made to arouse public opinion against this program by pointing to the racial composition of the caseload. Discussion of the ethnic or racial composition of the ANC caseload without an examination in depth as to the causes of these percentages tend only to excite latent prejudices. In the ANC program, we are aiding the most needy families in our community These are families who, because of peculiar prejudices and discrimination, are among the last to be hired and the first to be fired A definite relationship between unemployment and increase in caseload exists. Witnesses pointed out that when unemployment exceeds 5 percent corresponding increases in ANC caseload occur.

Studies recently completed by the Department of Social Welfare indicate that the present three month mandatory waiting period before aid can be given, not only creates hardships in the immediate post family crisis period, but in many cases aggravates problems which will make effective social welfare casework impossible It should be noted, existing federal statutes allow immediate aid where eligibility can be presumed California has not made use of the presumptive eligibility sections of the federal statute *Elimination of waiting periods would allow intensive social planning early in a family crisis situation.*

It was further suggested, that the intent of the ANC program should be clarified *The aim of the ANC program, in the view of the committee, should be the need of children as such, not merely need coupled with absence of the father.*

Substantial agreement existed among the witnesses with respect to the harmful effects of restrictive or punitive legislation which while alleging the correction of abuse, limits or curtails the aid which children in need may receive

Many of the deficiencies of the program, it was maintained, can be remedied by an adequately trained staff, working with a regulated caseload and attacking the total problem of the family in a crisis situation.

It was noted, that to the credit of the existing ANC program, 99 percent of those children of school age receiving aid are in school. This is a higher percentage than in the general school age population.

The Committee Supports and Recommends Appropriate Legislation to Insure:

1. The creation and development of the ANC Family Service Program and necessary redefinition of the purposes of ANC to accomplish this end, identifying and defining the scope of services

2. Elimination of the mandatory 90-day waiting period

3. Increase in the level of benefits to reflect increases in the cost of living.

4 Encourage consolidation in some counties, of the ANC and GA programs in cases where children and family situations are involved

5. Legislative support of caseload management

6 Provide evidence of interest in the development of qualified personnel by participating in a federal-state matching fund program for personnel training

HOMEMAKER SERVICES

The Assembly Interim Committee on Social Welfare met in Los Angeles on August 29, 1960, to review the extent to which homemaker services are currently available and to hear testimony on the advisability of the State's participation financially in such a program.

HOMEMAKER SERVICE· NEED DEFINED

Homemaker services, maintaining household routine and preserving and strengthening the family unit in times of stress, are designed to avoid the necessity of removing adults from their home surroundings or children from their family environment.

While funds for homemaker services can and have been included in the assistance grant, as in the case of ATPD recipients, grant limits are just not sufficient to provide service In many areas voluntary agency services are not available, and where available, only for limited time

Federal child welfare service funds entitle California to $650,000, all of which is presently spent for maternal and child welfare While these funds are available, they can *only* be used where children are involved, thus would not assist in the development of homemaker services for OAS, ANB or ATPD recipients

Persons in need of homemaker service, who are presently sent to public or private nursing or boarding homes, or children who are placed in foster care homes because of incapacity of the mother in her role as homemaker, might be maintained in the familiar surrounding of a home environment, reducing congestion in institutions, the cost of maintaining persons in institutions, and the emotional costs of disrupted family relations at a time when one is least able to cope with additional emotional stress

PRESENT LEVEL OF AVAILABLE HOMEMAKER SERVICE

I. Public Agency

A **State**—There exists currently no organized statewide program to provide homemakers services

B **County**—Only four county welfare departments presently have homemaker service within their departments which meet the requirements of federal reimbursement for administrative costs These are Humboldt, Marin, San Luis Obispo and Sutter Counties

The *Marin County* Welfare Department has a homemaker service which only recently began operation It provides for priorities first, to aged and/or convalescent and chronically ill adults and second, to family crises situations and thirdly, to "recluse" clients who cause much community concern.

Humboldt County has a homemaker service which employs one homemaker and makes her available to families with children as well as to adults who require such service.

San Luis Obispo County Welfare Department has had a homemaker service since 1958, serving families with children and elderly persons requiring such services The homemakers are employed by the welfare department and supervised by a social worker

Sutter County has had a homemaker service in its welfare department since July 1, 1958 The service employs one homemaker who is used almost exclusively for infirm or chronically ill aged persons

C. **Private Agencies**—There are presently three community homemaker projects under private auspices, being financed in part by Child Welfare Service funds as a demonstration of what the service can do for families with children where the mother is absent or unable to fulfill her role as homemaker These projects also provide service to aged and infirmed adults

Homemaker Services of the Los Angeles Region placed its first homemaker in June, 1959 Serving central Los Angeles and adjacent areas, it is staffed by a director, two case supervisors, and 20 homemakers in addition to clerical staff. The homemaker services of this agency are available to county welfare department clients Budget $90,000

Homemaker Service of Riverside has been operating since 1960 As a part of the Family Service Association of Riverside, has limited its services to referrals from other community health and welfare agencies. The agency has one supervisor of homemakers and employs two homemakers. Budget $17,460.

In addition, *San Francisco Homemaker Service* reports service to 226 families in which age combined with chronic illness, created problems which would have made family maintenance virtually impossible without this assistance

The Committee Recommends That the State Legislature Take the Necessary and Appropriate Action to Insure:

1. The development of a homemaker service in every community available to OAS, ANB, APSB, ATPD, GA, and Social Security recipients but to be extended in time to be available to all in need of the service.

2 Provide state financial participation to encourage homemaker services for recipients under the categorical aid programs (OAS, ANB, APSB, ATPD)

3 Appropriation of additional state funds for homemaker service in the General Assistance Program to provide that counties' share of cost as a percentage will be no more than for other categories

4 Use of federal matching funds to finance a program of homemaker service.

5 The State Department of Social Welfare be empowered to set time limitations in a homemaker program but that these limitations be as liberal as practical

6 The State Social Welfare Board be empowered to set minimum standards regarding salaries, qualifications and working conditions of homemakers.

DRUGS IN THE PUBLIC ASSISTANCE MEDICAL CARE PROGRAM

I. HISTORY OF DRUGS IN THE PROGRAM

A. *Controversy Over Drugs*

From the outset of the program, whose method was delineated in less than two months in the fall of 1957, the State Department of Social Welfare, its administrator, has suffered visible anxieties over drugs and the prices being paid for them It first wondered whether drugs should be included at all, in the limited fund available for medical care for each of the nearly half million aged, blind, and needy children who were qualified to receive care under matching grants provided by extensions of the Social Security Act It sought the advice of the State Department of Public Health, among others, and after prolonged consultations, was informed that rehabilitation and diagnostic services might be purchased more effectively and at less expense It nonetheless chose to provide drugs in the belief that doctors would frequently be unable to treat patients without drugs, and it proceeded to enter into an informal agreement or understanding with the California Pharmaceutical Association which, it turned out, quickly tended to bankrupt the program

This "agreement" was based on the following formula: the usual wholesale cost of the drug (in the unit prescribed by the physician rather than the price obtained by pharmacists) plus 67 percent as a markup, $1 25 as a pharmaceutical servicing fee, and the sum of these three items to be reduced by 10 percent The department agreed to pay for any prescribed drug that was listed in national official drug registries or formularies

The program was established under great pressure for immediate action Having no statistical information, the Department of Social Welfare appears to have accepted data given it by the California Pharmaceutical Association, to have quickly dropped its own proposal to distribute drugs at actual cost—from their own dispensaries or through county hospitals—and to have agreed to a contract offered by the association; it accepted a 10 percent discount from what it believed was the lowest drug fee schedule in California, the San Gabriel Valley Schedule The association stated that this 10 percent discount was in fact 20 percent in so far as it received no discounts from its drug suppliers

Drugs came to cost $4 46 of the $6 designated for members of the Old Age Security portion of the program alone. This left $1 54 for physician and all other services such as laboratory, X-ray, nursing care, and physical therapy.

Under these terms drugs came to cost more than all other services of the program combined The program came under public attack. In October, 1958, the fee schedule to pharmacists was altered slightly,

primarily by elimination of the prescription fee for nonlegend (over-the-counter) drugs The department again sought expert advice and was told by the State Department of Public Health, which again was one of its prime consultants, to reduce the number of admissible drugs drastically, that is, to "a few" On this occasion the department having formed a highly respected "Subcommittee on Life Saving Drugs" beneath the administrative level of its statutory Medical Care Advisory Committee, instructed the subcommittee to reduce the number of admissible drugs but decided, evidently, upon a larger list than the Department of Public Health had recommended.

This final list totaled 65 drugs As a result of its being introduced during fiscal year 1959-60, drug expenditures under the program, as related to total medical care expenditures under the program, dropped to 27 7 percent from 44 9 percent of the whole in the previous year Thus the so-called "closed formulary" may be said to have had some financial success It did so, however, by reducing services to welfare clients At the same time the fee schedule for drugs remained essentially the same

The Legislature and Governor both took an active interest in the program throughout this three-year controversy During 1958 the administration named the Interdepartmental Medical Fee Committee to study payments made under this and other state medical programs The Legislature later passed Senate Concurrent Resolution No 80 relative to the recommendations of this interdepartmental committee "*Resolved* (said S C R 80), that the State Social Welfare Board and the State Department of Social Welfare comply with such recommendations . . ."

The Interdepartmental Committee on Medical Fees made recommendations in 1958 for a reduction in the maximum allowance by reducing the markup from 50 percent to 33 percent or $5 whichever is lower and by reducing the prescription fee from $1 25 to $1 In the fall of 1958, the State Social Welfare Board conducted hearings on this proposal As a result of the testimony presented at these hearings, the State Social Welfare Board did not reduce the maximum allowances but did prohibit the payment of a prescription fee on items for which federal law does not require the prescription of a physician

Moreover, numerous consultants and the Governor formally urged that generic rather than trade names of drugs be adopted for the program On the surface, this would have the effect of reducing the cost of many drugs by as much as 75 percent Beneath the surface, it would seem to have the following effects make it difficult to enforce drug safety regulations, annoy physicians who may not know and have no time to study generic names when brand names are well known, inculcated as they are by drug "detail men", and enable the pharmacist to select the drug the state will buy from among a wide range of drugs listed, say, in the United States Pharmacopaeia (USP)

B. *History of Controversy*

American government has considered itself responsible for the medical welfare of indigents since Colonial times Only since the Social Security Act of 1935, however, have statewide programs been developed, and only since the 1950 amendments to the act have most

payments been made direct to vendors rather than to welfare patients The vendor payment method is being used by 44 states and territories, chiefly at the insistence of vendors—physicians, pharmacists, hospitals, and other suppliers of service—who discovered that patients would at times divert the money given them for medical payments

Twenty-seven states and territories presently provide for direct payment to the pharmacist Two states, Arkansas and Michigan, relate vendor payments for drugs to a period of hospitalization One state, Montana, makes vendor payments for drugs only—when drugs are needed to prevent blindness or restore sight The remaining 24 states and territories have upper limits on the amount of the monthly grant. A recent report from Ontario indicated that about 30 percent of physicians' prescriptions, including those for the nonindigent, are not filled because the patient cannot afford them

The Bureau of Public Assistance of the Department of Health, Education and Welfare reports that for the year 1957, slightly more than $21 3 million was spent for vendor payment for "drugs and supplies" in both public and general assistance programs Probably more than this was spent: some states do not itemize drug expenditures.

Where states do itemize expenditures, "drugs and supplies" make up 14 percent of the total amount of vendor payments for medical care Some, but not all, of these states furnish hospital, nursing home, and/or surgical care, which would, of course, reduce the percentage they spent for drugs In California, drug expenditures in all programs was 39 6 percent—from the time the program began (October 1, 1957) through June 30, 1960 During the fiscal year 1957-58, drugs cost the State 49 percent of the total program During fiscal 1958-59, the percentage dropped to 44 9 It is presently 27 7 percent, chiefly because of the restricted positive formulary

II AUDITS OF DRUG PRICES PAID BY THE STATE

A. *General Date*

There is widespread and undeniable evidence that in some cases at least, California is paying more for drugs under the program than private citizens must pay for their personal medications

First, a report by Paul Kalemkiarian lecturer in Pharmacy Administration, University of Southern California, was distributed by the California Pharmaceutical Association—at its convention of 1958 This report has both academic and professional acceptance It indicates that Ormase, a drug frequently prescribed for OAS patients, and which costs the pharmacist $4 50 for 50 (when he buys only 50), may be purchased for as little as $2 50 and for as much as $5 20 in 30 Southern California drugstores, for a quantity of 25 The same 25 tablets would cost the State $4 75 under the present fee schedule Although prices presumably have changed upward since 1958, by the test of this survey, 23 of 30 drugstores would be charging more to State financed patients than they would charge private patients

A more recent survey was made by the California Pharmaceutical Association It studied welfare drug prices in 1,303 pharmacies during 1960 In one example, it discovered that Donnatal, an antispasmodic, is "Fair Traded" at $2 08 per 100 and that the price for the 100 under

the Welfare Program would be $2 95 Yet, it reported, the average price for 100 Donnatal tablets in 1,303 pharmacies would be $3 33, so that the average prescription would be 11 4 percent more than the prescription for which the State pays Under questioning by the committee, the association's spokesman conceded that this suggested range of prices in which some were more and some were less than the welfare price, almost all appear to have been at "Fair Trade" level or above Thus although the association has given the State a discount from the widely used San Gabriel Schedule, this schedule, like the Hedgpeth Schedule widely used in Northern California (and to which it is almost identical) seems to be an ideal price-fixing method that is rarely if ever attained in reality it is a goal of pricing to which many pharmacists seem to aspire, but it is not a fact, and any discount from it cannot be said to be below all or even most prices of identical kinds and qualities of drugs

B. "Operation Audit"

The Department of Social Welfare, conscious of criticism and deeply concerned over the prices of drugs, attempted the first thorough analysis of the prices it had agreed to pay during June, 1960. With the initial help of Consumer Counsel Helen Nelson, the department in cooperation with Vince Dalsimer, Director of the Department of Professional and Vocational Standards, devised a sampling method and priced 391 prescriptions among drugstores throughout the State. It selected its drugs with the help of the State Department of Social Welfare's pharmaceutical and medical consultants

The drugs were phenobarbital, penicillin, reserpine, and digitoxin These drugs are commonly used They are likely to vary widely in price when there is any likelihood of variation at all. Moreover, they are drugs which pharmacists might wish to obtain in large quantities, and which are available in large quantities at wholesale discounts (although the quantities that may be in stock are limited by pharmaceutical laws); and this is an additional variable

The State Department of Social Welfare did not choose to weigh these variables into its conclusions On the basis of this one sample, limited at its base by the number and kinds of drugs that were priced, and limited in extent to 391 prescriptions, it nonetheless has reached conclusions that might critically affect the program

The department states, for example, that "There is no doubt that in general throughout the State regular retail prices paid by the public are considerably higher than those paid by the department (sic) "

If the department's measurement were scientific, the same conclusion might be stated "In the case of four commonly used drugs, most but not all drugstores charge more of private patients than they do of the California taxpayer under the present fee schedule "

This says little Still, it is accurate where the department's "conclusion" is misleading Where the department chooses to say, for example, that "of 192 prescriptions purchased 131 prescriptions or 68 2 percent cost more than the fee schedule," it might well have said that in the same area, Los Angeles, the State's fee schedule permits higher payment for its drugs than 31 8 percent of the prescriptions that were priced.

Similarly, in the San Francisco Bay area and coast counties the State's schedule permits higher payment than private citizens apparently do for these commonly used drugs in 21 2 percent of cases; and in Sacramento and San Joaquin Valley areas, the State pays more in 33 9 percent of cases

We concur, however, in the department's conclusion that careful generic prescribing can be consistent with high medical standards. We also approve of the department's concern that the quality and purity of drugs received by public assistance recipients not be sacrificed for reasons of fiscal expediency

"Operation Audit" therefore has its chief interest in the fact that it is the department's first attempt to gain a mathematical determination of the prices it has negotiated for the State, and it has secondary interest in the range of prices for four drugs, a range which begins considerably below what the State is paying, and which ends at a "considerably higher" level

The committee views with interest the fact that phenobarbital was the most widely purchased of the four drugs used in the sample survey and therefore, was most likely to be stocked in quantity by many pharmacies The audit states that "It is safe to assert that no pharmacy ever buys less than 1,000 ($1 59) and it is usually purchased in lots of 5,000 ($6 65) In any case, our fee schedule provides for a minimum wholesale cost of $ 50 per 100 The prescription for 50 tablets would cost the department $1 55 " A simple mathematical calculation reflects that the 5,000 tablets which the pharmacy usually buys for $6 65 may ultimately cost the State $155!

The committee disagrees with the interpretation of the department wherein they have noted in "Operation Audit" (hereinafter completely reprinted) the more favorable result reflected by the survey if phenobarbital was not considered in the findings In view of the fact that phenobarbital was the most widely purchased of the four drugs in the sample, it is most apt to be representative of other commonly purchased drugs and therefore, permits the conclusion that the State's fee schedule is unduly generous as it relates to the highly competitive, more commonly used drugs on the formulary This conclusion is completely different than the department's unrealistic suggestion that "Operation Audit" can be properly viewed, by excluding the most commonly purchased drug used in the sample

The complete "Operation Audit" follows

OPERATION AUDIT

In June of 1960 the State Department of Social Welfare, jointly with the State Board of Pharmacy, conducted an investigation of prescription pricing practices throughout California in an attempt to determine if the department's prescription fee pricing schedule provides for payment of prices that are higher than those normally paid by the public.

A total of 391 prescriptions were purchased Among the 391 were prescriptions for phenobarbital, penicillin, reserpine, and digitoxin

It was found that in the Los Angeles area, of 192 prescriptions purchased, 131 prescriptions or 68 2 percent cost more than the fee schedule The average cost over the fee schedule was $0 87

In the San Francisco area and coast counties, of 132 prescriptions purchased, 104 prescriptions or 78 8 percent cost more than the fee schedule The average cost over the fee schedule was $1.

In Sacramento and San Joaquin Valley area of 67 prescriptions purchased, 45 prescriptions or 67 1 percent cost more than the fee schedule The average cost over the fee schedule was $1 03

Personnel from the California State Board of Pharmacy inspected all of the prescriptions that were purchased Several were selected for assay and all of them proved to be well within the standards established by the U S P

The end results of the investigation are that

1 There is no doubt but that in general throughout the State regular retail prices paid by the public are considerably higher than those paid by the department

2 All the prescriptions called for the drugs by their generic names, and all the prescriptions were subjected to careful inspection and even analysis in some instances All the prescriptions were found to be well within the standards established by the U S P

It is therefore apparent that in moving toward the use of generic names in its medical care program, the department is in no way sacrificing quality of drugs

In the month of June, 1960, the department conducted an undercover investigation of prescription pricing practices throughout California in an attempt to discover whether the department's prescription fee pricing schedule provides for payment of prices that are higher than those normally paid by the public

Several men, some from this department and some from the California State Board of Pharmacy, were provided with prescriptions Each investigator had several sets of eight prescriptions Four of these eight were purchased outright, and receipts obtained For the other four, price quotations were obtained

Each investigator, picking a pharmacy at random in a given area, presented one of two prescriptions for filling Explaining that he might later need to have the other prescription filled, he asked what the price would be Complete records were kept by all of the investigators, both of prices paid and prices quoted

The four pairs of prescriptions were

A	50 Phenobarbital 30 mg tablets mg	Purchased
	50 Dextro amphetamine sulfate 5/tablets	Priced
B	20 Penicillin G 200,000 unit tablets	Purchased
	16 Tetracycline 250 mg capsules	Priced
C	60 Reserpine 0 25 mg tablets	Purchased
	30 Pentobarbital sod 0 1 gm capsules	Priced
D	50 Digitoxin 0 1 mg tablets	Purchased
	30 Diamox 250 mg tablets	Priced

Of the four prescriptions purchased, two (penicillin G and reserpine) were excellent choices, providing a great wealth of information The other two leave something to be desired There is really not much to be learned by purchasing and examining either phenobarbital or digitoxin

It is very difficult to evaluate quotations obtained for prescriptions to be filled later on, perhaps In the first place whenever a quotation is requested, the pharmacist's first thought is that the customer is shopping around for the lowest price This generally turns out to be the case Most pharmacists will thereupon quote down to the minimum of whatever price range they use in hopes of getting that potential "plus" business Another difficulty in evaluating the quotations obtained during this operation arises from the fact that two of the prescriptions, written by generic names, give the pharmacist a wide choice of products with a very wide choice of wholesale costs These two are Dextro Amphetamine Sulfate (costs from $0 10 per 100 to $2 66 per 100) and Pentobarbital Sodium (costs from $0 55 per 100 to $2 16 per 100) We have no way of guessing what merchandise at what wholesale cost might be the basis for the quotation

Of the prescriptions purchased, the pharmaceutical consultant decided to work from the following, partly arbitrary criteria

1 Phenobarbital 30 mg (½ grain) tablets cost $0 30 per 100 if purchased in units of 100 from Lilly This is the most expensive quantity of the most expensive brand available It is safe to assert that no pharmacy ever buys less than 1,000 ($1 59) and it is usually purchased in lots of 5,000 ($6 65) In any case, our fee schedule provides for a minimum wholesale cost of $0 50 per 100 The prescription for 50 tablets would cost the department $1 55

2 Penicillin G, 200,000 unit tablets cost from $2 per 100 to $9 90 per hundred. The most frequently encountered tablets of Penicillin G, 200,000 units are Squibb's "Pentids" These cost $9 90 per 100 These tablets are easily identified, each tablet being inscribed "Squibb" Other expensive brands are also marked for identification An average cost of $3 20 per 100 was assigned to all inexpensive, "non-name" brands The fee schedule price of prescriptions filled with inexpensive brands was set at $2 10 (if anything, this was high) For those filled with Squibb's "Pentids" the fee schedule price is $4 10

3 Reserpine 0 25 mg tablets cost wholesale from $0 25 per 100 to the famous $4 50 per 100 of Ciba's "Serpasil" Most catalogues list Reserpine USP, 0 25 mg tablets at $0 70, $0 80, or $0 90 per 100 tablets The prices per 1,000 tablets will fall into a $3 50 to $4 80 range Here again, no pharmacy buys these by the 100 So when an average wholesale cost of $0 70 was set, it was a generous price The prescriptions for 60 tablets would then cost the department $1 80 by the fee schedule Ciba's "Serapsil," costing $4 50 per 100 comes out to $5 20 Ciba's, Lilly's and Squibb's expensive products are all clearly marked and very easy to identify

4 Digitoxin ranges in wholesale cost from about $0 30 per 100 to $0 84 per 100 tablets (Lilly's "Crystodigin" and Wyeth's "Purodigin" being the ones most commonly encountered) The prescriptions filled with "non-name" brands were assumed to cost $0 40 per 100 which costs the department $1 75 at fee schedule prices Purodigin and Crystodigin, both easily identified, cost $1 75

We have provided, through the good offices of the Division of Research and Statistics, an interpretation of the results of all of the prescriptions grouped together, but broken down into three geographical areas The information provided therein is, in itself, extremely significant

In the Los Angeles Area, 192 prescriptions were purchased Of these, 131 or 68 2 percent, exceeded the fee schedule, 56 or 29 2 percent cost less than the fee schedule, while 5 or 2 6 percent cost the same as the fee schedule.

In the San Francisco Area and coast counties, 132 prescriptions were purchased Of these 104, or 78 8 percent, exceeded the fee schedule, 24, or 18 2 percent cost less than the fee schedule, while 4, or 3 0 percent cost the same as the fee schedule.

In the Sacramento and San Joaquin Valley Area 67 prescriptions were purchased Of these 45, or 67 1 percent exceeded the fee schedule, 16, or 23 9 percent cost less than the fee schedule, while 6, or 9 percent cost the same as the fee schedule

When we look at the purchases of the individual drugs, a very different picture emerges In the Los Angeles area, 44 out of 48 prescriptions for phenobarbital were below the fee schedule This very high proportion has a great influence on the overall picture Removing this item, the other three prescriptions look like this

36 out of 50 prescriptions for Penicillin, or 72 percent were priced above the fee schedule

44 out of 49 prescriptions for Reserpine, or 89 percent were priced above the fee schedule

42 out of 50 prescriptions for Digitoxin, or 84 percent were priced above the fee schedule

The same thing applies, but to a lesser degree in the other two areas

In the San Francisco area and coast counties, 31 out of 33 prescriptions for Penicillin, or 93 9 percent, were priced above the fee schedule

30 out of 33 prescriptions for Reserpine, or 90 9 percent, were priced above the fee schedule

24 out of 32 prescriptions for Digitoxin, or 75 percent, were priced above the fee schedule

In the Sacramento and San Joaquin Valley area

12 out of 17 prescriptions for Penicillin, or 79 4 percent were priced above the fee schedule

10 out of 16 prescriptions for Reserpine, or 62 5 percent were priced above the fee schedule

12 out of 17 prescriptions for Digitoxin, or 79 4 percent were priced above the fee schedule

Personnel from the California State Board of Pharmacy inspected all of the prescriptions that were purchased A very few seemed to be potentially questionable so the Board of Pharmacy had them assayed. All of them were well within standards established by the USP.

COMPARISON OF COST OF PRESCRIPTIONS PURCHASED AND PRESCRIPTION PRICE QUOTED WITH PAMC DRUG FEE SCHEDULE FOR THREE GEOGRAPHICAL AREAS OF THE STATE

	Los Angeles Area		*San Francisco Area and Coast Counties*		*Sacramento and San Joaquin Valley Area*	
	Number	*Percent*	*Number*	*Percent*	*Number*	*Percent*
Prescriptions purchased						
Total purchased	192	100 0	132	100 0	67	100 0
Prescriptions costing more than fee schedule						
Number	131	68 2	104	78 8	45	67 1
Average cost over fee schedule	($0 87)		($1 00)		($1 03)	
Range of amounts over fee schedule	($0 05–$3 50)		($0 05–$3 75)		($0 10–$3 95)	
Prescriptions costing less than fee schedule.						
Number	56	29 2	24	18 2	16	23 9
Average cost less than fee schedule	($0 34)		($0 20)		($0 39)	
Range of amounts less than fee schedule	($0 05–$2 25)		($0 02–$0 65)		($0 05–$2 30)	
Prescription price same as fee schedule	5	2 6	4	3 0	6	9 0

COMPARISON OF QUOTED PRICE OF PRESCRIPTIONS FOR THOSE ABOVE AND THOSE BELOW THE PAMC FEE SCHEDULE FOR THREE GEOGRAPHICAL AREAS OF THE STATE

	Los Angeles Area		*San Francisco Area and Coast Counties*		*Sacramento and San Joaquin Valley Area*	
	Number	*Percent*	*Number*	*Percent*	*Number*	*Percent*
Prescriptions on which price quoted						
Total quotation obtained	185	100 0	131	100 0	67	100 0
Prescriptions quoted at more than fee schedule						
Number	89	48 1	103	78 6	45	67 2
Average quoted price over fee schedule	($0 47)		($0 90)		($0 60)	
Range of amounts over fee schedule	($0 05–$3 10)		($0 10–$3 90)		($0 05–$1 45)	
Prescriptions quoted at less than fee schedule						
Number	93	50 3	28	21 4	21	31 3
Average quoted price less than fee schedule	($0 38)		($0 39)		($0 30)	
Range of amounts less than fee schedule	($0 05–$1 10)		($0 05–$0 95)		($0 05–$0 65)	
Prescription quoted price same as fee schedule	3	1 6	0	0	1	1 5

LOS ANGELES AREA

Phenobarbital ..... 43 Prescriptions
34 Below fee schedule with a range of from $0 05 to $0 90 below
9 Above fee schedule with a range of from $0 05 to $0 45 above.
Overall price range is from $0 65 to $2 00.

Penicillin ..... 50 Prescriptions
11 Below fee schedule with a range of from $0 05 to $2 25 below.
36 Above fee schedule with a range of from $0 15 to $2.85 above
3 Same as fee schedule.

Overall price range is from $1 60 to $7 00
28 Prescriptions filled with expensive brand-name Penicillin
22 Prescriptions filled with inexpensive, nonbrand-name Penicillin

Reserpine ---------- 49 Prescriptions
5 Below fee schedule with a range of from $0 30 to $1.10 below
44 Above fee schedule with a range of from $0 05 to $3 50 above
Overall price range is from $1 50 to $6 00
9 Prescriptions filled with expensive brand-name Reserpine.
40 Prescriptions filled with inexpensive, nonbrand-name Reserpine

Digitoxin ---------- 50 Prescriptions
6 Below fee schedule with a range of from $0 05 to $0 50 below.
42 Above fee schedule with a range of from $0 14 to $1.10 above.
2 Same as fee schedule
Overall price range is from $1.15 to $2 85.

SAN FRANCISCO AREA AND COAST COUNTIES

Phenobarbital ---------- 34 Prescriptions
15 Below fee schedule with a range of from $0 02 to $0 60 below.
19 Above fee schedule with a range of from $0 05 to $1 20 above
Overall price range is from $0 95 to $2 75

Penicillin ---------- 33 Prescriptions
2 Below fee schedule, both $0 10 below.
31 Above fee schedule with a range of from $0 15 to $3 15 above
Overall price range is from $2 00 to $5 70.
16 Prescriptions filled with expensive brand-name Penicillin
17 Prescriptions filled with inexpensive, nonbrand-name Penicillin

Reserpine ---------- 33 Prescriptions
3 Below fee schedule with a range of from $0 05 to $0 65 below.
30 Above fee schedule with a range of from $0 15 to $3 70 above.
Overall price range is from $1.50 to $7 75
8 Prescriptions filled with expensive brand-name Reserpine
25 Prescriptions filled with inexpensive, nonbrand-name Reserpine

Digitoxin ---------- 32 Prescriptions
4 Below fee schedule with a range of from $0 05 to $0 35 below
24 Above fee schedule with a range of from $0 15 to $1 20 above
4 Same as fee schedule
Overall price range is from $1 40 to $3 15.

SACRAMENTO AND SAN JOAQUIN VALLEY AREA

Phenobarbital ---------- 17 prescriptions
7 below schedule with a range of from $0 05 to $0.55 below
10 above schedule with a range of from $0 10 to $0 95 above
Overall price range is from $1 00 to $2.50

Penicillin ---------- 17 prescriptions
5 below schedule with a range of from $0 05 to $0 35 below
12 above schedule with a range of from $0 45 to $3 85 above
Overall price range is from $3 75 to $6.45
12 prescriptions filled with expensive brand-name penicillin
5 prescriptions filled with inexpensive nonbrand name penicillin

Reserpine ---------- 16 prescriptions
5 below fee schedule with a range of from $0 70 to $2.30 below
10 above fee schedule with a range of from $0 10 to $3 95 above
1 same as schedule
Overall price range from $1 75 to $6 80
7 prescriptions filled with expensive brand-name reserpine
9 prescriptions filled with inexpensive nonname brand reserpine

Digitoxin ---------- 17 prescriptions
0 below fee schedule
12 above fee schedule with a range of from $0 15 to $1 95 above
5 same as schedule
Overall price range from $1 75 to $3 50

III. OPEN AND CLOSED FORMULARIES

The "open" formulary is one in which exclusions are listed and all other officially recognized drugs are admissible, the "closed" formulary is one in which the admissible drugs are specified and all others excluded

The question of which kind of formulary shall be adopted by the department has been at issue since it was determined that the department had the funds (chiefly by reason of its having reduced the number of admissible drugs earlier) to purchase more drugs, and that more funds were being added by 1960 federal legislation the evolution of this concept, which appears cyclically, was complete by 1960

The Assembly Committee on Social Welfare opposes the so-called "open" formulary.

It does so for the following reasons:

* The "open" or "negative" formulary is cumbersome It would be difficult to make exclusions of drugs as they become necessary, and decisions on which drugs should be excluded would, under the "open" formulary, be predicated on the rapidly changing drug market more than they would on clinical appraisals of drugs

* The "open" or "negative" formulary would be expensive Witnesses and evidence before the Assembly Committee demonstrated how frequently new drugs are introduced solely for commercial rather than for medical purposes Effective new drugs could be instantly recognized by state employed experts, and they could be placed on the "closed" or "positive" formulary, but to find and exclude every ineffective or redundant drug seems an impossible chore, and making payment for them would be equally difficult

* The Department has stated that administrative costs of an "open" or "negative" formulary would be higher than those of a "positive" formulary.

* The Program began with a "wide open" formulary and was nearly bankrupted

* As presently established, the maximum allowable payments of the few drugs that are assigned limited payments under the "open" or "negative" formulary were determined primarily by one man, the pharmaceutical consultant to the State Department of Social Welfare His estimates of what the upper limit should be may be wholly accurate, but the Assembly Committee believes that more than one opinion should be brought to bear on a subject as important as this, and that to accept a single analysis, (even though it presumably takes into account the opinion of other knowledgeable individuals) as a basis for action would be to forego mature judgment whether or not the "open" formulary is accepted for a one-year test, as recommended by the Medical Care Advisory Committee, these figures and all exclusions should be carefully reviewed.

IV. THE NEED FOR DATA

Under its historical administration, this Program in California has penalized welfare clients during its sudden contractions of service It has penalized pharmacists by delaying some payments and so forcing some pharmacists to carry the counties credit for what appears to be unnecessary durations of time It has penalized taxpayers by its failure to develop sufficient data through which it might be improved

Many issues of the program would be solved by data, and until data are available, controversies will continue to be solved by the strongest rather than the wisest forces The Assembly Committee recommends that the Department of Social Welfare re-evaluate the entire concept of centralized bookkeeping through the California Physicians' Service, and to question whether centralized bookkeeping has been attained or whether an additional administrative step has been inserted

V. RECOMMENDATIONS AND FINDINGS OF THE COMMITTEE

1 That the Department of Social Welfare (SDSW) adopt a "positive" (closed-end) formulary

2 That the SDSW oppose the increase in prescription fee requested by the California Pharmaceutical Association

3 That the SDSW set in motion the necessary machinery to comply with the mandate of S C R. 80 which recommends that the State Social Welfare Board and the SDSW comply with the recommendations of the Interdepartmental Fee Committee

4 That current movements of the department in the direction of generic rather than brand-name prescriptions be encouraged and intensified

5 That the department explore the advisability of establishing prices for each drug on a "closed" or "positive" formulary, and in each quantity and that it pay these fixed amounts and no more (Such amounts should include an allowance for a reasonable prescription fee, where justified) That it therefore also explore the advisability of discarding the fee schedule arrangement that is relative to presumed prices of the open market wherein such prices may not exist

6 That an Industry Advisory Committee be established by the SDSW in order that the State obtain a means by which it may focus its massive purchasing power at the wholesale level and thereby receive the benefit of quantity discounts. Said committee to include representatives of drug manufacturers, wholesalers and retailers, among others

7 That through this fixed budgeting and pricing the department explore and develop contractual arrangements consistent with these recommendations with commercial participants in the program

8 Finally, the committee recommends·

That the department find why some counties have left the CPS and why others are restive participants in the CPS program

The committee recommends, meanwhile, that data being gathered by CPS be used for more than merely making payments. The department should determine whether the IBM cards from which payments are being made might produce the following data at least:

*Which are the most frequently used drugs on the present formulary? Are some drugs never prescribed? Are some so infrequently prescribed that they might more effectively be dropped from the program than left in it?

*At what wholesale levels is the State paying for drugs? Since this level is determined by physicians' prescriptions, should physicians be encouraged to increase or lower the quantities they are prescribing?

*Are all drugstores participating in the program? Are welfare prescriptions largely clustered around some few drugstores with which the State might consider separate arrangements?

*How frequently are there errors in billing? Is this an inordinate number by contrast to similar programs or methods? If so why?

APPENDIX

STATISTICAL TABLES SUPPLIED BY STATE DEPARTMENT OF SOCIAL WELFARE

Table 1 State Share of Public Assistance Expenditures as Percent of Total State Expenditures by Program by Fiscal Year, 1939-40 through 1959-60.

Table 2 Old Age Security Aid Payments by Source of Funds by Fiscal Year, 1939-40 through 1959-60

Table 3 Aid to the Blind Aid Payments by Source of Funds by Fiscal Year, 1939-40 through 1959-60

Table 4 Aid to Needy Children Aid Payments by Source of Funds by Fiscal Year, 1939-40 through 1959-60

Table 5 Aid to Needy Disabled Aid Payments by Source of Funds by Fiscal Year, 1957-58 through 1959-60

Table 6 Public Assistance Medical Care Expenditures by Program and Source of Funds for Fiscal Years 1957-58 through 1959-60.

Table 7 Medical Care, Total Expenditures, by Program, October 1, 1957 through June 30, 1960, and by Fiscal Year, 1957-58 through 1959-60

Table 8 Medical Care, Drug Expenditures, by Program, October 1, 1957, through June 30, 1960, and by Fiscal Year, 1957-58 through 1959-60

Table 9. Medical Care, Drug Expenditures as Percent of Total Medical Care Expenditures by Program, October 1, 1957, through June 30, 1960, and by Fiscal Year, 1957-58 through 1959-60.

Table 10. Medical Care, Average Medical Care Expenditure per Recipient (Fund plus Grant), October 1, 1957, through June 30, 1960, and by Fiscal Year, 1957-58 through 1959-60

Table 11. Old Age Security, Recipients and Expenditures (Actual and in 1947-49 Dollars) by Fiscal Year, 1939-40 through 1959-60.

Table 11A California Population, Percent of Total Population Aged 65 and Over, 1940 through 1960 (as of July 1 of each year)

Table 11B Old Age Security, Percent of Age 65 and Over, Population in OAS Recipient Status 1940 through 1960

Table 12. Aid to Needy Blind, Recipients and Expenditures (Actual and in 1947-49 Dollars) by Fiscal Year, 1939-40 through 1959-60

Table 13. Aid to Potentially Self-supporting Blind, Recipients and Expenditures (Actual and in 1947-49 Dollars) by Fiscal Year, 1941-42 through 1959-60

Table 14 Aid to Needy Children—Family Groups (Children Only) Recipients and Expenditures (Actual and in 1947-49 Dollars) by Fiscal Year, 1939-40 through 1959-60

Table 15. Aid to Needy Children—Boarding Homes and Institutions, Recipients and Expenditures (Actual and in 1947-49 Dollars) by Fiscal Year, 1939-40 through 1959-60.

Table 16 Aid to Needy Disabled, Recipients and Expenditures (Actual and in 1947-49 Dollars), by Fiscal Year, 1957-58 through 1959-60

Table 17 General Home Relief, Recipients and Expenditures (Actual and in 1947-49 Dollars) by Fiscal Year, 1939-40 through 1959-60

State of California
Department of Social Welfare

Research and Statistics
November 29 1960

TABLE 1. STATE SHARE OF PUBLIC ASSISTANCE EXPENDITURES * AS PERCENT OF TOTAL STATE EXPENDITURES, BY PROGRAM

By Fiscal Year 1939-40 Through 1959-60

Year ending June 30	Total state expenditures	Total all public assistance programs		Old Age Security		Aid to the Blind		Aid to Needy Children		Aid to Needy Disabled		Medical care	
		Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
1940	$282,749,000	$20,310,125	7 2	$15,176,519	5 4	$1,263,924	0 4	$3 878,682	1 4	------	------	------	------
1941	273,865,000	22 653,201	8 3	17,129,457	6 3	1,243,019	0 5	4,280,725	1 6	------	------	------	------
1942	257,946,000	22 862,465	8 9	17,332,688	6 7	1,223 418	0 5	4 306 359	1 7	------	------	------	------
1943	250,861 000	21,846,827	8 7	17,093,562	6 8	1,174 830	0 5	3,578,435	1 4	------	------	------	------
1944	264,661,000	47,340,348	17 9	43,297,284	16 4	1,076,563	0 4	2,966,501	1 1	------	------	------	------
1945	306,490,000	47,698,488	15 6	43,707,642	14 3	979,763	0 3	2,921,084	1 0	------	------	------	------
1946	342,175,000	49,117,651	14 4	44,571,087	13 0	1,243,605	0 4	3,302 356	1 0	------	------	------	------
1947	409,680 000	52,231 690	11 1	46 680,994	9 9	1,398 446	0 3	4,152,250	0 9	------	------	------	------
1948	657,726,000	71,392 794	10 9	59 757,911	9 1	2,752 919	0 4	8,881,964	1 4	------	------	------	------
1949†	†883 325,000	†107,009,359	12 1	†88,513,116	10 0	†4,520,061	0 5	13,906,882	1 6	------	------	------	------
1950†	†1,054,838,000	†165,417,598	15 7	†134,474,901	12 7	†6 324,877	0 6	24,647 820	2 3	------	------	------	------
1951	1,006,330,000	147,746,315	14 7	109 776,161	10 9	5,368,252	0 5	42 601 902	3 2	------	------	------	------
1952	1,068,072,000	146 390 217	13 7	106,034,328	9 9	5,554 035	0 5	34 801,854	3 3	------	------	------	------
1953	1,176,719,000	139,502,118	11 9	102,247,958	8 7	5,653,407	0 5	31,990,753	2 7	------	------	------	------
1954	1,381,400,000	137,731,038	10 0	100,361 109	7 3	5 711,605	0 4	31,653,324	2 3	------	------	------	------
1955	1,422,452,000	137,688,985	9 7	97,382,923	6 8	5,844,019	0 4	34,462,043	2 4	------	------	------	------
1956	1,532,811,000	143,554,570	9 4	103,951,357	6 8	6,382,337	0 4	33,220 876	2 2	------	------	------	------
1957	1,732,467,000	144,991,202	8 4	104,930,949	6 1	6,653,475	0 4	33,406,778	1 9	------	------	------	------
1958	1,891,436,000	166,813,182	8 8	108,775,674	5 8	7,424,632	0 4	40,599,320	2 1	$452,412	------	$9,560 944	0 5
1959	1,931,614,000	187,878,948	9 7	106 317,599	5 5	7,670,838	0 4	50,739,752	2 6	2,100,778	0 1	21,049 981	1 1
1960	2,292,815,000	193,885,302	8 5	109 770,888	4 8	7,764,525	0 3	54,362,972	2 4	3,860,864	0 2	18,100,053	0 8

* Excludes costs of administration
† Reflects passage of Proposition 4 in 1948 (effective January 1, 1949 until repealed by Proposition 2 in 1949 effective March 1, 1950), adding Article XXV to the Constitution

State of California
Department of Social Welfare

Research and Statistics
November 24, 1960

TABLE 2. OLD AGE SECURITY—AID PAYMENTS * BY SOURCE OF FUNDS

By Fiscal Year, 1939-40 Through 1959-60

Year ending June 30	Total		Federal		State		County	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
1940	$57,431,555	100 0	$27,157,906	47 3	$15,176,519	26 4	$15,097,130	26 3
1941	68,365,327	100 0	34,182,064	50 0	17,129,457	25 1	17,053,206	24 9
1942	69,181,797	100 0	34,589,458	50 0	17,332,688	25 1	17,259,651	24 9
1943	68,225,191	100 0	34,105,945	50 0	17,093,562	25 1	17,025,684	24 9
1944	88,646,360	100 0	36,729,488	41 4	43,297,284	48 8	8,619,588	9 8
1945	89 514,351	100 0	36,986,218	41 3	43,797,642	48 9	8,730 491	9 8
1946	90,895,411	100 0	37,449,741	41 2	44,571,687	49 0	8,876 983	9 8
1947	102,637,923	100 0	46,660,436	45 5	46,680,994	45 5	9 296,493	9 0
1948	123,224,052	100 0	53,425,127	43 4	59,757 911	48 5	10,041,014	8 1
1949‡	1163,293,210	100 0	69,472,731	42 5	188 514,116	54 2	5,307,363	3 3
1950‡	1225,367,932	100 0	90,893,031	40 3	1134,474 901	59 7	†	----
1951	223,300,038	100 0	95,394,454	42 7	109,776,161	49 2	18 129,423	8 1
1952	218,819,990	100 0	95 177,705	43 5	106,034,828	48 5	17,607,957	8 0
1953	224,423,750	100 0	105,194,167	46 9	102,247,958	45 6	16,981,625	7 5
1954	225,195,457	100 0	108,167,509	48 0	100 361 109	44 6	16 666,839	7 4
1955	220 262,565	100 0	106,709,920	48 4	97,382 923	44 2	16 169,722	7 4
1956	227 159,512	100 0	105,943,401	46 6	103 951,357	45 8	17,264,754	7 6
1957	236,144,264	100 0	113,783,293	48 2	104,930,949	44 4	17,430,022	7 4
1958	243 030,877	100 0	116 141,744	47 8	108,775,674	44 8	18,113,459	7 4
1959	243,226,584	100 0	119 188 887	49 0	106,317,599	43 7	17,720,098	7 3
1960	245 295,993	100 0	117,228,818	47 8	109,770,888	44 8	18,296,287	7 4

* Effective October 1, 1957, these amounts exclude payment for medical care from the grant effective October 1 1959 they exclude amounts transferred The amounts so excluded are included under medical care expenditures

† No county participation under Article XXV

‡ Higher state funds and lack of county funds reflects passage of Proposition 4 in 1948 (effective January 1, 1949 until repealed by Proposition 2 in 1949 effective March 1, 1950), adding Article XXV to the Constitution

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TABLE 3. AID TO THE BLIND—AID PAYMENTS * BY SOURCE OF FUNDS

By Fiscal Year, 1939-40 Through 1959-60

Year ending June 30	Total		Federal		State		County	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
1940	$3,954,060	100 0	$1,427,903	36 1	$1,263,924	32 0	$1,262,233	31 9
1941	4,204,917	100 0	1,.21,990	41 0	1,243,019	29 6	1,239,908	29 4
1942	4,075,576	100 0	1,632,161	40 0	1,223,418	30 0	1,219,997	30 0
1943	3,903,360	100 0	1,556,987	39 9	1,174,830	30 1	1,171,543	30 0
1944	3,566,537	100 0	1,416,487	39 7	1,076,563	30 2	1,073,487	30 1
1945	3,224,011	100 0	1,266,186	39 3	979,763	30 4	978,062	30 3
1946	3,733,510	100 0	1,250,288	33 5	1,243,608	33 3	1,239 614	33 2
1947	4,440,614	100 0	1,650,488	37 2	1,398,446	31 5	1,391,680	31 3
1948	5,816,827	100 0	1,921,412	33 0	2,752,919	47 3	1,142 496	19 7
1949‡	7,765,964	100 0	2,646,083	34 1	‡4,520,661	58 2	599,220	7 7
1950†	9,755,362	100 0	3,318,582	34 1	‡6,324,877	65 0	†91,903	0 9
1951	10,743,368	100 0	3,673 175	34 2	5,368,252	50 0	1,701,941	15 8
1952	11,225,168	100 0	3,893 855	34 7	5,554,035	49 5	1,777,278	15 8
1953	11,931,483	100 0	4,462,824	37 4	5,653,407	47 4	1,815,252	15 2
1954	12,300,746	100 0	4,749,722	38 6	5,711,605	46 4	1,839 419	15 0
1955	12,667 053	100 0	4,933,900	39 0	5,844,019	46 1	1,889,134	14 9
1956	13,567 247	100 0	5,114,417	37 7	6 382 337	47 0	2,070,493	15 3
1957	14,551,453	100 0	5,737 647	39 4	6,653,475	45 7	2,160,331	14 9
1958	15 889 900	100 0	6,038,905	38 0	7,424,832	46 7	2,426,163	15 3
1959	16,414,149	100 0	6,231,022	38 0	7,670,838	46 7	2,512,289	15 3
1960	16,432,001	100 0	6,174,365	37 5	7,764,525	47 1	2,543,111	15 4

* *Effective October 1, 1957, these amounts exclude payments for medical care from the grant, effective October 1, 1959, they exclude amounts transferred The amounts so excluded are included under medical care expenditures shown in Table 1*

† Counties did not participate in payments for Security for the Blind under Article XXV Data for Aid to Partially Self-Supporting Blind Residents only

‡ Higher state funds and lack of county funds reflects passage of Proposition 4 in 1948 (effective January 1, 1949 until repealed by Proposition 2 in 1949, effective March 1, 1950)

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TABLE 4. AID TO NEEDY CHILDREN *—AID PAYMENTS BY SOURCE OF FUNDS

By Fiscal Year, 1939-40 Through 1959-60

Year ending June 30	Total		Federal		State		County	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
1940	$8 755,489	100 0	$2,302,693	26 3	$3,878,682	44 3	$2,574,114	29 4
1941	9,355,175	100 0	3,046,284	30 6	4,280,725	43 0	2,628,166	26 4
1942	9,922,486	100 0	2,907,288	29 3	4,306,359	43 4	2,708,839	27 3
1943	8,186,579	100 0	2,073,053	25 3	3,578,435	43 7	2,535,091	31 0
1944	6,924,285	100 0	1,474 300	21 3	2,966,501	42 8	2,483,484	35 9
1945	7,096,545	100 0	1,368,731	19 3	2,921,083	41 2	2,806,731	39 5
1946	8,437,030	100 0	1,494,346	17 7	3,302,356	39 1	3,640,328	43 2
1947	12,030,187	100 0	2,677,499	22 3	4,152,250	34 5	5,200,438	43 2
1948	19,382,549	100 0	4,120,932	21 3	8,881,964	45 8	6,379,653	32 9
1949	29,798,805	100 0	7,062,794	23 7	13,966,582	46 9	8,769,429	29 4
1950	53,505,315	100 0	13,607,451	25 4	24,647,820	46 1	15,250,044	28 5
1951	78,485,858	100 0	26,975,015	34 4	32,601,902	41 5	18,908,941	24 1
1952	83,075 264	100 0	29,292,267	35 3	34,801,854	41 9	18,981,143	22 8
1953	80,342,986	100 0	31,971,398	39 8	31,600,753	39 3	16,770,835	20 9
1954	82,210,071	100 0	33,827,878	41 1	31,658,324	38 5	16,723,869	20 4
1955	89,441,051	100 0	36,831,652	41 2	34,462,043	38 5	18,147,356	20 3
1956	80,029,249	100 0	35,542,198	41 3	33,220,876	38 6	17,266,175	20 1
1957	89,269,984	100 0	38,448,724	43 1	33,406,778	37 4	17,414,482	19 5
1958	107,030,481	100 0	45,112,140	42 1	40,599 320	37 9	21,319,021	20 0
1959	131,205,026	100 0	53,753,675	41 0	50,739,752	38 7	26,711,599	20 3
1960	139,961,870	100 0	57,107,014	40 8	54,362,972	38 8	28,491,884	20 4

* Includes children living in boarding homes and institutions

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TABLE 5. AID TO NEEDY DISABLED—AID PAYMENTS BY SOURCE OF FUNDS

By Fiscal Year, 1957-58 Through 1959-60

Year ending June 30	Total		Federal		State		County	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
1958*	$1,023,030	100 0	$494,929	48 4	$452,412	44 2	$75,689	7 4
1959	4,873,040	100 0	2,420,090	49 7	2,100,778	43 1	352,172	7 2
1960	8,195,179	100 0	3,683,759	45 0	3,866,864	47 2	644,556	7 8

* Program effective October 1, 1957

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TABLE 6. PUBLIC ASSISTANCE MEDICAL CARE EXPENDITURES BY PROGRAM AND SOURCE OF FUNDS

For Fiscal Years 1957-58[1] Through 1959-60

Year ending June 30	Total		Federal		State		County	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
All Programs								
1958[1]	$17 350,827	100 0	$7 451 902	42 9	$9,560,944	55 1	$337,981	2 0
1959	38,457,784	100 0	16,730 735	43 5	21,049,981	54 7	677,068	1 8
1960	30,653,064	100 0	11,485,685	37 5	18,100,053	59 0	1,067,326	3 5
Old Age Security								
1958	12,884,335	100 0	5 291,301	41 1	7,264,215	56 4	328,819	2 5
1959	26,730,924	100 0	11,071,712	41 4	15,003,854	56 1	655,358	2 5
1960	17,895,644	100 0	5,351,946	29 9	11,516,305	64 4	1,027,393	5 7
Aid to Needy Blind								
1958	612,731	100 0	288 039	47 0	315,530	51 5	9,162	1 5
1959	1,300 819	100 0	606,991	46 7	672 118	51 7	21,710	1 6
1960	926,041	100 0	383,152	41 4	502,956	54 3	39,933	4 3
Aid to Potentially Self-Supporting Blind[2]								
1958	2,503	100 0	----	----	2,503	100 0	----	----
1959	11 953	100 0	----	----	11,953	100 0	----	----
1960	8,949	100 0	----	----	8,949	100 0	----	----
Aid to Needy Disabled[3]								
1958	----	----	----	----	----	----	----	----
1959	----	----	----	----	----	----	----	----
1960	4,657	100 0	2 328	50 0	2,329	50 0	----	----
Aid to Needy Children Family Groups								
1958	3 745 124	100 0	1,872,562	50 0	1,872,562	50 0	----	----
1959	10 104,065	100 0	5,052,032	50 0	5,052 033	50 0	----	----
1960	11,496,519	100 0	5,748 259	50 0	5,748,260	50 0	----	----
Aid to Needy Children—Boarding Homes and Institutions								
1958	106 134	100 0	----	----	106 134	100 0	----	----
1959	310 023	100 0	----	----	310,023	100 0	----	----
1960	321,254	100 0	----	----	321,254	100 0	----	----

[1] October 1, 1957, through June 1958
[2] Expenditures for October-December, 1957, included in Aid to Needy Blind
[3] Program effective October 1 1959
NOTE The Public Assistance Medical Care program became operative in this State on October 1, 1957

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TABLE 7. MEDICAL CARE—TOTAL EXPENDITURES, BY PROGRAM

October 1, 1957 Through June 30, 1960 and by Fiscal Year, 1957-58 Through 1959-60

Program	October 1, 1957 through June 30, 1960	1957-58 F Y [1]	1958-59 F Y	1959-60 F Y
All programs	$86,461,675	$17,350,827	$38,457,784	$30,653,064
OAS	$57,510,993	$12,884 335	$26,730,924	$17,895,644
ANB	2,889,591	612,731	1,300,819	926,041
APSB[2]	23,405	2,503	11,953	8,949
ATD[3]	4,657	----------	----------	4,657
ANC-FG	25,346,708	3 745,124	10,104,065	11,496,519
ANC-BHI	737,411	100,134	310,023	321,254

[1] October 1, 1957, through June, 1958
[2] Expenditures for October-December 1957, included in ANB
[3] Program effective October 1 1959

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TABLE 8. MEDICAL CARE—DRUG EXPENDITURES, BY PROGRAM

October 1, 1957 Through June 30, 1960 and by Fiscal Year, 1957-58 Through 1959-60

Program	October 1, 1957 through June 30, 1960	1957-58 F Y [1]	1958-59 F Y	1959-60 F Y
All programs	$34,246,500	$8 504,673	$17,257,256	$8,484,571
OAS	$24,418,336	$6,656,534	$13,194,160	$4,567,642
ANB	1,259,121	327,010	653,219	275 892
APSB[2]	10,431	1,437	5,801	3,193
ANC-FG	8,372,387	1,485,298	3,324,355	3,562,734
ANC-BHI	186,225	34,394	76,721	75,110

[1] October 1 1957, through June 30 1958
[2] October-December, 1957, expenditures included in ANB

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TABLE 9. MEDICAL CARE—DRUG EXPENDITURES, AS PERCENT OF TOTAL MEDICAL CARE EXPENDITURES, BY PROGRAM

October 1, 1957 Through June 30, 1960 and by Fiscal Year, 1957-58 Through 1959-60

Program	October 1, 1957 through June 30, 1960	1957-58 F Y [1]	1958-59 F Y	1959-60 F.Y
All programs	39 6%	49 0%	44 9%	27 7%
OAS	42 5	51 7	49 4	25 5
ANB	44 3	53 4	50 4	29 8
APSB[2]	44 6	57 4	48 5	35 7
ANC-FG	33 0	39 7	32 9	31 0
ANC-BHI	25 3	32 4	24 7	23 4

[1] October 1 1957, through June, 1958
[2] October-December, 1957, expenditures included in ANB

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TABLE 10. MEDICAL CARE—AVERAGE MEDICAL CARE EXPENDITURE PER RECIPIENT (FUND PLUS GRANT)

October 1, 1957 Through June 30, 1960 and by Fiscal Year, 1957-58 Through 1959-60

Program	Average monthly number of recipients	Total medical care expenditures	Average medical care expenditures
October 1, 1957 through June 30, 1958			
OAS	266,145	$12,884,335	$5.38
ANB	13,359	612,731	5.05
APSB[1]	337	2,503	1.23
ANC-FG	212,721	3,745,124	1.96
ANC-BHI	10,706	106,134	1.10
1958-59 F.Y.			
OAS	264,426	$26,730,924	$8.42
ANB	13,739	1,300,819	7.89
APSB	305	11,953	3.27
ANC-FG	247,700	10,104,065	3.40
ANC-BHI	11,618	310,023	2.22
1959-60 F.Y.			
OAS	257,734	$17,895,644	$5.79
ANB	13,623	926,041	5.67
APSB	302	8,949	2.47
ANC-FG	263,005	11,496,519	3.64
ANC-BHI	12,247	321,254	2.18
ATD[2]	8,170	4,657	.06

[1] Expenditures for October-December, 1957, included in ANB.
[2] Program effective October 1, 1959.

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TABLE 11. OLD AGE SECURITY—RECIPIENTS AND EXPENDITURES

(Actual and in 1947-49 Dollars)

By Fiscal Year, 1939-40 Through 1959-60

Year ending June 30	Average monthly number of recipients	Actual		In 1947-49 dollars	
		Total aid payments*	Average monthly grant*	Total aid payments*	Average monthly grant*
1940	135,928	$57,431,555	$35.21	$96,361,700	$59.08
1941	150,418	68,365,327	37.88	112,814,100	62.51
1942	158,178	69,181,797	36.45	103,876,600	54.73
1943	153,752	68,225,191	36.98	93,076,700	50.45
1944	156,488	88,646,360	47.21	118,195,100	62.95
1945	157,809	89,514,351	47.27	120,639,300	63.71
1946	159,635	90,898,411	47.45	114,770,700	59.91
1947	166,797	102,637,923	51.28	112,050,100	55.98
1948	181,080	123,224,052	56.71	123,843,300	56.99
1949†	†208,419	†163,293,210	†65.29	†158,229,900	†63.27
1950†	†265,674	†225,367,932	†70.69	†222,695,600	†69.85
1951	271,796	223,300,038	68.46	207,914,400	63.74
1952	273,976	218,819,990	66.56	193,474,800	58.85
1953	272,433	224,423,750	68.65	194,643,300	59.54
1954	271,317	225,195,457	69.17	193,466,900	59.42
1955	270,865	220,262,565	67.77	190,868,800	58.73
1956	268,775	227,159,512	70.43	195,154,200	60.51
1957	265,993	236,144,264	74.23	196,133,100	61.65
1958	265,325	243,030,877	76.33	195,048,900	61.26
1959	264,067	243,226,584	76.76	190,915,700	60.25
1960	257,378	245,295,993	79.42	188,399,400	61.00

* Effective October 1, 1957, these amounts exclude payment for medical care from the grant; effective October 1, 1959, they exclude amounts transferred. The amounts so excluded are included under medical care expenditures shown in Table 7.

† Reflects passage of Proposition 4 in 1948 (effective January 1, 1949 until repealed by Proposition 2 in 1949 effective March 1, 1950), adding Article XXV to the Constitution.

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TABLE 11A. CALIFORNIA POPULATION *—PERCENT OF TOTAL POPULATION AGED 65 AND OVER

1940 Through 1960 (As of July 1 of Each Year)

Year (July 1)	Total population	Age 65 and over	Percent of total age 65 and over
1940	6 899,000	585 000	8 5
1941	7,049,000	615,000	8 7
1942	7,297,000	645,000	8 8
1943	7 570 000	674,000	8 9
1944	8,083 000	704,000	8 7
1945	8,523,000	734,000	8 6
1946	9,298,000	764,000	8 2
1947	9,672,000	792,000	8 2
1948	9,895,000	828,000	8 4
1949	10,161,000	868 000	8 5
1950	10,438 000	903,000	8 7
1951	10 681,000	937,000	8 8
1952	11,209,000	981,000	8 7
1953	11,748,000	1,015,000	8 6
1954	12,254 000	1,041,000	8 5
1955	12,690,000	1,079,000	8 5
1956	13,260 000	1,113,000	8 4
1957	13,869,000	1,152,000	8 3
1958	14 432 000	1 185,000	8 2
1959	14,960,000	1,217,000	8 1
1960	15,530,000	1,250,000	8 0

* Population estimates are from Department of Finance the 65 and over age group estimates for 1941 through 1945 are interpolated figures from Department of Finance estimates for 1940 and 1946

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TABLE 11B. OLD AGE SECURITY—PERCENT OF AGE 65 AND OVER POPULATION IN OAS RECIPIENT STATUS

1940 Through 1960

Year	Population age 65 and over (July 1)*	Old age security recipients (June)	Percent of age 65 and over population in OAS recipient status
1940	585,000	141,617	24 2
1941	615,000	156,067	25 4
1942	645,000	157,597	24 4
1943	674 000	151,418	22 5
1944	704 000	157,605	22 4
1945	734,000	157,876	21 5
1946	764,000	162,308	21 2
1947	792,000	172,463	21 8
1948	828,000	188,267	22 7
1949†	868,000	†245,294	†28 3
1950†	903,000	†267,960	†29 7
1951	937,000	274,491	29 3
1952	981,000	273,245	27 9
1953	1,015,000	271,116	26 7
1954	1,041,000	271,916	26 1
1955	1,079,000	269,190	24 9
1956	1,113,000	267,397	24 0
1957	1,152,000	263 940	22 9
1958	1,185,000	265,658	22 4
1959	1,217,000	261,208	21 5
1960	1,250,000	254,751	20 4

* Population estimates for 1940 and 1946 through 1960 from the Department of Finance the data for 1941 through 1945 are interpolated figures from Department of Finance estimates for 1940 and 1946
† Reflects passage of Proposition 4 in 1948 (effective January 1, 1949 until repealed by Proposition 2 in 1949 effective March 1, 1950), adding Article XXV to the Constitution

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TABLE 12. AID TO NEEDY BLIND—RECIPIENTS AND EXPENDITURES

(Actual and in 1947-49 Dollars)

By Fiscal Year, 1939-40 Through 1959-60

Year ending June 30	Average monthly number of recipients	Actual		In 1947-49 dollars	
		Total aid payments*	Average monthly grant*	Total aid payments*	Average monthly grant*
1940	6,876	$3,954,060	$47 92	$6,634,300	$80 40
1941	7,289	4,204,017	48 07	6,938,800	79 32
1942	7,008	3,922,949	46 65	5,890,300	70 04
1943	6,673	3,753,686	46 88	5,121,000	63 96
1944	6,059	3,429,042	47 16	4,572,100	62 88
1945	5,396	3,078,745	47 55	4,149,300	64 08
1946	5,266	3,528,879	55 84	4,455,700	70 50
1947	5,845	4,175,843	59 54	4,558,800	65 00
1948	6,455	5,434,261	70 16	5,461,600	70 51
1949†	7,706	†7,286,925	†78 80	†7,061,000	†76 36
1950†	9,281	†9,182,143	†82 45	†9,073,300	†81 47
1951	10,275	10,116,612	82 05	9,419,600	76.40
1952	10,921	10,674,872	81 45	9,438,400	72 02
1953	11,226	11,393,087	84 57	9,881,300	73 35
1954	11,541	11,812,346	85 29	10,148,100	73 27
1955	12,020	12,223,017	84 74	10,591,900	73 43
1956	12,530	13,139,138	87 38	11,287,900	75 07
1957	12,963	14,149,839	90 96	11,752,400	75 55
1958	13,304	15,478,789	96 95	12,422,800	77 81
1959	13,718	16,024,758	97 35	12,578,300	76 41
1960	13,604	16,083,263	98 52	12,352,700	75 67

* Effective October 1, 1957, these amounts exclude payments for medical care from the grant; effective October 1, 1959, they exclude amounts transferred. The amounts so excluded are included under medical care expenditures shown in Table 7

† Reflects passage of Proposition 4 in 1948 (effective January 1, 1949 until repealed by Proposition 2 in 1949 effective March 1, 1950) adding Article XXV to the Constitution

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TABLE 13. AID TO POTENTIALLY SELF-SUPPORTING BLIND—RECIPIENTS AND EXPENDITURES (Actual and in 1947-49 Dollars)

By Fiscal Year, 1941-42 Through 1959-60

Year ending June 30	Average monthly number of recipients	Actual		In 1947-49 dollars	
		Total aid payments	Average monthly grant	Total aid payments	Average monthly grant
1942	260	$152,627	$49 00	$229,200	$73 57
1943	254	149,674	49 03	204,200	66 89
1944	233	137,495	49 18	183,300	65 57
1945	247	145,266	49 01	195,800	66 05
1946	295	204,031	57 89	258,400	73 09
1947	358	264,765	61 59	289,000	67 24
1948	439	382,566	72 54	384,500	72 90
1949	505	479,039	79 01	464,200	76 56
1950	543	559,219	84 90	546,700	83 89
1951	616	628,756	84 80	583,600	78 96
1952	546	550,296	83 98	486,600	74 25
1953	512	538,396	87 72	467,000	76 08
1954	458	488,400	88 96	419,600	76 43
1955	416	444,036	89 00	384,800	77 12
1956	391	428,109	91 30	367,800	78 44
1957	354	401,614	94 61	333,600	78 58
1958	334	411,111	102 44	329,900	82 22
1959	305	380,391	106 59	305,600	83 67
1960	302	398,738	110 00	306,200	84 49

State of California
Department of Social Welfare

Research and Statistics
September 20, 1960

TABLE 14. AID TO NEEDY CHILDREN—FAMILY GROUPS (CHILDREN ONLY) RECIPIENTS AND EXPENDITURES (Actual and in 1947-49 Dollars)

By Fiscal Year, 1939-40 Through 1959-60

Year ending June 30	Average monthly number of children	Actual		In 1947-49 dollars	
		Total aid payments	Average monthly grant	Total aid payments	Average monthly grant
			(Per child)		(Per child)
1940	35,618	$7,668,124	$17.94	$12,866,000	$30.10
1941	37,535	8,778,690	19.49	14,486,300	32.16
1942	35,261	8,790,528	20.77	13,199,000	31.19
1943	25,111	7,177,715	23.82	97,922,400	32.50
1944	17,624	5,961,541	28.19	79,487,200	37.59
1945	16,322	6,084,556	31.06	82,002,100	41.86
1946	17,742	7,278,302	34.19	91,897,800	43.17
1947	22,866	10,489,968	38.23	11,451,900	41.74
1948	32,061	17,264,839	44.88	17,351,600	45.11
1949	45,293	26,951,514	49.59	26,115,800	48.05
1950	82,802	49,247,882	49.56	48,663,900	48.97
1951	127,639	72,714,115	47.47	67,704,000	44.20
1952	129,686	76,703,843	49.29	67,819,500	43.58
1953	125,265	73,553,715	48.93	63,793,300	42.44
1954	127,961	75,298,832	49.04	64,689,700	42.13
1955	139,832	82,377,315	49.09	71,384,200	42.54
1956	138,641	79,162,750	47.58	68,009,200	40.88
1957	138,682	82,077,495	49.32	68,170,700	40.96
1958	157,758	98,821,184	52.20	79,310,700	41.89
1959	187,714	121,938,577	54.13	95,713,200	42.49
1960	200,344	129,776,661	53.98	99,674,800	41.46

State of California
Department of Social Welfare

Research and Statistics
September 20, 1960

TABLE 15. AID TO NEEDY CHILDREN—BOARDING HOMES AND INSTITUTIONS RECIPIENTS AND EXPENDITURES (Actual and in 1947-49 Dollars)

By Fiscal Year, 1939-40 Through 1959-60

Year ending June 30	Average monthly number of children	Actual		In 1947-49 dollars	
		Total aid payments	Average monthly grant	Total aid payments	Average monthly grant
1940	4,444	$1,087,365	$20.39	$1,824,400	$34.21
1941	4,579	1,176,485	21.41	1,941,400	35.33
1942	4,279	1,131,958	22.05	1,699,600	33.11
1943	3,484	1,008,864	24.13	1,376,300	32.92
1944	2,843	962,744	28.22	1,283,700	37.63
1945	2,622	1,011,989	32.17	1,363,900	43.36
1946	2,714	1,158,728	35.58	1,463,000	44.92
1947	3,200	1,540,219	40.11	1,681,500	43.79
1948	4,022	2,117,710	43.88	2,128,400	44.10
1949	4,776	2,847,291	49.68	2,759,000	48.14
1950	6,731	4,257,433	52.79	4,206,900	52.16
1951	8,841	5,771,743	54.40	5,374,100	50.65
1952	9,187	6,371,421	57.79	5,633,400	51.10
1953	9,371	6,789,271	60.37	5,888,400	52.36
1954	9,417	6,911,239	61.16	5,937,500	52.54
1955	9,504	7,063,736	61.94	6,121,100	53.67
1956	9,632	6,866,499	59.41	5,899,100	51.04
1957	9,681	7,192,489	61.91	5,973,800	51.42
1958	10,545	8,209,297	64.88	6,588,500	52.07
1959	11,618	9,266,449	66.47	7,273,500	52.17
1960	12,247	10,185,209	69.31	7,822,700	53.23

State of California
Department of Social Welfare

Research and Statistics
September 21, 1960

TABLE 16. AID TO NEEDY DISABLED—RECIPIENTS AND EXPENDITURES (Actual and in 1947-49 Dollars)

By Fiscal Year, 1957-58 Through 1959-60

Year ending June 30	Average monthly number of recipients	Actual		In 1947-49 dollars	
		Total aid payments	Average monthly grant	Total aid payments	Average monthly grant
1958*	1,473	$1,023,030	$77.19	$821,100	$61.95
1959	4,981	4,873,040	81.52	3,825,000	63.99
1960	7,841	8,195,179	87.10	6,294,300	66.90

* Program effective October 1, 1957.

State of California
Department of Social Welfare

Research and Statistics
September 20, 1960

TABLE 17. GENERAL HOME RELIEF—RECIPIENTS AND EXPENDITURES
(Actual and in 1947-49 Dollars)

By Fiscal Year, 1939-40 Through 1959-60

Year ending June 30	Average monthly number of recipients	Actual		In 1947-49 dollars	
		Total aid payments	Average monthly grant	Total aid payments	Average monthly grant
			(Per person)		(Per person)
1940	72,014	$9,561,034	$11 06	$16,042,000	$18 56
1941	68,721	9,381,599	11 38	15,481,200	18 78
1942	69,279	8 908,011	10 72	13,375,400	16 10
1943	32,112	5 377,219	13 95	7,335,900	19 03
1944	20,284	4,447,130	18 27	5,929,500	24 36
1945	19,712	4,841,381	20 47	6,534,800	27 59
1946	28,360	7,015,161	20 61	8,867,500	26 02
1947	44,701	11,459,823	21 36	12,510,700	23 32
1948	61,768	15,045,897	20 30	15,121,500	20 40
1949	81 359	20,184,117	20 67	19 558,400	20 03
1950	105,780	25,346,787	19 97	25,016,200	19 73
1951	60,575	17 015,620	23 41	15,843,200	21 80
1952	48,877	15,135,009	25 80	13 382,000	22 81
1953	43,752	13 882,461	26 44	12,040,300	22 93
1954	59 369	16,488 722	23 14	14,165,600	19 88
1955	59,772	17,867,210	24 91	15,482,900	21 59
1956	51,127	16 218,894	26 48	13,959,500	22 75
1957	52,186	16,158,576	25 80	13 420,700	21 43
1958	76,209	20 233 572	22 13	16,238,800	17 76
1959	71,087	20,360,813	23 87	15,981,800	18 74
1960	69,298	19,836,426	23 85	15,235,400	18 32

List of Witnesses—Hearing on Aid to the Permanently and Totally Disabled

Leon Lefson, Director, Bureau of Aid to the Totally Disabled, State Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

Mrs Elizabeth MacLatchie, Chief, Division of Social Security, State Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

Dr Jacobus ten Broek, Chairman, State Social Welfare Board, 2652 Shasta Road, Berkeley, California

Harold Simmons, Superintendent of Social Services, 220 West 37th Street, Community Health and Welfare Building, San Mateo, California

John E Affeldt, M D , Medical Director, Rancho Los Amigos Hospital, 7601 East Imperial Highway, Downey, California

Charles Gardippe, Chief, Bureau of Crippled Children's Services, Department of Public Health, 2151 Berkeley Way, Berkeley, California

Leon Lewis, M D , 2380 Ellsworth Street, Berkeley, California

List of Witnesses—Hearing on Responsible Relatives

John M Wedemeyer, Director, State Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

Father John C Keenan, Assistant Director of Charities of the Archdiocese of Los Angeles, Los Angeles, California

Jerry Pacht, First Vice President, Los Angeles County Democratic Committee, Los Angeles, California

George McLain, Chairman, California Institute of Social Welfare, 1031 South Grand Avenue, Los Angeles, California

William Barr, Superintendent of Charities, Los Angeles County, Los Angeles, California

Charles H. Broadhurst, Jr., Director of Publications, County Supervisors Association, 500 Elks Building, Sacramento, California

Hugh Brown, Assistant Director, Local Activities, California Taxpayers' Association, 730 Pacific Electric Building, Los Angeles 14, California

John Fletcher, Field Director, California Council of the Blind, 2341 Cortez Lane, Sacramento, California

Homer Detrich, Director, San Diego County Department of Public Welfare, San Diego, California

Mrs. Elsie Rogers, Chairman, Long Beach Chapter, National Association of Social Workers, 2080 Magnolia Avenue, Long Beach 6, California

Mrs. Dorothy B. Spilde, Registered Social Worker, 1427 Paseo del Mar, San Pedro, California

Mrs. Robert Sullivan, Member, Child Welfare Commission, Department of California, American Legion, 1425 Highland Avenue, Glendale 2, California (presentation made by Mrs. Elsie Rogers on behalf of Mrs. Sullivan)

List of Witnesses—Hearings on Youth Problems

Karl Holton, Probation Officer, Los Angeles County, 205 South Broadway, Los Angeles, California

Roger Murdock, Deputy Chief, Los Angeles Police Department, 150 North Los Angeles Street, Los Angeles, California

Juan Azevedo, California Youth Authority, Fourth Floor, Office Building No. 1, Sacramento, California

Morris Schwartz, Executive Secretary, Los Angeles County Youth Committee, Los Angeles, California

Dwight Lyons, Assistant Superintendent, Los Angeles City Schools, Auxiliary Services Division, Los Angeles, California

Ernest Trinquada, Supervisor, Boys Welfare, Los Angeles City Board of Education, Los Angeles, California

Father William G. Hudson, Catholic Youth Organization, Los Angeles, California

Jose R. Chavez, Member of the Committee, Federation of Spanish-American Voters, Los Angeles, California

Donald S. Howard, Chairman, Governor's Advisory Committee on Children and Youth

Mrs. Ramona Morin, Ladies Auxiliary, Los Angeles Chapter, G.I. Forum, Los Angeles, California

Arthur Rendon, 1st Vice President, Council of Mexican-American Affairs, Los Angeles, California

John W. Greene, Chairman, Board of Directors, Council of Mexican-American Affairs, Los Angeles, California

Salvador Montenegro, Los Angeles Chapter, G.I. Forum, Los Angeles, California

Elizabeth Miller, Deputy Attorney General, Sacramento, California

Herman Stark, Director, Youth Authority, Office Building No. 1, Sacramento, California

David Dressler, Professor of Sociology, Long Beach State College, Long Beach, California

Louis R. Diaz, Mayor, Pico Rivera

Rev. Robert Walker, Council of Churches, 1542 East Seventh Street, Long Beach, California

Capt. Paul Lansdowne, Long Beach Juvenile Department, Long Beach, California

Mrs. Raymond Still, President, P.T.A., Long Beach, California

Morris Bugbee, Boys' Club of Long Beach, Long Beach, California

Mrs. Betty Toro, Downey, California

Pauline Wiebe, 5710 Linden Avenue, Long Beach, California

List of Witnesses—Hearing on Aid to Needy Children

John M Wedemeyer, Director, State Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

Arthur W Potts, Bureau of Aid to Needy Children, State Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

Norman Clayton, State Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

John R Fletcher, California Council of the Blind, 2341 Cortez Lane, Sacramento, California

Percy Moore, Health and Welfare Representative, I L W U , 150 Golden Gate Avenue, San Francisco, California

Mrs Joan Teter, Golden Gate Chapter, National Association of Social Workers, 333 Frederick Street, San Francisco, California

Charles H Broadhurst, Jr , Director of Publications, County Supervisors Association, 500 Elks Building, Sacramento, California

List of Witnesses—Homemaker Services

Mrs Elizabeth MacLatchie, Chief, Division of Social Security, State Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

Ralph L Wilson, Director, San Luis Obispo County Welfare Department, 1184 Islay Street, San Luis Obispo, California

Mrs Barbara E Shenko, Assistant Director, Family Service Association, 645 A Street, Room 300, San Diego, California

Miss Deborah Pentz, Acting Director, San Francisco Homemakers Service, 410 Arguello, San Francisco 15, California

Miss Betty Presley, Director, Marin County Welfare Department, 622 Fourth Street, San Francisco, California

Mrs Jeanne Brown, Social Worker, San Bernardino County Welfare Department, Courthouse San Bernardino, California

Mrs Richard H Davis, President, Homemaker Service of Los Angeles Region, 346 North Larchmont Boulevard, Los Angeles 36, California

List of Witnesses—Hearings on Drugs in the Public Assistance Medical Care Program

Carel Mulder, Chief, Division of Medical Care, State Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

Donald Hedgpeth, Vice President, California Pharmaceutical Association, 601 Irving Street, San Francisco, California

Cecil A Stewart, Executive Vice President, California Pharmaceutical Association, 701 South St Andrews Place, Los Angeles, California

Eunice Evans, Chief Deputy Director, Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

John Hoerl, Pharmaceutical Consultant, Department of Social Welfare, 722 Capitol Avenue, Sacramento, California

Dr Fred Meyers, University of California Medical Center, San Francisco, California

Dr Lester Breslow, Chief, Division of Preventive Medical Services, State Department of Public Health, 2151 Berkeley Way, Berkeley 4, California

Martin Winton, Vista Pharmacy, 4421 Iowa Avenue, Fresno, California

Arthur Weissman, Director of Economics, Kaiser Foundation, Oakland, California

Donald C Brodie, Ph D , Chairman, Drug Advisory Subcommittee to the Medical Care Committee, Department of Social Welfare, University of California Medical Center, San Francisco 22, California

Helen Nelson, Consumer Counsel, State Capitol, Sacramento, California

George Sargenti, (Pharmacist), 315 Main Street, Salinas, California

Richard Lyon, Vice President, California Physicians Service, 450 Mission Street, San Francisco, California

Benson L Allard, Manager, Public Assistance Section, California Physicians Service, 450 Mission Street, San Francisco, California

Arthur McFail, Physical Restoration Service Consultant, Vocational Rehabilitation Service, Department of Education, 721 Capitol Avenue, Sacramento, California

William F. Nichols, Vice President, McKesson-Robbins Company, 274 Wattis Way, South San Francisco, California

Harold F Brehm, Vice President, Coffin-Redington Company, a Division of the Brunswig Drug Company, 175 Sylvester Road, South San Francisco, California

Don Carson, Manager of Contract Sales, Cutter Laboratories

F. E Male, President and Manager, The Apothecary, 500 Sutter Street, San Francisco, California

Robert Lee Geiger, Vice President and General Manager, Bowerman's Pharmacy, Inc, 328 Post Street, San Francisco, California

James D Loebl, Deputy Director, Department of Professional and Vocational Standards, 1020 N Street, Sacramento, California

Dr. Charles Gardipee, Chief, Bureau of Crippled Children Services, Department of Public Health, 2151 Berkeley Way, Berkeley, California

Joseph Long, Long Drug Stores, Happy Valley, California

Carl K. Raiser, Assistant to President, Smith, Kline & French Laboratories, Philadelphia, Pennsylvania

Charles L. Dyer, Sales Service Manager, Pacific Region, Pfizer Laboratories, a Division of Charles Pfizer & Company, Inc, San Francisco, California

Frank Duckworth, Attorney for Pfizer Laboratories

Richard P Sellman, Assistant Director of Sales, The Upjohn Company, Kalamazoo, Michigan

George M Moore, Sales Director, Western Region, Eli-Lilly & Company, San Francisco, California

G C Tasker, Branch Manager, Parke-Davis & Company, Menlo Park, California

Edson R Coar, Western Divisional Sales Manager, Abbott Laboratories, 60 Union Street, San Francisco, California

Lawrence Lee, Assistant to the General Counsel of Abbott Laboratories, North Chicago, Illinois

W B Rees, Jr, Branch Manager, Merck-Sharpe & Dohme, a division of Merck & Company, Inc, 340 Shaw Road, South San Francisco, California

Michael J Cousins, President, Robinson Laboratory, Inc, San Francisco, California

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ASSEMBLY COMMITTEE REPORTS
VOLUME 21 NUMBER 2

FINAL REPORT

ASSEMBLY WAYS AND MEANS COMMITTEE

SUBCOMMITTEE ON WELFARE COSTS

MEMBERS OF SUBCOMMITTEE

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FRANK LANTERMAN
CHARLES CONRAD
GORDON WINTON
BRUCE SUMNER
THOMAS REES

HAZEL FREDERICKSEN, *Consultant*

November 21, 1960

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

HON RALPH M BROWN
Speaker

HON CARLOS BEE
Speaker pro Tempore

HON. WILLIAM A MUNNELL
Majority Floor Leader

HON JOSEPH C SHELL
Minority Floor Leader

ARTHUR A OHNIMUS
Chief Clerk of the Assembly

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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE, ASSEMBLY INTERIM
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON WELFARE COSTS
SACRAMENTO, November 23, 1960

HON RALPH M BROWN, *Speaker*
and Members of the Assembly
State Capitol, Sacramento

GENTLEMEN The Assembly Ways and Means Subcommittee on Welfare Costs, created by H R 326 24 of the 1959 Regular Session, herewith respectfully submits its final report based upon the investigation of costs of welfare in the State Department of Welfare (Central and Area Offices) and in 20 of the 58 counties in California

In addition, this committee has carefully scrutinized a proposal made for a welfare program that would encourage counties to set up projects demonstrating the feasibility of unified public assistance and social welfare services

This report was prepared under the direction of the chairman, Hon Carlos Bee, and was adopted by the committee on November 21, 1960

Respectfully submitted,

CARLOS BEE, *Chairman*

JESSE M UNRUH
FRANK LANTERMAN
CHARLES CONRAD
GORDON WINTON
BRUCE SUMNER
THOMAS REES

I. INTRODUCTION

AUTHORITY AND PURPOSE

The Subcommittee on Welfare Costs of the Ways and Means Committee was authorized by H R 326 24 on June 18, 1960, to look into administrative and program costs of welfare in the State of California

This subcommittee has been especially concerned with establishing the actual present status of welfare expenditures in California and what outlays may be expected in the future, taking into account foreseeable changes in program and caseloads

While keeping in mind recent criticisms directed at portions of the Aid to Needy Children program, the subcommittee has felt that the problem of welfare costs runs deeper and wider, and the members have hoped to provide an overall picture of cost factors involved in all programs of public social welfare in the State

When people object to the rising cost of public welfare budgets in California they say they have no wish to deprive persons who are in need, but they are concerned about the size of the total tax bill

They also see no end in sight for the rise The California population is increasing at both ends The rate of addition of children is at an alltime high, and at the upper end we are adding to population by a greater ability to prolong life

These two groups, children and oldsters, contribute little to taxes, but their shelter, care, education and leisure require steadily growing investment

So taxpayers wince They see the federal government increasing its role in welfare programs, but this is little consolation when it is obvious that federal levies distributed for this purpose in California probably will cost the California taxpayers more than these programs are bringing back in federal aid

They look for assurance that California's welfare program is soundly based, wisely administered and free from waste

Those charged with administration of these programs echo these aims, and each administrator has ideas he thinks would improve the system

One inescapable fact stands out Although public assistance expenditures rose from $356 million in 1949-50 to $521 million in 1959-60, there was a drop in statewide per capita cost of the welfare programs taken together In 10 years it fell from $30 18 to $28 30, despite price inflation

PROCEDURES

The Subcommittee on Welfare Costs has striven for honest, unbiased stock-taking.

The preliminary work included conferences by the subcommittee consultant with state, area, and some county directors of welfare; and with representatives of the California Taxpayers' Association, the County Welfare Directors Association, the County Supervisors As-

sociation of California, the State Chamber of Commerce, the State Board of Equalization, the State Department of Finance and the Legislative Analyst

In August 1959, as a result of these conferences and the materials gathered, it was decided to conduct a study in 19 of the 58 counties These 19 counties were selected on a sampling basis as reflecting differences in population, topography, administrative pattern and philosophy These were

Alameda	Kings	San Joaquin
Butte	Lake	San Luis Obispo
Calaveras	Merced	Solano
Contra Costa	Modoc	Sonoma
Humboldt	Nevada	Ventura
Imperial	Orange	
Inyo	Sacramento	

A questionnaire was prepared and sent to welfare directors of the 19 counties with the understanding that the consultant would visit each to gain supplementary information

The subcommittee held a hearing in Sacramento on December 11, 1959, and another in Los Angeles on January 15, 1960, to learn the views of the general public, the county directors of welfare, the members of the State Welfare Board, State Department of Social Welfare, county supervisors taxpayers' associations, and other organizations and professions concerned with this subject

In March 1960, *Los Angeles County* was added to the study because no sampling in California could be complete without this preponderant area But it was decided to devote a separate section of this report to Los Angeles County because its welfare administrative organization was so different, by reason of population and geographical area, as not to be comparable with other counties in the study

In June, 1960, the subcommittee held a public conference in Los Angeles to discuss a proposal made at the January 15 hearing, for state co-operation in one or more county pilot studies to try out a new administrative approach in public welfare Members of the subcommittee have also met in executive session to discuss procedures and findings in regard to welfare costs

CONCLUSIONS

From the hearing testimony, questionnaires, consultant's visits carried out as planned, and from conferences and extensive correspondence with authorities in the field of public welfare these *conclusions* emerge

There are strengths as well as weaknesses in California's welfare system

California is among the leading states in standards of welfare aid given and is relatively liberal in terms of real and personal property which recipients may retain in qualifying for aid, but there is too much lack of cohesion among the various programs and too much costly complexity in law and execution

The Legislature, along with public welfare officials, should address itself to these shortcomings now, before new federal laws, in contemplation, can further complicate the problem

II. RECOMMENDATIONS

RECODIFICATION

Recommendation: The standing Code Commission should reorganize and clarify the entire Welfare and Institutions Code to make it easier to administer

Reason: Provisions are too many, too conflicting, too susceptible of differing interpretations all along the line, and therefore productive of unnecessary costs and inequalities

STATE STRUCTURE

Recommendation: The Legislature should recommend that the Governor of California consider simplification of the administrative structure of the State Department of Social Welfare and the possible modification or elimination of the three area social welfare offices

Reason: Over the years this department has grown enormously, with overlapping layers of functions and personnel

PILOT PROJECTS

Recommendation: The State should encourage the setting up, in a few selected counties, of pilot or demonstration projects to make full test of a more effective type of welfare service program, aimed at prevention and restoration and focused on helping dependent persons to achieve independence and self-care, prevent delinquency and crime, and prevent avoidable deterioration of family life It is proposed that approved county demonstration programs be established, with adequate provision for research, and with state financing of the added costs of these projects

Reason: There is need of a new look, and a whole look, at welfare Present public assistance and social welfare services are too piecemeal and too unrelated to achieve the social objectives just mentioned The present system does not help people avoid emergencies of financial dependence on society, it merely seeks to tide certain groups of them over until the emergency has passed, and it often results in their adopting dependence as a way of life State-supported pilot projects might well lead to a more comprehensive approach

ATTITUDE IN LEGISLATION

1 **Recommendation:** The Department of Social Welfare should keep attention focused on long-range objectives Prior to introducing a legislative bill it should discuss the bill's aims and methods with the State Social Welfare Board and should also inform the State Personnel Board, the Department of Finance, and legislators of the intent of the measure

Reason: This would lessen overlapping of existing laws and minimize the chance of hasty legislation that later would be difficult to change Over the past 30 years (since 1929) every decision to relax aid eligibility in California has become permanent, the Legislature has not later

moved to retrench, restrict or hold down costs This practical reality should be remembered whenever welfare bills are being prepared

2 **Recommendation:** The Legislature, when enacting welfare legislation, should always make clear its intent

Reason: This would avoid costly, troublesome confusion at county, state and sometimes federal levels In the Welfare and Institutions Code there is no clear statement of present legislative intent in many important areas of welfare administration

3 **Recommendation:** The Legislature should do all in its power to regain budget control of the appropriations for the welfare programs, so as to have opportunity for review from time to time

Reason: The Legislature has the responsibility of finding the revenue for welfare programs However, the Welfare and Institutions Code puts about 97 percent of state welfare costs outside of Legislature budget control and review by making them continuous appropriations, and the remaining 3 percent is influenced by the 97 percent The State Social Welfare Board has the power to increase the costs of welfare programs without seeking legislative approval, can adopt policies that increase cost without asking the cost, and it may also commit the State to substantial costs without the fiscal responsibility of finding the necessary revenue

RECOVERY

Recommendation: The State and/or county should be empowered to place a lien on the property of any welfare aid recipient This should be for the amount of money paid him while on aid—without any interest charge At his death, or the later death of his spouse, the welfare repayment should have first call on proceeds from the sale of the property.

Reason: Besides its fairness, this would greatly reduce the overall cost of welfare aid It would also tend to encourage responsible relatives to support persons who otherwise might become dependent on welfare support Three-fourths of the states have such recovery liens.

"RESPONSIBLE RELATIVES"

Recommendation: The "responsible relative" law should be changed so as not to require contributions from hard-pressed relatives It should permit, but not compel, a district attorney to prosecute a relative who fails to make the contribution prescribed by law It should increase the amount of income a single person can receive without having to contribute to his parents if they apply for aid

Reason: Willy-nilly prosecutions for noncontribution can be unjust to breadwinners who find it difficult to support their own families In the case of single persons, many county welfare directors feel it is unfair to require contributions from people with monthly net incomes as low as $200, particularly when the net is figured as gross minus only 20 percent Some would abolish the "responsible relatives" provision entirely Others would raise both the contribution level and the allowable deduction from gross.

UNIFORMITY

Recommendation: The Legislature should establish a much higher degree of uniformity among welfare programs, to get greater equity and cost-saving simplification

1. Greater uniformity in *eligibility requirements* as among these types of aid. Old Age Security, Aid to Needy Children, Aid to the Blind, Aid to the Totally Disabled, and General Relief.
2. Greater uniformity (and simplicity) in determining the *size of grants* in all the above programs. There should be a flat grant, with income deducted, to cover basic needs and allow something for what are now called "special needs"—the justification for which has been diminished by the State Medical Care Program, particularly in OAS and AB The State should no longer participate in making "special needs" grants as such The flat grant should be a standard family allowance based on the size of the family without reference to ages of family members The standard should be comparable to that for Aid to Needy Children families
3. A single formula of *cost sharing,* as between State and the counties, for all those programs toward which both contribute.
4. Greater uniformity of *recordkeeping* for all aids in the county and state welfare departments.

Reasons: The reasons for such sweeping proposals can best be expressed, perhaps, in the words of one of the many county welfare directors in California who have begged for a greater degree of uniformity. He writes, after a staff conference

> "The complexities of the present program, both in law and in regulation, have multiplied to the point where it is nearly impossible to provide a real service program with present numbers of staff in county welfare departments. Yet we are convinced that 'the taxpayers' will not stand for higher administrative costs and bigger staffs because California's administrative costs are already quite high compared to many other states Hence, there must be simplification of the eligibility laws and rules if we are to free existing staff and administrative dollars to do a real service program in those aids where such service will hopefully lead to rehabilitation of families and to better control of loads and costs The sheer weight of involved eligibility determination, precise measurement of basic and special needs, and the tremendous range and volume of accounting and statistical operations required by all of the wide variations in the programs prohibits much else today, and yet costs California a comparatively high number of administrative dollars
>
> "We need more nearly uniform eligibility requirements among the aids, much simpler methods of determining the amount of grant in all programs, uniformity among aids in this determination so that the complexities of accounting and statistics are reduced, and identical matching formulas for all aids to simplify claiming procedure.

"All of this would permit uniform recordkeeping instead of completely separate forms and case records as are required today It would also permit (staff) workers to carry *integrated* caseloads by geographical assignment, thereby materially reducing travel time and costs now duplicated every day throughout the State as ANC, OAS, ATD, AB and GR workers each go their separate ways to the same neighborhood

"With such uniformity *one* application form, *one* certificate of approval or denial, *one* flexible case record outline, *one* set of accounting and statistical forms could suffice instead of four or five *One* case record could contain everything pertaining to a household even though three or four different categorical aids were going into the household

"As it is now Grandpa gets OAS—separate records, all the way Grandma gets AB—maybe the same worker, maybe another, and separate records all the way

"Daughter gets ANC—again separate worker, separate records all the way And finally perhaps an older disabled son in the same home gets GR—again separate worker, separate records all the way Yet all these people live under one roof as one family unit, pool their resources, eat at the same table, and jointly pay the household bills We talk today of becoming public family service agencies, but the laws and rules under which we grant aid require us to single out individuals for public assistance rather than consider realistically the family unit as a whole

"With uniformity as suggested we should have the administrative funds left to really become public family service agencies devoted to helping people back on their own feet

"A number of other states have succeeded notably in achieving this uniformity I submit that California could borrow the best of some of these states' uniformity principles, both in law and regulation, without losing the best of its own good and adequate treatment of needy people, or the advantages of local administration But this, of course, means a complete recodification of the Welfare and Institutions Code"

The tremendous complexity of the public assistance programs, both in law and rules, is the primary cause of this State's being the second highest in the nation in administrative expenditures for welfare

A flat-grant provision, and no "special needs" grants in addition, would enable clients to know what to expect as an aid maximum and would encourage them to try to get the most for their money in terms of food, shelter and utilities It would virtually eliminate the exceedingly expensive bookkeeping process (about $10 per entry) of increasing or decreasing a recipient's grant from month to month

The single cost-sharing formula proposed here would further cut bookkeeping costs A uniform formula should be adopted, the exact ratio to be based on present statewide state-county shares of the combined programs. The formula should be a mutually agreed uniform ratio.

WELFARE MANUALS

Recommendation: The State Department of Social Welfare should simplify its manuals for the various aid programs, confining them as nearly as possible to an outline of goals to be achieved and premises to be taken into account in making decisions

Reasons: Today, for one of the aid categories alone—Old Age Security—the welfare worker is supposed to learn and know 684 pages of instruction, pages that are constantly revised as new rules are fashioned to meet every conceivable case situation

It is almost impossible for the welfare worker, administrator or legislator to get a clear idea, among all these details as to how a specific detail relates to a basic purpose In many situations it is therefore difficult to find two social work practitioners who can completely agree as to the proper grant determination

The cost in staff time, State and local, of preparing, distributing and assembling a constant flow of new pages to be inserted in every program manual is prohibitive.

STAFF YARDSTICKS

Recommendation: The State Department of Social Welfare, in cooperation with the counties, should develop positive standards for size and composition of county staffs needed to meet caseload situations

Reason: Staffing patterns definitely affect costs and efficiency, and the lack of a good pattern is felt by taxpayers and aid recipients alike

MERIT SYSTEM

Recommendation: The State Social Welfare Board should review the state merit system as it now operates in 44 of the 58 county welfare departments, it should bear in mind the general rule that the smaller the county's population the fewer its resources, the more difficult the welfare worker's job, the greater the skill needed if recipients are to be rehabilitated and taken off the rolls.

Reason: Comparison with the locally administered civil service systems in the 14 other counties, which are required to meet State Social Welfare Board requirements, may suggest cost-saving improvements in both types.

TRAINING

Recommendation: The State should make it mandatory for every social worker in every county welfare office to receive in-service training in work objectives and in how to effect them This could be done through planned courses given two hours a week on office time by a well-qualified person on the State Department of Social Welfare training staff

The State Department of Social Welfare should expand its training staff, now limited to two persons

All state colleges and university branches not now providing undergraduate majors in social work should be encouraged to offer them

The State should develop a scholarship program, using federal and state funds, for students showing promise in the fields of social welfare

The State should try to expand the present "leave with pay" plan enabling members of county welfare staffs to get professional education

in social welfare It should examine factors that have limited use of the federal-state "leave with pay" so that more use can be made of federal-state matching grants; and it should encourage boards of supervisors to vote educational leaves to welfare staff members

Reasons: Fully qualified staff is lacking, in large part, today. It is necessary to an effective public welfare program Training costs would be more than offset by savings in aid payments.

SPECIAL CARE FOR CHILDREN

Recommendation: The State should make some funds available to counties, on a matching basis, to help pay the cost of care away from home for children who need it and are not eligible for Aid to Needy Children.

Reason: Frequently families who are completely self-supporting under ordinary circumstances need financial help desperately to provide out-of-home care for a defective or disturbed child. They cannot afford the $150 or more per month which special care of this kind costs. Some counties help families in such situations, using county funds solely, but many counties do not—and some very sad instances of family breakdown have resulted.

FOSTER CARE LICENSING

Recommendation: The State should reimburse counties for a fair proportion of the cost of time actually spent in locating, studying, accepting or rejecting and (if accepted) supervising homes for foster care of children.

Reason: If the county performs a high-quality licensing job for the State the present $65 flat payment to the county for each new or renewal license is not enough Continuance of such a low-level payment tempts a county welfare department to approve annual renewals without thorough investigation

III. SUPPORTIVE BACKGROUND

THE PROGRAMS

There are 12 public welfare programs in California today They provide aid to more than 600,000 persons at a cost, federal, state and county, of slightly over $521 million a year (fiscal 1959-60) This is a $26 million increase in a year, attributable to inflation, to increases in certain caseloads, and to grant increases provided by the Legislature in 1959

The federal government helps with the financing of 6 of these 12 programs, the State with 11, and the counties with 10. In one, general relief (sometimes called general assistance), the county bears the entire burden.

Most of the programs are administered by the 58 county welfare departments, each headed by a director appointed by a county board of supervisors But the federal government requires, as a condition for helping any program, that the State supervise administration by the county. And in a few programs (these cost relatively little) the State either shares administration with the county or handles it alone

The principal legal basis for the State's public welfare programs is the Welfare and Institutions Code Supervision and policymaking for all state welfare programs is delegated to the State Department of Social Welfare, which is guided by the policy decisions of the State Social Welfare Board The legal responsibility for correctly administering most of the programs is delegated to the county boards of supervisors or their agents, the county directors of welfare.

Although the supervisors hire and fire the director, many of his decisions cannot be governed by them because, to a great extent, he is bound to make his determination in accordance with federal and state law and regulation

The Lineup

The program lineup in California is this·

First, there are four so-called *"categorical aids,"* where the applicant belongs to a special group of needy, recognized by both federal and state law These programs, which together take the great bulk of public welfare funds, are

	Source of funds	*Administered by*
1 Old Age Security (OAS)	Federal, State, County	County
2 Aid to Totally Disabled (ATD)	Federal, State, County	County
3 Aid to Needy Blind (AB)	Federal, State, County	County
4 Aid to Needy Children in Family Groups (ANC-FG)	Federal, State, County	County

Then there are the following extensions of help to blind persons and needy children—extensions to which the federal government gives no direct aid:

	Source of funds	*Administered by*
5 Aid to the Partially Self-supporting Blind (APSB)	State, County	County
6 Aid to Needy Children in Boarding Homes (ANC-BH)	State, County	County

Next, applying to all six of the foregoing groups, is

	Source of funds	*Administered by*
7 Medical Care	State, County	County

But the State also feels it necessary to prevent blindness, so we have this program

	Source of funds	*Administered by*
8 Prevention of Blindness	State	State

The federal government (Children's Bureau) helps to pay for certain services to aid children, and in this it is joined by the State and by counties having special projects to this end So we get

	Source of funds	*Administered by*
9 Child Welfare Services (CWS)	Federal, State, County	County

The State takes major responsibility for licensing boarding homes for children and aged, for insuring suitable adoptions (relinquishment and independent), and for limited service in intercountry adoptions The State may provide service itself, or may delegate these responsibilities to counties where it feels the counties are ready for it, and it also issues licenses to approved private adoption agencies So we have these programs

	Source of funds	*Administered by*
10 Licensing	State County	State and/or County
11. Adoptions	State	State and/or County

Finally, state law requires each county to maintain a general relief program, including indigent medical care General relief, or general assistance, is a sort of catchall for indigent and other needy persons who cannot qualify under one of the federal or state-supported programs

	Source of funds	*Administered by*
12 General Relief (GR)	County only	County

Counties usually also include, under the General Relief heading, funds which they use to supplement categorical aid payments when the needs occur that are not allowable within statutory grant maximums

Program Costs

The four federally aided "categorical aids" and their two nonfederally aided cousins (APSB and ANC-BH) cost $504,357,000 of the $521 million spent for public welfare in the State in fiscal 1959-60

Administrative costs (federal, state, and county) took $54,857,000 of this Recipients received aid as follows (see also projected figures for 1960-61)

	1959-1960		*1960-1961 (projected)*	
	Costs *	*Caseload (persons)*	*Cost*	*Caseload (persons)*
OAS	$270,900,000	257,830	$273,500,000	253,000
ATD	9,400,000	8,045	13,900,000	11,155
AB and APSB	17,600,000	13,835	18,600,000	14,315
ANC				
–FG	140,600,000	254,775	140,700,000	251,875
–BH	10,600,000	12,190	11,500,000	12,850
Total	$449,500,000	546,675	$458,600,000	543,395

* (These figures, supplied by the State Welfare Department include, in each group medical care The total of such medical costs was $32,100,000)

The federal government sets standards the states must meet to get federal assistance funds It grants the funds on a matching basis up to a fixed maximum.

California participates in every federally-aided welfare program In the categorical aid programs it and the counties extend full aid, without federal sharing, to persons not eligible under federal definition

Within bounds set forth in the Social Security Act the states have wide latitude in deciding how their programs are to be organized and administered, who is eligible for aid, and how much eligible persons shall get There are wide differences, as well as similarities, state by state, depending on economic conditions and the attitudes of the bodies politic

Some states have tried hard to simplify welfare laws and regulations and make application within their borders uniform They have the same basis for determining need in all the categorical aid programs

In Oregon, to take only one example, the state and counties divide, by the same fixed formula, the cost of that part of the four categorical aid programs not borne by federal funds

In California, by contrast, each categorical aid has a different basis for determining need and a different basis for dividing the nonfederal share between the State and the counties As among the counties of California there are also great variations, the greatest, of course, being in the field of general relief, the program financed solely by the counties without supervision by the State

The supervisors, in framing their annual county budgets, take into account the amounts needed for matching federal and/or state funds and for general relief. The size of their appropriation for welfare depends partly on economic and social conditions and partly on the degree of liberality toward welfare recipients California counties devote from 9 to 41 percent of their total budgets to welfare.

Of the $521 million cost of public welfare in California in 1959-1960, the sources were

	Percent
Federal	43 5
State	36 7
Counties	19 8

A breakdown for the year 1958-1959 showed that the counties, taken together, paid the following shares of the following programs·

	Percent
Old age security	10 4
Aid to the blind	18 0
Aid to needy children	24 1
Aid to disabled	12 4
Medical care for foregoing	00 0
Board home licensing	12 2
Adoptions	2 7
General relief (including indigent medical care)	100 0

Because sharing formulas for the various programs differ greatly, if an applicant can qualify under two or more programs the temptation arises to place him in a category most advantageous for the county But despite such differences and such temptations, there is remarkable stability in the combined counties' share of total costs It amounted to 19 8 percent in 1958-1959, as it did the following year, and the figure

has remained at about 20 percent, with no significant variation, for the last nine years

This fact has led some people to suggest that much time and labor could be saved, and much confusion eliminated, by using one sharing formula for all the programs just listed In other words, charging the counties about one-fifth across the board.

Present Sharing Formulas

In OAS, ATD and AB the federal reimbursement is $38 50 for each recipient Above that, up to limits set by California law, the State and county share costs on a basis of six-sevenths State and one-seventh county for OAS and ATD, but on a basis of three-fourths state and one-fourth county for AB

In ANC-FG, where present federal reimbursement is $17 50 for the needy relative or caretaker of the child, plus $19 for each child eligible under federal regulations, the additional cost, up to the statutory limit, is shared 67 5 percent State and 32 5 percent county

EXAMPLE. Grant of $215 for caretaker and 3 children

	$215 00
Federal share—$17 50 for caretaker plus 3 x $19	74 50
Balance	$140 50
State share —67 5 percent of $140 50	94 83
County share—32 5 percent of $140 50	45 66

In OAS, ATD, AB and ANC-FG cases that are ineligible for federal participation, the State bears five-sixths of each payment, the county one-sixth The same ratio applies in APSB and ANC-BH programs, where there is no federal participation

In special cases in any of the six groups just named the county may, if it wishes, supplement the aid with county general relief funds

Administrative costs, as distinguished from aid given, are reimbursed 50 percent by the federal government in cases involving categorical-aid recipients eligible under federal rules The State bears the administrative costs in the Prevention-of-Blindness Program, the counties bear the administrative cost of general relief.

Determination of Needs

There are wide variations, in California, in determining how much aid the different groups of welfare recipients are *entitled* to

For OAS and AB, there is a cross between a flat grant, minus income, and the budget method

An OAS recipient may receive up to $95 a month to cover normal living expenses These "basic needs," so called, cover rent, utilities, clothing, education, household operations, recreation, transportation,* personal items such as toothpaste, and incidentals

In addition there are allowances for special needs, such as necessary diets for the ill; household furniture and appliances (or repairs thereto) if needed, glasses, tires and car repair if essential

* Transportation allowances are to meet minimum needs of recipients in connection with attending schools, visiting doctors and clinics, shopping as necessary, taking part in some community activities (church, recreational affairs, etc) In some counties GR employables are allowed transportation to go to and from work until they get their first pay check

Special needs are extremely costly, especially in counties giving broadest application to the term. The number and complexity of definitions of special need items now existing make it practically impossible to simplify administration of county welfare programs

If the recipient has income of $20 or more a month, the "special need" is taken from his outside income; the remainder of his income, if any, is supplemented by the aid grant so that he will have $95 for normal living expenses.

A recipient with income less than $20 a month who has special need gets $95 for normal living expenses plus any part of the $20 needed to meet the special need However, this recipient's grant will not be more than necessary to bring his total income up to $115 a month.

For AB the rule is different The maximum grant to meet basic needs is $115 a month, but the first $11 of income after earnings of $50 a month must be applied toward meeting basic needs. Any additional income may be applied toward meeting any special needs. No special needs can be allowed if the AB applicant's nonexempt income is $11 a month or less

The State Department of Social Welfare has had budgets of basic needs for both OAS and AB since 1942 But these are not true budgets They are devices for determining what needs (and in what amounts) are special needs to which outside income may be applied

For ANC the needs of all families *are* determined on a budget basis locally applicable and adjusted for the size, ages and sex composition of each recipient family The State sets grant ceilings, but allowances for transportation, education, recreation and incidentals are more or less determined by each county, and $25 above the rent ceiling set for a particular *county* may be allowed if special need is shown

For ATD the law sets a $106 monthly limit for all but special needs A basic $76 is allowed for food, clothing, household maintenance and incidentals; and up to $30 is added for shelter and utilities The amount of aid granted is determined by deducting income from total allowable needs, or from $106, whichever is less

Medical Care

The 1957 Legislature established a medical care program for recipients of OAS, AB and ANC, and provided a Medical Care Trust Fund of about $30,000,000 annually for its support This money comes from a monthly premium deposit of $6 for each adult recipient, and $3 for each eligible child, paid in equal shares by the federal and state governments Administration costs are shared equally by the counties and the federal government

Shortly after this program went into effect the expenditures for medical care in OAS and AB far exceeded premium deposits for these two aids By October, 1958 (a year after the program became effective), medical care expenditures in OAS were averaging $6 86 per recipient ($4 37 for prescriptions, $2 49 for practitioner services) and in AB—expenditures were averaging $7 17 ($4 18 for prescriptions, $2 99 for practitioner services) The ANC program, on the other hand, was not making full use of its medical care funds Therefore the department, construing legislative intent to be the spending of all these funds, expanded ANC medical services while withdrawing some of the OAS

and AB medical services This, however, resulted in an unbalanced program

In January, 1959, the Social Welfare Board, in an attempt at balance, adopted a proposal of the Medical Care Advisory Committee to pay only for drugs found absolutely necessary for adequate medical care, and also shifted substantial portions of medical-care costs over to the aid programs by changing the special needs provisions of the aid grants

For the quarter ended March 31, 1960, the average per month per OAS recipient was $6 25, AB, $6 02, ANC, $3 91

In October, 1959 medical care became a part also of the ATD program Emphasis in this program will be functional improvement services

An objectionable early feature of the medical care program was that a doctor might get payment for services from the county as a Medical Care Fund vendor one month, and the next month be notified that he must get his payment from the aid recipient (If a recipient received any income other than his assistance grant, which was not being used to meet other special needs he must pay for doctor's care himself)

The passage of Senate Bill No 515 in 1959 remedied this by enabling county welfare departments to make all payments from the Medical Care Fund This greatly simplified the administration of medical care It also constitutes a step toward furnishing adequate medical outpatient services to all recipients of aid regardless of their income status

General relief recipients may receive medical and hospital care in one of the 81 county hospitals, if the county considers them "medically indigent " There is some variation among counties as to who is considered medically indigent, but generally those unable to pay, have no responsible relatives able to pay, and cannot obtain these services elsewhere are accepted

It appears that some of the cost problems in the medical care programs now are (1) lack of leadership and adequate controls of the medical care programs, (2) the special needs provisions allowing extensive expansion of medical care without legislative budget review, (3) lack of co-ordination of medical care programs with other available public medical care in California, thus in several instances duplicating, contradicting or assuming existing programs.

As a result of legislation enacted in the 1960 Session of Congress, California will receive an additional $18 million a year to broaden medical services for recipients of OAS.

This new federal law, effective October 1, 1960, also provides for special grants to states on a matching basis for care of "medically indigent " These are aged persons who are not on relief but who are unable to meet the high costs of medical care

California does not now have a statewide program of care for these medically indigent older citizens Legislation to set up such a program will have to be introduced during the 1961 Session.

A medical care study made during 1959-1960 by Margaret Greenfield, Public Administrative Analyst, at the request of the State Department of Social Welfare, is expected to evaluate the present program and make recommendations for desirable changes or modifications

STATE WELFARE DEPARTMENT

The State Department of Social Welfare is guided in its supervision of welfare programs by policy decisions of the State Social Welfare Board

The department has a central office at Sacramento whose major functions are program development, community welfare services, and administration This office decentralizes state supervision to three area offices Area I, at Los Angeles, Area II, at San Francisco; Area III, at Sacramento

The total central office staff for the year 1959-60 averaged 304 employees; the three area offices together, 296

The basic plan of organization of the central office has gone unchanged for a number of years, but frequent modifications and additions have added layers that make the structure complex and confusing For example There are three medical care programs (service, drugs, hospital) operated by different divisions, these programs do not have uniformity of method or of criteria in establishing fees.

The overall organization consists of an executive unit (the director, deputy directors, director's staff assistant, medical director, chief referee, associate counsel) and five divisions, each with 4 to 10 separate bureaus under its authority

Area Offices

The three area offices have basic structures very much alike. Each area is divided into districts.

Los Angeles	three districts serving 12 counties
San Francisco	three districts serving 16 counties
Sacramento	four districts serving 30 counties

Each area is headed by an area director and has an overall representative for each district Each has an administrative analyst and a fiscal representative In addition there are housed in each area office, but responsible to the central office, a hearing officer, a medical consultant, one or more research analysts, and field auditors

Each area office has the following four sections

Public Assistance Section, employing a public assistance supervisor, public assistance specialists, public assistance eligibility auditors, a section clerk, a stenographer, and an operations unit having a supervisor and workers on appeals and complaints

Child Welfare Section, employing a child welfare supervisor, child welfare specialists, a section clerk and stenographer

Office Management Section, supplying clerical and stenographic help to the area office

Medical Service Section, employing medical social work consultants, a section clerk, a stenographer, and the temporary help of doctors as needed on ATD cases

In the Los Angeles area office there are two additional sections.

Children's Institutional Section, staffed by child welfare specialists

Aged Institutional Section, staffed by public assistance specialists

In the San Francisco area office there is an

Institutional Licensing Section, staffed by specialists in child welfare and public assistance

In the Sacramento area office, licensing is done by a unit under the Child Welfare Section.

Partly because the area offices employ professional field staffs while the central office has many exclusive fiscal and statistical functions, the professional personnel outnumbers the clerical in the former, while the reverse is true in the central office

Payrolls 1959-60

	Professional	*Clerical*		*Total*
Central office	97	207		304
Area offices				
Los Angeles	84	52	136	
San Francisco	60	30	90	
Sacramento	42	28	70	296
Total	283	317		600

Costs 1959-60

	Salaries	*Maintenance and operation*
Central office	$1,670,868 39	
Area offices		
Los Angeles	711,263.65	$130,805
San Francisco	490,736 85	96,769
Sacramento	382,238.82	74,892

Relationships

Although in theory the lines of a flow chart are from State through area office to district office to county, in practice they careen in a sort of mystic maze

Each area office has a counterpart of the staff specialists in the central office, but relationships are not clear, nor are lines of supervision uniform. The Department of Welfare has a procedural manual; and a detailed and good organization handbook is a part of it This shows functions, authorities, responsibilities and relationships for all key staff, central and area offices, but little use seems to be made of it

There are differences of interpretation by those away from the central office When new problems come up there is a tendency to play by ear Although the area district representative is expected to maintain the basic administrative ties with counties, there are frequent exceptions to this rule Counties are at liberty to seek help directly from the area offices or even the central office And the department's procedural manual, while emphasizing that the area office is the channel from central to county, provides that the central office people may deal direct

This situation can lead to confusion if the central office interpretation differs even slightly from that given to a county by the district representative or the area office—and in any event creates the need of elaborate and costly "fill-ins" so that the left hand may know what the right is doing

Counties differ in their attitudes toward state supervision by area personnel A few welcome it Most resist it In many instances counties feel the area "specialists" are less competent to decide particular problems than the county staffs they are supervising Lack of qualified area personnel able to give leadership to the county staff is a problem

counties find hard to cope with Resistance is sometimes due to the number of area "specialists" calling on a county.

"One intelligent well-qualified area person could give counties the necessary information—this would save endless time and expense," one hears.

The merit system program is administered directly from the central office

Training consultation is provided from the central office, since there are no training specialists in the areas.

Some other functions, such as the handling of life care contracts, are also centralized

Research and statistics functions are carried out by staff from the central office assigned to the area offices So in effect this is a function of the central office In contradiction to this, the administrative analysts are assigned directly to the areas and function as a part of the area staff.

COUNTIES

Approximately 8,650 county welfare employees in 58 counties carry out the diversified and complex programs of welfare which directly effect the lives of over 600,000 people in California

Organization

The administrative organization of each county differs from others to some extent, with some so divergent as to defy comparison. The simplest plan of organization seems to be three divisions—adults, children's, business—but counties having this structure may assign different phases of work to these divisions

The State Department of Social Welfare does not try to secure uniformity in the administrative organization of the counties The theory under which it has operated for years is substantially that the "what" shall be specified by rule, but the "how" is left to local discretion

Even the titles of county welfare departments differ One county lists only "Welfare Director, County Office Building." The 57 other counties use. County Welfare Department, 32, Department of Public Welfare, 9, Department of Social Welfare, 8. Social Welfare Department, and Social Service Department, 2 each, Department of Public Health and Welfare, Public Welfare Department, County Welfare Commission, and Bureau of Public Assistance, 1 each

The statutes, and the rules and regulations of the State Social Welfare Board are the single most important means for obtaining some uniformity of procedure These set out provisions for each board of supervisors and county welfare director to follow and are contained in the State Welfare Department manuals The manuals contain "Handbook" material, as well The Handbook material is not mandatory, but it gives examples, or preferred methods within the discretion allowed by statute and rule.

Sometimes a small change in a law can pile a heavy load on the whole state-county machinery. For instance, one regulation, based on a law, says that a recipient shall get the full amount of aid to which he is entitled Formerly counties were not required to write a check until the amount was a minimum of $2 Now if a 6-cent refund is nec-

essary a county must send the recipient a check for this amount, even though the clerical work involved costs $10

Different counties apply statutes and rules to similar situations in different ways, each contending that its application is correct Instances of variation come to the attention of the department in a number of ways through conferences of state or area staff with county welfare directors and local staff; by studies and reviews, appeals, complaints or statements by applicants, recipients, or other interested persons or groups When these situations are discovered, the state staff gives its interpretation of rule and regulation and asks the county to follow this interpretation If the county does not conform, the department cites the county to show why state and federal funds should not be withheld

The State permits continuance of certain wide differences in procedure, in the handling of ANC absent-father cases In some counties these cases are routinely referred to the district attorney's office for investigation In others the welfare department does the investigating Money collected from absent fathers may be handed over directly to the mother by the welfare department, which then deducts the amount from her ANC grant, or may be credited to the bookkeeping fund from which federal, state and county payments can be reimbursed Or the money from the absent father may be received, in the first instance, by the district attorney or the probation department and then paid to the mother directly or through the welfare department

General Relief

There is a myriad of reasons why welfare costs differ in the various counties economic condition of the county, affecting the attitude of the board of supervisors toward welfare recipients, resources available to the recipients, distances to be covered in dealing with applicants, variations in costs of rent, and utilities, and the degrees of complexity (necessary and unnecessary) of administration

Nowhere are the differences more apparent than in general relief, the program financed entirely by each county Here the county has virtually carte blanche

Some but not all of the county welfare departments have manuals or sets of resolutions, drawn up by their boards of supervisors, to follow in administering general relief Occasionally it is not readily apparent that these guideposts are followed in detail

The 58 counties have 58 varieties of general relief programs—and in most of them the standards for general relief fall below the minimum standards for any of the categorical aid programs

In general those eligible for general relief fall into one of the following groups

1 Needy elderly persons who are aliens and unemployable, or who have not yet attained the age of 65
2 Physically or mentally incapacitated persons not eligible for categorical aids
3 Applicants for one of the categorical aids who need assistance while their eligibility is being determined

4 Needy employable persons (single or family) who are temporarily in need of aid

5 Needy transients

Some counties restrict eligibility almost entirely to unemployables and give only emergency or seasonal aid to employables They call the unemployable group the "hard core" of the general relief loads

There are definite seasonal trends in the general relief program, especially where agriculture predominates Also, because of crop cycles, this trend varies in different parts of the State Any large-scale unemployment, such as factory layoffs whether seasonal or not, tends to increase a county's general relief load

The employable person applying for aid is referred to county work projects — where these exist — or to the state employment office, or may be referred directly to a job that someone in the welfare office knows of

Where general relief is necessary, a few counties give cash grants plus a grocery order, many confine aid to grocery orders only, some combine grocery orders with surplus commodities County welfare departments operating commissaries give orders on the commissary for food and, if needed and in stock, for clothing and such articles as towels, sheets, blankets and occasionally, a mattress or other household furnishing Some counties depend on private donations of clothing to supply general relief recipients, and a few give clothing orders

Poorer counties provide less aid and are more restrictive in determining eligibility When local financial pressures increase, restrictions are tightened—so that when the needs of people increase, general assistance grants become less adequate

Though the categorical aid programs have been liberalized over the past 10 years, general relief standards set many years ago have not increased appreciably, so there is wide contrast between the aid granted a family on general relief and one receiving aid to needy children, for example in one county a general relief family gets an average grant of $22 per person for the month, whereas an ANC family receives $42 per person per month plus an average of $2 80 per person for medical care

Counties vary in the length of time they provide general relief In some counties it is "as long as the family is in need and employment is not available " In some, two weeks or a month is the limit It is by no means rare for an applicant to be told, if he is a transient "Here's enough for 10 gallons of gas to take you out of this county "

Supplementation

In the four categorical aid programs, where the county receives federal and state matching money, and in the programs where it gets state aid, there also is a marked variation in county contribution

A considerable difference among county "special needs" policies is partly responsible, and another big factor is the giving or denial of "supplemental aid"—over and above the amount that is shared by federal and/or state

In some counties the county supervisors vigorously oppose using county money for supplementation, here supplementation may run

as low as $10 to $30 total county outlay for a month, or even zero, while other counties with comparable population and caseloads may supplement to a total extent of $5,000 to $35,000 a month

In June, 1960, supplemental aid by all counties for the four categorical aid programs reached a total of $343,284 The range was from zero in some counties to a high of $73,399 in ANC cases, and from zero to a high of $53,573 in Old Age Security

Caseloads and Costs

There is so much talk of welfare caseloads and costs that one might think the one was a direct determinant of the other Not so The two are related, but not in easily understood fashion. There are no State-set standards or measuring sticks for caseloads in the county offices

In each county the cost per case for the different categorical aids varies The largest proportion of the total costs is for OAS and ANC But the highest cost per case is for the Aid to Totally Disabled program

As among counties, the cost per case for any category varies for reasons we have seen The least cost-per-case difference among counties is in the OAS program, but even this is 54 percent higher in some counties than in others.

The number of cases a social worker carries runs all the way from 140 to 260 in OAS, 25 to 100 in ANC; 12 to 100 in AB; 2 to 25 in ATD And it runs from 75 to 170 in General Relief The average time taken by counties for processing a case from the filing of the application until the applicant receives his first check runs from 10 to 45 days in OAS; from 10 to 60 days in ANC; from 27 to 45 in AB, sometimes six months in ATD

Many elements influence the size of a caseload per worker In some counties the total number of recipients receiving aid in a specific category justifies a worker having a specialized group of cases (all OAS, or all ANC, etc) In counties with smaller numbers of recipients one worker may carry two or more of the categorical aids plus general relief, and if geographical location of recipients is a problem, one worker may handle all the categorical aid cases plus general relief cases for an area that is remote or hard to reach.

The content of the social worker's job changes from time to time—duties are added or taken away as changes are made in the law, in organization of the office, in policies regarding home visits, in frequency of recertifications, and in other methods of work All this affects the caseload per worker

The amount of time a worker devotes to telephone calls, letter writing, office contacts or outside visits pertaining to a case, fluctuates widely—although the actual number of days a worker spends in the office and in the field is fairly constant among the counties—two days in the field; three in the office, is the general pattern

Some offices use trained social workers for processes handled in other offices by clerical help In some, the social worker sees the aid applicant immediately, in others, by appointment later in the office or at his home

In many offices the social worker spends much time doing paper work A large part of this is the filling out of forms prescribed by the State Welfare Department; part is the handling of forms adopted by

the county for its own use One county welfare department handles altogether 1,000 forms

A record is kept of each case The social worker may dictate case-record material to a stenographer direct or via dictaphone, or she may type her own records, or may write records in longhand for a stenographer to type

Depending partly on the quality of her supervision, she may produce narrative records that are too long and repetitious, or too sketchy to be of much use; or she may do a competent job, telling the story clearly and concisely, without repeating all details already recorded on forms

In some counties there is a routine bank and property check on all OAS and/or ANC and GR cases In other counties no check is made or made only on certain cases The checking may be done by (1) social worker, (2) a clerical staff member, (3) special property and bank staff member, (4) by mail

Caseload per worker is not an accurate measure of either amount or quality of work accomplished with the recipients Quality of work done depends upon the ability, knowledge and training of the worker; quantity of work depends upon responsibilities of the worker other than direct casework with the clients

Usually administrative costs are lowest where caseloads are highest However, low caseloads do not necessarily mean a better job is being done with clients The low-cost-per-case county is not necessarily the most efficiently handled, since this may reflect poor service with a possibility of increased caseloads at a later date

A county with high administrative cost can argue that it reflects greater service to the recipient and is thus justified This is an intangible factor and is a difficult contention to argue with Counties with the highest administrative costs per case month, and the lowest case loads, seem to provide for a greater range of recipient needs; greater recognition of individual problems; more elaborate procedures for establishing eligibility and the amount of grant, more frequent visits with a consequence of more changes in grants

Child Services

In some counties services to children are much more extensive than in others Services are given not only to the child who is without the protection and care of his own family, but also to the child living with his family under conditions that thwart health, educational or emotional development In addition to finding and licensing boarding homes (day-care and full-time), workers give counsel to families, assist the child with behaviour problems, and help interpret to the community the economic and social hazards that threaten family security.

Despite interdepartmental agreements between the County Welfare Department and the Probation Department in regard to the type of services each department will provide, in all but a few counties there remain overlapping, duplication, and lack of co-ordination of methods and procedures in the services This is especially true in cases of the delinquent child on an ANC grant

In some counties children who are court wards (delinquent, dependent, or neglected) and eligible for ANC are placed in foster homes and

receive supervision by the probation department In other counties, delinquent children eligible for ANC are placed and supervised by the probation department, and the neglected and dependent children, some of whom may be wards of the court, are under supervision of the welfare department In a few counties all children receiving assistance under ANC, whether dependent, neglected or delinquent, are placed and supervised by the welfare department

Types of shelter care for children who are delinquent, dependent or neglected, vary widely among the counties They range from quarters in juvenile hall, jail, county hospital, to special receiving homes and subsidized foster homes

Boarding Homes

Counties have responsibility for one service which is not giving assistance—i e , licensing and supervision of boarding homes for children and adults In both programs basic rates in boarding homes vary among the counties

Board and care rates for recipients of OAS and vary from $60 to $250 in the different counties If the cost of care in boarding home exceeds the OAS recipient's grant and income (which he controls and pays to the operator) some counties supplement with county funds up to $150 a month, the maximum set by the State as a standard amount In unusual circumstances a county may be obliged to pay more than the standard rate, sometimes as high as $250 a month

Basic rates established by the counties, in boarding homes for children vary from $45 to $85 among the 58 counties This variation is due to several factors

(1) Many counties pay a higher than basic rate for children with special problems, physical, mental or emotional

(2) In some counties, the basic rates *include* necessary clothing; in other counties, the rate is supplemented by a clothing allowance

(3) Age of child is a factor in most counties—but in setting up food schedules, counties differ in their age/sex groupings of children

(4) Larger counties tend to establish rates by ordinance, smaller counties tend to bargain

The State Department of Social Welfare does not set a standard of assistance in the boarding home program of ANC as it does in the family program The state department may delegate the function of licensing boarding homes to county welfare departments, in which case it reimburses the county from the General Fund for full costs up to a limit of $65 per new or renewal license issued

The State Welfare Department also has the authority to license county welfare departments to do either or both types of adoption program (1) relinquishment adoptions, (2) independent adoptions, and reimburses the county for administration and cost of preliminary care in adoption cases, from the General Fund The adoption program is supervised and controlled by the State Department of Social Welfare

Staffs

In some counties the size of total staff depends on the size of caseloads, in others on the amount of funds available

The ratio of professional to clerical workers in the county welfare departments varies from 1 3 to 1 4, among the professional workers the ratio of supervisors to social workers varies from 1 2 to 1 8 5

The *average salary* paid caseworkers and casework supervisors in counties is highest in the Los Angeles area, lowest in the Sacramento area Staff turnover, however, does not vary greatly among the counties in the three areas It is about one-fourth to one-third of total staff per year This high turnover does not seem to be due entirely to low salaries, although that certainly enters into the situation It takes about six months for a new worker to learn the basic factors relating to eligibility and determination of grants, because of the complexity of laws and rules under which a county office must operate If because of large waiting uncovered caseloads, a new, untrained worker is required to take on a considerable amount of responsibility for coping with behavior and marital problems, in addition to economic dependency, of applicants for aid, the worker may decide this job is too frustrating, and decide to go into some other field of work offering quicker opportunity for personal satisfaction in a job completed

The lack of workers trained in social work techniques is one of the serious problems of county welfare departments Social work training, while not the answer to all welfare problems, does enable an intelligent worker to do a better job of rehabilitation and guidance toward restoring aid recipients to self-maintenance

In many county agencies the staff is largely made up of mature people who have families and live in the community They may be former teachers, nurses, businessmen or women, but seldom more than 1 percent are graduate social workers The wonder is that some of the offices can perform as well as they do If workers could acquire well-planned, sound training in social welfare there is not much doubt that the cost of such training would be more than offset by the saving in aid payments alone, to say nothing of other advantages not so easily measurable in dollars and cents

Training

The cost to a county for training each new social worker has been variously estimated by counties at from $500 to $1,800 This is a considerable amount to invest in a person who does not remain with the county welfare department more than a year or two

The State Department of Social Welfare has no funds available for public assistance scholarships or professional training of caseworkers However, the federal government offers two opportunities for training

(1) It gives a limited number of scholarships on child welfare service funds In California 66 such scholarships were awarded to county public assistance workers in the past five years (September, 1954, to September, 1959)

(2) The federal government matches state funds on a 50-50 basis to grant "leave with pay" to provide professional education for members of county welfare staffs Only two counties have availed themselves

of this help, for a total of six employees In several cases well-qualified workers offered educational leave with pay under this plan were unable to accept because they could not fulfill Welfare and Institutions Code Section 300 requiring bond to guarantee their return to their county agency for two years or refund the salary paid them on leave

Approximately 250 caseworkers have taken time from their jobs and financed their additional education themselves during this five-year period

LOS ANGELES COUNTY

Los Angeles County is, of course, subject to all the complexities of law and regulation that govern welfare administration in the 19 smaller counties surveyed And it has had to add its own complex of welfare administration.

Yet, by and large, it has dealt very skillfully with its immense problem and is constantly striving for improvement.

Los Angeles County, with 38 4 percent (6,078,130) of the State's population, handles 40 percent of California welfare disbursements One out of every 24 of its residents receives some form of public assistance (April, 1960)

The bureau of public assistance, as the county welfare department is called, has 15 district offices and nine subdistrict offices through which it decentralizes aid for the convenience of applicants Each of the 15 district offices handles more recipients per month than the monthly caseload of each of 30 of the 58 California counties

Only four states in the nation have more recipients of Old Age Security or Aid to the Blind than does Los Angeles County, though 29 states have a higher number of Aid to Needy Children recipients

Los Angeles County Costs

In fiscal 1958-59 Los Angeles spent $195,766,455 for welfare programs, financed thus:

Federal	$83,819,073	(42 8%)
State	72,084,059	(36 8%)
County	39,863,323	(20 3%)

Of the grand total, administration took $21,011,429—10 73 percent And of this amount salaries of employees (3,483 in June, 1959) accounted for $15,706,838.

The estimated annual cost per case of administering welfare programs during the fiscal year 1958-1959 is shown in the following table

Administrative Costs—Fiscal Year 1958-1959

	Annual cost administration	*Annual cost per case*
Old Age Security	$7,349,909	$5 52
Aid to Needy Blind	538,598	7 39
Aid to Partially Self-supporting Blind	8,747	7 69
Aid to Needy Children—Family Groups	7,132,779	24 03
Aid to Needy Children—Boarding Homes and Institutions	233,346	6 61 per child
Aid to Totally Disabled	1,374,471	71 07 *
General Relief	4,173,579	20 91

* Unrealistic cost, due to lack of time for stabilization of new program

The total per capita cost of welfare in Los Angeles County for the fiscal year 1958-1959 was $32 98

The State Medical Care Program increased public assistance disbursements in Los Angeles County by $15,000,000, and raised administrative costs by $1,000,000. The increases in grants to aged and blind effective in January, 1960, increased disbursements in Los Angeles County some $7,000,000

Program costs for the month of June, 1960, were as follows

Program Costs—Month of June, 1960

	Recipients	*Expenditures*	*Average monthly aid*	*County supplemental*
OAS	102,435	$9,259,316	78.46	$387
ANC				
Children	64,032			
Relatives	18,391			
FG (cases)	23,859	3,393,632	(Per child 54 13) (Per case 151 48)	73,394
BH	3,530	315,995	73 87	52,183
AB	5,351	573,712	100.63	105
APSB	71	7,806	112 56	--
ATD	3,394	299,074	85 92	1,533
GR	19,242	729,582	49 04	191,539 * 538,046 †

* Aid in kind
† Aid in cash

Additional expenditures under County General Relief.

Boarding home care	(Adults (Children	$42,028) 12,157)	Trans	$6,442
Transient		143	Other	7,935

County supplementation is primarily in ANC. Supplemental needs in this category have been as high as $100,000 in one month

Administration

The county's welfare director, headquartered at the central administrative office, is assisted in his work of direction by five assistants and various divisions: Administrative Service Division, Blind Division, Child Welfare Services Division, Training Division, Medical Care Division, Special Services Division. Expert help in each of these divisions is an advantage that many of California's counties do not enjoy

The Child Welfare Services Division, for example, besides having a central director and assistant director, has supervisors of child welfare in nine district offices. There are altogether 88 child welfare workers, all well qualified This division is directing a two-to-three-year pilot study in one district office to determine the county's need for protective services and how they can best be given The county supervisors put up $32,000 a year for this study, which began April 1, 1958. The study staff includes a supervisor, three child welfare workers and two clerical workers, and the caseloads are limited to 20 families per worker

The Training Division with a director and nine training supervisors, plans, co-ordinates and carries out the various training programs for the total personnel of the Public Assistance Bureau Its inservice training includes orientation for newly employed workers The division also

gives field supervision to graduate and undergraduate students of social welfare in eight local universities and colleges

The Medical Care Division has a staff of consultant doctors from medicine, osteopathy, chiropractic and dentistry These consultants, under the supervision of a medical director, review bills submitted by some 7,500 participating practitioners to insure that the treatment paid for from the Medical Care Fund is in conformity with ethical practice They work closely with their professional associations During the 1958-1959 fiscal year, the Medical Care Division reviewed approximately 2½ million statements and prescriptions, and paid 15 million dollars from the Medical Care Fund Each month 200,000 bills and prescriptions are received from some 7,000 doctors and 1,500 pharmacies Each month 1¼ million dollars for treatment and supplies is paid on behalf of 60,000 persons

A *Bureau of Adoptions* established as a separate agency in 1949 by the board of supervisors provides services for the entire county through a main office and two branch offices This bureau handles both independent adoptions and relinquishments The relinquishment program offers counseling to parents considering whether to let their child be adopted, cares for the child pending final decision, places the child in a carefully selected home The independent adoption program studies each family petitioning to adopt a child placed by, or at the direction of the natural parent, reports to the superior court the facts in the case and the opinion of the bureau as to whether an adoption should be approved

During fiscal 1958-1959 the relinquishment program accepted for study 1,190 mothers and children In the independent adoption program 1,402 petitions were recommended for approval The cost of independent adoptions was $276,196 This expenditure was reimbursed by the State Department of Social Welfare

Fees totaling $129,656 were collected from adopting parents and applied against administrative expenses of the bureau

The placement of hard-to-place children is one of the outstanding functions of this agency These are children with physical handicaps older children, and children of minority groups, many of whom formerly were cared for in paid boarding homes dependent upon public support during their lifetime, or until they were able to earn enough to support themselves

Licensing of boarding homes and institutions for children and adults is delegated by the State Department to the Bureau of Licensing administered by the Los Angeles County Charities

The Bureau of Public Assistance maintains a central clothing office in Los Angeles Aid recipients in need of clothing can go to the store and select it, then order it sent to the district office for him or have it sent to his home (welfare pays the postage) The maintenance of this central clothing office, instead of the issuance of clothing orders usable at clothing stores in the applicants' home districts, has raised some feasibility questions in the minds of some in the bureau

There is considerable variation among the 15 district offices in the methods used in processing welfare cases The variation is not extreme, however, when differences in caseloads, size of staffs, location and community makeup are allowed for There appears to be uniform agree-

ment on interpretation of rules and regulations and on other information issued to district offices by the central organization There also seems to be uniform equity in the way applicants are treated

General Relief

Los Angeles County leans to the generous side in its general relief program The general relief family budget, set up by the Administrative Services Division and approved by the board of supervisors, is similar to the ANC budget

Recipients who are unable to handle cash get aid in kind that is, grocery orders, clothing orders, direct payments of rent to landlords Single, unattached needy men are given meal and lodging tickets or sent to one of the camps—Warm Springs or Acton—that provide custodial care and rehabilitation

During the 1958-59 fiscal year 138,620 grocery orders were issued These were handled through direct teletype with the larger district offices, enabling the recipient to receive his order in person immediately and giving simultaneous record to the central accounting office where orders must be processed for payment to vendors

Indigent nonresidents receive aid pending return to legal residence outside the county, 2,386 persons were returned to their places of legal residence during 1958-59

For residents there is no time limit on general relief, but the recipient must repay any amount he receives

Every employable applicant is expected to continue to search for private employment Pending that as a condition of receiving aid, he is required to work on a work project Work projects have the dual purpose of keeping the indigent from being idle and of helping to establish work habits and self-respect Fifty-four work projects were operated in 1958-59 in connection with other county departments and bureaus · roads, parks and recreation, probation library, hospitals and so on, they were noncompetitive and did not replace civil service employees

When an employable is granted general relief he receives lunch money and money for transportation to the project for two weeks For every hour he works he earns $1 25, and the amount he owes general relief is deducted from his paycheck As long as he is jobless he may work on a project as many days per month as his GR budget calls for —up to 17 days per month

Paper Work

Paper work in the Los Angeles County district welfare offices is costly and time-consuming There are now over 1,000 forms to be filled out in various phases of the programs The local administrator has tried to simplify procedures, and has made surprising savings against the increasing weight of regulatory instructions from above

He keeps operations under constant analysis from an organization and methods standpoint By improved systems and procedures the bureau has been able to eliminate 203 positions, mainly clerical, in the last five years, the accumulated saving on this alone has been estimated at $1,500,000

At the same time services to clients have been increased by simplification and speeding up The Administrative Services Division is adapting electronic data-processing to welfare operations to further reduce administrative costs

One of the problems of cost stems from the need, under present law and regulations, to make numerous changes of grant from month to month. Approximately 500,000 changes of grant were processed in Los Angeles County in fiscal 1959-60.

A staff official comments "Assuming the administrative cost of these actions to be $10 per change, it is readily apparent that upwards of $5,000,000 per year is consumed by a process which amounts to nothing more than increasing or decreasing recipients' grants by relatively nominal amounts."

UNIFIED WELFARE PLAN

There is almost 100 percent agreement among county welfare directors that major redirection of public welfare programs must take place if they are to meet the criticisms now being leveled at these programs, including criticisms which directors themselves voice.

Several experimental studies are now going on in county welfare departments, and directors watch these with interest They are not content, however, to wait for the outcome of these before testing other possibilities also

So we find the interest of a number of directors as well as legislators stimulated by a proposal, by Dr Donald Howard, now referred to as the Unified Welfare Plan.

The proposal, made to this Subcommittee on Welfare Costs, was that a state fund be established to encourage counties in developing projects to demonstrate the feasibility and desirability of unified public assistance and social welfare services.

Impressed by the interest shown in the Unified Welfare Plan, the chairman of this subcommittee asked a number of people to participate in a public discussion in Los Angeles, June 22, 1960, for the purpose of getting a clear idea of what needed to be considered with a view to drawing up enabling legislation for the 1961 Session of the Legislature.

The discussion was more or less along the lines proposed in the Unified Welfare Plan for setting up pilot studies in a few counties if that seemed advisable.

The Director of the State Department of Social Welfare; the Chairman of the Social Welfare Board, representatives of the County Supervisors' Association, and of the California Taxpayers' Association; the president of the County Welfare Directors' Association were among those taking part in the discussion

There seemed to be general agreement that there is need for improvement in our public welfare system Can we save money without injury to our present program? Can we have a better program at no increase in cost? Can we have a very much better program that would mean some extra cost at the start but a great possible saving, by preventive social action, in the future?

Until such time as the Unified Welfare Plan has been tested in California, we have no way of knowing the possible advantages or disadvantages of such a plan, and until it has been studied on such a practical basis we cannot draw valid conclusions as to its merit

Therefore, it was decided to ask a number of especially interested counties to advance specific suggestions for pilot or demonstration studies, with a thorough understanding worked out by the county directors and county supervisors as to who will bear the cost, state and/or county; type of controls necessary, staffing patterns in the county welfare office (will additional staff be needed, or merely redirection of present staff?)

The county supervisors in the selected counties have been asked to appoint their county welfare director, to serve on a committee to evaluate the feasibility of the Unified Welfare Plan, and develop for the consideration of the Subcommittee on Welfare Costs a detailed and specific plan for the conduct of such pilot or demonstration projects.

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INTERIM COMMITTEE ON WAYS AND MEANS
JESSE M. UNRUH, *Chairman*

SUBCOMMITTEE ON COSTS OF EDUCATIONAL TELEVISION

RECOMMENDATIONS FOR TELEVISION IN CALIFORNIA HIGHER EDUCATION

MEMBERS OF THE SUBCOMMITTEE

CHARLES J CONRAD, *Chairman*

BRUCE F. ALLEN
CARLOS BEE
JOHN L E COLLIER
PAULINE L. DAVIS
THOMAS J MacBRIDE
WILLIAM A MUNNELL

LARRY MARGOLIS, *Committee Consultant*
MARION CERRELL, *Committee Secretary*
LAWRENCE W. FISHER, *Legislative Intern*

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ASSEMBLY
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HON CARLOS BEE
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Chief Clerk

COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
SACRAMENTO, January 2, 1961

HONORABLE RALPH M. BROWN
Speaker of the Assembly and
Honorable Members of the Assembly
Assembly Chambers, Sacramento, California

GENTLEMEN: Enclosed is the report on Educational Television in California Higher Education prepared in accordance with the provisions of House Resolution 326.24 by the Subcommittee on Educational Television of the Assembly Interim Committee on Ways and Means

I urge that the Legislature give careful attention to the recommendations contained herein.

Respectfully submitted,

JESSE M. UNRUH, *Chairman*

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, January 2, 1961

HONORABLE JESSE M. UNRUH
Chairman, the Assembly Interim
Committee on Ways and Means
California Legislature

DEAR MR UNRUH: Pursuant to your directive and in conformance with action taken by the Ways and Means Committee in reference to Items 84, 86 and 90 of the State Budget during the 1960 Budget Session, the Subcommittee on the Costs of Educational Television herewith submits its report on Educational Television in California Higher Education.

Contained herein are recommendations concerning the use of television in public institutions of higher learning. Also contained herein is an account of the hearing which was held to examine into what uses have been made of educational television in California in the past and what projects educators feel should be designed for educational television in the future

Respectfully submitted,

CHARLES J. CONRAD, *Chairman*

WILLIAM A. MUNNELL
CARLOS BEE
JOHN L. E. COLLIER
PAULINE L. DAVIS
THOMAS J. MACBRIDE

INTRODUCTION

The Master Plan for Higher Education which the State Legislature approved during the 1960 session points up the fact that within the next six years college enrollments will double in California The role which television will play in meeting the problems posed by this scholastic explosion is only now beginning to emerge in the State

Since 1955 experiments have been conducted in a few institutions to determine the efficacy of Educational Television Out of these experiments has come a point upon which almost everyone involved in education agrees *television can be used to teach* The results of these experiments have indicated that in most presentation courses televised instruction is at least as effective as conventional instruction

Thus television may be a means through which faculty resources will be better utilized in the state's educational institutions Present trends indicate that in the future fewer and fewer qualified instructors will be available to teach the ever-increasing number of students who are going to be involved in California higher education If television will enable one instructor to lecture to 400 students at a time—and lecture effectively—this would be a more efficient use of his talents than eight lectures to classes of 50 students each and would certainly be preferable to limiting the courses's enrollment because of the lack of available instructors to teach it.

This should not imply that television would be used to replace the teacher Rather, television can supplement his work and make it possible to ease the demands for *additional* qualified instructors who will be more and more difficult to find as the demand for them increases No faculty member presently employed, however, would find his position in jeopardy because of television Neither will ETV eliminate the future need for qualified instructors, but, if used wisely, it may help to close the gap between the number of faculty needed by our State institutions and the number which will be available

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PROCEDURE

The Subcommittee on the costs of Educational Television, in its study of the role ETV should play in California higher education, attempted to learn what problems were involved in educational television and gave particular attention to the cost factors which must be considered by the State before undertaking wholesale ETV operations in public institutions of higher learning.

A hearing was held at San Jose State College on October 13, 1960, to learn the views of representatives of the 18 state colleges in California as well as those of representatives of the University of California and Los Angeles City College, both of which have conducted experiments in educational television. Members of the staff of the Department of Education also testified about the State program for ETV and its projection for the future

CONCLUSIONS

From the testimony at the hearing and other background material secured from foundations and institutions throughout the country, the subcommittee has concluded that television should play an important role in higher education To do this it must be used wisely in courses where it can be effective It should be an instrument for teaching a sufficient number of students so that its cost is kept down to a point where it will effect a savings in the per-student cost of education in California

The subcommittee was impressed by the many possibilities which ETV holds for experimentation with new ideas in presenting education Educational television is in a particularly favorable position to explore new fields and methods in the communication of ideas and learning This experimentation should be continued by the various institutions which have and will have television equipment and, where possible, it should be broadened and new areas and techniques should be explored

The subcommittee agreed, however, that the development of ETV has been somewhat stultified by the lack of any overall plan for its use in California Much has been done individually by various schools in an experimental vein, but an organized program of priorities has not yet been established The subcommittee concluded that the experimentation was valuable and should be continued, but State schools must now move ahead under an organized program through which they can more fully utilize the television equipment which may be made available to them

RECOMMENDATIONS

APPLICABILITY

Recommendation: Television should be introduced gradually into a school's curriculum and no attempt should be made to apply it immediately in all classes It would appear that not all courses can easily be adapted for television (see below) Therefore, a set of general criteria should be drawn up at each school which can be used to determine whether or not a new course can be taught effectively via ETV

Reason: ETV's success is dependent upon careful planning by both the administration and faculty of a college in order that it may gain acceptance by faculty and students as a responsible educational procedure It must be integrated into the curriculum in a manner which will extend the quality of teaching At one junior college the President attempted to introduce a comprehensive program of filmed television courses without a proper period of faculty orientation Violent objections against this program were raised by the faculty Ultimately, the school's president resigned and the program at the school was greatly curtailed

In addition, television must fit the character of the course Such classes as freshman English, mathematics, psychology and basic courses in the curricula have been very effective when taught by ETV Other upper division classes which involve classroom discussion as a vital factor have been less effective when taught by television As one witness put it, "There are many courses which can be handled entirely by television, but in each case it is false economy to apply television arbitrarily to any given course of instruction until you know what would be the proper balance between the several methods of instruction"

Recommendation: In order to justify financially the use of a complex Educational Television system, the use of television normally should be limited to courses in which at least 200 students are enrolled

Reason: Studies in various universities across the country have shown that the economic advantage of using television begins with classes of about 200 students and increases progressively from this point as the number of students in TV sections increases The cost of teaching fewer than 100 students by television is much higher than by conventional procedures.

In addition, the growing acceptance of television has changed many of the old ideas about "fixed student-teacher ratios" Recent studies have shown that students do well on examinations and in many cases better if taught in larger classes by *superior teachers* Thus the old shibboleth that the only good classes are those with a limited enrollment would not seem to hold true What can be verified is that the quality

of the teacher is the paramount consideration As one educator, Dr Alvin O Eurich of the Ford Foundation put it, "It is hard to imagine anything more stultifying than a bad teacher in a small class"

Recommendation: The State Purchasing Department should retain an expert who has a detailed knowledge of television equipment to handle the purchasing of television components for State institutions of higher learning and to recommend the type of equipment which would best fit each school's program

Reason: In the past, there has been no central purchasing of television equipment Thus, the State has not been able to effect the maximum economy which comes with central purchasing for all schools and departments Witnesses testified that "the schools would have benefited had there been an expert buyer available to choose the equipment" The use of such an expert would also tend to insure a greater compatibility of television equipment because central purchasing would secure various component parts of the same type which would then be interchangeable In addition, he would be able to keep abreast of the market and thus avoid securing equipment which would rapidly become obsolete

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Recommendation: The agent who is responsible for the purchasing of television equipment should, at present, restrict state buying of closed-circuit equipment to Vidicon television cameras

In the future, some schools may wish to undertake open circuit broadcasting An endeavor of this type should be limited to a very few schools whose geographic location, equipment and enrollment might make their situation peculiarly ideal for open circuit broadcasting In such cases the use of Image Orthicon equipment might then be justified

Reason: Two types of equipment currently are available—Vidicon and Image Orthicon Of the two the Image Orthicon is far costlier In experiments with closed-circuit television in several colleges and universities it has been proven that Vidicon cameras now available are entirely satisfactory for closed-circuit educational uses as well as for open-circuit broadcasting, kinescope recording and the presentation of motion pictures Because economy is a prime factor in State budgeting, it is inadvisable to spend a considerable amount of money for equipment which would only slightly improve TV broadcasting in a college's television operation

JUNIOR COLLEGES

Recommendation: Section 11251 of the State Education Code should be revised in order to permit state apportionment funds to be paid to junior colleges for students who may be taking classes taught via educational television without a certified teacher actually being in the room with each class This revision would apply to local elementary and secondary schools as well

Reason: It has been adequately demonstrated that students can learn from televised instruction in large class groups without a certified teacher being physically present in the room One of the long range purposes of introducing television into our schools as a teaching tool

is to alleviate the constantly spiraling costs of education. If it is necessary to have a paid, certified teacher in each classroom receiving a broadcast via ETV, this not only will greatly increase the cost of using the medium, but it also will vitiate a most important asset TV's ability to extend the teaching talents of one instructor from a single studio to several classrooms simultaneously

UNIVERSITY OF CALIFORNIA

Recommendation: The University of California has budgeted funds for educational television on both its Berkeley and Los Angeles campuses Because of its greater emphasis on graduate courses — which are more complex and therefore need a high level of classroom discussion—the University should continue its efforts to use television where it can improve the quality of a course—and in lower division classes where large numbers of students are enrolled in general courses in which television can be used effectively as the primary means of instruction

The University, through the Coordinating Council for Higher Education, should also make available to other State institutions of higher learning whatever filmed television resources it may develop which could be of value to these other schools

Reason: There are many courses where television can be used as a teaching aid rather than as the total means of instruction Examples are courses in medicine, where a camera can bring a delicate operation before the eyes of the class without interfering with the surgeon—and courses in education through which groups of student teachers can observe, via television, instructors working in actual classroom situations without causing any interruption to the class

In such courses as these and others instructors may make varied use of ETV even though it may be impractical to implement it as the total means of instruction

In lower division courses, there are many large classes in which television can be used to disseminate the course (as taught by one instructor) to several lecture halls filled with students The efficacy of this type of operation in presentation courses has been proven in many schools in recent years It has been repeatedly demonstrated that better instruction results when the teacher is given the opportunity to use his special talents more widely than he can in the conventional classroom

The University should cooperate with junior colleges and State colleges which may be equipped with TV facilities It has resources which are not duplicated in any of these institutions These schools can make use of these resources and give greater depth to their students' educational program by using kinescopes or video tape recordings of courses (or segments of courses) put together by the University of California

STATE COLLEGES

Recommendation: The State College Board of Trustees should develop an overall plan for educational television in California's State Colleges Today no such plan exists

Reason: Because television is an expensive operation, it should be so organized that colleges are not duplicating the work of one another when they could be doing individual work and pooling their unique resources. Thus an overall plan is needed to insure that educational television in the State colleges will have an orderly development and that each school will not receive TV equipment simply because money is available or a building has been constructed to house the equipment.

The State College system will, in the future, assume a major responsibility for undergraduate education in this State and television should become an extremely valuable teaching tool in these institutions. In order to insure that full value is received from ETV, a program should be set up delineating divisions of labor between the several colleges and specifying priorities for development throughout the State. ETV activity in each school should be organized so that it will fit into this State-wide plan. By so doing, greater economy would be effected and, at the same time, the individual resources of each institution would be more fully exploited.

Recommendation: A policy statement should be laid down by the State College Board of Trustees specifying how ETV will be used in each college under this overall plan. Each school should not embark on an occupational program of television training simply because the equipment is available.

Reason: Research has shown that the television industry can absorb only a few people who graduate as telecommunications majors each year. In addition, those schools which stress occupational programs (such as San Diego State College) place too little emphasis on instructional TV. Thus the television equipment is not being used as efficiently as it could be and maximum economy is not being realized. The primary mission of television in the State Colleges should be instruction—all occupational programs should be incidental to this. A few colleges may want to continue developing small programs for majors in educational television. With the growth in this area, schools and colleges may, in the future, be able to absorb some of the graduates trained in television for whom commercial stations do not have openings.

TEACHERS RIGHTS

Recommendation: The Coordinating Council for Higher Education and each State institution of higher learning should establish a policy regarding the rights of instructors who may be affected by the introduction of television as a teaching tool at their schools.

Reason: There are many problems concerning teachers rights involved with the development of educational television. This area, in the past, has been one of the big stumbling blocks in the way of the development of efficient and economical ETV programs in some schools. In order that those professors who teach via television (and therefore put a great deal more time into the background work involved in the development of an individual course) are compensated properly, such a policy should be established. It should delineate the advantages

which will accrue—such as a reduction in course load, a payment for the re-use of tapes and films, technical assistance in preparing each course for broadcast and other added benefits

CONCLUSION

Recommendation: Statewide cooperation on ETV between all the institutions of higher learning should be stressed through the Coordinating Council for Higher Education Outstanding programs which may be developed at one institution should be shared with as many other schools as may find them valuable The Coordinating Council should study the feasibility of organizing a State Television Library where the best in educational kinescopes and video-tape-recordings could be catalogued, filed and made available to schools which could make practical use of these resources in supplementing their programs

Reason: Such cooperation will make for a more efficient use of ETV throughout the State and will more fully exploit the individual resources of each institution In addition, students from one school will be able to enjoy the talents of the outstanding professors from the several colleges and the University

A State Television Library would act as a central repository and focal point from which a school could obtain various specialized material which might not be immediately available on its own campus This supplemental material could broaden the programs which exist at the various institutions throughout the State It would also reduce the total cost of California's overall ETV program by making individual kinescopes or video-tape-recordings available to many institutions

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Recommendation: The Legislature in the future may wish to revise section 9551 and section 20255 of the Education Code to enable State colleges and/or junior colleges to make use of those open-circuit television channels that have been set aside by the Federal Communications Commission for educational use and which eventually may be needed in public education to broadcast extension courses. Such a broadcasting operation should only be undertaken as a part of an overall plan for educational television in California and with the approval of the State Legislature

Reason: Because of the projected increase in enrollments at State colleges and junior colleges, it is possible in the future that there will not be sufficient classroom space to handle the student population In such a case it will become necessary to educate students in locations other than college classrooms Open-circuit broadcasting via educational television channels might help to solve this problem

In addition, it could make the wisdom of the colleges available to the general public Educational television holds out nearly unlimited possibilities for the dissemination of fresh ideas and the best of what has been thought in the past

Because setting up an open-circuit operation is extremely expensive (average between $370,000 and $550,000 according to latest figures) no school should consider undertaking such a project without thorough study and only after other important priorities have been met

Recommendation: The Coordinating Council for Higher Education should set up a standing committee which would undertake a continuing study of the advances being made in educational television throughout the country This committee should make regular recommendations to the Coordinating Council on how these advances can be adopted in California's institutions of higher learning. In addition, the committee should determine how these technological advances may effect economies in our state educational system

Reason: To date there has been little coordination of the various operations in educational television which have developed in public higher education in California Such a committee under the jurisdiction of the Coordinating Council could alleviate this problem by acting as a central information center and also as an advisory agency to State institutions It should assume the responsibility for insuring that efficient use is made of the new developments which may arise in the field of educational television in the future One of the great contributions which ETV can make in California is to effect economies in public education One educational administrator, Superintendent Joseph Hall of Dade County, Florida, noted before a Congressional Committee that his county had saved three million dollars in school construction in the three years it had been using television instruction Furthermore, he anticipates saving twelve million dollars in the next five years During the year 1960, the county has saved $300,000 in teachers' salaries which has paid the cost of televised instruction and Dr Hall added, "the quality of the school program has improved "

SUMMARY OF PUBLIC HEARING ON EDUCATIONAL TELEVISION

HELD—OCTOBER 13, 1960

San Jose State College—San Jose, Calif.

Chairman Charles J Conrad convened the meeting with opening remarks which set down the hearing's purpose and delineated the specific areas in which the Ways and Means Committee is interested

"We are here to study the problems involved in educational television and particularly the costs which must be met by the State in financing ETV operations in our public institutions of higher learning," he pointed out

Early in the hearing, Dr Robert O Hall of Alameda State College presented an overview of the status of educational television throughout the United States

Pointing to the "tremendous growth" since ETV's inception shortly after the Korean War, he told the subcommittee that today there are 47 open-circuit stations in operation in this country which are devoted strictly to education

In U S schools and colleges, several hundred closed-circuit operations are to be found "They vary from the simple use of television as an opaque projector to a complete, closed-circuit instructional program" Dr Hall pointed out that the difference between closed and open-circuit operations lies in the fact that closed-circuit pictures are transmitted by cable and may be seen only by people viewing a set connected to one of the cables Open-circuit images are broadcast by transmitters, may be seen by the public and the stations broadcasting the images must be licensed by the Federal Communications Commission

"In education, the big bulk of open-circuit ETV has been found in primary and secondary schools," he went on "Most instructional television in higher education has been closed-circuit You have greater specialization in higher education and thus work with the smaller groups where closed-circuit operations are more efficient"

Dr Dorothy Knoell of the State Department of Education, reviewing for the subcommittee the background of ETV in California higher education, pointed out that its history goes back to the early 1950's when the State colleges were working with "no State support at all—working in individual communities with the commercial stations"

The State first appropriated a major amount for educational television in 1957 Two closed-circuit projects in the State colleges—one at San Jose and the other at San Diego—were given funds to begin operating In 1958 and 1959, further appropriations for ETV were cut from the Governor's budget In 1960, however, funds were once again made available to continue the progress of ETV in the State colleges

Dr Knoell pointed out that with this appropriation the colleges are once again moving ahead "If we are successful, we should have seven State colleges equipped with closed-circuit equipment within a year"

HAS ETV PROVEN ITSELF?

Dr Richard Lewis, head of the audio-visual department at San Jose State College believes it has

"We know that we have people who can teach directly in television We know that students can learn from television We are very confident of these things "

Dr Lewis pointed up the success of San Jose's program in student teaching Cameramen transmit an image from an actual classroom situation to an audience of college students majoring in education.

"Instead of having students running all over the country looking in the schools, all of them coming back with different experiences, we now can have as many as we want in one room and, guided by one instructor, they get an insight into the classroom which they could get in no other way "

Dr Lewis also cited the practicality of using TV to transmit, via coaxial cable, a demonstration performed in a limited space to a large group of students in another room ETV has been used in this manner in aeronautics and engineering courses at San Jose

Rudy Breitz, of the University of California at Los Angeles, pointed to the use of ETV in medicine where a number of students can watch an operation being performed without interfering with the work of the surgeon

Dr Hall cited nation-wide figures which show that more than 700 courses were given for credit last year over both closed and open-circuit stations in this country

DESIGN FOR THE FUTURE

Dr Kenneth Norberg of Sacramento State College, a school which expects to have its closed-circuit TV complex out of the planning stage and into operation next year, told the subcommittee that at his institution "we're interested in applying television to large courses primarily, but not necessarily exclusively, because we think some special things can be done in small course situations at times that would be very much worth the use of the equipment "

Norberg pointed out that in each case television must be adapted to the character of the course "In other words, if you have a course that meets three times a week, a three-unit course, it may be that in some cases it's better to use television twice a week and then go back to your small group discussion on the third meeting each week Or it may be in other cases that the proper proportion would be one-third TV and two-thirds by other methods I'm sure there are several courses which can be handled entirely by television, but in each case I think it's false economy to arbitarily apply television across the board to any given course of instruction until you know the proper balance between the several methods of instruction "

At Chico State College, which has been giving extension courses over the local commercial station for several years, ETV Director Hector Lee said that closed-circuit television also could be a great help in making up for the lack of qualified teachers in such fields as mathematics and psychology

"Math, particularly the more elementary, general types, could be handled by closed-circuit, so could psychology and we think that some kinds of freshman English could be I'm thinking particularly of the usual sub-freshman course that's preparatory to the regular freshman course"

At UCLA, ETV is emphasized as a teaching aide rather than a complete instructional tool "We want to provide leadership in the development of simplified techniques so that we can introduce television into the classroom for the improvement of teaching as it already exists." Director Bretz declared "So far we've found that TV is a visual aide that is really convenient and usable for the instructors—it will do almost anything the instructor wishes it to do"

Los Angeles State College, on the other hand, has been involved in an extension operation similar to that of Chico in the north L A currently broadcasts two courses (Children's Literature and Art, Music and Dance) over Station KCOP, a local commercial channel

Dr James Enochs told the subcommittee that "we do anticipate that we will be able to go on with our open-circuit program in Los Angeles But I would like to point out that the time available on commercial stations is getting less and less and the time we are able to rent at a reasonable rate is perhaps not the best hour for reaching the largest numbers of students Therefore, a closed-circuit operation is also essential to reach larger numbers of our own students on campus"

Dr Leo Cain of San Francisco State College declared that his institution would prefer to build their own ETV courses at their college for transmission over the school's closed-circuit system "Nevertheless, we feel our programs could then be made available for open-circuit telecasting through a device such as video tape"

Dr Cain stated that San Francisco State "has specific plans for developing certain courses by television and also plans to telecast certain aspects of other courses We feel that this should be done essentially by closed-circuit on the campus"

He pointed up the necessity of introducing closed-circuit operations onto a campus gradually "We are going to use the total facilities of the campus, including the instructional faculty, the radio-tv department, audio-visual and so forth and we believe that by introducing the medium gradually costs will be kept to a minimum"

San Francisco did its first work in *instructional* television in 1956 and continued for three years under a Ford Foundation grant

"We found that the instruction of college students can be carried on successfully by television and that the medium lends itself to instruction in such fields as English, social science, science, psychology and creative arts It also showed that superior high chool students could profit from college courses given by TV."

CO-ORDINATING ETV IN CALIFORNIA

Assemblyman John Collier suggested that the State might save money by equipping only "one central station at a specific state college" for the development of programs. Kinescopes or video tape recordings of these programs, he said, might then be shipped to State

colleges throughout California and the "master teachers" would then be made available to students from Arcata to San Diego at a savings to the taxpayers

He suggested that the "master teachers" could be brought to the central station from their various schools, film their courses and then return to their regular classes

Some of the educators objected that filming courses tended to "freeze" them and make it impossible for the professor to keep up to date with world events and the constant changes in his own area of study

Dr Enochs mentioned the possibility that a college might gain control of one of the as yet unused educational television channels set aside by the FCC "If we had an ETV station similar to KQED in San Francisco or KVIE in Sacramento we, and all the other colleges and public schools in the area, could share in the use of this station," he said "This would be of value to the public because we cannot anticipate that there will continue to be time on commercial stations for educational programs "

Dr Knoell recommended that a "*liaison committee under the Coordinating Council for Higher Education be set up to have jurisdiction (or at least some advisory powers) over educational television for higher education throughout the state* This committee would establish priorities for the equipping of ETV operations in the various state schools and decide where programs should be duplicated and where they should not be

"We have an educational planning office now in the Department of Education" she said, "with a specialist and two consultants There we have had the responsibility for working with the State colleges in the development of occupational television majors We also have worked with the colleges in the development of instructional television programs *We assume this function will go on under the new State College Board of Trustees* "

TEACHERS RIGHTS

The biggest problem arising out of any extensive use of ETV in California higher education will be that of teachers rights, Dr Knoell predicted Some of the questions she posed in this area were, "What is a proper course load for TV teachers? What kind of assistance should we give to TV instructors? What do we do about payment for re-use of TV tapes and films? What about one instructor whose course goes to ten institutions?"

Dr Robert Hall pointed out that teachers working on ETV projects "work longer, work harder " The total preparation is more difficult

Often too, as Consultant to the committee Larry Margolis pointed out, teachers object to the loss of the personal relationship between themselves and their students

Dr Dallas Tueller of Fresno State College, in speaking of the difficulties which his staff has encountered in attempting to set up an ETV program at Fresno, reported that once a professor has done one course for television he is reluctant to repeat the experience

"I think we have proven the point that there is a readiness of our able people to use this medium and to use it effectively But all have said that until there is provision for some reduction in teaching load and provision for the kind of assistance that you would get from a good audio-visual center where there is a graphic arts person available, they would not undertake it again "

Assemblyman Bert DeLotto asked if television might not tend to create a caste system in education where one group of teachers who give courses via television are better known and more highly paid—while the other group is relegated to a second-class status of leading discussion groups and instructing smaller classes

Witnesses agreed that this could well be a problem and, as Dr Cain of San Francisco State College put it, it will probably demand a policy decision on the part of the State college system when ETV is firmly established and might even demand "legislative action "

ABOUT MONEY

Witnesses agreed that in the future instructional television would foster economy and lower the cost-per-student in California higher education—but for the present, ETV is still an expensive operation

In the words of Dean Charles Trigg of Los Angeles City College, "Closed-circuit TV instruction has been more expensive than the conventional procedures using other audio-visual aids We feel, however, that there should be some way to utilize television to effect economies or to improve instruction or both "

Dr Hector Lee of Chico pointed out that "if we have 100 students in a class that ordinarily has 20 students to a section, we could spread the instructor to four equivalent sections via television and thus effect a savings "

President Cornelius Siemens told the subcommittee that "we at Humboldt State College have proceeded on the assumption that television equipment, if selected with care, can serve the functions of occupational training, teacher observation and other audio-visual and instructional uses Television equipment, however, cannot be a substitute for the classroom teacher though it can add and enrich classroom instruction And instruction by television, considering the highly technical personnel necessary to maintain and operate the equipment may, except in very large classes, prove as expensive as instruction by the classroom teacher "

At Sacramento State College, where an instructional television program has just come off the drawing boards, Dr Kenneth Norberg reported that the cost of the operation will be between $29,000 and $37,000 a year over the next five or six years "Thus our total expenditure for televised instruction in any given year is less than 1 percent of the total budget. We think if we can accomplish the results we have in mind, that this is a very modest expenditure for the values it will gain "

Los Angeles State College this year received an appropriation of $90,000 for ETV Dr James Enochs reported that $21,000 was for the rental of open-circuit time on local Station KCOP, $40,000 was for the closed-circuit equipment, two camera chains and a film camera

chain along with the accessory and auxiliary equipment which is involved, $11,000 was appropriated for the remodeling of the studio facilities and $16,000 was for personnel

Witnesses stressed that in order to effect economy it is always important to have advance planning Dr Cain pointed out "that while adequate equipment is necessary, adequate technical arrangements do not necessarily mean that the effective use of television as an instructional device will be guaranteed Success is determined by careful planning by both administration and faculty of the college in order that it may gain acceptance by both faculty and students as a responsible educational procedure It must be integrated into the instructional program in a manner that will extend and improve the quality of teaching "

At San Diego State College, where the total investment in equipment is valued at $200,000, the cost of operating the television center each year is $8,500

San Diego's Dr Kenneth Jones, in speaking of ETV's costs, stated his belief that "when instructional television is developed to its full potential in both open and closed-circuit dissemination, it may well reduce the estimated increase in the cost of education projected over the next ten years Comparable to commercial broadcasting, it depends upon the student load taught via the medium just as advertising and production costs are met in commercial television by the buyer potential of any given product that is reached through television It seems to me reasonable to believe that instructional television will compare quite favorably with the costs of operating and maintaining a major technical or scientific department within the school. The difference here is the difference of means to education rather than the ends of education

"Instructional television moneys will provide a dissemination of education rather than provide the knowledge per se "

THE NEED FOR AN EXPERT BUYER

As Committee Consultant Larry Margolis put it, "There is general agreement concerning the need for someone in the State Finance or Purchasing Department who is an expert on television equipment "

Dr. Knoell pointed out that there had been $35,000 in the Governor's budget for such a person and his staff, but this was cut out of the budget by the Legislature.

There has been no central purchasing in the past

According to Harold Strohmer of Chico State College, the equipment which has been agreed upon for State colleges is "compatible with commercial stations and could be used directly over open-circuit for broadcasting.

"There is cheaper equipment which is not compatible, but this has never been considered," he said, in reply to a question from Mr. Margolis asking if there was not a kind of equipment which will do only closed-circuit classroom instruction and nothing else

Like Dr Knoell, Los Angeles State College's Dr Enochs approved of central purchasing and told the subcommittee that "we would have benefited if we had had really expert help in the past "

OCCUPATIONAL TRAINING WITH ETV

According to Dr Dorothy Knoell, the State Department of Education "will not introduce an occupational program of television education unless it is in support of a strong ETV instructional program" She pointed out, however, that the Director of Finance had restricted budgeting last year to occupational programs only This policy has been changed now and the emphasis is being placed on instructional television, she said

In the two State colleges which have closed-circuit setups operating today, however, occupational programs are active San Jose State College more closely follows the formula which Dr Knoell said the Department of Education favors

There the equipment is used for instructional purposes An occupational program in television and radio exists under the aegis of the Speech and Drama Department

At San Diego State College the program in television is completely given over to occupational training and no budget exists for instructional uses

At Humboldt State College, which is soon to have closed-circuit equipment, money was provided for an occupational program after a language arts building was constructed to house the equipment

At Chico State College no occupational program exists and in the words of Dr Hector Lee, "we don't foresee one"

Dr Enochs reported that an occupational program will be instituted at Los Angeles State College when closed circuit equipment is installed "We feel we should try to put our emphasis upon the preparation of persons to work in educational television, however"

San Francisco State College hopes to integrate the two sides of its program "We intend to merge with the instructional program the technical help and advice which can be given to us by our professional training courses in television This will reduce costs" San Francisco State College has had a professional major in radio-television for eight years

Dr Knoell stressed that the occupational programs do not train technicians "It is a professional program to train people for the industry"

Legislative Intern Larry Fisher questioned whether there was a sufficient demand in the industry to absorb a large number of graduates trained for the television profession

Dr James Enochs replied that this was one reason the State has not proceeded as rapidly with the development of a professional program in radio-television He nevertheless expressed the hope that educational television operations in the future may be able to absorb a large number of professionally trained graduates

CONCLUSION

Witnesses were in agreement that television has a place in higher education, even though some schools have had difficulty implementing their ETV programs Dean Trigg of Los Angeles City College said that faculty opposition had forced a curtailment of his school's TV

operation Dr. Cain of San Francisco and Dr Lombard of Fresno both told the subcommittee that they have had difficulty securing staff to teach over television because there was no provision for added benefits such as a lessening of course load Nevertheless, each educator expressed optimism about the future of TV at his school

Dr. Lewis of San Jose State College, in summing up said; "Television will play an important role if we are wise and don't try to make it do everything If we try to make it do those things it can do well and then do it with a sufficient number of students so that the cost is down to a point where we're actually hoping to solve some of our problems, it will be of great value to education."

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VOLUME 21 NUMBER 4

CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

REPORT ON DEDICATED FUNDS

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

February 15, 1961

To the Speaker and Members of the Assembly

Your Interim Committee on Ways and Means in accordance with the provisions of House Resolution 326.24 herewith respectfully submits a report on Dedicated Funds.

Because of general concern over the restrictions on the Governor and the Legislature in planning and approving a realistic expenditure budget, your Committee assigned this subject for special study by the consulting firm of Griffenhagen-Kroeger, Inc, specialists in public administration and finance. Mr. Louis J. Kroeger and Mr. Hugh J. Reber represented the firm in this study.

Your Committee held conference sessions with the consultants on early drafts of the report and a public hearing in which both general principles and certain special funds were discussed. The Committee expresses its appreciation to the witnesses whose testimony contributed to a better understanding of this complex problem.

Respectfully submitted,

JESSE M UNRUH, *Chairman*

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INTRODUCTION

This is a report about the "dedicated" funds of the State of California.

Dedicated funds are all those moneys in whole or in part exempt from legislative control over their expenditure

Some dedicated funds are priorities on the general fund. Others are know as "special funds"

Dedications or priorities established by the constitution or by statute on the *general fund*, remove about 55% of that fund from effective legislative control in the current fiscal year

Some of the "special funds" are subject to legislative control over their rate of income and expenditure, but in most cases special fund balances are preserved against transfer to any other purpose, however critical the fiscal position of the State may be

The Governor and the legislature are made responsible by the constitution for a balanced budget That *responsibility* is complete and inescapable, but unqualified *authority* to discharge that responsibility is limited to about 34% of the total of the State's expense As to the remaining 66%, the Governor and the legislature are restricted by the constitution and statutes in their ability to plan and approve a budget exactly suited to both current needs and the State's current fiscal condition.

This lack of fiscal control has been viewed critically for decades by every responsible observer and student of California state government, including many legislative committees Often this critical comment has been incidental to a report on some other subject

This report has only one subject—the policy and fiscal handicaps of dedicated funds. It has only one purpose—the elimination of the handicaps, to restore fiscal authority equal to fiscal responsibility.

SUMMARY FINDINGS AND CONCLUSIONS

Dedications of portions of the General Fund to specific purposes and the multiplicity of Special Funds are a substantial restriction on the authority of the Governor and the Legislature to fulfill their responsibility for a properly balanced budget

Moreover, the large number of Special Funds complicate accounting, make case management and investment more difficult, and create pools of idle funds.

For more than two decades the evils of dedicated funds have been reported by students and observers, including many committees of this Legislature

Very few of the states have solved this problem; but this should not deter California

At both the federal and local levels, there is much less reliance on dedications of funds

Although Special Funds are generally undesirable, there are two categories which are justified. (1) invested capital funds and (2) funds for segregated operations and entities.

The report identifies a number of kinds of dedications and suggests criteria for judging their validity By these criteria, most of the dedications are found to be unjustified

Legislation is proposed to consolidate or abolish many of these dedications in the interest of better planning and fiscal control

THE PRESENT SITUATION

The extent of the special funds problem is indicated by the fact that there are currently 70 such funds accounted for in the budget, which during the 1960-61 fiscal year are expected to receive $728,220,176 in income, spend $780,922,048 and have remaining balances on June 30, 1961 of $167,911,013 Another 63 such funds, not included in the budget totals, had balances on June 30, 1959 totalling $2,068,935,224 The detail of the current income, expense and balances for these funds, as taken from the current budget, appear as Appendix A in this report

Appendix B summarizes the legal authority, date of establishment, depository and principal source, and disposition of each fund

The dedications of the general fund established by the constitution or by statute are as listed below, together with the estimated expenditure for these purposes in the current fiscal year:

FIXED BY CONSTITUTION

Salaries of State Legislators	
Section 2 (b), Article IV	$720,000
Bond Interest and Redemption	
Various Bond Acts Ratified in the Constitution	14,449,088
Public School Buildings Bonds Ratified in the Constitution	17,513,006
Total Constitutional Fixed Charges	$32,682,094

FIXED BY STATUTES

Contribution to Judges' Retirement Fund.	
Section 75101, Government Code	
Justices and Judges of Supreme and Appellant Courts—State Operations	$17,200
Judges of Superior and Municipal Courts—State Operations	242,775
Apportionment to Public Schools	
Sections 5153, 6401, 6919, 17301, 17456, 18271, 18303 and 20211 Education Code	674,914,600 *
Contributions to State Employees Retirement System—Sections 20751 and 20752, Government Code State Operations	29,212,087
Local Assistance	12,300
Old Age Security	
Section 2021, Welfare and Institutions Code	119,804,100
Section 4552, Welfare and Institutions Code	9,205,760
Aid to Needy Blind	
Section 3025, Welfare and Institutions Code	8,315,900
Section 4552, Welfare and Institutions Code	522,000
Aid to Potentially Self-Supporting Blind	
Section 3420, Welfare and Institutions Code	335,200
Section 4552, Welfare and Institutions Code	21,600
Aid to Needy Children	
Section 1510, Welfare and Institutions Code	55,388,800
Section 4552, Welfare and Institutions Code	6,370,380
Aid to Needy Disabled	
Section 4002, Welfare and Institutions Code	6,844,300
Aid to Needy Disabled	
Section 4552, Welfare and Institutions Code	401,600
Totals, Statutory Fixed Charges	$911,609,902
Totals, Fixed Charges	$944,291,996

* Although the present apportionment is set by statute, there is a constitutional provision of $180 per ADA below which the Legislature may not reduce it

In short, dedicated funds are involved in about two-thirds of the annual fiscal program of the State of California.

Stated in another way, the dedicated funds impair by two-thirds the authority of the Governor and the Legislature to plan and control the State's fiscal well-being

While the concept of dedicated funds is often said to pre-date the concept of the executive budget, it is interesting to note that of the present special funds the great majority have been created since the state constitution was amended in 1922 to provide an executive budget Of these funds now in existence:

4 were created prior to	1900
6 were created in the decade	1900-09
18 were created in the decade	1910-19
28 were created in the decade	1920-29
29 were created in the decade	1930-39
33 were created in the decade	1940-49
37 were created in the decade	1950-59

THE LEGAL STATUS

Those special funds or dedications of portions of the general fund which are provided by the constitution or by initiative measures not subject to legislative amendment must necessarily remain as they are until and unless the people approve the necessary change.

All statutory funds and dedications can, of course, be abolished by the Legislature legally, if not practically, as easily as they were created. In this sense, dedicated funds are not "beyond legislative control." Yet as long as the dedications remain on the books, they restrict to that degree the Legislature's freedom in acting on the budget. That, of course, is usually their purpose.

In some cases the dedication may have been intended only as a statement of policy, yet they are in such form as to discourage the annual review and reconsideration of that policy; and in doing so serve to defeat a basic constitutional policy that there shall be an annual budget.

The question has been raised whether the Legislature can abolish the special fund of a regulatory or licensing agency and transfer the revenue to the General Fund. Representatives of the State Controller have expressed the view that since these funds are obtained through the exercise of the State's police power, rather than its taxing power, the funds must retain a special character.

The question was put to the Legislative Counsel. In his Opinion No. 4559, dated August 22, 1960, it is held that "The Legislature may not abolish special funds of regulatory or licensing agencies, and transfer the revenue thereof to the General Fund, where the effect would be to impede the regulatory program to which the fund relates Balances in such funds, however, may be transferred to the General Fund where such transfer will not impede the continued operation of the regulatory programs to which the funds relate."

This Opinion does not meet the issue squarely. There is no necessary implication in the abolishment of special funds that the effect would be "to impede the regulatory program" If the Legislature were to abolish such funds, and at the same time impose crippling limitations on the appropriations for the regulatory agencies, that might be the case. It must be assumed, however, that the Legislature in the exercise of its powers will act wisely and provide necessary support for all authorized functions of the State government. Separate accounts could be kept so that it would be clear at all times what the relationship is between the amount of income derived from each field of activity under regulation or license, and the expenditures devoted to regulation and enforcement, without imposing the rigidity of separate identity for the money.

PREVIOUS COMMENT

This is by no means the first study to recognize the critical problems posed by dedicated funds The following quotations show recurrent attention to the matter. In brief, they highlight these problems arising from dedications of funds:

1. Inconsistency in principle with an annual budget
2. Inadequate control over operating plans and policies
3. Inadequate control over expenditures
4. Lack of clarity in accounts reflecting the State's net financial position
5. Difficulties in cash management
6. Limitations in investments
7. Added administrative costs

As long ago as 1936, Griffenhagen and Associates (one of the firms merged to form Griffenhagen-Kroeger, Inc , the Committee's consultants on this study) made these comments in a report to the Interim Committee of Twenty-five of the California Conference on Government and Taxation:

"The Special Fund System:

"Special funds represent a clumsy and archaic method of making allocations of public moneys to particular purposes They serve no purpose that could not be accomplished far more conveniently, efficiently and economically through the budget system Public moneys should be allocated on the basis of demonstrated needs with due regard to the importance and urgency of each need in relation to all other needs The special fund system takes no account of actual or relative needs for moneys, but arbitrarily applies revenues from particular sources to particular purposes

"Special funds unnecessarily tie up cash in idle bank accounts Huge working capital reserves are inevitable under the system since each fund is operated so as always to have some cash surplus. . . .

"The theory of benefit in taxation is in some measure responsible for this situation Under this theory those who benefit from a government service are taxed for its support and their contributions are used to support the service. The benefit theory is sound, but it is not necessary to establish special funds and to maintain idle cash balances to give effect to the principles involved in the case of any service Budgeting and accounting can insure any allocation of funds decreed by the people or the legislature . . .

"Tradition and the apparent simplicity of a special fund are largely responsible for the continued existence of the special fund system The special fund system ante-dated the budget. It is a primitive way of allocating moneys It is analogous to the stocking or tin box method of budgeting under which the housewife places the money for each of the principal items of household expense in a separate stocking or box, except there are few housewives who would go hungry if the cash in the "food" stocking were exhausted and there were a surplus of money in all of the other stockings. When any group of taxpayers wants a new service, particularly a regulatory service in their own interests, the plans for the service always include the means of financing it, and what looks more simple to the average taxpayer or member of the legislature than a provision in a bill to the effect that all revenues collected under its provisions shall constitute a special fund from which the expenses of administering the act shall be defrayed? The fallacy of this is that neither the cost of administration nor the amount or rate of the fee or tax is scientifically determined In connection with almost every special fund a substantial part of the overhead cost of administration is borne by the general fund supported by general taxation and in addition the people pay the fees or taxes in increased prices of the services and commodities they buy from the regulated industry, trade, or profession.

"In establishing special funds, the resulting complexity of governmental finances, the added difficulties of accounting, the unavoidable volume and intricacies of financial reports, and the inevitable bewilderment of the average taxpayer about the finances of government, are not recognized.

"Special funds are incompatible with the budget The budget should be a definite financial plan for a definite future period. It should embrace all the resources available and to become or to be made available, and a complete allocation of such resources on the basis of demonstrated needs. Special funds are continuing appropriations of specific revenues without regard to actual needs They tie the hands of the executive and the legislature since they can be used only for specific purposes, and thus, one legislature succeeds in binding its successors "

More recently—in the last decade—these significant comments have been made by committees of this Legislature·

Senate Interim Committee on Governmental Reorganization—January, 1951.

"Conclusion No. 2—The practice of establishing a large number of special funds with moneys earmarked for specific purposes unnecessarily complicates the State's accounting system and interferes with the Legislature's responsibility for fixing over-all State policy.

"Recommendation No. 2—The practice of establishing special funds should be studied further to see if a system more appropriate to legislative purposes could be evolved."

Senate Interim Committee on State and Local Taxation—"Economy or Deficits: The Outlook for Government Finance." March, 1952.

"Typically, surpluses lead to extravagances in governmental operations. They lead to the assumption of new services and the earmarking of fixed amounts of funds for the continued provision of the services State expenditures for public schools, highways, and categorical aid programs are cases in point With the advent of a decline in economic activity, the State thus finds itself hopelessly saddled with obligations to pay out fixed sums to provide guaranteed amounts of service to its citizens in the face of revenues which are inadequate for meeting these obligations "

Legislative Auditor—"Recommendations Regarding the Disposition of State Revenue from Horse Racing", November 20, 1952.

"That the Fair and Exposition Fund be abolished and that revenue . . . which now goes into the Fair and Exposition Fund . . . be channeled into the State's General Fund. We further recommend (a) that this same action be taken with regard to breakage revenues that go into the State College Fund, and (b) that all activities now supported from horse racing revenues, to the extent that they are deemed necessary by the Legislature, be supported on the basis of annual budget justifications and annual appropriations from the General Fund

"Our reasons for this basic recommendation are as follows:

1 The creation of special funds and the appropriation of fixed amounts or fixed percentages from these special funds is unsound budgetary and fiscal policy. It obscures the State's financial position, limits the Legislature's ability to consider the relative needs of fairs and related activities in terms of other programs or the over-all financial condition of the State, and tends to remove selected activities of government from general public scrutiny in terms of the general tax burden of the State."

Joint Legislative Budget Committee—"Governmental Fund Structure of the State of California", 1953.

"The fund structure of (California) State Government constitutes approximately 155 separate funds in the State Treasury, with approximately 15,000 separate accounts employed by the State Controller who is charged by law with the responsibility of superintending the fiscal concerns of the State and, among other duties, is charged with the keeping of all accounts in which the State is interested unless otherwise provided by law . . . The funds are grouped into nine generally accepted classes, namely, the General Fund Reserve, Special Revenue, Working Capital, Bond, Sinking Special Assessment, Trust and Agency, and Utility Funds."

Assembly Interim Committee on Revenue and Taxation—"Taxation of Horse Racing in California." June, 1953.

". . . An amount equivalent to four percent of the total pari-mutuel handle in California goes into the Fair and Exposition Fund. In 1953-54 this will produce over $15,700,000 which will be expended

primarily for state and local fairs and related purposes. The committee questions the need for continued expenditures of this magnitude for these purposes in a time when existing state revenues are hard pressed to provide what the committee believes to be more fundamental and more necessary services."

Joint Legislative Committee on Impounded Funds from Tide and Submerged Lands—"**Study of Impounded Funds from Tide and Submerged Lands.**" **March, 1954.**

"In connection with a discussion of the State Beach and Park Fund, the Legislative Analyst, Mr. Post, stressed again his view that a far broader concept must be applied budget-wise than to the beaches and park development to any particular fund. Only in exceptional cases such as highways, he insisted, could a really good argument be made for a special fund It was his belief that no such case could be made for oil revenues being the basis for the program under discussion Rather it should be valued on the same basis as, for example, the Division of Forestry, or many other projects financed out of the General Fund."

Senate Interim Committee on Governmental Organization—"**Proposed Reorganization of California State Agencies.**" **June, 1955.**

"The analysis of fund accounting included in the second partial report of the Senate Interim Committee on Governmental Reorganization presented to the Legislature in January, 1951, was reviewed by Price Waterhouse and Company in the report *Accounting and Auditing for the State of California*, November 30, 1954, prepared for the Joint Legislative Budget Committee. This report states that we agree with substantially all the remarks that were made which endorse the proposition that 'the need to keep separate records for a multitude of funds impedes the budgeting and accounting and reduces legislative control ' Furthermore, it makes it difficult to present an informative, comprehensive statement of a state's operations and its financial condition."

Assembly Interim Committee on Government Organization—"**Recommendations for Obtaining Economy and Efficiency in California State Government.**" **December, 1958.**

"The Legislature should submit to the voters a constitutional amendment which would remove from the Constitution all present restrictions against full annual review of the State's total budget by the Legislature

"The Committee concludes that within well-defined limitations there is some practical justification for a few continuing appropriations Examples of such are [those] providing. (a) the State's share of state employees' and teachers' and other retirement funds; and (b) funds necessary for the payment of bond interest and principal amounts as due

"The Committee recommends that there be established by appropriate legislation a temporary commission composed of members of the legislative and executive branches of State Government and a number of citizens otherwise substantially qualified . . . This

Commission should be given . . . the mission of . . examining the continuing, permanent appropriations now in existence to see if there should not be a far greater opportunity for the Legislature than it has now to review the State's total annual proposed expenditures."

Joint Legislative Tax Committee—May, 1959.

"The Committee recommends that the Legislature should take all necessary steps to abolish all special funds with the exception of those providing for the State's share of state employees' and teachers' and other retirement funds, and those necessary for the payment of bond interest and principal amounts as due"

Finally, *The Governor's Committee on Reorganization in State Government,* in its "Report to the Governor on Reorganization of State Government by Task Forces", November 1959, says:

"Efforts to minimize the number of special funds as a means of reducing relative accounting and other administrative costs should be given positive continuous emphasis. Also, at every opportunity, the Legislature should be apprised of the desirability of this."

PRACTICES OF OTHER STATES

We learn from other states that dedicated funds are a problem to most. That few other states have met the problem head-on and solved it by bold action should not dissuade California from taking whatever steps it finds necessary.

Many writers and special commissions, more or less nation-wide, have expressed concern regarding the special fund practices. The Council of State Governments finds these practices to be undermining the authority of state legislatures, and it has repeatedly recommended that special funds generally be abolished. It does not insist that all of them can be abolished.

Situations that exist or may exist in any state explain why this is a nation-wide problem, including the following:

1. The rise of special user taxation for highways.
2. Expanding federal aid.
3. Federally sponsored insurance funds in the welfare field.
4. A desire generally to reduce taxation when possible by developing special charges for public services.
5. States establishing logically segregated kinds of activities such as pensions, liquor stores, institutional enterprises, etc., where separate, essentially commercial-type accounting is necessary.
6. States increasingly assuming fixed responsibilities for aids to local governments, particularly schools

Some of these prevailing practices do not always involve special funds or dedications, but they clearly imply that special funds or dedications are needed for some purposes In four states * there is a policy of almost entirely avoiding *tax* dedications, including highway user tax dedication. In many other states there are few tax dedications except for highways.

OTHER LEVELS OF GOVERNMENT

The practice of dedicating funds, and hence the problems they create, are not peculiar to the states. However, the federal government, the counties, the cities and other local units to a much lesser degree complicate their budgeting, their accounting and auditing or their fiscal management by creating, in effect, special bank accounts

There are many examples in both national and local governments of amounts spent for a given function in rough proportion to a given source of revenue, but this is a matter of general policy, taking into consideration facts obtained from the general accounts and budget.

The special funds usually found at other levels of government are those which are justified for a state government as well, according to criteria discussed later in this report.

* New Jersey, Delaware, New York and Rhode Island.

BUDGET FORMAT

The California budget reflects the condition of all the funds under the control of the State As submitted by the Governor, the budget document is partly a statement of financial condition, and partly a recommendation for expenditures to support the next year's program

That part of the budget proposal which is finally included in the appropriation actions of the Legislature is partly an automatic enactment according to prevailing established formulas, and partly (a lesser part) an expression of legislative judgment on the Governor's proposed program.

The current budget document is divided into several parts, intended to assist in a better understanding of its principal characteristics The main divisions are·

1. Message
2. Charts and Summaries
3. State Operations
4. Capital Outlay
5. Local Assistance
6. Treasury Funds not Included in Budget Totals

Though this format has helped considerably to isolate the considerable amount of uncontrolled expenditure for local assistance, and the treasury funds not included in the budget totals, it still does not provide either to the Legislature or the general public a full understanding of the limitations on legislative control over funds

We recommend that in some manner the format of the budget be further modified to show more clearly in summary and in addition to what it already shows.

Controlled Current Operations
Controlled Current Capital Expenditures
Constitutional and Statutory Expenditures in whole or in part not currently under legislative controls.

GUIDING PRINCIPLES

The constitution pronounces a most important guiding principle, that the Governor shall submit an annual budget calculated to balance expenditures and revenues, and it implies that the Legislature shall adopt a fiscal program consistent with this principle. To be effective, this requires that there be no financial resources outside the budget and no activities escaping legislative review and controls

Unless legislative control can be made more complete, there are three possible alternatives which ought to be considered.

A. The first would be to make clear, perhaps by constitutional amendment, that the Legislature is not really required to be concerned with a review of current needs in relation to current revenue, but rather that it is limited to revising the formulas from time to time by which expenditures will automatically be made. This hardly seems a sensible alternative, even though it is implied in much of the present situation Surely, it is more realistic to require each succeeding legislature to review the current situation, with which it is most familiar, rather than to require it to speculate about and to control future conditions about which it can make only an educated estimate

B The second alternative would be to go the whole way on the dedication of funds, leaving it to the people to make all of the basic decisions about priorities by constitutional amendments and initiative or referendum measures; and then simply to require the Legislature to raise the funds necessary to support these programs This, too, is unrealistic and complex. The total financial requirements of the State are much too involved to be successfully presented to and understood by the electorate at large Appeals to people about specific programs are likely to be more emotional than logical. The commitments once made by these procedures would be exceedingly difficult to undo—as the present conditions prove.

C. The third possible alternative would be to decide now that all the decisions made in the past have been right, and by simply ignoring the problem have the budget for a jet age, increasingly industrial and increasingly urban state controlled by values and principles which pre-date the idea of an executive budget, which pre-date most current programs and which were sound only in relation to the agricultural and rural character of the State in the days when these principles were first established.

None of the foregoing alternatives are suggested seriously. They are mentioned only to suggest that there are no sensible alternatives to meeting the issues of dedicated funds head-on, thereby restoring a greater measure of fiscal control to the Legislature

The issue that has to be faced squarely is that of a planned budget vs. unbudgeted programming

The trend in state government finance has been away from the planned budget. The trend instead has been towards *greater* segmenting and funding of resources and appropriations, other than pursuant to an annual budget. Of California's funds, 37 were created in the past decade. Particularly in the recent trend, there is "dedication" of state general resources, principally for schools and welfare.

What has been going on is commonly described by the word "programming." The word implies new, vital study of needs and forward planning—which is good; but unfortunately in much of that new, vital "programming" there has been scant attention to the traditional basic principle of state budgeting and legislative control as laid down by the California Constitution.

BUDGETING AND LEGISLATIVE CONTROL

A full discussion of procedures of budgeting and of legislative review and control of special or general funds, including procedures of comprehensive forward planning, would be beyond the scope of this report However, the present status of dedications applying to a large part of the total state revenue and expenditure cannot be adequately considered without introducing a few basic questions respecting budgeting and legislative control

First, should not a modern concept of forward state planning be accepted in this State?

We believe that all services of state government, as well as aids to local authorities, should be and will be protected by comprehensive advance planning and programming made a part of the annual budget process Above all, there should be and will be advance consideration of all tax and other revenue requirements The relatively poor, insecure, and essentially special-interest planning, represented by statutory foundation and similar programs, will thus become unnecessary.

Second, recognizing that there are today important "special" revenues, notably highway user tax, federal grants, departmental fees and earnings, and oil royalties, are there any of these over which the state legislature must not exercise control? Are there any which should be or will be considered as wholly separate and distinct from the rest of the state's annual budget?

We believe the answer to both of these questions must be an unqualified NO. In its budgeting California is now attacking "dedication" by trying to achieve a consolidated, comprehensive budgeting of some of the special revenues, in spite of the handicap introduced by the confusing legislation creating many special revenue funds.

Third, recognizing the existence of various special funds, should any of these funds' operations be wholly outside the responsibility of the Governor in preparing and submitting the state budget or outside the responsibility of the legislature?

To reverse the trend toward "dedication", we suggest that the basic principle of complete annual budgeting and legislative con-

trol must replace the unsound principle of "dedication" in all state finance We think the Constitution clearly intends that no area of state finance should be outside the *annual* responsibility of the Legislature.

It is to be conceded, of course, that there will be deposits and other moneys which should be held in the state treasury which are not owned by the State, and they have no direct relation to public expenditure or a purpose of producing public revenue, but these are not state funds in any sense They are not unbudgeted state funds

Notably in the school and welfare commitments against the state's general fund, there is "programming" without budgeting There is an assured level of state support for these functions which was set without similar "programming" for all other state governmental functions or consideration of state revenue There is deliberately a promise of continuing a level of support, without forward planning and consideration of the future requirements of other governmental functions. There is deliberately an inflexible dedication, not made subject to review as part of the process of annual budgeting and not subject to the kind of annual review of forecasted needs and revenues which is contemplated by the California constitution and by the modern concept of "program budgeting."

We believe that the State of California is as nearly prepared as any state to understand and put into effect an effective procedure of forward planning and annual program budgeting This would open the way to the elimination of dedications against the state's general fund

The best argument in support of these foundation dedications and priorities is their close relationship to programs which are also financed in part by local governments When the local governments are planning their budgets, they need to know in advance the amount of revenue they can expect from the State The hazard on the other hand is that local agencies of government come to regard this income as "free money" to be applied toward a higher standard of service than may be necessary

Both the Legislature and the governing bodies of local government ought to be under the obligation to review the relative value of programs periodically and to adjust expenditures to the revenue produced by a reasonable level of taxation All this is possible while providing local governments with some assurance concerning the State contribution and yet without binding the State for a long time by either one or two alternatives.

a The Legislature can make its commitments one year in advance, but for one year only, thus gaining a great deal more flexibility than under present arrangements.
b. The fiscal time table of either the State or the local govenments, or both, can be sufficiently adjusted so the final action will have been taken on the State budget before the local governments have to make their decision

The essence of the problem with which this report deals is that the Legislature at a given session, or the people at a given election, have

decided that what appears to them to be a sound principle at the moment should be enforced on future generations This is a wholly understandable reaction on the part of people concerned with a particular function or the securing of a particular program at a given time It overlooks completely, however, the changing character of the State, in which new values and new conditions in time invalidate earlier principles.

We think it unsound to commit specific details of fiscal policy to rigid legal formulas however sound the principles from which they are derived. For example, the State enjoys a substantial income from public lands, particularly in the form of oil royalties There is a great deal to be said in behalf of the principle that money derived from the depletion of a natural resource should not be spent for current operating expenses, but should be used to create other resources or facilities of permanent value To require the Legislature to keep this principle in mind would not be contrary to anything we have said concerning the handicaps of dedicated funds To go one step further, however, to specify the purposes to which that income should be applied, now and in the future, does limit the Legislature's inherent fiscal responsibility and authority and should not be permitted

CLASSES OF SPECIAL FUNDS

The most practical immediate attack on dedications of the Special Funds would be to establish a strict annual control over the appropriation to the School Fund in excess of that required by the Constitution. This extra sum, first of all, should not be transferred to the School Fund because of a constitutional requirement that all moneys in the School Fund be annually distributed for local school support. This has resulted in recent years in "bonus" distribution running as high as ten million dollars per year Instead, the Department of Education should be required to bring in a documented budget each year to show what funds are needed for local school support in excess of the constitutional guarantee, the Legislature should evaluate that request in relation to all other needs; and the amount appropriated should be distributed directly from the General Fund according to the formulas on which the request for funds was justified.

We do not conclude that all special funds must be regarded as in conflict with sound principles of state budgeting In some aspects of state budgeting and control by the Legislature, special funds are necessary or useful A comprehensive "program budget" must be a multi-fund budget However, there are only a few *types* of such funds that are necessary. If only necessary funds are retained, effective annual budgeting and legislative control will be possible.

For the purpose of establishing criteria regarding the acceptance or rejection of special funds, we identify the following types of funds.

Group 1, Special funds expendable for state operations, which include all moneys, revenue and balances, not reserved, and thus available currently for appropriation and expenditure, whether for operation of the state general government in the strict sense, or for capital outlay. Group 1 excludes only funds set aside as state reserve funds and for investment, and for operations *necessarily* separate and distinct

from state general government The Group includes the following types of funds:

- Funded proceeds of bond sales for general government.
- Funded appropriations for state construction.
- Funded state debt service
- Taxes shared with local governments.
- State dedications of general tax revenues
- Dedications of special revenues, including·
  - User taxes for highways;
  - Fees for regulatory services;
  - Other departmental fees and charges;
  - Grants and contributions;
  - Trust funds which are expendable for governmental operations.
  - Oil royalties.
- Clearance funds—revenue passed from fund to fund
- Revolving working capital for some of the state governmental operations.
- Funded appropriations for operations
- Feeder funds (for refund operations).
- Payroll clearing account (for payroll operations)
- Other expendable nominal funds—legally dictated or other holding of moneys (outside the state treasury or in other separate accounts).

Group 2, Invested capital funds, which include the state's planned reserve funds and provision for income producing investments, as follows

- Endowment funds
- Stabilization funds
- Reserves for construction
- Sinking funds, for term debt only
- Pooled investments of cash balances

Group 3, Funds for segregated operations and entities, which include only working capital which the existence of commercial type activities and any segregated entities of state government implies and makes necessary, plus deposits and trusts with no public expenditure or revenue This group should be defined to exclude any surpluses of state owned entities which could be and should be made available for general state operations One goal of budget control must be to prevent the holding of excessive capital for any entity or operation. This Group includes the following types.

- Funds of autonomous, strictly governmental agencies, if any
- Insurance funds, including insurance trust funds and pension funds.
- Loan funds.
- Funds of enterprises (including commercial type activities in institutions, ports and toll roads)
- Working capital for such intra-government services as state purchasing, stores, shops, printing, etc.
- Special assessment funds
- Funded deposits and Trusts with no public expenditure or revenue and suspense funds

SPECIAL FUNDS EXPENDABLE FOR STATE OPERATIONS

Most of the funds in Group 1 (Special funds expendable for state operations) are objectionable on the grounds that (1) they complicate accounting, (2) most of them hold idle expendable resources, and (3) most of them are dedications. Each objection is discussed more fully below.

Accounting. There should be a *comprehensive* general fund, and thus very clear general financial statements As to the funds in this group, each special fund law obstructs correct accounting for resources and tends to hide them In every case of accounting under a special fund law, preoccupation with law prevents objective, scientific consideration of the real accounting requirements Nevertheless the accounting for a fund must be complex or it lacks control of receivables, encumbrances and current payables Producing correct figures for costs of functions and activities with support by more than one fund is a serious complicating problem.

Holding Idle Resources. The general fund can and should be holding *all* working capital for general government operations Every dedicated special fund in this group is based in part on a confused concept, in effect asserting that a dedication of special revenues or other resources cannot be carried out without the present practice of holding millions of idle fund balances in a hundred pools

Advocates of dedicated special funds in this group are in effect asserting without offering any budget justification, that the activities in question require this reserved capital. If any general government or other activities do require any part of this reserved capital, this is something to be proved, and a special reserve fund (of the type in Group 2) should be provided

In effect we are saying that by not identifying clearly the purpose of expendable funds, and by not requiring that annual budgeting should prevent unnecessary holding of state resources, millions of dollars are being held to meet a future year's budgeted requirements.

We believe that only the advocates of the highway dedications would seriously maintain that it makes sense to hold large cash resources idle, and we find it difficult to concede that there ought to be unauthorized idle moneys of any kind.

Dedication in lieu of budgeting for requirements. In the case of every dedication, special fund or not, the result of the dedication may be a rich activity or a poor activity, because there are special resources There will be as many standards as to what is a necessary public expenditure as there are dedications However, legally dictated accounting, or holding of idle resources, and a special budget status, may well contribute to the inequities, causing them to be greater in case of any dedicated special fund.

Despite the general objections raised to the Group 1 type of special funds, there are some which can be justified.

1 Four types of the funds of this group may be unavoidable·
   a Some bond indentures prescribe that the proceeds of the bond issue must be cleared through or held in a special fund
   b. Some bond indentures prescribe special funds for debt service
   c. Some of the grants and contributions may be administered under rules dictated by donors. These rules ought not prescribe special funds, but may.
   d. Some trusts may arbitrarily require the setting up of special expendable funds for state operations they support Rendering an account as trustee should be the only requirement.

2 In addition to these unavoidable funds, many other funds associated with construction may seem to be at least harmless There are theories of budgeting which would treat capital outlay financing as a segregated part of the state financial plan We would concede that a few unnecessary expendable special funds—if they are all related to construction exclusively—might not be a serious complication of the budget

3 If by consolidations and eliminations, there remained only a few general government expendable special funds, regardless of their purpose, they should all be reviewed annually, so that the financial position of the State may be understandable and budgeting may not be seriously impeded

In addition to the foregoing general objections to many of the special funds, the following more detailed comments concerning some of them deserve consideration

All of the special funds once seemed logical or they would not have been created, and many may seem logical today, but they all, collectively, prevent there being a true general fund, and confuse and complicate the State's financial statements and also the accounting for many governmental activities Nearly all funds hold idle resources. As a general rule the basic objection to a special fund is that it is a "dedication" of both the revenue and the balance of the fund.

Funded Proceeds of Bond Sales. These comments apply equally to general government issues and to issues for enterprises It is appropriate to comment first on funds holding the proceeds of bond sales because, in almost all cases, they present the issue of funding versus accounting control. If bonds are authorized for stated purposes, the proceeds are already appropriated or *de facto* dedicated, but on this ground alone a special fund is not necessary Accounting control can be exercised to assure that the authorized purpose of each issue is satisfied. Adequate safeguards need to be established to assure that between the time of the sale of the bonds and the time the proceeds are spent for an authorized purpose, they are not spent for some other purpose However, the state's general fund accounting control is such a safeguard, and perhaps a better safeguard than the control actually exercised if there is a special fund.

However, in typical cases of bond funds of special purpose issues, the state may have no reason not to accept a provision in the bond indenture prescribing a special fund, simply to conform with common practice.

If it is argued that the terms and interest cost of a loan are affected favorably by prescribing a special fund for bond proceeds, this type of special fund need not be allowed to cause the holding of uninvested idle cash or to obstruct annual state budgeting Even the desirable rule of budgeting for construction that prescribes showing the entire picture in each annual budget, can be complied with

If it is necessary in order to avoid any possible misunderstanding to provide a separate bond proceeds fund, it scarcely seems necessary to provide a separate fund for each bond issue. It should be adequate to use a single Bond Proceeds Fund, in which all such moneys will be held with adequate accounting recognition of the separate identity of each purpose.

Funded Appropriations for Construction. There are desirable practices of combined forward planning, programming, and annual budgeting for construction, without special funds or even non-lapsing appropriations In contrast, the relationship of various existing special funds in the budget for capital outlay to a practice of forward planning and programming is a very confused one The present special funds in this major area of state responsibility operate to obstruct and postpone making a proper start in comprehensive capital planning and budgeting.

So long as there is an accepted practice of borrowing, it can be argued that state construction, including or excluding highways, is in fact a separate and distinct area of planning and budgeting Presumably even the possibility of borrowing implies that capital outlay is a distinct problem However, there is the very important possibility of so planning as to reduce borrowing and save millions in interest costs We believe that capital outlay is a major segment of, and an integrated part of, comprehensive state operations planning, programming, and budgeting; and that special funds are a competing and conflicting concept

Funded State Debt Service. Any incurring of debt in effect constitutes a dedication of funds for the repayment of principal and the payment of interest If the debt is incurred to build a facility or create a service which will produce direct income from its users or beneficiaries, it may be appropriate to set up a special fund into which these proceeds will be paid and will be held pending their expenditure for interest, or to retire the debt In all other circumstances, however, there is no need to compound the fiscal problems of the State by both recognizing that the debt is an obligation to which a portion of the State's money is dedicated, and setting up a special fund through which to finance this obligation.

Taxes Shared with Local Government. There should be very small balances held in such accounts What makes this one of the objectionable types of special funds is that provisions of the law prescribing such a fund are most likely to dictate a large holding of idle cash

In any case where the State serves as a collection agency, to gather a tax in behalf of both itself and agencies of local government, there should be no question about the earmarking of the portion of the funds intended for the local governments. This does not necessarily require

a special fund, but merely the reserving by accounting practices of that portion of the revenue which is intended for distribution to the local agencies.

Dedications of Special Revenues—"User" Taxation, Fees and Charges. There are a great many departmental fees and charges and some taxes where the payments are made by a special group which considers itself entitled to receive stated governmental services. The most notable such "user fund" is the highway fund, receiving its income directly or indirectly from license fees and taxes on motor vehicles and motor vehicle fuels, and dedicated completely to the construction and maintenance of highways and streets The advocates of a special fund for this purpose can point to considerable achievement in California's highway system, and can further point to the need for a continuing high level of support to meet the highway deficiencies which still exist What they cannot prove is that the highway system would now be worse off had the Legislature had a freer hand in appropriating money for highway purposes

There is a powerful argument to the effect that without some limitation on the purposes for which gasoline taxes can be spent, there would be an easy temptation to increase this tax for general purposes, since it is so easily collected and yields a rich return But this argument applies with equal force to taxes on liquor and tobacco, on general retail sales, and on income If we carry this argument to its logical conclusion, the proceeds of every tax should be wholly committed or dedicated. Each new service would then have to be accompanied by a new kind of tax on something else The Legislature's control over expenditures would be reduced to practically nothing while its responsibility for raising revenue would become more critical.

The special user funds seldom fulfill exactly their intent of relating a charge to a benefit Some of them, such as the highway fund, generally hold large idle balances, while others may be so "poor" that the activity they intend to support is neglected, or support is supplemented by the General Fund.

Since we can find no logical basis for justifying one "user fund" while not justifying others, and since the recognition of all such funds would lead to the nullification of the Legislature's authority in financial matters, we can only conclude that no user special fund can be justified

Assuming that the policy of building highways at the expense of the users, as measured by vehicle ownership and fuel usage is valid, a general policy to that effect can be declared and observed without the costly and confusing mechanism of special funds

Dedications of Special Revenue: Regulatory Funds. These are a particular category of "user" fund When professional or vocational groups seek State licensing for their own protection, or when a phase of private business is put under State control (notably the financial institutions), it has often been the practice to support regulation by license fees or other assessments on those regulated, and to administer the program through a special fund The practice is not universal; there are regulatory activities for which fees are charged but deposited in the General Fund.

There is no sound reason for special funds for regulating agencies. It implies that regulation is for the regulated group alone, whereas it must be assumed to be in the public interest as well If it is not in the public interest, it should not be a State function If it is in the public interest, there is no reason why license fees and related assessments should not be in the General Fund

Moreover, the fact that by use of special funds these activities are generally regarded as self-supporting, leads the administration and the Legislature to be more lenient in reviewing proposed expenditures In some States this "double standard" has gone to the extent of permitting different salary standards for employees doing the same kind of work because one department can afford high salaries while another cannot

If the Legislature, as a matter of policy, wishes to approve expenditures for the regulatory agencies in relation to the amount of revenue they generate, it should be free to do so But it should be a conscious policy decision in each case, not an automatic occurrence as at present

Dedicated Grants and Contributions. If grants (federal or other) are offered the State for purposes that are approved by the state officials, including the state legislature, the acceptance of such moneys implies a desired "dedication" However, there should be both budgetary control and legislative appropriation. Very often there are matching appropriations or matching commitments of special fund resources, yet this kind of dedication, *per se* should not require the setting up of the moneys in a special fund. It requires only accounting to prove performance of the terms of the grant. The important condition to justify a special fund, if any, is that the contributor should have required this segregation of funds as a condition of the contribution Unless this is true, there is no particular point in keeping the fund apart If conditions are imposed it almost necessarily follows that the State must accept and observe these conditions if it is to accept the funds

Trust Funds Expendable for Governmental Operations. The word "trust" has a great many different meanings in public administration Wherever there is or may be a third party interest, it may be considered that there is a trust According to a body of law wholly distinct from administrative law, it is not generally permissible to intermingle trust and private funds of the trustees To apply this rule of law to public funds might mean that practically all existing special funds would have to be retained

We believe it unreasonable to require the State of California to segregate any moneys that are expendable for governmental operations because they are said to be "trust" funds. If the State assumes temporary custody of the funds, it should need only to keep a faithful account, and surely can be deemed honorable enough to restore these funds to their rightful place on the termination of the trust. In the meantime, these funds could mingle with others for better treasury management and easier accounting.

As an alternative to eliminating numerous trust funds entirely, a single Trust Fund might be established with separate accounts to be maintained for each purpose

Clearance Funds. These are special funds serving no purpose except to be the temporary intermediary for money being transferred from one or more sources to one or more purposes They are a poor and confusing substitute for simple accounting procedures which would show the sources of revenue and the objects of expenditure The worst example is the several "funds" through which vehicle license and highway user revenues pass in the course of being distributed to state and local highway and road purposes

Revolving Funds. The word "revolving" attached to the name of a fund may or may not mean that it relates to a fully self-supporting activity In fact, relatively lax budgetary controls over such funds leave some doubt about their exact condition. With proper accounting, and with the proper forecasting of revenue and expenditure needs many functions now provided for through revolving funds could be handled by way of regular appropriations Nevertheless, some revolving funds will continue to exist They should be subject to the same budget and accounting standards and practices as are applied to the General Fund

Funded Appropriations for State Operations. The Assembly and Senate contingent funds exist in order to assure the independence of the Legislature from executive control. Were the Governor to veto an appropriation for legislative operations after the Legislature had adjourned, these contingent funds make it possible for the Legislature to continue its interim programs

An alternative method which could be used to insure the independence of the Legislature without necessitating a special fund is one by which the Legislature could make a continuing appropriation (say $300,000 for the Senate and $500,000 for the Assembly) for its own appropriations without reference to fiscal years Such legislation would be expressed as follows:

"Beginning July 1, _____ and every July 1 thereafter there is appropriated the sum of $ _____ for the expenses of the Senate and $ _____ for the expenses of the Assembly."

Feeder Funds. In some instances, funds are held outside the State Treasury for a period pending deposit, in order to have more flexibility in making refunds and adjustments on items paid in error or under protest. The theory has been that once the money is deposited in the treasury, it cannot be refunded except by legislative appropriation

The idea that there should be a place outside the State Treasury where funds can be left, even temporarily, opens up dangerous possibilities. The point that there should be an easy mechanism for refund is valid. To be consistent with desirable principles of budgetary control, the special suspense or holding funds should be abolished, and instead there should be an annual appropriation, or authorization by the Legislature of an amount sufficient to make the necessary refunds, subject to pre-audit to assure adherence to prescribed standards.

Other Expendable Nominal Funds. We use the term "nominal" to refer to any special fund, such as the Feeder Funds just discussed, where pursuant to law or practice, state moneys are being held outside the State Treasury or in special accounts, or other purely fiscal procedures have the effect of holding back moneys. The principal example

of nominal funds in California may well be balances held outside the state treasury for which comprehensive data are not available. An obvious objective of efficient fiscal procedure is to eliminate all nominal funds

INVESTED CAPITAL FUNDS

In the foregoing discussion virtually all of the Group 1 special funds (those expendable for operations) have been found objectionable, both on specific grounds and on the general premise that the basic principle of budgeting expenditure and revenue prescribed by the California Constitution cannot be effective so long as balances of available state resources are held in more than a hundred special fund pools For all of the preceding expendable funds for state operations, the general fund should hold the resources in one pool. However, for orderly planning of state finance, like the orderly planning of any individual's finances, there should be reserves of invested capital

We should have a conspicuous small group of Invested Capital Funds fully identified as to purpose and unmistakable as capital funds

Several of the types of funds in question now exist, but there is totally lacking at present a concentration of reserved capital in a few unmistakable funds Instead of planned and controlled reserves, moneys necessary to create such reserves lie idle in a hundred expendable funds because they are "dedicated "

Endowment Funds. There is today a non-expendable endowment fund called School Land Fund There are other endowment funds outside the State Treasury, at least at the University of California

Stabilization Funds. Whenever the general income exceeds expenditures to any considerable extent, it may be wise to consider establishing a stabilization or "rainy day" account, as a hedge against drastic tax increases in less prosperous times There are many policy considerations inherent in the decision as to whether or not such a stabilization fund should be provided Our point here is not to debate those policy questions, but rather to suggest that whenever such a stabilization procedure is decided upon, then a special fund is justified to hold these moneys in reserve In that case, adequate legal protection should be made to preserve the fund against raids for purposes not originally intended

Reserves for Construction. Some of the existing fund balances may reflect a nebulous special-fund kind of reserving of capital for state construction, but examining the capital outlay budget, there is no evidence of a state policy at this time of reserving available state resources for future construction. The State Construction Program Fund was not conceived as such a fund We recommend that there be such a fund as soon as there is forward financial planning for construction, with a minimum resort to borrowing

Sinking Funds: (for term debt) We mention this type of invested capital funds merely to round out the picture of necessary funds holding reserved capital.

Pooled Investments of Cash Balances. The Surplus Money Investment Fund is a unique example of a very wise and profitable kind of invested capital fund.

Segregated Operations and Entities. Because there have been strong departments of state government, and strong groups interested in particular programs, and there has not always been emphasis on the basic principle of unified, strong budgetary and legislative state operations, funds referred to above have sometimes been created which seem to imply a degree or color of departmental or agency autonomy. However, we do not interpret any laws as establishing a clear policy of autonomy, to the extent of exempting an agency from the constitutional provision respecting budgeting or implying any delegation of powers belonging to the State Legislature

The term "segregated" in this State is not applicable to departmental funds generally. It is applicable to insurance funds, commercial or business types of activities, some similar intra-government service operations, etc , where separate management and fund accounting is obviously necessary, as described below.

Funds of Autonomous strictly Governmental Agencies. If there are any such funds, they must have a basis in a clear State policy.

Perhaps tuition and any similar special funds of the University of California are such funds

Advocates of a special fund for the highway program may contest our not finding an intention to grant autonomy in this case. They may argue that unbudgeted working capital is necessary for a highway fund We concede that programming for state highways is a serious and long-range problem of state government operations, but the same is true in varying degrees of every other activity of state government

Insurance Funds. Where contributions or premiums have been paid in, whether or not matched by the State, to establish the basis for subsequent repayment to the contributors or their beneficiaries, or to a general class of beneficiaries, there is an obligation to invest and manage these funds for the sole benefit of the beneficiaries This is, perhaps, the purest justification of a special fund It is the preserving inviolate of funds contributed to fulfill an insurance contract at some later date. The budgeting of such funds should clearly be apart from the general state operations budget.

Loan Funds. There are several important loan activities financed and managed by the State with respect to which there is necessarily accounting for capital. Having comprehensive separate and distinct accounting for each such operation is desirable It would be a serious mistake to fail to keep segregated fund accounts for them.

Funds for Enterprises. Whether the activity is a major one or is incidental to the operation of a state institution, if the correct accounting principle is that of a commercial or business-type entry, it would be a serious mistake not to provide an appropriate degree of autonomy, segregated capital, and proper enterprise accounting.

The status of the State Fair and of State-operated toll bridges is that of a self-financing quasi-enterprise, and a special fund may be accepted as necessary in order to maintain their status as such.

Intra-government Services Working Capital. Some operations are in a different category from enterprises only in that they provide services solely to departments of the state government and the usual revenues are transfers from state appropriations. If supported by special funds, however, they are subject to comments made earlier about "revolving funds"

Funded Deposits and Trusts with no Public Expenditure or Revenue. It is obviously not always necessary for moneys deposited with the State Treasury to be held in a special fund, even if in some cases the deposit is held to be a trust deposit In effect, the Treasurer can hold deposits in the general fund in the same manner that ordinary deposits or escrow or trust accounts are held by a bank

However, there may be acceptable special funds for deposits of that kind which are in fact segregated operations Since there is no relation to operations of state funds and to state budgeting, the only important consideration is the question of investing idle cash balances Under state laws these balances can be invested, separately or as a part of the Surplus Money Investment Fund.

CRITERIA APPLIED

If the criteria proposed in the foregoing section are adopted and applied, only the following special accounts and funds would be required.

1. **Special revenue clearance accounts**
   For vehicle license fees and highway user taxes shared with local governments
   For alcoholic beverage license taxes shared with local governments
2. **Grants and contributions** (funded only if so prescribed by the donor as a condition of the grant or contribution)
   Public Health—Federal Fund
   Social Welfare—Federal Fund
   Unemployment Administration Fund
   Vocational Education Federal Fund
   Vocational Rehabilitation—Federal Fund
   Water Resources Revolving Fund
   State Park Contingent Fund
3. **Bond Proceeds Funds** (a single fund in lieu of separate funds now established for each bond issue)
4. **Debt Service Funds** (non-enterprise; only if prescribed by the bond indenture)
   State Buildings Sinking and Interest Fund
   Bond Sinking Fund of 1943
   Flood Control Fund of 1946
   Postwar Unemployment and Construction
   School Bond Retirement
   California State Park Interest & Sinking Fund
   Highway Interest and Sinking Funds, 1, 2 and 3
5. **Invested Capital**—General
   Endowment funds of institutions
   Stabilization fund (if authorized)
   Surplus Money Investment Fund

6. Invested Capital—Insurance and Pension Trusts
Compensation Insurance Fund
Unemployment Compensation Disability Fund
Old Age and Survivors Insurance Revolving Fund
Judges' Retirement Fund
Legislators' Retirement Fund
State Employees' Retirement Fund
Teachers' Retirement Fund

7. Governmental Autonomous Agency
University of California special revenues

8. Loan Funds
Local Projects Assistance Fund
Veterans Farm and Home Building Fund of 1943
Public School Building Loan Fund
State School Building Loan Fund
Revenue Deficiency Reserve

9. Enterprises
California Industries for the Blind Manufacturing Fund
Correctional Industries Revolving Fund
Inmate Welfare Fund
Opportunity Work Center Fund
Toll Bridge Authority Revolving Fund
College Auxiliary Enterprise Fund
State Harbor Operations

10. Debt Service Funds: Enterprises
San Francisco Harbor Improvement Fund
San Francisco Harbor Revenue Bond Fund
India Basin Sinking Fund
San Francisco Seawall Sinking Fund No 2
San Francisco Seawall Sinking Fund No. 3
San Francisco Seawall Sinking Fund No 4
San Francisco Seawall Fund No 4
San Francisco Harbor Construction (Series A) Fund
San Francisco-Oakland Bay Bridge Toll Revenue Fund
Olympic Bond Fund

11. Intra-Government Services Working Capital
Ballot Paper Revolving Fund
Printing Fund
Purchasing Revolving Fund
Surplus Educational Property Revolving Fund

All remaining special funds, and all fixed dedications of portions of the general fund, would be abolished or repealed as rapidly as amendments to statutes, initiative measures and the constitution can be made effective.

The net effects of these actions would be to eliminate the uncontrolled annual expenditures for operating and capital outlay purposes; and would make available for better fixed control, accumulated special fund balances totalling approximately $376,000,000.

Priorities. Since it is unlikely that all special funds can be abolished and all dedications of the General Fund repealed at one time, consideration might be given to setting priorities to the groups set forth below, each of which brings together funds of a given type, to which a given set of conditions or arguments apply

1. *Separate Professional and Vocational Standard Funds*
   In 1959 the Legislature acted to consolidate these into a single Professions and Vocations Fund. The Controller and Attorney General believe the measure is defective, hence the old funds remain separate and the new fund holds no money Pending later possible action on the whole subject of regulatory funds, the 1959 action should be amended to correct its defects This would abolish special funds of the following agencies·
   - Accountancy
   - Architectural Examiners
   - Athletic Commission
   - Barber Examiners
   - Cemetery
   - Contractors' License Board
   - Cosmetology Contingent
   - Dentistry
   - Dry Cleaners
   - Funeral Directors and Embalmers
   - Furniture and Bedding Inspection
   - Landscape Architects
   - Medical Examiners Contingent
   - Nurse Examiners
   - Optometry
   - Pharmacy Board
   - Physical Therapy
   - Private Investigators and Adjusters
   - Professional Engineers
   - Registered Social Workers
   - Shorthand Reporters
   - Structural Pest Control
   - Veterinary Examiners Contingent
   - Vocational Nurse Examiners
   - Yacht and Ship Brokers
2. *Other Regulatory Funds*
   This report has recommended that all regulatory funds be abolished The action just proposed to complete consolidation of the Professions and Vocations Funds is only a partial step toward that objective The full list of those which should be abolished is as follows·
   - Banking
   - Chiropractic Examiners
   - Collection Agency Board
   - Insurance
   - Itinerant Merchants
   - Osteopathy
   - Pilot Commissioners
   - Real Estate

Savings and Loan Inspection
Transportation Rate
Architecture Public Building
Petroleum and Gas
Dairy Products Trust
Professional and Vocational Standards Fund
Real Estate Education and Research Fund
Professions and Vocations Fund

3 *State Government Operation Fund*

These are special funds whose source is the General Fund, or a special tax, or fee not regulatory in character, and which support functions which should be supported by direct appropriation Both because of this reason and because the Legislature should set an example, we propose early elimination of the following funds:

Redemption Tax
State Beach and Park
State College
Assembly Contingent
Highway Right-of-Way Acquisition
Legislative Printing
Senate Contingent
Vocational Education
Wild Life Restoration
Yuba River Debris Control
State Water Pollution Control Fund
Surplus Educational Property Revolving Fund
Water Commission Revolving Fund
Agricultural Building Fund
Southern Crossing Engineering Fund
Tax-deeded Land Rental Trust Fund
Medical Care Premium Deposit Fund
Highway Properties Rental Fund
Peace Officers Training Fund
Subsidence Abatement Fund
Soil Conservation Development Fund

4. *Feeder Funds*

In discussing criteria we pointed out the hazards of these funds, in which money is held prior to deposit in the Treasury, to facilitate refunds We recommend that the Legislature either authorize a refund procedure or annually appropriate an amount from the General Fund, out of which duly authorized refunds may be made for all purposes, with adjustments to be made each year by appropriation from any special fund of the refunds chargeable to it. On this basis the following Special Funds may be abolished:

Employment Contingent
Alcoholic Beverage Control
Bank and Corporation Tax
Gift Tax
Personal Income Tax
Retail Sales Tax
Cigarette Tax Fund
Inheritance Tax Fund

5. *Foundation Support.*
Here we deal mainly with dedication of a portion of the General Fund The lively interest in adequate financing for schools and for welfare should not discourage an annual evaluation of these needs in relation to other needs and the State's total financial resources The dedications immediately in question are.

Apportionments to Public Schools

Apportionments to Categorical aids in Welfare

6. *Bond Proceeds Funds.*
A single fund has been proposed, with separate accounting for each bond issue, into which would be consolidated all of the following present separate funds, and in which would be included the proceeds of all future bond sales.

Carquinez-Straits Bridges Construction Fund
Richmond-San Rafael Bridge Construction Fund
San Francisco-Oakland Bay Bridge Construction Fund
State Construction Program Fund
California State Park Funds

7. *Trust Funds.*
We have recommended that all Trust Funds be abolished. If any degree of special protection is desired, then a single Trust Fund should be established All balances in existing Trust Funds should be transferred to it, and all future trust transactions should be administered through it.

8. *Clearance Funds*
In those cases where a fund is used solely to receive money from an outside source or another state fund, for no other purpose than to transfer it to another fund, or to local governments, the special fund serves no useful purpose. The money may as well go directly from source to object, with an accounting record of receipts and disbursements

We recommend that consideration be given to studying the feasibility of eliminating some of the following funds The kind of transaction it "clears" is shown for each fund

a. The Fair and Exposition Fund receives a share of the horse race betting proceeds and the proceeds of realty sales by District Agricultural Association and distributes these to the Horse Racing Board for administrative expenses and to the Department of Finance for supervision of fairs.

b The State School Fund receives proceeds from public land holdings, interest from investments and transfers from the General Fund, all of which are in turn applied to the local school support

c The Highway Users Tax Fund, the Motor Vehicle Fuel Fund, the Motor Vehicle Transportation Tax Fund and the Motor Vehicle Fund receive money from various motor vehicle and fuel revenues for transfers to the Highway Fund and to local governments.

9 *Special User Funds.*

The stiff opposition to all efforts to "divert" highway funds, makes it obvious that from a practical standpoint, the abolishing of these special user funds would be difficult, but we find little logic on their side. The funds involved are·

Fish and Game Preservation
Highway
Motor Vehicle
Poultry Testing Project
Flood Project Maintenance Revolving Fund
Watermaster Service Fund

A PLAN OF ACTION

We are dealing here with an exceedingly complex problem There are funds and priorities on the General Fund; the amount of money is large; the constitution and initiative enactments as well as statutes are involved, and powerful interests will stoutly defend every established dedication of funds It would be unrealistic to suggest that the entire problem can be solved by one swift stroke.

We recommend, instead, that the following steps be taken

1. That bills be introduced to eliminate the funds found to be the least justified
2. That a constitutional amendment be referred to the people embodying the criteria proposed in this report, and requiring the Legislature to abolish all funds inconsistent with the criteria.

   or

   That a constitutional amendment be offered which would require the Legislature to re-examine each dedicated or special fund at regular intervals after its creation, with authority to discontinue it.
3. That the Legislature enlist the interest of civic groups concerned with state finance, to the end that the problem will be better understood and support for its solution will be gained.
4. That pending adoption of constitutional amendments, the Legislature commit itself as a matter of policy to observe the proposed criteria
5. That sub-committees be assigned by the Assembly Committee on Ways and Means and the Senate Committee on Finance to give continuing attention to the problem, to develop public interest and support, to plan the orderly abolishment of unjustfied dedications or funds, and to prevent new dedications and funds which do not qualify according to the criteria.

APPENDIX A

SPECIAL FUND INCOME, EXPENSE AND BALANCES

The following reproduction of Schedule 4 from the 1960-61 Governor's Budget disclosed the current income, expense and balances in the special funds

Schedule 4

SUMMARY OF FUND CONDITION BY FUNDS AS OF JUNE 30, 1959, JUNE 30, 1960, AND JUNE 30, 1961

Fund	Page Reference	Accumulated surplus June 30, 1959	Estimated revenues 1959-60	Estimated expenditures 1959-60	Transfers between funds	Accumulated surplus June 30, 1960	Estimated revenues 1960-61	Estimated expenditures 1960-61	Transfers between funds	Accumulated surplus June 30, 1961
SPECIAL FUNDS										
Agriculture Fund	55	$3,640,603	$8,685,822	$6,856,509		$3,469,916	$7,056,273	$7,203,540		$3,322,649
Alcohol Beverage Control Fund	543	596,394	10,100,000	10,071,394		625,000	10,450,000	10,425,000		650,000
Architecture Public Building Fund	529	484,127	1,004,000	1,268,200		219,927	1,034,500	1,217,278		37,149
Assembly Contingent Fund	3	1,334 654		1,500,000	+$966,450	493,104		1,468,101	+$975,000	
Banking Fund	548	570,550	663,044	747,320		486,274	768,575	826,217		428,633
California Water Fund	943	177,125,717	7,896,139	59,939,158	+250,000 −376,199 −15,000,000	109,956,569	7,020,985	59,842,732		57,134,822
Chiropractic Examiners Fund	576	55,106	61,625	76,965		39,766	63,685	79,686		23,765
Collection Agency Fund	578	61,193	110,660	118 246		53,607	94,445	111,645		36,707
Dairy Products Trust Fund	56	204,620	500,000	524,894		179,516	500,000	524,904		155,012
Employment Contingent Fund	793	100,000	863,997	393,299	−470,698	100,000	862,925	−46,049	−907,974	100,000
Fair and Exposition Fund	802	12,226,162	20,544,639	13,950,809	−103,925 −642,500 −209,000 −17,845,567	10,000	21,503,000	7,636,973	−265,000 −15,000 −13,656,027	
Fish and Game Preservation Fund	477	3,533,449	10,887,150	10,135,655		4,284,944	11,344,745	11,391,295		4,238,394
Highway Fund	884	74,702,655	1,310,000	388,367,310	+330,289,359 (+334,007,667)	17,934,714	1,252,000	341,015,997	+336,781,354 (+351,671,510)	17,952,071
Highway Users Tax Fund	887			84,075,650	+71,091,503 +10,265,839 −330,289,359			88,074,314	+64,349,158 +11,835,000 −339,781,354	
Insurance Fund	554	2,000,000	2,540,099	2,123,664	−411,336	2,000,000	2,560,000	2,096,050	−463,950	2,000,000
Itinerant Merchants Fund	306	27,774	17,000	15,942	−28,832					
Legislative Printing Fund	4	329,710		854,710	+525,000			1,560,000	+1,560,000	
Local Project Assistance Fund	974		316,491		+15,000,000	15,316,491	427,714			15,744,205
Motor Vehicle Fund	451	23,741,345	132,441,204	73,708,699	−71,091,503	11,285,347	132,882,000	60,709,825	−64,349,158	26,129,364
Motor Vehicle Fuel Fund	306	27 850,738	337,256,000	2,955,188	−332,007,667	29,443,883	356,004 700	2,541,315	−351,671,510	31,114,558
Motor Vehicle License Fee Fund	451	8,033,314	119,562,655	119,148,908		8,447,581	124,455,350	124,456,240		8,446,681
Motor Vehicle Transportation Tax Fund	306	1,196,225	12,339,843	1,611,834	+28,832 −10,265,839	1,687,227	13,447,000	1,585,685	−11,835,000	1,733,543
Osteopathic Examiners, Contingent Fund of the Board of	560	57,628	51,235	65,973		43,038	52,085	68,067		27,056
Peace Officers Training Fund	367		450,000	426,998		23,002	600,000	599,171		23,831
Petroleum and Gas Fund	505	155,843	713,843	784,778		84,608	807,107	791,715		100,000
Pilot Commissioners' Special Fund	562	41,741	9,061	33,693		17,049	9,000	24,678		1,371
Poultry Testing Project Fund	88	20,692	53,385	171,134	+103,935	7,368	61,020	176,729	+123,341	15,000
Professions and Vocations Fund										
Accountancy Fund	569	375,746	235,690	299,864		311,572	276,630	281,421		306,781
Architectural Examiners Fund	571	26,257	104,404	85,713		45,948	111,785	92,271		65,472
Athletic Commission Fund	572	50,143	180,000	180,525		29,618	160,000	185,686		3,932
Barber Examiners Fund	573	51,210	169,730	178,026		45,514	173,850	176,715		42,649
Cemetery Fund	594	19,471	52,199	50,844		20,817	55,675	52,442		24,050
Contractors License Board Fund	580	159,500	1,410,365	1,016,802		553,363	1,513,810	1,055,509		1,013,664
Cosmetology Contingent Fund	581	114,844	365,170	303,801		176,513	395,380	316,205		255,688
Dentistry Fund	582	96,993	132,634	142,102		87,575	122,740	135,307		75,008

Schedule 4—SUMMARY OF FUND CONDITION BY FUNDS AS OF JUNE 30, 1959, JUNE 30, 1960, AND JUNE 30, 1961—Continued

Fund	Page Reference	Accumulated surplus June 30, 1959	Estimated revenues 1959-60	Estimated expenditures 1959-60	Transfers between funds	Accumulated surplus June 30, 1960	Estimated revenues 1960-61	Estimated expenditures 1960-61	Transfers between funds	Accumulated surplus June 30, 1961
SPECIAL FUNDS—Continued										
Professions and Vocations Fund—Cont.										
Dry Cleaners Fund	583	74,685	331,200	358,346		47,539	344,755	385,400		6,894
Funeral Directors and Embalmers Fund	585	47,001	63,982	58,603		52,380	61,993	60,281		54,092
Furniture and Bedding Inspection Fund	586	157,783	261,613	353,914		165 482	361,613	373,493		153,602
Landscape Architects Fund	588	32,359	17,413	19,231		30,443	17,793	19,031		29,205
Medical Examiners Contingent Fund	591	392 686	404 415	410,146		386,955	408,350	446,659		348,646
Nurse Examiners Fund	592	202 596	290 000	257 830		235,076	330,000	334,943		230,133
Optometry Fund	594	13,541	44,686	46 153		12,074	45,410	45,697		11,787
Pharmacy Board Contingent Fund	595	90,592	263,101	299,880		53,813	325,000	321,541		57,272
Physical Therapy Fund	596	17,979	7,850	13,008		12,823	7,850	12,612		8,061
Private Investigators and Adjuster Fund	596	172,476	62,421	99,336		135,561	55,533	80,747		110,147
Professional Engineers Fund	597	158,398	310 000	330,765		137,533	310,000	332,946		114,587
Registered social Worker's Fund	598	26,474	28,879	29 492		25,861	28,650	29,015		25,166
Shorthand Reporters Fund	599	34 513	17,580	16 649		35,444	18,360	16,858		36,946
Structural Pest Control Fund	600	21,019	72,222	88,496		4,845	95,266	92,639		7,482
Veterinary Examiners' Contingent Fund	601	20,784	26,158	25,743		21,199	27,660	26,768		22,091
Vocational Nurse Examiners Fund	603	14,526	138 030	106,418		46,138	148,700	116,184		78,654
Yacht and Ship Brokers Fund	604	36,677	20,220	18,692		38,205	20,360	19,649		38,916
Real Estate Education and Research Fund	557	1,097,983	464,077	407,219		1,154,841	508,260	448,104		1,214,997
Real Estate Fund	557	1,615,618	1,763,449	1,609 129		1,769,938	1,948,290	1,652,782		2,065,446
Redemption Tax Fund	298	694 433	213,000	217,981		689,449	213,000	230,745		671,704
Savings and Loan Inspection Fund	559	608,007	925,500	795,271		738,236	1,025,500	905,392		858,344
Senate Contingent Fund	3	1,329,727		1,810,200	+1,239,093	658,620		1,788,000	+1,129,380	
Sixth District Agricultural Association Fund	330	148,034	140,383	349,429	+209,000	145,988	228,152	568,091	+15,000 +190,000	11,049
State Beach and Park Fund	863	19,683,273	10,741,837	21,526,093		8,899,017	8,262,609	21,594,986	+5,045,360 −768,498	610,000
State College Fund	737	2,249,972	16,278	1,497,755		768,498				
State Lands Act Fund	334	829,996	1,396,655	1,450,881		775,770	1,555,201	1,561,505		769,466
State Fair Fund	326	97,752	1,547,828	2,210,987	+642,500	76,693	1,784,000	2,329,954	+265,000 +255,500	51,239
State School Fund	919	25,617	4,364,282	4,364,899		25,000	4,028,000	4,028,000		25,000
State School Construction Fund	951	1,000,000				1,000,000		200,000		800,000
Subsidence Abatement Fund	506	177,506	241,291	108,271	−250,000	60,526	142,951	115,589		87,891
Transportation Rate Fund	612	94,582	2,993,000	2,834,039		153,543	3,000,000	2,894,884		298,659
Veterans Dependents Education Fund	628	180,940	309,000	480,840						
Wildlife Restoration Fund	647	1,572,344	736 255	1,157,304	+1,717	1,213,012	778,800	1,652,326		339,486
Provision for Salary Increase	675							11,426,123		−11,426,123
TOTALS, SPECIAL FUNDS		$371,822,385	$697,312,523	$825,335,705	+2,434,260 −19 103,710	$227,129,753	$728,220,178	$780,922,048	+9,279,581 −15,796,449	$167,911,013
GRAND TOTALS, ALL STATE FUNDS		$427,838,147	$2,165,833,418	$2,292,814,626	+$236,516	$301,093,453	$2,346,266,051	$2,477,121,574		$169,337,930

Schedule 5

STATEMENT OF BALANCES IN OTHER TREASURY FUNDS WHICH ARE NOT INCLUDED IN THE BUDGET TOTALS

Fund	Page Reference	Balance June 30, 1958				Balance June 30, 1959			
		Cash	Securities	Due from Surplus Money Investment Fund	Total	Cash	Securities	Due from Surplus Money Investment Fund	Total
WORKING CAPITAL AND REVOLVING FUNDS									
Agriculture Building Fund	—	$84,665			$84,665	$12,133			$12,133
Architecture Revolving Fund	1026	103,687,880			103,687,880	101,494,886			101,494,886
Ballot Paper Revolving Fund	1000	86,292			86 292	73,272			73 272
California Industries for the Blind Manufacturing Fund	1013	120,978			120 978	534,287			534,287
Correctional Industries Revolving Fund	1001	116,005			116,005	993,312			993,312
Highway Right of Way Acquisition Fund	887	964,780			964,780	999,607			999,607
Old Age and Survivors Insurance Revolving Fund	1000	28,021			28,021	97,642			97,642
Printing Fund	1018	1,566 166			1,566,166	617,112			617,112
Professional and Vocational Standards Fund	556	139,144			139 144	262,534			262,534
Public Building Construction Fund	—	30,516			30 516				
Purchasing Revolving Fund	1021	122 858			122,858	269,187			269,187
Soil Conservation Development Fund	1025	119,899			119,899	38,325			38,325
State Payroll Revolving Fund	1000	39,393,708			39,393,708	41,676,089			41,676,089
State Water Pollution Control Fund	1027	154,258			154,258	151,677			151,677
Surplus Educational Property Revolving Fund	1017	86,498			86,498	609,412			609,412
Surplus Money Investment Fund	1000	3,265 026	$84 444,000	−$84,575,000	3,134,026	4,559,152	$91,218,320	−$91,380,000	4,397,472
Veterans Affairs Construction Fund	—	206,117			206,117	190,580			190,580
Water Commission Revolving Fund	—	49,148			49,148	40,703			40,703
Water Resources Revolving Fund	1029	3,038,286			3,038,286	6,648,931			6,648,931
PUBLIC SERVICE ENTERPRISE FUNDS									
San Francisco Harbor Funds									
San Francisco Harbor Improvement Fund	1035	459,326		1,900,000	2,359,326	568,003		1,950,000	2,518,003
San Francisco Harbor Revenue Bond Fund	—	139,600	280,000		419,600	100,785	280,000		380,785
San Francisco Harbor Special Fire Deposit Fund	—	37,642		275,000	312,642	30,955		250,000	280,955
India Basin Sinking Fund	1000	1,139	7,979		9,118	1,852	7,911		9,763
San Francisco Seawall Sinking Fund No 2	1000	10,113	9,117		19 230	10 566	8,688		19,254
San Francisco Seawall Sinking Fund No 3	1000	12,098	11,113		23,211	12,291	10,618		22,879
San Francisco Seawall Sinking Fund No 4	1000	90,968	193,465		284,433	89,082	192,768		281,850
San Francisco Seawall Fund No 4	—	465,131			465,131	412,114			412,114
San Francisco Harbor Construction (Series A) Fund	—	14 388	800,000		814,388	494	813,003		814,387
Toll Bridge Funds									
Carquinez Straits Bridges Construction Fund	1040	796,325	7,979,975		8,776,300	169,459	366,980		566,439
Richmond-San Rafael Bridge Construction Fund	1040	158,254			158,254	29,942	196,938		226,880
San Francisco-Oakland Bay Bridge Construction Fund	1039	51,060	2,249,287		2,300,347	277,199	1,843,319		2,120,518
San Francisco-Oakland Bay Bridge Toll Revenue Fund	1039	143,883	23,799,089		23,942,972	37,472	32,097,521		32,134,993
Southern Crossing Engineering Fund	1040	154,209			154,209	38,277	98,238		136,515
Toll Bridge Authority Revolving Fund	—	690			690	690			690
Other Utility Funds									
College Auxiliary Enterprise Fund	1041	98,178			98,178	89,056			89,056
Compensation Insurance Fund	1048	1,405,999	82,240,293		83,646,292	881,161	86,792,538		87,673,699
Small Craft Harbors Revolving Fund	980	853,980			853,980	616,730			616,730
Unemployment Compensation Disability Fund	1054	68,301	119,457,305		119,525,606	393,940	103,358,323		103,352,263
Veterans Farm and Home Building Fund of 1943	1049	766,590	114,788,273		115,554,903	695,990	42,840,618		43,536,608

Schedule 5—STATEMENT OF BALANCES IN OTHER TREASURY FUNDS WHICH ARE NOT INCLUDED IN THE BUDGET TOTALS—Continued

Fund	Page Reference	Balance June 30, 1958 Cash	Balance June 30, 1958 Securities	Balance June 30, 1958 Due from Surplus Money Investment Fund	Balance June 30, 1958 Total	Balance June 30, 1959 Cash	Balance June 30, 1959 Securities	Balance June 30, 1959 Due from Surplus Money Investment Fund	Balance June 30, 1959 Total
BOND FUNDS									
Public School Building Loan Fund	954	$955,039			$955,039	$1,106,054			$1,106,054
State School Building Aid Fund	954	57,064,763			57,064,763	40,100,561			40,100,561
State Construction Program Fund	694	1,281,731			1,281,731	21,122,935			21,122,935
RETIREMENT FUNDS									
Judges' Retirement Fund	1052	35,892	$2,154,560		2,190,452	23,080	$2,283,444		2,306,524
Legislators' Retirement Fund	1053	19,122	245,000		264,122	9,401	285,886		295,287
State Employees' Retirement Fund	1053	7,170,035	883,121,884		890,292,919	7,609,005	1,048,365,655		1,055,974,660
Teachers' Retirement Fund	1052	8,484,411	381,901,793		390,386,204	7,623,971	441,944,413		449,568,384
DEBT SERVICE FUNDS									
Olympic Bond Fund	682	19,342	306,500		325,842	3,084	300,364		303,448
State Buildings Sinking and Interest Fund	682	11,368	3,629,030		3,640,398	756	3,786,519		3,787,275
TRUST AND AGENCY FUNDS									
Federal Funds									
Public Health—Federal Fund	512	685,863			685,863	559,269			559,269
Social Welfare—Federal Fund	613	2,238,488			2,238,488	2,021,524			2,021,524
Unemployment Administration Fund	1054	2,496,072			2,496,072	3,715,507			3,715,507
Vocational Education Federal Fund	172					1,502,155			1,502,155
Vocational Rehabilitation—Federal Fund	177	38,337			38,337	269,164			269,164
Other Trust and Agency Funds									
Condemnation Deposit Fund	1000	3,930,650	3,068,795		6,999,445	4,812,774	9,734,945		14,547,719
Inmate Welfare Fund	1012	139,214			139,214	161,646			161,646
Medical Care Premium Deposit Fund	1000	663,933			663,933	3,132,629			3,132,629
School Land Fund	1000	45,358	12,563,045		12,608,403	111,068	14,035,495		14,146,563
Special Deposit Fund	1000	4,015,179		$2,325,000	6,340,179	6,974,248		$6,105,000	13,079,248
State Park Contingent Fund	1000	122,873			122,873	54,529			54,529
Tax Deeded Land Rental Trust Fund	1000	4,104			4,104	4,470			4,470
Torrens Title Assurance Fund	1000	63			63				
Unclaimed Property Fund	1000	108,261	6,464,283		6,572,544	161,689	6,334,783		6,496,472
Unemployment Fund	1054	13,780			13,780	6,819			6,819
TOTAL BALANCES IN OTHER TREASURY FUNDS		$248,533,007	$1,739,714,756	—$80,075,000	$1,898,172,763	$264,782,037	$1,887,228,187	—$83,075,000	$2,068,935,224
General Fund		*5,728,701*			*5,728,701*	*13,773,358*			*13,773,358*
Reserve Funds		*109,423,546*	*163,045,689*		*272,473,235*	*43,463,300*	*188,419,916*		*231,888,216*
Highway Fund		*27,058,146*	*75,013,437*		*102,071,633*	*6,799,366*	*96,870,221*	*26,300,000*	*129,969,587*
Other Special Funds		*20,875,330*	*20,000*	*80,075,000*	*100,968,330*	*19,774,592*	*20,000*	*56,775,000*	*76,569,592*
Treasurers' Trust Accounts		*13,009,390*	*32,076,332*		*45,085,722*	*15,799,833*	*31,980,348*		*47,780,181*
Uncleared Collections		*24,081,819*			*24,081,819*	*4,440,088*			*4,440,088*
Warrants Outstanding		*92,124,919*			*92,124,919*	*87,433,171*			*87,433,171*
Time Deposit in Banks[a]		*—153,888,000*	*153,888,000*			*—154,738,000*	*154,738,000*		
Pooled Money Account[a]		*—334,642,732*	*334,642,732*			*—270,783,302*	*270,783,302*		
TOTALS, STATE TREASURERS ACCOUNTABILITY		*$52,242,076*	*$2,438,405,046*		*$2,540,647,122*	*$30,749,443*	*$2,630,039,974*		*$2,660,789,417*

[a] Not identified as to fund.

APPENDIX B

SUMMARY OF SPECIAL FUND CHARACTERISTICS

The following summary indicates the legal authority for each fund, the date it was established, the principal sources of the fund, and its principal dispositions.

Fund	Citation Code Section	Date Est	Source	Disposition
SPECIAL REVENUE FUNDS				
Accountancy				Administrative expense
Architectural Examiners	B & P 5500-5604	1941	Fees and penalty	Administrative expense
Athletic Commission	B & P 18600-18783	1924	Tax on admission, license fees	Administrative expense, care of veterans
Banking	Financial 270-275	1909	Annual assessments, examination fees	Administrative expense
Barber Examiners	B & P 6500-6630	1927	Fees	Administrative expense
Cemetery	B & P 9600-9770	1940	Fees and licenses	Administrative expense
Chiropractic Examiners	Deerings Gen Laws Act 4811	1922	Fees and licenses	Administrative expense
Collection Agency Board	B & P Div III, Ch 8 6850 et seq	1937	Fees and licenses	Administrative expense
Contractors' License Board	B & P 7000-7145	1929	Fees and licenses and penalties	Administrative expense
Cosmetology Contingent	B & P 7300-7457	1937	Fees and licenses	Administrative expense
Dentistry	B & P 1600-1752	1915	Fees, licenses, fines and forfeitures	Administrative expense
Dry Cleaners	B & P 9500-9598 5	1947	Fees and licenses	General Fund for support of State Fire Marshal, administrative expense
Funeral Directors and Embalmers	B & P 7600-7729	1929	Fees and licenses	Administrative expense
Furniture and Bedding Inspection	B & P 19000-19221	1935	Licenses	Administrative expense
Insurance	Insurance Ch 145 Statutes of 1935	1929	Licenses and examination fees, reimbursements, penalties, taxes	Administrative expense
Itinerant Merchants	B & P 16300-16451	1939	Licenses, fees and fines	Administrative expense
Landscape Architects	B & P 5615-5656	1953	Fees and penalties	Administrative expense
Medical Examiners Contingent	2000 et seq 2550 et seq 2600 et seq	1907	Fees, taxes, penalties, fines and forfeitures	Directories, administrative expense U C Medical Library
Nurse Examiners	B & P 2700-2840	1933	Fees and licenses, penalties	Administrative expense
Optometry	B & P 3000-3152	1913	Fees and licenses, penalties, ½ fines and forfeitures	U C research, administrative expense
Osteopathy	Deering Gen Law B & P 2490-2497 Osteopathic Act 5727	1922	Fees and taxes, ¾ fines and forfeitures	Administrative expense
Pharmacy Board	B & P 4000-4416	1931	Fees and penalties, ½ fines	Administrative expense
Physical Therapy	B & P 2650-2694	1953	Fees and licenses	Administrative expense
Pilot Commissioners	Harbors & Navigation 1159	1927	6% of bar pilotage fees	Administrative expense, General Fund
Private Investigators and Adjusters	B & P 7500-7583	1947	Fees and licenses	Administrative expense
Professional Engineers	B & P 6700-6799, 8700-8805	1929	Fees and licenses, certificates, penalties	Administrative expense
Professions and Vocations Fund	B & P 205	1959	Consolidation of 36 special	funds for accounting purposes
Real Estate	B & P 10000-10601, 11000-11658	1917	Fees and licenses, permits, sale of directories	Administrative expense, U C Institute of Real Estate
Real Estate Education and Research Fund	B & P 10450 6, 10451 5	1956		Real Estate Education and Research in State Education Institute
Registered Social Workers'	B & P 9000-9044	1945	Fees and penalties	Administrative expense
Savings and Loan Inspection	Financial 5350, 5351, 5352	1911	License, fees and penalties	Administrative expense
Shorthand Reporters'	B & P 8000-8032	1951	Fees	Administrative expense
Structural Pest Control	B & P 8500-8677	1935	Fees and licenses, penalties	Administrative expense
Transportation Rate	Pub Utility Div 2, Ch 6	1935	Fees on operating revenue, other fees, sale of documents, penalties	Reimbursement of General Fund for moneys for administrative expense
Veterinary Examiners Contingent	B & P 4800-4905	1927	Fees, charges for documents, penalties, ½ fines and forefeitures	Administrative expense

APPENDIX B—Continued

SUMMARY OF SPECIAL FUND CHARACTERISTICS

Fund	Citation Code Section	Date Est	Source	Disposition
SPECIAL REVENUE FUNDS—Continued				
Vocational Nurse Examiners	B & P 2840-2895	1951	Fees	Administrative expense
Yacht and Ship Brokers	B & P 8600-8975	1935	Fees and licenses	Administrative expense
Agriculture	Agriculture Div 1, Ch 1, Article 1, Sec 20-34 7	1929	Licenses and fees, General Fund	Administrative expense, Agricultural Budding Fund, seed potato test plot
Architecture Public Bldg	Education 18191-18205	1933	Fees	Administrative expense
Employment Contingent	Unemployment Insurance 1535-1589	1945	Interest on contributions and penalties	Refunds, interest on refunds and judgments, administrative expense
Fair and Exposition	B & P Agriculture Div 8, Ch 4-88, 92, 94	1933	4% of pari-mutuel pool, sale of realty by District Agricultural Assn	Administrative expense of Horse Racing Board, Dept of Finance for supervision of fairs
Fish and Game Preservation	Fish and Game 45	1909	Licenses, permits, fees, taxes, ½ fines and forfeits, and others	Administrative expense Pacific marine fisheries, acquisition and construction of preserves and hatcheries
Highway	Street & Highway 45 B & P 5321	1933	Transfers from Highway Users Tax Fund Balance on Motor Vehicle Fuel and M V Fund after expenses and other	General administration Highway maintenance, acquisition and construction
Highway Properties Rental Fund	Streets & Highways 104 6	1959	Leases of properties	
Motor Vehicle	Vehicle 776	1915	Licenses, fees, penalties, transfers from Motor Vehicle License Fee Fund, interest	Motor Vehicle Department administrative expenses, Highway Patrol administrative expenses, Highway Users Tax Fund
Motor Vehicle Fuel	Revenue & Taxation 7301-8403 8801-9354	1923	Taxes and penalties	Administrative expense Division Highway taxes, Bd of Equalization, Tax Coll and Refund Div and Bureau of Highway Accts and Reports, Controllers Office, Transfers to Highway Users Tax Fund
Motor Vehicle License Fee	Revenue & Taxation 10701 11005	1935	License, fees of vehicles subject to registration penalties	Transfer to M V Fund to General Fund to Counties and Cities
Motor Vehicle Transfer Tax	Revenue & Taxation 9601-10601	1935	License fees, taxes, penalties	Administrative Expense, Div Highway Tax, Board of Equalization and tax collection and refund
Petroleum and Gas	Public Resources 3110	1917	Assess on Prod Penalties, sale of maps and publications	Administrative expense, Div Oil and Gas, Dept of Natural Resources
Poultry Testing Project	Agricultural 47	1939	Fees, sale of eggs and poultry, transfer from Fair and Exposition Fund	Administrative expense, acquisition of project facilities, awards
Redemption Tax	Revenue & Taxation 3660	1937	Fees and rents	Administrative expense, Tax-deeded Land Div, Controllers Office, apportionment to counties
State School	Constitu Education Art IX, Sec 4 5151-5155 5201-5203	1851	Rents and royalties school lands, State oil and mineral royalties, interest from investments, transfer from General Fund	Support of schools to school districts
Sixth District Agricultural Assn	Agricultural 91 5	1933	Transfer from Fair and Exposition Fund, rentals, admissions to transport exhibits	Sixth District Agri Assn support, acquisition and construction, maintenance etc, transfer to General Fund for advances
State Beach and Park	Public Resources 5010	1957	Transfer from State Lands Act Fund, camping and parking fees	Acquisition and maintenance of Beaches and Parks Construction operations
State College	B & P 19620 1	1947	Certain proceeds from pari-mutuel pool at horse racing	Acquisition, construction, maintenance and support of Dept of Agri at Fresno State College

APPENDIX B—Continued

SUMMARY OF SPECIAL FUND CHARACTERISTICS

Fund	Citation Code Section	Date Est	Source	Disposition
SPECIAL REVENUE FUNDS—Continued				
Dairy Products Trust	Agricultural 740-750 2	1945	Milk fat assessment, penalties and interest thereon	To Dept of Agri. for administrative costs and Bureau of Milk control audits
State Fair	Agricultural 76	1933	Admissions, fees, rentals, parking, wagering, transfer from Fair and Exposition Fund	Operation of State Fairs, construction, improvements, equipment, etc
RESERVE FUNDS				
Bond Sinking Fund of '43	State '43 Ch 611 State '45 Ch 1492	1943	Appropriation from Gen Fund, interest on invest matured principal Repayment on loan	Transfer to Gen Fund, transfer to Highway Fund, investments
Capital Outlay and Savings	Budget Act 1951 Ch 1020	1951	Transfer from Post war Employment Fund and Gen Fund, investment income	Transfer to Architecture Revolv Fund for Public Works to U C directly for construction
Flood Control Fund of '46	Water 12810	1946	Approp to Fund Income from investments	Flood control projects with U S
Postwar Unemployment and Construction	State '45 Ch 647 State '46 Ch 20	1945	Approp from General Fund Increment from investment	To local agencies for public works administrative expense of Act to Controller and Finance Dept Transfer to Water Resources
Revenue Deficiency Reserve	Gov 16410-16413	1947	Transfer from General Fund Repay of loans	Transfer to General Fund when needed Loans to General Fund
School Bond Retirement	State '52 Budget Ch 3, Sec 2 Item 114 1	1952	Transfer from General Fund Income from investment	Transfer to General Fund
FEEDER FUNDS				
Alcoholic Beverage Control	B & P 23000 et seq	1935	License, fees, excise taxes, penalties	To local agencies refunds Transfer to General Fund
Bank & Corporation Tax	Revenue 23001-Taxation 26481	1929	Taxes, penalties and interests	Refunds Transfer to General Fund
Cigarette Tax Fund	Revenue & Taxation-30462	1959		Refunds Transfer to General Fund
Gift Tax	Revenue—15101 Taxation—16652	1939	Taxes on gifts, penalties, interest	Refunds Transfer to General Fund
Inheritance Tax Fund	Revenue & Taxation 14902	1959		Refund of inheritance tax payments Transfer to General Fund
Personal Income Tax	Revenue & Taxation 17001-19500	1935	Personal income tax, penalties and interest	Refunds Transfer to General Fund
Retail Sales Tax	Revenue & Taxation 6001-7176	1933	State and local sales tax, use tax, permit fee	Refunds Transfer to General Fund
State Lands Act	Public Resources 6816	1938	Oil gas, mineral royalties Reimbursements for services	Support Div of State Lands, Ana-Colo River boundary determination Admin Exp by Div of State Lands for School Land Fund and State School Fund Transfer Vet Dependents Education Fund Transfer to State Beach and Park Fund.
GOVERNMENT COST FUNDS				
Assembly Contingent	Gov't 9127	1949	Transfer from General Fund	Assembly contingent expense Reversion to General Fund
Highway Right-of-Way Acquisition	State '52, Ch 23 (ext ases) Ch 1714 State '53	1952	Transfer from M V Fuel Fund, M V Transport Tax	Acquisitions of Rights-of-Way
Highway Users Tax	Streets & Highways 2100	1947	Transfer from M V Fund. Transfer from M V Fuel Fund Transfer from M V. Transport Tax Fund	To Counties to State Highway Fund
Legislative Printing	Gov't 9128	1949	Transfer from General Fund	Legislative printing
Senate Contingent	Gov't 9126	1949	Transfer from General Fund	Senate contingent expenses
Veterans' Dependents Education	Military & Veterans 897	1921	Transfer from State Lands Act Fund	Educational assistance to veterans dependents to General Fund for admin expenses

APPENDIX B—Continued

SUMMARY OF SPECIAL FUND CHARACTERISTICS

Fund	Citation Code Section	Date Est	Source	Disposition
GOVERNMENT COST FUNDS —Continued				
Vocational Education	Education 3704	1917	Transfer from General Fund	To secondary schools for vocational education to Div of Instruction, Dept of Education
Wild Life Restoration	B & P 19627	1947	Horse racing license revenue	Administration expenses Wild Life Conservation Board, capital outlay for projects
Yuba River Debris Control	State '35 Ch 686	1935	Transfer from General Fund	Construction, maintenance, improvement, repair of facilities for control of Yuba River
INTEREST REDEMPTION AND SINKING FUNDS				
California State Park Interest & Sinking Fund	Stats '27 Ch 765	1927	Transfer from General Fund	To fiscal agent for interest and maturing principal
Highway Interest and Sinking Funds, 1, 2, 3	Stat '09 Ch 383 Stats '15 Ch 404 Const Rev Art XX I & Tax Code Sec 2, 3 11004	1909 1915 1919	Transfer from General Fund	Payment of interest and maturing principal
India Basin Sinking Fund	State '09 Ch 407	1909	Transfer from S F Harbor Improvement Fund Investment Income	Bond principal and int Transfer to S F Harbor Improvement Fund unused balance
State Bldg Sinking & Int Fund	Stats '13 Ch 235	1913	Transfer from General Fund Investment income	Interest redemption
S F Seaway Sinking Fund No 2	State '09 Ch 320	1909	Transfer from S F Harbor Improvement Fund Investment income	Bond interest & redemption Return of balance to S F Harbor Improvement Fund
S F Seaway Sinking Fund No 3	Stats '13 Ch 602	1913	Same as No 2	Same as No 2
S F Seaway Sinking Fund No 4	Constitution Stats '29, Art XVI, Sec 8, Ch 935		Same as No 2	Same as No 2
S F State Bldg Sinking Fund	Stats '13 Ch 541	1913	Transfer from General Fund	Bond interest and redemption
State Bldg & St Univ Bldgs Int & Sinking Fund	Stats '25 Ch 161	1925	Transfer from General Fund	Bond interest and redemption
U of C Bldg Int & Sinking Fund	Nov '14 Initiative Stats '15 Ch 16	1914	Transfer from General Fund	Bond interest and redemption
WORKING CAPITAL AND REVOLVING FUNDS				
Architecture Revolving Fund	Gov't 14030 et seq	1933	Transfer from approp to several agencies for construction and improvement	Architecture services Return of balance Revolving Fund for wages, advances etc
Ballot Paper Revolving Fund	Elections 3704	1913	From counties and cities for ballot paper sold	Purchase, storage, transport, sale costs of ballot paper
Calif Industries for Blind Manufac Fund	W & I 3332	1953	Sale of products manufactured by blind	Operating costs of Blind Products Mfg Transfer of excess to General Fund Revolving Fund for Comp Advances, etc
Correctional Industries Revolving Fund	Penal 2714	1945	Sale of services and/or products	Operating expenses, Transfer excess to General Fund
Old Age & Survivors Insurance Revolving Fund	Gov't 23037	1951	Contributions, penalties, & int, rumb received by State related to OASI coverage	Payments of contrib required under OASI, reimburse admin exp refunds for errors
Opportunity Work Center Revolv Fund	W & I 3374	1959		Purchase and rental of equipment for Blind Center
Printing Fund	Gov't 13640	1899	Transfer General Fund, collection from agencies for printing costs	Operating costs, revolving fund for comp advances, etc
Professional & Vocational Stand Fund	B & P 100-105	1929	Transfer from special funds—General Fund	Admin and capital expenses of B & P Dept Transfer to General Fund and contributing funds.

APPENDIX B—Continued

SUMMARY OF SPECIAL FUND CHARACTERISTICS

Fund	Citation Code Section	Date Est	Source	Disposition
WORKING CAPITAL AND REVOLVING FUND—Continued				
Purchasing Revolving Fund	Gov't 13373	1917	Legislative appropriation, sales and services to other agencies	Operating expenses, Revolving Fund
Soil Conservation Development Fund	Public Resources Div 9, Ch 1680 Stats '55	1955	Rental, sales, services Grants from U S for soil conservation	Grants for soil conservation Purchase of equipment and operating expenses on it Loans to S C Dist to General Fund for division of Soil Cons Dept of Natural Resources, matching funds for Pleasanton Nursery
State Payroll Revolving Fund	Gov't 16390	1949	Transfer from Agency Fund and Appropriations	Salaries and wages, payments of withholding to designated payee Return of excess
State Water Pollution Control Fund	Stats '49 Ch 1551	1949	Repay of loans, interest on loans	Loans to municipalities and districts Excess to General Fund
Surplus Educational Fund	Education 205	1947	Transfer to Reserves charges billed Transfer working capital from General Fund Reimburse from Dept. Education	Costs and operation expenses for acquiring surplus U S property for Calif Educa Inst Admin. Exp —Return of excess
Surplus Money Invest Fund	Gov't 16471	1945	Transfer of excess from special funds, principal and earnings	Investments, apport of earnings Transfer to special funds
Toll Bridge Authority Revolv Fund	Street & Hiway 30313	1939	Reimburse from Toll bridge acq & constr or toll rev funds	Operat & admin exp of Toll Bridge Authority Act
Water Commission Revolv Fund	Water 2862	1921	Charges for determining water rights Penalties and interest	Expenses of determining water rights Transfer to other funds
Water Resources Revolving Fund	Gov't 14034	1939	Transfer from approp for projects under Div of Water Res from other sources under Agreements	Expenses of surveys, construction, maintenance, investment authorized by contributors
BOND FUNDS				
Calif State Park Funds	Stats '27 Ch 785	1927	Proceeds of sale of bonds	Acquisition of land for parks
S F Seawall Fund No 5 & 5th SW Sinking Fund	Stats '57 Ch 2238	1957	Proceeds bond sales, investment income	Harbor improvement bond payments
Harbor Bond Sinking Fund				
5th S F Seawall Fund				
Small Crafts Harbor Bond Fd	Stats '58 Ch 102	1958		
Small Crafts Harbor Improv Fund				
Public School Bldg Loan Fund	Education Constitution, Div 3 Ch 1 6 & 1 7, Art XVI Sec 15	1949	Sale of bonds investment income from surplus funds Transfer from State Sch Fund Return to Loans and Advances and Unauthorized expenses	Apport of School Dists Bond costs Transfer to General Fund Transfer to State School Bldg Aid Fund
Public Bldg Constr Fund	Gov't Stats '55 15845 Ch 1666	1955		Purchase, construction, lease of state buildings
S F Harbor Construction Fund	Harbors & Navigation 3300-3369	1951	Proceeds of sale of bonds	Construction of facilities. Bond costs Bond interest (early)
S F Seawall Fund No 4	Stats '29 Constitu Ch 835, Art XVI Sec 8	1929	Proceeds of sale of bonds	Construction of facilities
State School Bldg Fund	Education 5048 7	1952	Transfer from State School Bldg Loan Fund Deducts from State Sch Fund apports refund of Sch Dist. Loans	Apport to School Dist Transfer to General Fund Transfer to Public School Bldg Loan Fund
State School Bldg Aid Fund	Education Constitu Div 3, Ch 19, 20 Art XVI, Sec 16 5	1952	Proceeds Bond Sales Transfer from Gen Fund investment inc surplus funds Transfer from State School Fund	Apport to School Dists School Buildings Bond Costs Expenses of State Allocation Board and meetings Transfer to General Fund
School Construction Fund	Education 13957	1957		Apport. to school districts

APPENDIX B—Continued

SUMMARY OF SPECIAL FUND CHARACTERISTICS

Fund	Citation Code Section	Date Est	Source	Disposition
ASSESSMENT FUNDS				
Flood Control Project Maintenance Revolv Fund	Water 8440	1947	Assess of est costs of operation and maintenance of flood control projects	Expenditure for maintenance of flood control projects
Watermaster Service Fund	Water 4350	1913	Assess from owners of water rights Transfer from Gen Fund	Payment of claims Transfer from General Fund
UTILITY FUNDS				
College Auxiliary Enterprise Fund	Education 20356	1949	Rents, charges, fees for student housing facilities	Operating expenses for student housing facilities, construction of facilities
Compensation Insurance Fund	Insurance 11770	1913	Insurance premiums Premium deposits Reimbursement from other state funds Investment income recoveries	Workmens' Compensation losses Administrative costs. Premium taxes, Premium Dividends
Local Projects Assess Fund	State '59 Ch 1752	1959		Loans and grants to local water projects
Peace Officers Training Fund	Penal 13523	1959		Administrative expenses of Commission on Peace Officers Standards & Training grants to local gov't
S F Harbor Improv Fund	Harbor & Navigation 1690-3231	1876	Harbor tolls, charges services, investment income, half fines	Operating expenses of harbor facilities Some improvements, administrative expenses, payments to S F for services
Subsidence Abatement Fund	Public Resources 3333	1958	Assessments and charges	Administrative expenses
UCD Fund (Disability Fund)	Unemployment Insurance 2601-3270	1946	Wage-earner contributing assess of voluntary plans Transfer from Unemp Trust Fund, investment income	Disability benefits Administrative expenses Land acquisition and construction of buildings
Veterans' Farm & Home Bldg Fund of '43	Military & Veterans 988	1943	Interest and principal on farm and home purchase contracts Investment income bond sales, loans from General Fund	Purchase of farms and homes on veterans contracts Transfer to General Fund Investment on funds pending use
AGENCY FUNDS				
U S Flood Control Receipts Fund	State '47 Ch 145	1947	Receipts from U S for acquisition of flood control lands	Distribution to counties
U S Forest Reserve Fund	Gov't 29480-29484	1907	Receipts from U S for forest lands	Distribution to counties
U S Grazing Fees Fund	Public Resources 8551-8558	1945	Receipts from U S for grazing lands	Distribution to counties
Agriculture Bldg Fund	Agricultural 35-35.6	1950	Transfer from Dept of Agri Fund, rentals	Acquisition of property, construction, operating costs, repay contributing funds and interest, transfer to General Fund
Condemnation Deposit	Public Resources State '59 Ch 2164	1959	Various	Disbursements on court order
Medical Care Premium Deposit Fund	W & I 4603-4604	1957		Distribution to counties
Richmond-San Rafael Bridge Constr. Fund	Streets & Highway 30300	1929	Proceeds Bond Sales. Investment income	Land costs, construction, operating expenses, studies, bond interest (con 6 months)
S F-Oakland Bay Bridge Constr Fund	Streets & Highway 30300	1929	Proceeds Bond Sales Investment income	Land, construction, operating costs, studies, 1st bond interest
School Land Fund	Constitu Art IX, Sec 4	1859	Land sales, transfer from unclaimed Property Fund, Property of inter-State ex-residents	Earnings from investments, Transfer to State, State School Fund
Social Welfare Federal Fund	W & I 124 1-124 4	1951	Federal grants	Federal share Old Age Assns Aid to Blind and Needy Children Federal share of local administra costs, County and State administrative costs
Southern Crossing Eng Fund	Streets & Highway 30300	1953	Bond sales Investment income	Bay crossing studies

APPENDIX B—Continued

SUMMARY OF SPECIAL FUND CHARACTERISTICS

Fund	Citation Code Section	Date Est	Source	Disposition
AGENCY FUNDS —Continued				
Tax-deeded Land Rental Trust Fund	Revenue & Taxation 3659	1943	Rental of property, acquisition by State from unpaid taxes	Distribution to counties
Unemployment Administration Fund	Unemploy Insurance 1555-1562	1935	U S grants sale of salvage etc	Administrative expenses
Vocational Rehab Federal Fund	Education 5803-5806	1953	Federal grants	Expense for Vocational Rehabilitation and Training
Vocational Education Federal Fund	Education 18706	1957		
TRUST FUNDS				
Calif 10th Olympic Int and Sinking Fund	State '27 Ch 313	1927	Transfer from General Fund, accrued interest on bonds sold	Payments of interest and maturing principal
Inmate Welfare Fund	Penal 5006	1945	Proceeds from canteens and hobby shops Prisoner deposits	Education and welfare of inmates
Judges Retirement Fund	Gov't 75100-75108	1937	Transfer from General Fund of judges contrib from counties, amount deducted from judges' salaries	Retirement allowances, refunds
Legislators' Retirement Fund	Gov't 9350-9361 5	1947	Deductions from Legislators' compensation approp as needed Investment income	Retirement benefits, death benefits, refunds
Montague Water Conservation Dist Condemnation Fund	Civil Procedure 1254	1932	Litigation deposits	Court directed disbursements
Olympic Bond Fund	State '27 Ch 313 Constitu Art XVI Section 5	1927	Proceeds bond sales	1932 Olympic expenses
Public Health Federal Fund	Health & Safety 117	1951	Federal grants for state and local health agencies, hospital construc	Transfer to General Fund for State Public Health support Payments to local governments
Teachers' Permanent Fund, Teachers Annuity Deposit Fund	Education 14251-14683	1913	Member contribution, employer contribution, State contribution	Transfer to Teachers' Retirement Disbursement Fund
Teachers' Retirement Disbursement	Education 14251-14683	1913	Investment income, transfer from above three funds	Purchase of securities, Retirement benefits refunds
Special Deposit Funds	Gov't 16370-16376	1880	Collections by state agencies not otherwise allocated Unclaimed funds	Withdrawals by Agency Depositors Disburse or reversion of unclaimed funds
State Employees Retirement Fund	Gov't 20000-21500	1931	Members and employer contributions, investment income	Retirement benefits, death benefits, refunds
State Park Contingent Fund	Public Resources 5009	1927	Gifts and bequests local gov't approp	Park additions and improvements, refunds
Torrens Title Assurance Fund	Land Title Law Sec 105 (Gen 1914) Law 8859	1914	Real property registration fees Investment income	Satisfaction of judgments
Unclaimed Property Fund	State '51 Ch 1708	1951	Monies and property (except permanently escheated) paid to State under provisions of Code of Civil Procedure	Refunds, title search and appraisal costs, bond costs, selected payments Transfer to General Fund, payments to claimants, Transfer to school land fund
Unclaimed Property Fund	Penal 1520	1959		
Unemployment Fund	Unemploy Insurance 1621-1637	1936	Employer contrib earnings on funds, property, investments	Refunds unemployment insurance benefits

APPENDIX C

CASE STUDIES

REAL ESTATE EDUCATION AND RESEARCH FUND

This fund was created in 1956. It utilizes part of the fees derived from the regulation of real estate brokers and agents to finance real estate education and research in state educational institutions.

In the four completed fiscal years since its creation it has received $1,534,536 in license fees and earned interest on its surplus. Its expenditures have been but a small part of its income

The following summary gives the details of income and expense from July 1, 1956 through June 30, 1960.

	1956-57	1957-58	1958-59	1959-60
Beginning Surplus		$644,841	$945,765	$1,047,983
Prior Year Adjustment			262	1,748
Revenues				
License fees	$644,841	321,815	401,663	396,604
Interest		7,205	20,225	41,697
Total Resources	$644,841	$973,861	$1,367,915	$1,534,536
Expenditures				
U of C		$28,096	$194,365	$249,957
Division of Real Estate			75,567	105,894
Ending Surplus	$644,841	$945,765	$1,097,983	$1,178,685
Total Expenditure and End Surplus	$644,841	$973,861	$1,367,915	$1,534,536

The full program of expenditure for the last fiscal year is shown below:

Detail	Administration	Sub-totals: Junior colleges	Sub-totals: State colleges	Grand totals
ADMINISTRATION				
Salaries and Wages	$34,053 08			
Office Expense	1,862 29			
Communications	1,426 56			
Travel	2,619 68			
Rent	2,160 00			
Compensation Insurance	44 34			
Equipment	324 91			
				$42,490 86
REER—NEEDS				
Administration	$7,566 43			
Junior Colleges				
American River Junior College 209		$1,645 00		
State Colleges				
Chico State College 180			$310 31	
San Fernando Valley State 316			82 25	
Long Beach State 182			68 75	
Fresno State 208			750 00	
Humboldt State 330			234 28	
San Jose State 265			1,000 00	
San Francisco State 509			18 80	
Los Angeles State 338			4,300 60	
Tom Emmons 562			300 00	
Total Needs	$7,566 43	$1,645 00	$7,064 89	16,276 32
REER—PROGRAM				
Administration				
Junior Colleges				
Pasadena Junior College District 317		$1,750 00		
State Colleges				
San Diego State 119			$4,100 00	
Fresno State 210			4,750 00	
San Jose State 140			840 66	
Los Angeles State 178			15,063 50	
Los Angeles State 176			1,392 65	
Sacramento State 181			5,018 60	
San Jose State 263			6,237 76	
San Jose State 264			5,200 00	
Total Research		$1,750 00	$42,603 26	44,353 26
TOTAL 1959-60 EXPENDITURES				$103,150 44
Contributions to Retirement System				2,743 51
University of California $257,107 57				$105,893 95

The question this experience raises is whether a fund should be allowed to accumulate rapidly when the rate of expenditure suggests either that there is not a critical need for this education and research or that the agency is remiss in its responsibility to develop the program, if it is needed.

This clearly calls for the more frequent legislative scrutiny that abolishing the special funds would provide.

STATE BEACH AND PARK FUND

This fund was created in 1957. It receives money by transfer from the State Lands Act Fund (oil, gas and mineral royalties) and from camping and parking fees The fund is to be used for the acquisition of beaches and parks, and for construction and maintenance.

The 1957 legislation anticipated an annual revenue of $12,000,000, which has not been sustained in subsequent years, with the result that the fund is currently over-appropriated

This demonstrates a clear hazard of a special fund. It encourages an administrative agency to anticipate a given level of support from a special source; results in the planning of a program equal to that expectation; and then leaves the Legislature the difficult choice of either repudiating plans or of supplementing the special fund from the General Fund.

When the State Beach and Park Fund was established in 1957, it combined three prior funds into this one. The accumulated surplus available in the funds on July 1, 1956 was $40,592,307.

For the fiscal year 1956-57 there was operating revenue of $749,570 and transfers of $364,241 from the *General Fund* and $3,911,541 from the State Lands Act Fund. In that same year expenditures totalled $12,556,404. By the end of the year the surplus had been reduced to $33,268,832.

For the fiscal year 1957-58, operating revenues were $1,215,611, and there was a transfer of $8,050,000 from the State Lands Act Fund. Expenditures totalled $19,429,127. By the end of that year the surplus was reduced to $23,167,347.

In the fiscal year 1958-59, operating revenues totalled $1,462,827. This was the one year in which there was a transfer of $12,000,000 from the State Lands Act Fund, and there was a further transfer of $8,088,459 from the Investment Fund More than matching this heavy income, expenditures totalled $25,046,655, further reducing the year end surplus to $19,683,273

In the fiscal year 1959-60 (estimated) there were operating revenues of $4,944,673, of which $3,304,256 was interest earned on investments. Transfer from the State Lands Act Fund provided $5,797,164. Expenditures of $21,529,003 reduced the surplus to $8,896,017.

For the current fiscal year, after transfer of $5,046,360 from the State Lands Act Fund and $5,349,177 from the *General Fund*, the excess of expenditures over income is expected to reduce the surplus to $610,000.

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ASSEMBLY INTERIM COMMITTEE REPORTS

1959-61

VOLUME 22 NUMBER 1

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CRIMINAL PROCEDURE

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JEROME R WALDIE

* Resigned, appointed San Diego Municipal Judgeship

PAMELA C. THOMPSON, *Consultant*
MAXINE MOORE, *Committee Secretary*
MILTON L. McGHEE, *Legislative Intern*

Published by the

ASSEMBLY
OF THE STATE OF CALIFORNIA
JANUARY, 1961

HON. RALPH M BROWN
Speaker

HON CARLOS BEE
Speaker pro Tempore

HON WILLIAM A MUNNELL
Majority Floor Leader

HON. JOSEPH C. SHELL
Minority Floor Leader

ARTHUR A OHNIMUS
Chief Clerk

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LETTER OF TRANSMITTAL

January 2, 1961

HON RALPH M BROWN, *Speaker of the Assembly, and*
Members of the Assembly
Assembly Chamber
Sacramento, California

GENTLEMEN: In compliance with the provisions of House Resolution No. 326, the Interim Committee on Criminal Procedure herewith submits a report on a number of subjects assigned to this committee for interim study.

We have made, in this report, a number of recommendations We believe that the adoption of these recommendations would improve the administration of justice in the State of California.

Respectfully submitted,

JOHN A. O'CONNELL, *Chairman*

TOM BANE
PHILLIP BURTON
ROBERT W CROWN
LOUIS FRANCIS, with some exceptions
VERNON KILPATRICK
NICHOLAS C PETRIS
JEROME R WALDIE

PART I

VAGRANCY

RECOMMENDATION

The committee recommends that the vagrancy statute be repealed and that it be replaced by the following section defining disorderly conduct:

An act to repeal Section 647 of, and to add Section 647 to, the Penal Code, relating to vagrancy.

The people of the State of California do enact as follows:

Section 1 Section 647 of the Penal Code is repealed

~~647. 1. Every person (except a California Indian) without visible means of living who has the physical ability to work, and who does not seek employment, nor labor when employment is offered him; or,~~

~~2. Every beggar who solicits alms as a business; or,~~

~~3. Every person who roams about from place to place without any lawful business; or,~~

~~4. Every person known to be a pickpocket, thief, burglar or confidence operator, either by his own confession, or by his having been convicted of any of such offenses, and having no visible or lawful means of support, when found loitering around any steamboat landing, railroad depot, banking institution, broker's office, place of amusement, auction room, store, shop or crowded thoroughfare, car, or omnibus, or any public gathering or assembly; or,~~

~~5. Every lewd or dissolute person or every person who loiters in or about public toilets in public parks; or,~~

~~6. Every person who wanders about the streets at late or unusual hours of the night, without any visible or lawful business; or,~~

~~7. Every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; or,~~

~~8. Every person who lives in and about houses of ill fame; or,~~

~~9. Every person who acts as a runner or capper for attorneys in and about police courts or city prisons; or,~~

~~10. Every common prostitute; or,~~

~~11. Every common drunkard; or,~~

~~12. Every person who loiters, prowls or wanders upon the private property of another, in the nighttime, without visible or lawful business with the owner or occupant thereof; or who while loitering, prowling or wandering upon the private property of another, in the nighttime, peeks in the door or window of any building or structure located thereon and which is inhabited by~~

~~human beings, without visible or lawful business with the owner or occupant thereof;~~

~~Is a vagrant, and is punishable by a fine of not exceeding five hundred dollars ($500), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.~~

SEC. 2 Section 647 is added to the Penal Code, to read:

647. Every person who commits any of the following acts shall be guilty of disorderly conduct, a misdemeanor.

(1) Who engages in lewd or dissolute conduct in any public place or any place open to the public or exposed to public view;

(2) Who solicits or who engages in any act of prostitution,

(3) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms as a business;

(4) Who loiters in or about any toilet open to the public for the purpose of engaging or soliciting any lewd or lascivious or any unlawful act,

(5) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself and to account for his presence when requested by any peace officer so to do, if the surroundings are such as to indicate to a reasonable man that the public safety demands such identification;

(6) Who is found in any public place in such a condition of drunkenness that he is unable to exercise care for his own safety, or, by reason of his drunkenness, interferes with the free use of any street, sidewalk or other public way,

(7) Who loiters, prowls, or wanders upon the private property of another, in the nighttime, without visible or lawful business with the owner or occupant thereof; or who while loitering, prowling or wandering upon the private property of another, in the nighttime, peeks in the door or window of any inhabited building or structure located thereon, without visible or lawful business with the owner or occupant thereof,

(8) Who lodges in any building, structure or place, whether public or private, without lawful authority and without the permission and consent of the owner or occupant thereof, or of the person in control thereof

LEGISLATIVE COUNSEL'S DIGEST

Vagrancy.

Repeals Sec. 647, adds Sec. 647, Pen. C.

Restates law of vagrancy. Deletes provisions defining person known to be pickpocket, thief, burglar, confidence operator, common drunkard, and common prostitute as vagrant Designates proscribed acts as disorderly conduct rather than vagrancy.

Vagrancy laws originated in the days of feudalism in an effort to control runaway serfs They constituted the criminal aspect of the poor laws and their aim was to confine the laboring population to fixed areas, working for fixed rates of pay With that beginning, they branched out to include begging, drunkenness, prostitution and a host of other offenses

The theory of present day vagrancy statutes was stated in *District of Columbia* v *Hunt*, 163 F. 2d 833, 835

> "A vagrant is a probable criminal; and the purpose of the statute is to prevent crimes which may likely flow from his mode of life."[1]

The California Supreme Court has said

> "Vagrancy differs from most other offenses in the fact that it is chronic rather than acute, that it continues after it is complete, and thereby subjects the offender to arrest at any time before he reforms"[2]

Many vagrancy statutes have been declared unconstitutionally vague by the courts[3] or modified by judicial interpretation President Roosevelt vetoed a bill which made a vagrant of, "any person leading an idle life . and not giving a good account of himself."[4]

Opposition to vagrancy laws has generally been based upon three objections

1 The provisions of the law are archaic and unconstitutionally vague.

2 Vagrancy laws are sometimes used as a cloak for arresting and convicting people for some other more serious crime that cannot be proved

3 Vagrancy arrests are often "suspicion" arrests and are made without probable cause

With regard to the first point, there is little controversy in California today It is generally agreed that the language of present Penal Code Section 647 is ridiculously outdated Since the advent of *In re Newbern* it is felt that the "common prostitute" will shortly join the "common drunk" in the limbo of unconstitutionally vague statutes

In the second instance, California has its share of persons who plead guilty to a charge of vagrancy in return for the dropping of more serious charges This expedient is particularly effective against a defendant who cannot afford legal counsel It has been argued that this "copping a plea" procedure saves enough time and money for both parties to justify its existence This pragmatic approach has been criticized as causing disrespect for the administration of justice, and therefore, being more expensive in the long run

Thirdly, since *Wolf* v *Colorado*, 338 U S 24, arrests on "suspicion" have been unconstitutional at the local level. This is the aspect of vagrancy laws which has most often been criticized—they are usually used to make "suspicion" arrests or arrests for conduct which, though not criminal, is unpopular[5] The existence of such sections as 647 3 and 647 6 makes possible such cases as *People* v *Jackson*, No. 93, Jan.

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[1] Justice William O Douglas, "Vagrancy and Arrest on Suspicion" (speech given at University of New Mexico Law School, Albuquerque, New Mexico, March 15, 1960), p 9

[2] *People* v *Craig*, 152 Cal 42, 47

[3] See *Hawaii* v *Anduha*, 48 F 2d 171, *People* v. *Belcastro*, 356 Ill 144 *St Louis* v *Roche*, 128 Mo 541, *Ex parte Smith*, 135 Mo 223; *Ex parte Hudgins*, 86 W. Va 626, The "Common Drunk" Section of California's vagrancy statute was invalidated by *In re Newbern* 53 A C 790, March 1960.

[4] S Rep No 821, 77th Cong, 1st Sess, p 2

[5] See *Edelman* v *California*, 344 U S 357 This case involved the use of an ordinance to suppress a speech which, in part at least, was critical of the police

22, 1935,[6] in which 375 men were arrested for vagrancy at one time—most of them being arrested within a union hall

Testimony at a legislative hearing in 1958[7] indicated that the vagrancy statute is still being used in a discriminatory manner against minority groups.[8]

It is fairly obvious that the police often use a vagrancy arrest to cover a suspicion arrest.

An example reported in a newspaper follows.

> *"Yoloan Is Cleared on Vagrancy Count*
>
> "Municipal Judge James M. McDonnell dismissed a vagrancy charge against "A." who was arrested Thursday by police detectives who thought he might be involved in a *burglary*[9] they were investigating.
>
> "The arrest occurred when 'A' drove to the home of 'B,' who is charged with receiving stolen property, in the company of "C."
>
> "'A' had been cleared of all charges 'C' was booked for possession of narcotics.
>
> "The police said four television sets stolen from Veterans TV, 3269 Folsom Boulevard, were found in the home of 'B' "[10]

The California Court of Appeals has said of this practice.

> "For three weeks defendant was observed reading racing section of paper and contacting ten to fifteen people per day. His arrest on a vagrancy charge was a subterfuge to obtain evidence of bookmaking and was illegal "[11]

Of 2,547 persons charged with $1,000 vagrancy in San Francisco in 1957, 2,214, or 86 9 percent, were dismissed During the same year, 921 Caucasian men and 1365 Negro men were charged with "$1,000 vagrancy" while the figures for "common vagrancy" were 844 Caucasian and 287 Negro The "$1,000 vagrancy" booking was explained as follows:

> Q. "I just wanted to ask you one question The reason for creating the $1,000 vag was to detain a person longer than a person picked up under your ordinary vag statute?
>
> A. "No sir Basically, it was to create a file for ourselves for the future—for future reference as to who the individual was In other words, the matter of discretion has to enter into this and the police department has to decide as best it may who the greater sus-

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[6] See the *Recorder*, Jan 24, 1935

[7] A Public Hearing of the Assembly Interim Committee on Judiciary (Subcommittee on Constitutional Rights) John A O'Connell, Chairman, San Francisco, California, July 28 and 29, 1958

[8] *Ibid*, Testimony of: Gregory Stout, Attorney at Law, San Francisco Bar, Joseph G Kennedy, Deputy Public Defender, City and County of San Francisco, Lawrence Speiser, Attorney, American Civil Liberties Union of Northern California, George Vaughn, Jr, Los Angeles Branch, National Association for the Advancement of Colored People, Richard A Bancroft, N A A C P, San Francisco, Ralph Guzman, Southern California Branch, A C L U, Los Angeles, John Adams, Jr, Legal Redress Committee, N A A C P, San Francisco Two other scheduled witnesses, Mr Leo Friedman of the San Francisco Bar and Mr Richard Erwin, President of the Criminal Courts Bar Association of Los Angeles County, who did not take the stand, announced that their testimony would have been substantially the same as that given by Gregory Stout and Lawrence Speiser

[9] Emphasis ours

[10] News item, the Sacramento Bee, Thursday, Sept 8, 1960, p A17

[11] *People* v *Wilson*, 145 Cal App 2d 1

pects are, who the greater criminals are and if we feel one party should be mugged and fingerprinted it's because we feel that maybe he will commit a more heinous crime in the future.

Q "Then the only difference would be the amount of bail?

A "At the present time, yes, I would say so. I would also say that possibly some of the officers feel that by making it a thousand dollars that it will provide, possibly, an opportunity to question the particular individual where if it were smaller—this is in the minds of some officers possibly, but it is not a policy of the department."[12]

Of the 1,355 persons charged with "common vagrancy," 696, or slightly more than one-half, were dismissed.

The committee members were informed, at the February, 1960 hearing that the San Francisco police no longer use the "$1,000 vagrancy" booking at all and that the total vagrancy arrests dropped to 731 in 1959

The following testimony was given regarding present practices·

A " . Even this sharp decline on vagrancy did not affect the picture, as far as our effectiveness is concerned As I indicated, we still brought about a considerable decline or decrease in our crime picture. The decrease in the vagrancy arrests hasn't hurt us at all[13]

Q "Chief, was there any corresponding increase in arrests for other crimes, so it would tend to offset the reduction in the arrests for vagrancy?

A "I would say yes, there was The exact figures, I haven't here."[14]

Apparently, since the 1958 Subcommittee hearing, the San Francisco Police Department has taken a greater interest in training their officers as to the limits of a lawful vagrancy arrest

". . The import of the vagrancy laws, brought out by the case and what not, tried to train the officer what it means . . . They're a little more hesitant, a little more careful,, a little more cautious and more slick about that type of arrest."[15]

Changes in police practices have been voluntary however, since the vagrancy statute has not as yet been changed There was an attempt to modify the vagrancy laws in the 1959 Legislature A bill was passed with amendments by the Legislature, but vetoed by Governor Brown. The Governor, in a letter to Ernest Besig, Executive Director, American Civil Liberties Union of Northern California, August 26, 1959, gave the following reasons for his objection to the bill:

"DEAR ERNIE,

"I have your letter inquiring as to the reasons for my vetoing of A B 2712 (vagrancy), A B 2607 (use of warrants of arrest) and A B 276 (3-hour bookings)

[12] Testimony of Inspector Alfred Arnaud, Chief's Office, San Francisco Police Department, at San Francisco hearing
[13] Testimony of Thomas Joseph Cahill, Chief, San Francisco Police Department, at Sacramento hearing
[14] Testimony of Inspector Alfred Arnaud, *op cit*
[15] *Ibid*

"As I stated in the release announcing my decision not to approve A B. 2712, I am sympathetic to the overall purpose of the bill which was to punish individuals only for wrongful actions and not simply because of their status But I found that in accomplishing this laudable objective the proposed legislation unfortunately removed from police control certain dangerous conduct, regulation of which is necessary in the public interest.

"The bill proposed to repeal subdivisions 3 and 6 of the present law without substituting any kind of control over those whose conduct afforded occasion for legitimate suspicion I am aware that police action in this regard has led to criticism, and I agree that the present law should be revised But I do not think that the possibility of abuse justifies completely denying any controls at all. Legislation in this area would be effective if it gave some definition of authority and obligation to which the private citizen and the policeman could reasonable and fairly conform A B 2712 also eliminated control of the nighttime prowler under subdivision 12, except for the peeping Tom The menace of the nighttime prowler is far more serious than this, and sanctions such as now exist are necessary to protect the public The bill also made it an offense to loiter in public parks Such a prohibition is both illogical and dangerous I am certain that you and ACLU must agree that such a provision is unthinkable

"Finally, there was serious doubt that the bill was ever legally passed by the Assembly. The official Journal shows that it received only 40 votes instead of the 41 required by the Constitution, and it came to my desk bearing such a notation by the Speaker I am advised by respectable legal opinion that under such circumstances the measure could not become law

"Because of these objections I was unable to approve the bill in its present form I would certainly look favorably upon legislation in the future which conformed to the above reasoning and assure you again of my sympathy with the general objectives which the Legislature had in mind

". I trust this further explanation will satisfy your inquiry.

"Sincerely

"'PAT'

"EDMUND G BROWN

"P S —Art Sherry, the author of A B 2712, asked me to veto it because of emasculatory amendments"

In the October, 1960, issue of the *California Law Review,* Professor Sherry sets out a modified version of his original bill, along with his rationale for each section.

Since the committee finds itself in agreement with so many of Professor Sherry's proposals, we shall set out his draft of a new Section 647, section by section, including his comments thereon. Following each section, we shall note any points on which the committee may differ with Professor Sherry's bill

"*The people of the State of California do enact as follows:*

"SECTION 1. Section 647 of the Penal Code is repealed

"SEC. 2. Section 647 of the Penal Code is enacted to read

"647. *Disorderly conduct. Every person who commits any of the following acts shall be guilty of disorderly conduct*[68]

"1. *Who engages in lewd or dissolute conduct in any public place or any place (open to the public or) exposed to public view;*

"This provision is drafted to cover the subject matter of existing subsection 5 which provides that a "lewd and dissolute person" is a vagrant It departs from the concept of status and deals directly with socially harmful lewd or dissolute conduct, that is, such conduct when it occurs in public view It is based in part upon a similar approach in the Michigan vagrancy statute[69]

The committee is in full agreement with this section as proposed.

"2. *Who solicits or who engages in any act of prostitution;*

"This is a simple description of the conduct to be proscribed It was drafted before the decision in the *Newbern* case which has, by necessary implication, deleted the term 'common prostitutes' from the list of those who are vagrants The qualification 'for pecuniary profit' added by the Assembly bill seems unnecessary[70] (Footnote 70 By definition, a prostitute is one who engages in sexual intercourse for hire *People* v *Head*, 146 Cal. App 2d 744, 304 P 2d 761 (1956))"

The committee is in full agreement with this section as proposed

"3 *Who accosts other persons in any public place (or in any place open to the public) for the purpose of begging or soliciting alms (as a business);*

"This section is drafted to meet the problem of controlling begging by describing specific acts It is aimed at the conduct of the individual who goes about the streets accosting others for handouts It is framed in this manner in order to exclude from one ambit of the law the blind or crippled person who merely sits or stands by the wayside, the Salvation Army worker who solicits funds for charity on the streets at Christmas time and others whose charitable appeals may well be left to local control The bracketed words, which were added in Assembly Bill 2712, improve the original draft."

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[68] It is not necessary, of course, to use the label "disorderly conduct" Assembly Bill No 2712 simply provided that every person who committed certain specified acts was guilty of a misdemeanor There is an advantage, however, in furnishing a label beforehand, otherwise California's many police agencies (or the press) will invent a variety of labels as a matter of record-keeping and statistical convenience The resulting lack of uniformity obviously would be undesirable

[69] See note 29, *supra*, the following have been held to come within the description of "lewd or dissolute" as the words are used in Cal Pen Code Sec 647(5), a narcotic addict, *People* v *Jameson*, 112 Cal App 2d 555, 298 P 2d 896 (1956), a sodomist, *People* v *Babb*, 103 Cal App 2d 326, 229 P. 2d 843 (1951), a window peeper, *People* v *Arlington*, 103 Cal App 2d 911, 229 P 2d 495 (1951), and a nude dancer, *People* v *Scott*, 114 Cal App 778, 296 Pac 601 (1931), see Note 39, Calif L Rev 579 (1951). Except for the addition of the words in parentheses, the first section of the Assembly bill is identical"

The committee is in full agreement with this section as proposed

"4. *Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious (or any unlawful) act;*

"The existing law classes as a vagrant every person who 'loiters in or about public toilets in public parks' Assembly Bill 2712 left these words unchanged except that it substituted 'or' for 'in,' thus making it an offense to loiter in a public park This is hardly an improvement The original proposal, as it appears above, excluding the words in brackets, requires that the loitering which is proscribed be that which is accompanied by lewd intent. This is precisely what the present law is aimed towards. hence there is little or no reason for not being specific [71] (Footnote 71: *Fountain* v. *State Board of Education*, 157 Cal App. 2d 463, 320 P 2d 899 (1958).) It seems undesirable too to limit the application of the statute to what may be construed to be only publicly maintained facilities as is the case with the existing law The words in brackets are suggested as an alternative in the event it may appear to be desirable to widen the scope of the draft so that it would include, for example, those situations in which automobile service station toilet facilities are used for the sale or administration of narcotics."

The language in A B 2712 relating to loitering in a public park was added to the bill after it left the Assembly. The committee has no objection to the addition of the words in parentheses in view of the requirement of intent We support this section as proposed.

"5 *Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself and to account for his presence when requested by any peace officer so to do;*

"This provision was not included in Assembly Bill 2712. It is a difficult subject to treat with any degree of satisfaction but one which requires serious and careful consideration because of the practical necessities of police responsibility for the preservation of law and order. The draft is designed to replace subdivisions 3 and 6 of the present code section by providing a more specific description of the kind of suspicious person that the police are bound to deal with At the heart of the problem here is the great desirability of stating the terms of police authority in such a way as to minimize abuse without impairing the ability to take necessary action [72] (Footnote 72 · The provision in the draft requiring the suspicious loiterer to identify himself and to explain the reason for his actions upon the request of a peace officer is consistent with the authority which such officers have long possessed in California A dictum in the earliest case in which the private persons responsibility to respond to reasonable police inquiry is discussed is in point with respect to the suspicious loiterer: 'A police officer has a right to make inquiry in a proper manner of anyone upon the public streets at a late hour as to his identity and the occasion of his presence, if the surroundings are such as to indicate

to a reasonable man that the public safety demands such identification" *Gisske* v *Sanders*, 9 Cal App 13, 16, 98 Pac 43, 45 (1908). Years later, the California Supreme Court adopted this conclusion in *People* v. *Simon*, 45 Cal 2d 645, 290 P 2d 531 (1955). For an illustrative suspicious person case and a useful summary of the law, see *People* v *West*, 144 Cal App 2d 214, 300 P. 2d 729 (1956)) To write any law in complete accord with this standard is probably impossible but this is not a valid argument for simply denying the police power to take any action with respect to the 'suspicious person' The draft attempts to spell out the limits of the policeman's authority and to declare some obligation on the part of the citizen to account for himself when his loitering arouses suspicion [73] (Footnote 73· 'The bill proposed to repeal subdivisions 3 and 6 of the present law without substituting any kind of control over those whose conduct afforded occasion for legitimate suspicion I am aware that police action in this regard has led to criticism, and I agree that the present law should be revised But I do not think that the possibility of abuse justifies completely denying any controls at all Legislation in this area would be effective if it gave some definition of authority and obligation to which the private citizen and the policemen could reasonably and fairly conform' Letter from Governor Edmund G Brown to Ernest Besig, Esq, Director of the American Civil Liberties Union of Northern California, August 26, 1959)"

This proposed section is a substitute for present Sections 3 and 6 which have occasioned the greatest abuse of the vagrancy laws in the past They make possible, in effect, a type of "suspicion" arrest which is in conflict with the provisions of the Fourth Amendment This type of legislation invites unequal protection of the laws in that it rarely [16] affects anyone unless he is poor, nonconformist, or a member of some minority group

The relationship between this section and the exclusionary rule was pointed out at the San Francisco hearing·

"Now along with this vagrancy law is the problem of the right to question. It, in effect, shifts the burden of proof to the individual to satisfy the officer who, as Inspector Arnaud suggested, has discretion in the matter It is up to the individual to explain satisfactorily to the officer why he is on the street or why he is at a certain place

"It has been suggested that this is a relatively minor price to pay for crime prevention First of all, I am not so sure that it results

[16] There have been a few exceptions, such as that of the two doctors who were arrested in San Francisco this summer on a vagrancy charge The arresting officer's report stated

"While on patrol this date at the above time, 1 30 a m, I was patrolling the Twin Peaks roadway, looking for possible peeping toms for which there have been numerous complaints filed at Park Station While so doing I observed the below arrested parties walking along the roadway on top of Twin Peaks On stopping to question the parties, number one stated that they were just getting some air When I told them that it was a very unusual hour to be out walking, they stated that they 'didn't think that we are doing anything wrong,' and that they didn't think I should be bothering them When I told them that they could be arrested for being up there at this time of night, they stated that they thought that was kind of silly, and that I would have a hard time making such a charge stick Both parties were taken to Park Station and booked on the below charges"

in crime prevention. Secondly, I do not think it is such a small price to pay I do not feel that I would want to explain to a law enforcement officer why I am on the street at the evening hours and I believe these arrests are made, not at 4 30 in the morning as the usual case is suggested but in the day and in the early evening hours An officer who seeks to arrest a person when he has no probable cause to suspect a person has committed a crime is in no different position from anybody else and should be treated no differently

"If the officer has the power to question an individual at his own discretion at the price of taking him in on a vag charge he can do it to you, or me, or anyone else Now the importance of this right to question combined with the vagrancy laws is seen by the turn that has been taken with the search and seizure cases with the State Supreme Court If you have a valid arrest, and if you have a valid arrest because there is no reasonable explanation as to why a person is out on the street under the vagrancy laws, then a search incident to the arrest is legal and the search may be utilized to find some material on the individual with which he is later charged So we can start out with a valid arrest, a valid vagrancy arrest that there is no reasonable explanation and go on from there to the search and seizure The question is whether the police should have the power to search individuals at their own discretion I do not think they should have the power I think they assume they have the power at the present time." [17]

The traditional common law with reference to questioning, and the English practice, is described by Justice Devlin of the High Court of England:

"The police have no power whatever to detain anyone on suspicion or for the purpose of questioning him They cannot even compel anyone whom they do not arrest to come to the police station It is true that in the course of an inquiry they frequently ask people to come to the police station and make a statement there and that people almost invariably comply. But many people genuinely prefer to go to the station rather than have the police coming to their homes Very often there is no place in the home where an interview could conveniently be conducted; and anyway policemen who call create talk among the neighbors But it is up to the police to make sure that a man comes to the station voluntarily; if they do not, they may land themselves in serious complications; they may find not only that they are defendants to a claim for false imprisonment but also that the answers they have obtained from the accused are held to be inadmissible because the accused, being under arrest, is in custody within the meaning of, and therefore protected by, the Judges' Rules" [18]

[17] Testimony of Lawrence Speiser, Attorney, A C L U of Northern California, at San Francisco hearing

[18] Patrick Devlin, *The Criminal Prosecution in England* (New Haven Yale University Press, 1958), pp 82-83

The type of liberty in question was defined by the Right Honorable Lord Justice Denning in his series of Hamlyn Lectures at London University:

> "Let me first define my terms By personal freedom I mean the freedom of every law-abiding citizen to think what he will, to say what he will, and to go where he will on his lawful occasions without let or hindrance from any other persons Despite all the great changes that have come about in the other freedoms, this freedom has in our country remained intact "[19]

In this country Justice Douglas decried the abuse of the vagrancy concept in a speech at the University of New Mexico Law School in March 1960

> "I think we can say with confidence that in this particular area of law the traditional safeguards available to accused persons tend to mean practically nothing.
>
> " . . . The view persists in this country that these wanderers are 'a potential menace to the community' and must be punished. H R Rep No. 1248, 77th Cong, 1st Sess, p 2. What Perkins, The Vagrancy Concept, 9 Hastings L J 237. 252-253, wrote is typical of these pronouncements 'In metropolitan centers . . . the vagrancy law is one of the most effective weapons in the arsenal of law enforcement, and if the officer's use of this weapon should be seriously impaired the security of the citizen would be grievously weakened ' That has a familiar ring The same justification is often given for holding people incommunicado and for allowing coerced confessions to be used in evidence. But do not these vagrancy laws—like the use of force to get a confession—merely make for lazy police and lax police practices?
>
> "The charge against them is more serious than that A man who is idle and has no visible means of support is placed in a criminal category, because he is deemed likely to commit a crime in order to gain a livelihood. Foote and others have challenged that premise (104 Pa L Rev 625-627); and there seems, indeed, little evidence to support it Moreover, when the law proceeds on that basis, suspicion is the foundation of the conviction; the presumption of innocence is thrown out of the window England got rid of that concept Criminal intent of some character, not mere idleness and destitution, must be present[10] (Footnote 10: See Danks, Suspected Persons and Reputed Thieves, Crim L Rev. (1958) p. 115)"

The Conference of State Bar Delegates, in 1959, approved a resolution favoring the repeal of subsections 3 and 6 of Section 647

The committee finds that Section 5, as proposed by Professor Sherry, would lend color of law to arrests based upon suspicion It would invite a double standard of justice and leave too much discretion in the hands of the arresting officer When probable cause exists, the officer may arrest without benefit of this section. Where probable cause does not exist, it would be better that no arrest be made

[19] Sir Alfred Denning, "Personal Freedom," *Freedom Under the Law* (London Stevens & Sons Limited, 1949), p. 5

Although Professor Sherry sets out a dictum from *Gisske* v *Sanders* as a justification for the adoption of his proposed Section 5, we find that his argument rests only upon the first half of that dictum It not only states that an officer has the right to make inquiry in a proper manner of anyone upon the public streets at a late hour as to his identity and the occasion of his presence, but goes on to say " . . . if the surroundings are such as to indicate to a reasonable man that the public safety demands such identification " This phrase accords with many other cases holding that probable cause can consist of the refusal to answer questions *coupled with other circumstances* There is no implication that such refusal alone would justify arrest For example:

> *"Inquiries Reveal Probable Cause*
>
> "*The refusal to answer questions* or inconsistent or evasive answers may, in itself, be one circumstance, among others, which would justify the police officer in making an arrest for vagrancy
>
> "*People* v *West,* 144 Cal App 2d 214 (defendant carrying armload of clothes, gives inconsistent explanation of possession, in area where burglaries recently committed) "[20]

An inconsistent answer, of itself, has been held insufficient probable cause for an arrest for vagrancy

> "Prior to the arrest the officer had been told by an anonymous informant that the defendant was a known thief and dealt in narcotics and the officer had seen the defendant sitting in an automobile talking to a known addict about a month prior to the arrest On the night of the arrest at about 2 a m, the officer observed defendant in the doorway of a liquor store talking to another person; every few moments the defendant left the doorway, looked down the street and returned to the doorway The officer asked the defendant what he was doing and defendant answered that he was waiting for a friend After placing him under arrest for vagrancy, the officer told the defendant to take his hand out of his pocket and when defendant refused to do so, the officer grabbed his hand and found a marijuana cigarette. Held. There was insufficient probable cause to arrest for vagrancy, since the defendant might have been looking for a bus, a taxi, or a person *People* v *Harris,* 146 Cal App 2d 142 "[21]

The committee feels that any requirement that a citizen answer questions put to him by a police officer must be made with care.

However, in an effort to combat crime more effectively, we recommend that Professor Sherry's proposed Section No 5 be adopted with an amendment In order to make it fit more nearly the dictum from *Gisske* v *Sanders,* upon which it is based, we recommend that the following phrase from that opinion be added.

> ". . . if the surroundings are such as to indicate to a reasonable man that the public safety demands such identification.
>
> "6. *Who is found in any public place in such a condition of drunkenness (intoxication) that he is unable to exercise care for*

[20] California Department of Justice *Probable Cause to Arrest and Admissibility of Evidence,* by Bonnie Lee Martin, Rev Ed (Sacramento 1960), p 28
[21] *Ibid.,* p 31

his own safety, or, by reason of his drunkenness (intoxication) interferes with (or obstructs or prevents) the free use of any street, sidewalk or other public way;

"This provision was also omitted from Assembly Bill 2712 It would fill the gap left by the decision in *Newbern* by providing a uniform, definite standard for police control of the public drunk who is a nuisance to others and a danger to himself The words in brackets are suggested as alternatives"

The committee recommends that this section be adopted as proposed, eliminating the alternative words in brackets

"7. *Who loiters, prowls or wanders upon the private property of another, in the nighttime, without visible or lawful business with the owner or occupant thereof; or who while loitering, prowling or wandering upon the private property of another, in the nighttime, peeks in the door or window of any inhabited building or structure located thereon, without visible or lawful business with the owner or occupant thereof;*

"This is substantially the same as subdivision 12 of the code section as it now reads Only the superfluous specification of habitation 'by human beings' is dropped In Assembly Bill 2712 the section was greatly modified by restricting its application to the peeping tom alone Both types of conduct denounced by the law, however, carry the same threat to the public peace, thus making any such limitation appear to be nothing more than arbitrary."

The committee recommends the adoption of this section as proposed.

"8. *Who lodges in any building, structure or place, whether public or private (other than one which is maintained for lodging purposes), without the permission of the owner or person entitled to the possession or in control thereof.*

"This is the last section or category that appeared in the draft. It is a simplification of the wording of subdivision 7 of the present statute and an extension of its reach to cover public as well as private property Assembly Bill 2712 carries an almost identical provision which is better than the draft because of its omission of the unnecessary lodging house exception"

The committee recommends the adoption of this section as proposed in A B. 2712:

"Lodges in any building, structure or place, whether public or private, without lawful authority and without the permission and consent of the owner or occupant thereof, or of the person in control thereof;"

The committee believes that the adoption of a bill as outlined in our recommendations will eliminate crimes of status and substitute workable definitions of criminal conduct We believe that a policy of making arrests only upon probable cause, in accordance with constitutional mandates, will create a better working relationship between the public and the officers who enforce its laws.

PART II

LAWS OF ARREST

RECOMMENDATIONS

Section 833 Penal Code

The committee recommends that the following clause be added to Section 833.

> " . but only if the arresting officer could lawfully have arrested such person at the time the search was commenced "

Section 834a Penal Code

The committee proposes the following amendment to Section 834a Penal Code:

> However, for the purpose of Section 148 of the Penal Code neither an unlawful arrest nor an attempt to make an unlawful arrest shall constitute a "duty" No peace officer shall assert any cause of action, in any legal proceeding, or recover any damages in any proceeding, against the person arrested or attempted to be arrested if such arrest or attempted arrest was unlawful, unless (1) the peace officer received injuries and such person used greater force than reasonably necessary to resist the arrest, (2) such person used a dangerous weapon, or (3) such person actually committed the offense for which the arrest was made or attempted

Section 835 Penal Code

The committee does not recommend any legislative change in the section at the present time but suggests that the Legislature review the effect its adoption has had upon the amount of force used in making arrests without warrants

Section 835a Penal Code

The committee makes no recommendation.

Section 836 Penal Code

The committee recommends that

> Section 836 be amended to make clear that it codifies the *Coverstone* rule which was a test applying to the civil liability of peace officers.

Section 841 Penal Code

The committee recommends that·

> Peace officers follow a policy of informing the arrested person of the charge against him when there is any chance that he might not already know it, and in all cases in which the arrested person asks the cause of his arrest Such a policy would be helpful in maintaining a co-operative attitude on the part of the public

Section 842 Penal Code

The committee recommends that the following phrase be added to the end of the section

"and in any event, within two hours of his arrest."

Section 847 Penal Code

The committee recommends that:

Section 847 be amended to make it clear that it does not purport to hold that a lawful arrest can validate a subsequent false imprisonment

The committee also recommends that:

The civil liability of peace officers be studied at length during the next interim in an effort to draft legislation which will balance, as perfectly as possible, a vigorous law enforcement policy with freedom from arbitrary police action

Section 849 Penal Code

The committee recommends the addition of the following section to the Penal Code:

"In any case in which a person, after arrest with or without a warrant, is not brought before a magistrate within the time required by law, the person who brings such person before a magistrate, must file with the magistrate a verified statement explaining why he was not brought before the magistrate within the time required by law and stating the time and place of the arrest, force, if any, used in effecting the arrest, places to which the arrested person was taken and the purpose of taking him to such places"

Section 849a Penal Code

The committee recommends that the change proposed in A.B. 2039, and approved by the State Bar, be put into effect by the Legislature during the 1961 General Session. The pertinent section of that bill, introduced by Assemblyman John A O'Connell, has been summarized by the Legislative Counsel as follows:

"Modifies rules governing arrest on a felony warrant in a county other than the county from which the warrant issued, to provide, generally, that the person arrested shall be taken before a magistrate in the county of arrest unless he expressly waives the right, rather than that he be taken before a magistrate of the county from which the warrant issued, unless he requires otherwise However, in cases in which amount of bail is not endorsed on warrant, and arrested person is taken before magistrate of county of arrest, the magistrate shall fix bail as otherwise provided by law, or may refuse to fix bail if refusal is authorized by law.

"Requires that a person arrested without a warrant must be taken before a magistrate in the county in which the arrest is made, rather than the county in which the offense is triable. Provides, however, that defendant may waive right to be taken before magistrate of county of arrest. Details procedure to be followed

when person so arrested is taken before magistrate of county of arrest"

Section 849b Penal Code

The committee recommends

That the Legislature approve a budget item augmenting the collection of statistics by the Bureau of Criminal Statistics.

That a transcript showing the disposition of every person prosecuted in a municipal or justice court be sent to the Bureau of Criminal Identification and Investigation

Section 850 Penal Code

The committee knows of no objection to this section as amended in 1957.

Section 851.5 Penal Code

The committee recommends that·

The section be amended to delete the words, "at his own expense" It would seem reasonable to allow the police to charge such a toll against any money in possession of the person at the time of arrest, but no person should be prevented from contacting an attorney, relative, or friend for lack of funds

Section 1524 Penal Code

The committee makes no recommendation.

Section 1526 Penal Code

The committee makes no recommendation

INTRODUCTION

Specific issues regarding the legality of an arrest or search were seldom raised in California before 1955 Before that date the question was not so important because evidence gained by an unlawful arrest and/or search was admissible in California courts In 1955, the California Supreme Court, in *People* v *Cahan*, adopted the federal rule that evidence unlawfully obtained cannot be used against a defendant in a criminal proceeding

In 1957 the law enforcement agencies came before the Legislature with a bill (A B 1857) which would have changed the laws of arrest to such an extent that virtually any arrest would have been lawful—thus effectively sidestepping the Cahan rule The Legislature rejected some of the more drastic innovations but accepted enough of the proposed changes to effect a number of changes in the laws of arrest.

During the 1959 general session of the Legislature, an attempt was made by way of Senate Bill No. 728 to except narcotics cases from the Cahan rule This effort failed In addition to opposition based upon the central issue, many legislators believed that such a change would be declared by the courts to be unconstitutional Although the federal exclusionary rule was not originally set out as a requirement of the United States Constitution, the opinion in *Irvine* v. *California* made it

clear that a majority of the justices were dissatisfied with that interpretation. Moreover, in *Wolf* v *Colorado,* the United States Supreme Court declared that the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers.

On June 27, 1960, the United States Supreme Court decided two further cases [1] which strengthen the argument that a legislative attempt to allow the introduction of unconstitutionally obtained evidence would be invalid

It should be emphasized, in discussing this subject, that the exclusionary rule does not affect the introduction of evidence which has been lawfully obtained. The Fourth Amendment allows reasonable arrests, searches, and seizures Arguments pro and con with regard to the merits of the exclusionary rule have been made by many able commentators [2] In view of the decisions in *Elkins* and *Rios,* we believe that the controversy has been resolved in favor of the exclusionary rule and further debate on that question would be futile

The Legislature's responsibility now is to maintain a continuing appraisal of our laws of arrest, search, and seizure with the intent of balancing, insofar as possible, the demands of a vigorous law enforcement policy with Fourth Amendment guarantees This is not an easy task We cannot expect to achieve perfect justice, we can aspire to it

Five years have passed since the adoption of the Cahan rule The new arrest laws have been in effect more than three years The courts have ruled on many cases involving the issue of lawful arrest They have developed certain guidelines by which law enforcement officers can determine whether the facts of a case constitute reasonable, or probable cause for arrest [3]

This committee has followed judicial developments in this area with great interest In addition, we have been concerned with several questions that have arisen regarding the effects of the legislative changes of 1957

Several bills relating to the laws of arrest and search and seizure were referred to this committee for interim study We have not restricted our study to the specific terms of those bills but have chosen to deal with the subjects generally In doing so we have had the advantage of testimony given at two legislative hearings, the first of which was held in San Francisco on July 28 and 29, 1958, by the Assembly Subcommittee on Constitutional Rights The second hearing was held in Sacramento on February 18 and 19, 1960, by the Assembly Interim Committee on Criminal Procedure The list of witnesses heard on these two occasions will be found in Appendix J

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[1] *Rios* v *U S* 80 S Ct 1431 *Elkins* v *U S* 80 S Ct 1437

[2] *Olmstead* v *U S*, 277 U S 438, 485, *Weeks* v *U S*, 232 U S 383, 345, *Wolf* v *Colorado,* 338 U S 25, *Irvine* v *People of State of California,* 347 U S 128, 132, *People* v *Cahan,* 44 Cal 2d 434, 282 P 2d 905, *Benanti* v *U S*, 355 U S 96, *People* v *Defore,* 242 N Y 13, 21, 150 N E 585, 587, *Breithaupt* v *Abram,* 58 N M 385, 271 P 2d 827, *Elkins* v *U S*, 80 S Ct 1437, *Brinegar* v *U S*, 338 U S 160, 181, *On Lee* v *U S*, 343 U S 747, 758 Yale Kamisar, "Wolf and Lustig Ten Years Later Illegal State Evidence in State and Federal Courts," 43 *Minn L Rev* (1959) W C Douglas, "The Means and the End" 1959 *Wash U L Q* (1959) 8 Wigmore, Evidence (3rd Edition, 1940) Sec 2184 Zelman Cowen, "The Admissibility of Evidence Procured Through Illegal Searches in British Commonwealth Jurisdictions," 5 Vanderbilt L Rev 523 (1952)

[3] See Judge Murray Draper (C C A, 1st App Dist), "The Cahan Case and Probable Cause," *California Bar Journal, May-June, 1959,* p 251, and Bonnie Lee Martin, *Probable Cause to Arrest and Admissibility of Evidence,* Printing Division, Documents Section, Sacramento, California, 1960

The following report deals specifically and individually with the various changes that were made in the laws of arrest by the adoption of A B 1857 It also considers proposals for possible revision of certain other sections of the Penal Code

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
833 No such section	833 A peace officer may search for dangerous weapons any person whom he has legal cause to arrest, whenever he has reasonable cause to believe that the person possesses a dangerous weapon. If the officer finds a dangerous weapon, he may take and keep it until the completion of the questioning, when he shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon

Section 833

There is apparently some question as to the intent of the new section For example, two Legislative Counsel opinions state·

> ". . . The effect of the provision permitting arrest for illegal possession of the weapon appears to be that though it develops that there is no basis for arrest of the suspect for the offense which the officer had probable cause to believe he had committed, the suspect may nevertheless be arrested for illegal possession of the weapon turned up by the search authorized by this section."[4]

And:

> "New Section 833, Penal Code, relating to search for weapons, offers interesting possibilities If a case is a proper one, under that section, for searching for a weapon, and the officer does search the suspect, it may be that in the course of the search the officer will come across evidence of another crime, e g, marijuana. It would seem that this would be deemed legally obtained and admissible. (See *People* v. *Ortiz,* 147 Cal. App. 2d 248)."[5]

An analysis of the 1957 changes prepared by two attorneys for the Judicial Council says of this section:

> "The question has been raised elsewhere whether an arrest for possession of a dangerous weapon which is discovered through a search initiated illegally is allowed by the last sentence of Section 833. Probably the provision is confined to cases where there is legal cause for the search In the absence of such an interpretation the law has been changed"[6]

However, District Attorney Thomas C. Lynch of San Francisco told a legislative committee.

> ". . . I understand there's an opinion of the Legislative Counsel, and I have heard it expressed by others, that this section is au-

[4] Legislative Counsel Opinion No 1012, Feb 3, 1958
[5] Legislative Counsel Opinion No 1195, Feb 28, 1958
[6] Report prepared by Judicial Council Staff for the Judicial Council of the State of California, July 17, 1958, p 6

thority for detention by police officers and I cannot read that into it. In fact, I think the section is meaningless Originally it was proposed, as you will recall, that the police officers be given some enlarged authority to search a person when they felt that they might have a dangerous weapon which, of course, would be something that would put the officer in peril

"As the section now reads it says the peace officer may search for dangerous weapons any person whom he has legal cause to arrest whenever he has reasonable cause to believe the person possesses a dangerous weapon It also goes on to say that after the search is over he has to give the weapon back or charge the man with having it That, to me, is meaningless because if you have reasonable cause to arrest a man you have a right to search him so I don't see where that enlarges any power of a police officer to make a search for a weapon. Where it enlarges his power to make a so-called detention arrest I fail to see I think that is a matter of practical application I haven't seen this section used in that manner"[7]

The present confusion as to the intent of this section can be cleared up either by repeal or by the simple amendment which is set out in the Recommendations.

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
834a No such section.	834a If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest

Section 834a

It is generally agreed that the purpose and effect of this new section is to abrogate the traditional common law right to resist an unlawful arrest, by force if necessary.

The Legislative Counsel comments

"The chapter added Section 834a, Penal Code, providing that if a person has knowledge, or by the exercise of reasonable care should have knowledge, that he is being arrested by a peace officer, it is his duty to refrain from using force or any weapon to resist an arrest Unless the word 'lawfully' is read into this provision before 'arrested', this section changed the law The general rule formerly was that a lawful arrest may not be resisted and an unlawful arrest may be resisted (see *People* v *Spinosa*, 115 Cal. App. 2d 659; 5 Cal Jur 2d 186; Secs. 692-694, Pen C ; Sec 50, Civ C)"[8]

The analysis prepared for the Judicial Council says of this section·

"It is possible that Section 834a, in imposing the 'duty' on a person arrested to refrain from resisting the arrest, has the effect

[7] See Transcript of Assembly Interim Committee on Judiciary, Subcommittee on Constitutional Rights, San Francisco, California, July 28, 29, 1958, p 96

[8] Legislative Counsel Opinion No. 1012, Feb 3, 1958.

of authorizing the ultimate arrest if the suspect resists what would otherwise be an unlawful arrest ''[9]

The written argument in support of A B 1857 which was presented to the Legislature in 1957 says of this section·

"Although no statute in California prohibits physical resistance to known official action in excess of authority—the courts have stated· 'They attempt to justify their resistance upon the ground that they were entitled to resist an unlawful attack upon them by the sheriff That, however, is not the law It is the duty of a citizen to obey the commands of a peace officer given in his line of duty If the officer is exceeding his authority, the recourse of the citizen is to the courts, and not to open resistance.' *People* v. *Yuen*, 32 Cal App. 2d 151. *(On denial of appellant's petition for hearing in Supreme Court, the court withheld 'approval of the conclusions of law contained in the' quoted portion)* In a similar case, *People* v *Spear*, 32 Cal App. 2d 165, the court stated, 'The law does not countenance a breach of the public peace in order to enforce a private right Courts are created for the purpose of determining those rights and any other rule would result in private battles going on at various times and places, to the great inconvenience of the general public Such a rule is not to be accepted or approved '

"At the present time our code law permits citizens to forcibly resist an unlawful arrest, even though they know of the official position of the officer and the *official duty* that he is attempting to perform No matter how good the intentions of the officer and how scurrilous the deeds of the citizen—unless the officer can justify his actions under Penal Code 836 (and a court may later declare them unlawful by a 4 to 3 decision) the citizen may use 'any necessary force' (Civ Code 50) or 'resistance sufficient to prevent the offense' (Penal Code 693) to prevent the officer from carrying out what he mistakenly believes to be his sworn duty. In the days of the common law, when constables were armed with staffs or at best, a sword, and citizens were equally armed, and to be arrested meant months in jail, chained with leg irons, and with little if any hope of bail, awaiting the yearly session of the court, there was good reason for allowing such resistance. But today, the reason has disappeared with the advent of a speedy trial—presentment before a magistrate without unnecessary delay and other modern criminal procedure By law, peace officers are required to carry firearms—and by the same law, citizens are prohibited from so doing The only person who could profit by being permitted to lawfully resist a peace officer is a person who illegally carries concealed weapons and as such, is a threat himself to good order ''[10]

The theory behind the common law right of resistance which is still followed in England, is well described by Sir Alfred Denning·

"If the police should overstep the mark and arrest a man when they have no lawful authority to do so, he has the same rights as

[9] Report prepared by Judicial Council Staff, *op. cit*, p 20
[10] Emphasis ours

against the police as he would have against any private individual who unlawfully arrested him. He is entitled to resist the unlawful arrest, if need be, by force If a ticket collector or a policeman tried to arrest a passenger for travelling without paying his fare, when he was willing to give his name and address, he would be entitled to knock them down rather than go with them. If he submitted to the arrest and went, he would be entitled to obtain his immediate release by means of a writ of habeas corpus · and, after obtaining his release, he would be entitled to bring an action for damages against them for false imprisonment.

"It should not be supposed that, in laying down these principles, the judges have any desire to encourage citizens to resist lawful authority They do not Nor has that been their effect It is simply a question of balancing the conflicting interests Social security requires that the police should have power to make a lawful arrest, but individual freedom requires that a man should have power to resist an unlawful arrest and, if need be, by force That is proved by the experience of France In that country no citizen has any right to defend himself against the police or other public officers Even if they are acting quite unlawfully, as, for instance, if they arrest a man without any justification at all, or beat him quite unmercifully, or if they force an entry into his house by night without any warrant, he must submit to it all He must not hit back and must not defend himself or his house. If he does he is guilty of the criminal offense of rebellion [19] The only thing a citizen can do is to submit and complain afterwards We are told by a writer on French Criminal Procedure that this led to the 'passage á tabac', which took its name from the passage which leads from the charge room to the cells in any police station If a prisoner had violently resisted arrest that passage, which was usually dark, was lined on both sides by policemen, who rained blows on the unfortunate accused as he passed between them to the cell. This cowardly practice was not even officially denied, but efforts have been made to suppress it, and probably now only occurs in exceptional cases. [20] This shows how, even in a free country, the law, by giving to police officers an authority which is wider than absolutely necessary, may lead to grave abuse

"The Balance of Interests

"The way in which we in England have balanced conflicting interests on this important point—the power of arrest—is a model. The police are not regarded here as the strong arm of the executive, but as the friends of the people So much is this the case that any case of assaulting or obstructing the police arouses great indignation And no one is inclined to resist the authority of the police, because it can safely be assumed to be lawfully used. The reason is twofold. on the one hand, the law does not put into the hands of the police any more power than is absolutely necessary:

[19] Panstin Hélie (see note 6), p 161
[20] Wright on French Criminal Procedure, 44 L Q R at p 339

on the other hand, the police are, on the whole, such a fine body of men that they do not abuse the powers which they have "[11]

This committee fails to see that it can be a "duty" of a peace officer to make an unlawful arrest. At the same time, we recognize that a peace officer should be protected from excessive resistance. We therefore propose the following amendment to Section 834a:

> However, for the purpose of Section 148 of the Penal Code neither an unlawful arrest nor an attempt to make an unlawful arrest shall constitute a "duty". No peace officer shall assert any cause of action, in any legal proceeding or recover any damages in any legal proceeding, against the person arrested or attempted to be arrested if such arrest or attempted arrest was unlawful, unless (1) the peace officer received injuries and such person used greater force than reasonably necessary to resist the arrest; (2) such person used a dangerous weapon, or (3) such person actually committed the offense for which the arrest was made or attempted

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
835. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.	835 An arrest is made by an actual restraint of the person, or by submission to the custody of the officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
835a No such section	835a Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by use of reasonable force to effect the arrest or to prevent escape or to overcome resistance

Section 835

The Judicial Council staff analysis of the 1957 changes says of this section:

> "The 1957 Legislature substituted for the words 'not . . any more restraint than is necessary' the words 'such restraint as is reasonable' in describing the quantity of permissible force when

[11] Denning, Alfred. *Freedom Under the Law* (London: Stevens & Sons, limited, 1949) pp. 19, 20.

an arrest is made[8] (Footnote 8 · Pen Code, § 835, see also Pen. Code, § 835a) But where the arrest is pursuant to a warrant, no change in language was made, and the officers are entitled to use 'all necessary means' to effect the arrest[9] (Footnote 9. Pen. Code, § 843)

"The questions are thus presented whether the test of permissible force has been altered and whether less force is not permitted to effect an arrest without a warrant than is permitted to effect an arrest under authority of a warrant[10] (Footnote 10 · See *People* v *Lathrop*, 49 Cal App 63, 67-68, suggesting that the use of 'all necessary means' under Section 843 would permit even a shooting to accomplish an arrest pursuant to a warrant, presumably without regard as to whether the alleged offense constituted a misdemeanor or a felony)"[12]

However, it is clear from the argument written in support of A B 1857, that the intention of its drafters was exactly opposite to this conclusion:

"At the present time, codified law in reference to this subject is incomplete and indefinite Penal Code section 835 prohibits 'any more force than is necessary for his arrest and detention' but Penal Code section 843, in reference to arrests *under warrant*, where defendant flees or resists allows the peace officer to 'use all necessary means to effect the arrest' *No substantial reason has been advanced to justify restricting such permissive force to arrests under warrant as distinguished from arrests without warrant.* The use of force, under particular circumstances, is also permitted by Penal Code sections 844-845 pertaining to breaking doors, etc By Penal Code section 196, homicide, when committed by a peace officer is justified when (1) necessarily committed in overcoming actual resistance to the execution of some legal process, or (2) in the discharge of any other legal duty; or (3) when necessarily committed in retaking felons—or when necessarily committed in arresting persons charged with felony and who are fleeing from justice or resisting arrest Further limitation on the use of force by peace officers is contained in Penal Code sections 147 (Inhumanity to prisoners), 149 (Assaults by officers under color of authority) and 673 (Cruel and unusual punishment)

"Permission to use any necessary force is granted to all persons by Civil Code 50 to protect themselves, families, servants or guests from wrongful injury and resistance sufficient to prevent a public offense is permitted by Penal Code Sections 692, 693 and 694

"It would seem desirable therefore, that the right to use force *reasonable under all the surrounding circumstances* in any arrest be affirmatively granted to peace officers and that such permission be made an integral part of the law of arrest "[13]

It might be noted at this point that if there was, prior to 1957, a difference in the degree of force that could be used to effect an arrest

[12] California Judicial Council of the State of California "1957 Statutory Changes in the California Law of Arrests," pp 18-19
[13] See Argument in Support of Assembly Bill 1857 Our emphasis

with a warrant and an arrest without a warrant, and greater force could be used to effect an arrest with a warrant, the difference could be justified by the fact that in the case of arrest with a warrant a magistrate has previously determined that there is probable cause for arrest.

We do not recommend any legislative change in this section at the present time but suggest that the Legislature review the effect its adoption has had upon the amount of force used in making arrests without warrants.

Section 835a Penal Code

This section as amended in 1957 appears to be a reasonable restatement of the law as it existed prior to that time.

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
836 A peace-officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person	836 A peace officer may make an arrest in obedience to a warrant, or may without a warrant, arrest a person;
1 For a public offense committed or attempted in his presence	1 Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence
2. When a person arrested has committed a felony, although not in his presence	2 When a person arrested has committed a felony, although not in his presence
3 When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it	3 Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed
4 On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested	
5 At night, when there is reasonable cause to believe that he has committed a felony.	

Section 836

The "Argument in Support of Assembly Bill 1857 Relating to the Law of Arrest in California" states, with regard to this section:

> "Section 2 Amending Penal Code Section 836 Section 836 is the basic authority for a peace officer's right to arrest It is proposed herein to amend this section to truly reflect its basic purpose, namely, to include all authority for arrest, as distinguished from authority to stop, detain or question The following amendments have been made"

And, as to 836, subsection 1, the Argument says

> "The first subdivision incorporates the decision in *Coverstone* v *Davies*, 38 Cal 2d 315, that a misdemeanor is committed in the officer's presence whenever he has reasonable cause to believe it is being committed in his presence"

Witnesses who have testified regarding this change have expressed varying appraisals as to its effect Excerpts from some of this testimony follow·

Q "In your opinion do you think this is a tremendous extention of the law as it stood before?

A. "Not at all. I do not think it is any extension.

Q. "As I understood it, this was supposed to be a codification of what the case law had already held Is that your view of it?

A "That is my view of it and I do not think it has had any impact whatsoever. I have not seen any." [14]

"I think what is more basic to this is the dangerous part about the new tendency with regard to arrests for misdemeanors. The misdemeanor does not have to take place in the presence of the officer and the fact that the officer can have probable cause as a basis for picking him up and therefore not be subject to false arrest suit really gives him a greater power than the vagrancy statutes themselves envisioned so I would say that the statute itself coupled with probable cause gives the police power so that the rights of the little people and, as you see here, particularly the minority people are being really infringed upon" [15]

"Why do California police need such power? Do they deal with more serious offenses than the FBI? It is even absurd to suggest it. By selection we are discussing here only petty offenses. Is it a back door effort to subvert the *Cahan* doctrine by making an arrest an incident to a search rather than the other way around? When does an officer have reasonable cause to believe an offense is committed in his presence when it is not in fact committed in his presence? When all the elements of the offense are not in fact performed although the officer believed they were? When they were not committed in his presence but he believed they were committed in his presence? If the latter, are we putting a premium upon officers who see and hear things that were not there?

". . . Let me try to put another way what I have in mind. I think that even if the *Coverstone* doctrine had remained uncodified that there would have been much less threat to the civil liberties of Californians than with it codified; because then the standard would have been according to the statute in fact commission of the offense and in particular cases judges would have followed the *Coverstone* rule—in false arrest cases for example. They need not have followed the *Coverstone* rule in illegal search and seizure cases because *Coverstone* was a false arrest case. Or they might have held *Coverstone* to its narrow facts but now by making it a legislative enactment we have said to the police officer 'You decide not whether the offense was committed in your presence, but whether you can make it stick in court that you had reasonable cause to believe that the offense was committed in your presence.' And I think that just opens Pandora's box and

[14] Testimony of Thomas C Lynch, District Attorney, San Francisco at San Francisco hearing

[15] Testimony of John McFeely, N A A C P, San Francisco at San Francisco hearing

is wholly unnecessary from the point of view of law enforcement in this state except as a means to ground a legal search and seizure thereafter and therefore in subversion of the *Cahan* rule." [16]

"It should be added that under the present law, in theory, the police officer is individually liable, however, by reason of recent court decisions, the leading case being *Coverstone* vs. *Davies*, 39 Cal 2d 315 and the enactment of Section 836 of the Penal Code in 1957 the police officer enjoys an immunity from civil liability if the facts establish that he had probable cause to believe an offense had been committed in his presence I am inclined to agree with Justices Carter and Schauer's dissent that the effect of the decision is '. . no action for false arrest, false imprisonment or malicious prosecution shall lie against anyone connected with the enforcement of the law', and that the effect of the adoption of this rule '. . . demonstrates the absurdity of the argument that a person whose rights have been violated by a police officer may obtain redress against the officer' I feel very strongly that the Legislature was ill advised to enact Section 836, Subparagraph 1 of the Penal Code in 1957 adopting the rule of probable cause justifying an arrest. A police officer would have to have little imagination not to conjure up a set of facts which would permit him to escape civil liability after having violated the rights of a law-abiding citizen" [17]

The requirement that a misdemeanor actually be committed in the presence of the arresting officer served to discourage arrests based upon anachronistic, petty, or technical offenses when the real purpose of the arrest was to legalize a search.

Although the change with regard to misdemeanor arrests was designed to codify the *Coverstone* rule, that case dealt with the civil liability of the arresting officer rather than the admissibility of evidence gained by such an arrest Thus, subsection 1 might easily be construed as applying only to cases of civil liability.

Of subdivision 2, the analysis made for the Judicial Council says:

"The Supreme Court in 1955 left open the question whether subdivision (2) of section 836, which remains unchanged by the 1957 amendments, authorizes an arrest when the person arrested is in fact guilty of a felony, even though there is no reasonable cause for the arrest [2] (Footnote 2: People v. Brown, 45 Cal. 2d 640, 643) The 1957 amendments would seem to make it most difficult now to hold invalid an arrest made under such circumstances

"It is possible that the amendment to subdivision (1) of section 836 broadened the powers of peace officers to make arrests for public offenses apparently committed in their presence." [18]

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[16] Testimony of Richard A Bancroft, N A A C P, San Francisco, at San Francisco hearing

[17] Testimony of Terry A Francois, N A A C P, San Francisco, at San Francisco hearing

[18] California Judicial Council of the State of California, "1957 Statutory Changes in the California Law of Arrests," pp 8-9

On this same subsection, a publication of the Attorney General's office states:

"Reasonableness of the Search

"B Search as Incident to Lawful Arrest

"The legality of the arrest is not necessarily determinative of the lawfulness of a search incident thereto.

"When defendant has in fact committed a felony an arrest would be lawful without probable cause (Pen. Code, § 836 (2)), but the search and seizure incident thereto would not be lawful.[9] (Footnote 9. *People* v *Brown*, 45 Cal 2d 640, 648; *People* v. *Burgess*, 170 Cal. App. 2d 36, *People* v *Ingle*, 173 A C A. 670, 673.)" [10]

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
841. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape	841 The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape

Section 841

The committee recommends that peace officers follow a policy of informing the arrested person of the charge against him when there is any chance that he might not already know it, and in *all* cases in which the arrested person asks the cause of his arrest. Such a policy would be helpful in maintaining a co-operative attitude on the part of the public

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
842 If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required	842 An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but if the person arrested so requests it, the warrant shall be shown to him as soon as practicable

Section 842

Some objections have been made to the phrase "as soon as practicable" in this section on the grounds that it is too vague to be of much value to the person arrested. The "Argument in Support of Assembly Bill 1857, relating to the laws of arrest in California . . ." says:

> "Warrants are generally on file in the main office of a police or sheriffs department, and should be able to be produced well within two hours in any part of any city or county, thus avoiding any undue hardship on any person."

[10] California Department of Justice *Probable Cause to Arrest and Admissibility of Evidence*, by Bonnie Lee Martin Rev Ed (Sacramento 1960), p. 157.

In view of this statement, it would not be unreasonable to allay fears of abuse of this section by adding a requirement that the warrant be shown to the person arrested within two hours after his arrest. We are, therefore, proposing such an amendment in our recommendation.

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
847 A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer.	847 A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer. There shall be no civil liability on the part of and no cause of action shall arise against any peace officer, acting within the scope of his authority, for false arrest or false imprisonment arising out of any arrest when: (a) Such arrest was lawful or when such peace officer, at the time of such arrest had reasonable cause to believe such arrest was lawful, or (b) When such arrest was made, pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested, or (c) When such arrest was made pursuant to the requirements of Penal Code Sections 142, 838 or 839

Section 847

As to the effect of the amendments to this section, then Attorney General Edmund P. Brown stated·

> "The right to sue for false arrest and false imprisonment as it existed prior to this amendment is identical to the right under this amendment. *The citizen had a right to sue for false arrest prior to the amendment where the officer acted unlawfully or without reasonable cause; such remains the law* This section simply codifies the existing judicial decisions on the subject "[20]

The written argument for A B 1857 said of this section:

> "If the officer involved is orally ordered by a magistrate to arrest some person who committed or attempted to commit a public offense (even though not in the presence of the officer) Penal Code section 838 requires him to arrest such person, although no authority for such arrest appears in Penal Code section 836, at present, or as to be amended (See *Frazier* v *Moffatt*, 108 Cal App (2d) 379) The same is true of a demand made of the officer to aid in an arrest, under Penal Code Section 839, wherein he would be chargeable as a principal.

[20] See transcript of Assembly Interim Committee on Judiciary, Subcommittee on Constitutional Rights, San Francisco, July 28-29, 1958, p. 17

"Therefore in order to enable the officer to carry out these code requirements, he should be protected by a code provision specifying his immunity from liability when carrying out the *specific demands of the code.*[21]

"That a peace officer is not liable for false arrest or false imprisonment when the arrest is lawful or when he has reasonable cause to believe the facts constitute a lawful arrest, has long been the law in California (See *Murphy* v *Murray*, 74 Cal App 726; *Dragna* v *White*, 45 Cal (2d) 469, *Miller* v *Glass*, 44 Cal (2d) 359, nor is he liable for malicious prosecution for acts done within the scope of his authority (See *White* v *Towers*, 37 Cal 2d 727)" [22]

In response to a question regarding a peace officer's liability under Section 847 as it existed prior to the amendments, the Legislative Counsel stated·

"You have asked that we discuss the law (apart from such effect as the 1957 amendment of Section 847, Penal Code, may have had) relating to the liability of a peace officer who accepts custody of an arrested person from a private citizen who has made the arrest

"In the time available to us, we have not found any reported case in which an attempt was made to hold an officer liable for false arrest or false imprisonment in these circumstances However, it is difficult to see how any liability of the officer could arise merely from the act of accepting delivery of the arrested person from the citizen who made the arrest Section 847 provides that a private person who has arrested another for the commission of a public offense must, without unnecessary delay take the person before a magistrate or deliver him to a peace officer (see, however, Section 849, Pen C, referring only to taking the arrested person before a magistrate) Though Section 142 of the Penal Code has not been construed in this context, we note that the section makes a peace officer who willfully refuses to 'receive . . . any person charged with a criminal offense' guilty of a felony, and this section could literally be applied to the situation in question In any event, acceptance of delivery of the arrested person from the arresting citizen would seem to be in accordance with law and not an act giving rise to liability Of course, the officer might thereafter be guilty of acts or omissions giving rise to liability, just as in the case of an arrest originally made by the officer himself "

A further question was put to the Legislative Counsel regarding the meaning of the phrase "acting within the scope of his authority" as it is used in this section The counsel's opinion on this question said·

"The term 'scope of his authority,' as used in Section 847, has not been construed by the courts In cases antedating the 1957 amendment, it was indicated that this term, used with reference to acts of peace officers, refers to lawful acts, and is not the same

[21] Emphasis ours

[22] *White* v *Towers*, a 4-3 decision, sets out, in the majority opinion and the dissent, detailed arguments on the desirability of allowing a suit for malicious prosecution A recent and most interesting civil liability case is *Davis, et al* v *Kendrick*, 52 A C 530 (July, 1959) This was an action brought to recover damages for wrongful death caused by an assault by defendant policeman

as 'color of law' (*White* v *Towers*, 37 Cal 2d 727, 733; *Silva* v. *MacAuley*, 135 Cal App 249, 257) However, from the context in which the term is used in Section 847 we believe it is evident that the term was intended to cover more than that which a peace officer can lawfully be authorized to do *The section is plainly intended to confer immunity with respect to certain unlawful acts (see, particularly, paragraph (a) of Sec 847)*[23] The term in question is more commonly used in the field of agency, with reference to the extent to which an agent can bind his principal, and it may be that the term is used in somewhat the same sense as 'apparent authority' in the field of agency (see 2 C J S p 1182 et seq ; 3 C J S. p 138 et seq) However, we must conclude that the meaning of 'scope of his authority' in Section 847 is uncertain ''

Some concern has been expressed as to the effect this amended section may have upon civil liability for false imprisonment For example, the analysis prepared for the Judicial Council comments·

"Apparent Effect on Law

"Prior to 1957 the question as to whether there existed a civil cause of action against peace officers for false arrest or false imprisonment when the arrest was made without a warrant seemed to depend primarily on whether the detention was authorized by section 836 of the Penal Code.[1] (Footnote 1 · 'The question whether the officers made an unlawful arrest, subjecting them to damages for false imprisonment, is governed by section 836 of the Penal Code 111' (*Hughes* v. *Orrb*, 36 Cal 2d 854, 857) See *Miller* v *Glass*, 44 Cal 2d 359, 362; *Coverstone* v *Davies*, 38 Cal. 2d 315, 319-320, *Oppenheimer* v. *City of Los Angeles*, 104 Cal App 2d 545, 549; 22 Cal Jur 2d 46, cf *Peterson* v *Robison*, 43 Cal 2d 690 (arrest by private person), *Collyer* v *S. H. Kress & Co*, 5 Cal 2d 175, 180-181 (arrest by private person); *Murphy* v *Murray*, 74 Cal App 726, 729 (arrest by peace officer))

"One exception should be noted Even though a lawful arrest occurred, an action for false imprisonment could be maintained if the suspect was detained for an unreasonable period prior to being taken before a magistrate (*Dragna* v. *White*, 45 Cal. 2d 469, 472) It is not clear whether the 1957 amendments have abrogated this rule (See text to Part VI, pages 28 and 34)

"Amended section 847 appears to have expanded this test by providing that in certain situations peace officers are not civilly liable for false arrest or false imprisonment regardless, apparently, of the validity of the arrest The scope of such immunity is discussed in the remainder of this Part

" No liability for false arrest exists if the arrest was lawful The rule, however, has been that, if a suspect were detained for an unreasonable period of time following his lawful arrest, there could be liability for false imprisonment[5] (Footnote No 5 Dragna v White, 45 Cal 2d 469, 472; Kaufman v. Brown, 93 Cal App 2d 508, 511) Section 847 possibly abrogates this rule by immunizing officers from actions for false imprisonment 'arising out of any arrest when, (a) Such arrest was lawful. .' ''

[23] Emphasis ours

The same objection was made by some of the witnesses who testified at legislative hearings

> "I noticed the Judicial Council opinion suggests that under the detention section on page 49, part 1, there exists a question of whether a suit for false arrest or false imprisonment still lies It is unclear. It seems to be unclear because it states in another section, I think 847 that if there was a valid arrest that no suit for false imprisonment or false arrest shall lie "[24]

and

> Q. "Your position generally is that you are satisfied with the changes made by the Legislature in 1957 but you would oppose further attempts to enact those provisions which were rejected by the Legislature in 1957?
>
> A "Basically that is correct I do find I quarrel a little bit with 1857 on the immunity of a police officer from suit for false imprisonment or false arrest The false arrest part is all right if it is made upon probable cause but the false imprisonment is something different A police officer can have good grounds to arrest an individual and after he has found out that there was no crime committed he can still keep him in jail on suspicion They generally do for about seventy-two hours so that portion I do not think is fair—the false imprisonment to an extent "[25]

This committee is of the opinion that Section 847 was not intended to confer immunity for a false imprisonment which originated in a lawful arrest. The testimony of those persons who drafted the 1957 amendments indicates that they simply desired to codify existing case law on the subject. We know of no court opinion holding that a lawful arrest can validate a subsequent false imprisonment Nevertheless, in view of the apparent confusion on this point, we recommend that the section be amended to clarify its intent regarding false imprisonment

The problems described in Legislative Counsel Opinion No. 1260 with regard to the degree of immunity conferred by Section 847 allow no simple solution We agree with the California Supreme Court that.

> "Police officers are guardians of the peace and security of the community; their problems are manifest and complex and they should not be held to accountability greater than that required of any other reasonable or prudent man under like circumstances."[26]

At the same time, the individual citizen is entitled to some protection and should be reimbursed or compensated for injury done to him without right and under color of law This is an historical conflict between two interests, both of which must be protected in order to preserve democratic government We do not believe that we can, as yet, offer a satisfactory proposal for revision of this section We suggest,

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[24] Testimony of Lawrence Speiser, Attorney, A C L U of Northern California at San Francisco hearing

[25] Testimony of Philip Erbsen, Attorney at Law, Los Angeles, at San Francisco hearing

[26] *People* v. *Ingle*, 53 A C 408 (California Supreme Court Crim 6564, Jan 19, 1960)

however, that this problem should be studied at length during the next interim and legislation proposed to balance, as perfectly as possible, a vigorous law enforcement policy with freedom from arbitrary police action

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
849 When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and a complaint stating the charge against the person, must be laid before such magistrate.	849 (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person, must be laid before such magistrate. (b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever: (1) He is satisfied that there is no ground for making a criminal complaint against the person arrested Any record of such arrest shall include a record of the release hereunder and thereafter shall not be deemed an arrest but a detention only (2) The person arrested was arrested for intoxication only, and no further proceedings are desirable (3) The person arrested was arrested for a misdemeanor, and has signed an agreement to appear in court or before a magistrate at a place and time designated, as provided in this code.

Section 849

This section is one of those most extensively changed by the 1957 amendments

Before getting into the changed portions of the section, it might be well to discuss the interpretation of a phrase which is found in the section both before and after 1957 and that is "without unnecessary delay."

Many persons have interpreted this phrase to mean no more delay than the physical facts require, plus the earliest availability of a magistrate From the testimony before the committee, it is clear that this is not the general interpretation now and has been even less

so in the past One police chief expressed his present understanding of the phrase as follows.

> Q "I've been interested in the testimony we've heard so far about the practical interpretation placed on requirement that a person be taken before a magistrate without unnecessary delay. From some of the testimony we've heard before, I gather that the requirement is sometimes interpreted to mean that you can delay not only so long as the physical facts require until the magistrate is available, but also long enough to conduct a little investigation to check out the officer's story and check out the story of the arrested persons, so that you may in fact delay longer than is absolutely necessary beyond the time when the magistrate is first available, subject only to a 48-hour absolute limit Does that jibe with your understanding?"
>
> A "Yes, pretty much It would have to be, I think, a flexible situation as to what is deemed to be a necessary delay In a serious felony-type crime, a necessary delay might mean quite a considerable length of time, where in a minor type of situation where we only had to interrogate a couple of victims who might need to determine the validity of this charge, and then if we waited say even a period of 8 to 10 hours, that could possibly be deemed unnecessary delay It has to be considered a flexible situation I don't think we can say a cut and dried time We could put a maximum on it which is in the statute It still could be construed, and has been, I assume, in the courts where six hours could be unnecessary delay."[27]

One district attorney informed the committee that, prior to his administration, procedures governing felony arrests in his county were so complicated that some people stayed in jail as long as a week without getting before the magistrate[28] It was this kind of procedure which led Judge Vallee to say:

> ". . . The detaining of persons in custody and not taking them before a magistrate without unnecessary delay is a prevalent practice We have yet to hear of any public prosecutor, complying with his oath of office, prosecuting any police officer for violation of Section 825 The police are permitted to flaunt, defy, and violate the law they have sworn to uphold by the officers whose duty it is to prosecute them Detention of a prisoner without taking him before a magistrate without unnecessary delay is not only a violation of Section 825 it deprives the person of his constitutional right to be admitted to bail (Const, Art I, § 6), denies him a speedy preliminary hearing (Const, Art I, § 8), deprives him of his right to be advised of his rights by a magistrate (Pen Code, § § 858, 859), and in many cases deprives him of the right and opportunity to obtain counsel (Pen Code, § 825) In the present case the detentions of Grace, Johnson, and Strain were obviously illegal Grace was arrested on July 7, 1957; he was not

[27] Testimony of Francis L Barnett, Chief of Police, Roseville, California, at Sacramento hearing

[28] Testimony of John M Price, District Attorney of Sacramento County, at Sacramento hearing.

taken before a magistrate until July 12. Johnson was arrested on July 11, 1957; he was not taken before a magistrate until July 15 or 16 Strain was arrested on August 6 or 7, 1957; he was not taken before a magistrate until August 12 The ordinary motive for extended failure to take a prisoner before a magistrate is not unrelated to the purpose of extracting a confession. (*Mallory* v. *United States*, 354 U.S 449 (77 S Ct 1356, 1 L Ed 2d 1479).) It would seem that the only possible way of stopping the illegal practices of the police is a similar rule in the state courts But as an intermediate reviewing court, we are bound by the decisions of the Supreme Court holding that the mere illegal detention of a person under arrest, no matter for how long, is not ground for excluding a confession.

"The judgments and the orders denying new trials are affirmed The appeals from the orders denying probation are dismissed "[29]

Shinn, P. J , and Wood (Parker) J , concurred

Appellants' petitions for a hearing by the Supreme Court were denied February 4, 1959 Carter, J , and Schauer, J , were of the opinion that the petition should be granted.

Mr. Robert Burns, Assistant City Attorney of Los Angeles testified regarding detention practices as follows:

Q ". . there have been examples of cases where people were not brought before a magistrate in 48 hours and I wonder just how often this happens, is there any special reason for it or has there been a change in practice since those cases, so that it now never happens Just what is the answer?

A. "No, it's happened quite regularly up to, you might say, the *People* vs. *Grace* . . .

Q "Do I understand that the net effect of this, since *Dragna* vs. *White*, the Los Angeles Police Department, at any rate, has accepted the proposition that it is necessary to issue the complaint and bring the person arrested before a magistrate .

A "Within forty-eight hours

Q. " . not to exceed forty-eight hours

A. "That is what we have—I've directed that ever since *Dragna* vs. *White*. I think it's the only department in California that has Since the Grace case, I think a lot of them are following it—I would say most people are."[30]

Apparently the widespread presumption before *Dragna* vs *White*, decided in 1955, and *People* vs *Grace*, 1958, was that only the person arrested on a warrant must be taken before a magistrate within 48 hours

Q. "Mr Burns, haven't the courts, though, so construed that, as far as the rights for the defendant or the arrested person are concerned, they do not make a distinction whether it's an arrest with a warrant or without a warrant?

[29] *People* vs *Grace* 166 C A 2d 68 332 P 2d 811

[30] Testimony of Robert Burns, Assistant City Attorney of Los Angeles, at Sacramento hearing

A "That is what the court has said in this case, in the *Dragna* Case I said, because we had three or four cases, if 48 hours hadn't gone by, why worry about it. That's the point I made in the *Dragna* vs *White* Now all you have to worry about is the right start—and then they took up several other cases which similarly had lumped the two, and said that forty-eight hours applies to both of them.

Q. "Hasn't this been historical though, even before the *Dragna* Case?

A. "Not to any extent . ."[31]

Since a very small percentage of arrests were, and are, made with a warrant, in the great majority of cases the police felt themselves free to hold a defendant until they were ready to produce him before a magistrate.

A witness from the Alameda County District Attorney's office testified as follows regarding detention practices in his area.

Q "Did you follow a different procedure before the Supreme Court announced its interpretation of 825, in the case of *Dragna* vs. *White*?

A. "I would say that in the last perhaps three or four years, there has been a growing consciousness of the duty of the officer involved, to charge the person or release him within this 48-hour period, . . .

Q. "Whether he was arrested or not?

A. "—yes, that's correct ."[32]

The public defender of San Francisco suggested that Section 849, as amended in 1957, allows the old practices to continue more or less under color of law.

Q. "Is it your feeling that Section 849 as amended in 1957 permits the arrest of a person without probable cause?

A. "We haven't any doubt about it . . . I think the law enforcement officials have to have statutes under which to operate. I think they try to interpret them to the best of their ability But when you find you get a statute on the book like Section 849, which isn't specific in what is meant by a reasonable period of time, . . I say the Legislature is responsible, not the arresting officer."[33]

We believe that the Penal Code should spell out the requirement that in all cases an arrested person shall be taken before a magistrate within 48 hours of his arrest, and that this period of time, excepting Sundays and holidays, shall be the maximum reasonable delay. It should also be made clear that an unreasonable delay may consist of far less time than 48 hours If a schedule of bails has been made up, which includes the offense for which the person was arrested, he shall be

[31] *Ibid*
[32] Testimony of Albert E Hederman, Jr, Assistant District Attorney, Alameda County, at Sacramento hearing
[33] Testimony of Edward T Mancuso, Public Defender, City and County of San Francisco, at Sacramento hearing

entitled to make bail on a Sunday or a holiday. Section 825 should be amended to include arrests made without a warrant

In 1959 Assemblyman Louis Francis introduced a bill defining the term "booking". This definition has been added to the Penal Code as subdivision 21 of Section 7

> "To 'book' signifies the recordation of an arrest in official police records, and the taking by the police of fingerprints and photographs of the person arrested, or any of these acts following an arrest." [34]

Although there is now a definition of booking and a requirement that an arrested person be permitted to make one completed phone call after booking, there is no legal requirement that an arrested person be booked at all It is a common practice to conduct the interrogation of a prisoner after his arrest, but before booking him Thus, the purpose of his phone call, to preclude incommunicado detention, is effectively frustrated [35]

We recommend that an arrested person be booked within three hours of his arrest, or that the arresting officer shall file a statement with the magistrate explaining why the arrested person was not booked within three hours and indicating time and place of arrest, force, if any, used in effecting the arrest, all places to which the arrested person was taken prior to booking and the purpose of taking him to such places

Section 849a

The first change made in this section, the addition of the phrase, "if not otherwise released," will be considered in conjunction with the provisions of 849(b)

The second change made in this section was in regard to the magistrate before whom the arrested person is taken Before 1957 an arrested person was taken before the nearest or most accessible magistrate in the *county in which the arrest was made* Since the 1957 change, such person is taken before the nearest or most accessible magistrate in the *county in which the offense is triable.*

The "Argument in Support of Assembly Bill 1857 Relating to the Law of Arrest in California" stated of this change·

> "The second part of the amendment is made to cover arrests made by officers of one county in another county. For instance, if a San Francisco police officer without a warrant arrests a defendant in San Mateo County for an offense committed in San Francisco County, he is required now, under Penal Code section 849, to take him before a San Mateo magistrate and seek a complaint there. This is an arbitrary and useless command, because the proper court and venue are in San Francisco County (See Penal Code Section 777 that jurisdiction lies in the county where the offense was committed) Therefore the additional amendment should be made to provide for presentment before the magistrate in the proper county

[34] See Penal Code, Sec 7 21, p 5
[35] See Sec 851 5, *Op Cit*

"For all practical purposes, arrests made *without* warrant in one county for offenses committed in another county are restricted to felonies, because an arrest for a misdemeanor must be made at the time of the commission of the offense or in fresh pursuit of the offender (See *Jackson* v *Superior Court*, 98 Cal. App 2d 183) For arrests *under warrant*, the person arrested for a misdemeanor may be admitted to bail in the county where arrested (Penal Code section 822) but a person arrested under a felony warrant must be returned to the county where the warrant was issued (Penal Code Section 821)."

However, Penal Code Section 821 contains the following provision for bail.

"If the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit him to bail in the amount specified in the endorsement referred to in Section 815a, and direct the defendant to appear before the court or magistrate by whom the warrant was issued on or before a day certain which shall in no case be more than 10 days after such admittance to bail If bail be forthwith given, the magistrate shall take the same and endorse thereon a memorandum of the aforesaid order for the appearance of the defendant

"If the warrant on which the defendant is arrested in another county does not have bail set thereon, or if the defendant arrested in another county does not require the arresting officer to take him before a magistrate in that county for the purpose of being admitted to bail, or if such defendant, after being admitted to bail, does not forthwith give bail, the arresting officer shall immediately notify the law enforcement agency requesting the arrest in the county in which the warrant was issued that such defendant is in custody, and thereafter such law enforcement agency shall take custody of such defendant within five days in the county in which he was arrested and shall take such defendant before the magistrate who issued the warrant, or before some other magistrate of the same county "[36]

At least some of the proponents of this change of venue were under the impression that a person arrested under this section would be entitled to bail:

" . Furthermore, it should be pointed out that an accused is still protected from unreasonable acts of the officer by the availability of bail . . . "[37]

This has not, however, been the opinion generally expressed to the committee Following are some of the comments made upon this particular change·

"Penal Code Section 849—the committee has questioned several individuals on this question as to whether there is some hiatus in

[36] California Penal Code, Sec 821
[37] Testimony of Edmund G Brown at San Francisco hearing

the law on the situation where a person is arrested without a warrant in a county other than the county in which the crime is triable Can he get bail without going back to the county in which the crime was committed? The answer appears to be in the code as it stands now, that no, he cannot. There does not appear to be any jurisdiction within the county where he is arrested and certainly, as Professor Sherry suggested, this should follow the same pattern as the situation where there is an arrest with a warrant."[38]

". . . Section 849 is probably unconstitutional because it is in conflict with the constitutional right of bail . . ."[39]

"He certainly should have that jurisdiction He (the magistrate in county of arrest) should also definitely have the jurisdiction of setting bail so that a person is not held awaiting the arrival of authorities from another jurisdiction We recently had a case where a party was in jail for nearly 10 days and in that particular county they had a trial on They said they didn't have an officer to send down They were just going to have to wait until the trial was over and they could find someone to send down to pick them up So that was it The man stayed in jail until that period of time and there wasn't a thing we could do We couldn't get him out on bail. We couldn't get him released or anything

". . . We have had many cases where prisoners were taken into custody and held in prison for a period of five or six days, before they are picked up by the authorities from other counties, without any possibility of these people getting out on bail, in the meantime"[40]

The State Bar of California, in December of 1959, took a position favoring amendment of this procedure in the manner which had earlier been proposed in A B 2039 The pertinent section of that bill, introduced by Assemblyman John A O'Connell, has been summarized by the Legislative Counsel as follows

"Modifies rules governing arrest on a felony warrant in a county other than the county from which the warrant issued, to provide, generally, that the person arrested shall be taken before a magistrate in the county of arrest unless he expressly waives the right, rather than that he be taken before a magistrate of the county from which the warrant issued, unless he requires otherwise. However, in cases in which amount of bail is not endorsed on warrant, and arrested person is taken before magistrate of county of arrest, the magistrate shall fix bail as otherwise provided by law, or may refuse to fix bail if refusal is authorized by law

"Requires that a person arrested without a warrant must be taken before a magistrate in the county in which the arrest is made, rather than the county in which the offense is triable Provides, however, that defendant may waive right to be taken before magistrate of county of arrest Details procedure to be followed when person so arrested is taken before magistrate of county of arrest"

[38] Testimony of Lawrence W Speiser at San Francisco hearing
[39] Testimony of James MacInnis at San Francisco hearing
[40] Testimony of Edward T Mancuso, Public Defender, City and County of San Francisco at Sacramento hearing

We recommend that the change, proposed in A B 2039, and approved by the State Bar, be put into effect by the Legislature during the 1961 General Session

Section 849b

The "Argument in Support of Assembly Bill 1857 Relating to the Law of Arrest in California" says of this change which was proposed in that bill·

> " . . . Present legal thinking (see *Dragna* v. *White*, 45 Cal. 2d 469) indicates that while an arrest, based upon a reasonable cause, is lawful, yet a subsequent detention could be unlawful Such would be the case if after arrest, but before arraignment, the arresting officer learned of facts which destroyed the belief upon which his reasonable cause was based. It would then be the duty of the arresting officer to take steps to cause the release of the person arrested from further custody. Yet under present code law, the officer does not have authority to release a person under arrest. Under Penal Code Section 853 1, a citation may now be issued in lieu of taking before a magistrate a person arrested for violation of a county ordinance, and a similar provision in respect to arrests for city ordinances is now before the State Legislature This, in itself, should be sufficient reason for the adoption of the above section."

It might be noted at this point that the issuance of a citation is not done "in lieu of taking before a magistrate" in the same degree as the change made to this section. Under the procedure governing the issuance of citations for misdemeanors, the arrested person signs a written agreement to appear before the magistrate at a specified time and place The magistrate fixes the amount of bail he thinks necessary to guarantee the appearance of the arrested person and may, if such person does not appear at the time specified, continue the proceedings against him Thus, under the citation sections (853.1 for city or county ordinances and 853 6 for state misdemeanors) the discretionary power as to whether an arrested person should be held or released is retained by the magistrate.

The analysis prepared for the Judicial Council points out that no clear limit is set upon the time within which an arrested person may be detained under this section·

> "The provision in Section 849 that a person arrested must be taken before a magistrate 'without unnecessary delay' applies only to persons 'not otherwise released' pursuant to subdivision (b). There is no express requirement of a speedy release in subdivision (b) Unless 'not otherwise released' means 'not otherwise *previously* released,' it is not clear what duty is placed upon an officer to effect the release within a reasonable length of time "

And:

> " . . . When a suspect is ultimately released pursuant to subdivision (b) of Section 849, possibly there is no restriction upon the length of his detention, and if this is true, it follows that it

may not be possible to state a cause of action for false imprisonment "

The possibility that this section might preclude false imprisonment suits has already been considered in this report See discussion under Section 847.

There is a wide diversity of opinion as to the effects of this section and also as to the desirability of revising it Excerpts from some of the testimony on this section follow:

"Now, the other section—849, I will have to confess that is a type of procedure that we have used since 1944 This, as you recall, has been a subject of some controversy among district attorneys I believe the district attorney of Ventura County wrote a law review article on the subject

"There have been those district attorneys who claim that once a man has been apprehended by a police officer or a peace officer there must be a complaint filed against him and he must be produced in court and he must have bail placed We have never believed that We believe that when a district attorney, if he is called upon to make a decision, comes to the conclusion that a man is not to be prosecuted for one reason or another, he should be immediately released and that it is not necessary to subject him to further legal proceedings "[41]

" the notion of a detention with a disavowal of arrest would probably be unconstitutional under that section unless the Constitution itself were amended."[42]

"Getting to the changes in the law of arrest which were made in 1957, I think there was an excellent comment in the opinion put out by the judicial council which I realize has not yet been adopted, that Penal Code Section 833 and 849b appear to authorize searching, questioning, detention and release prior to an arrest This could be sloppy draftsmanship That is a little unclear but this interpretation, I think, is a valid one in looking at those sections "[43]

"Prior to 1957, Section 849 PC provided safeguards which tended to assure an arrested person fair treatment It provided for a division of the function of government The peace officer is made the accuser, the judge and the jury Such authority vested in any one person is a contradiction of the theory of democracy Obviously such a state of affairs is completely devoid of fairness and would seem to violate the due process clause of the Fourteenth Amendment to the U S Constitution as well as the comparable provision of the California Constitution "[44]

"I would look at one particular change which I would have some rather definite opinions regarding This would be section 849 which was amended by the Legislature in 1957 Broadly speaking again, I feel that regardless of the benefits which might be derived from this particular section, that there would be a very definite

[41] Testimony of Thomas C Lynch, District Attorney, San Francisco, at San Francisco hearing

[42] Testimony of James MacInnis, Practising Attorney, San Francisco, at San Francisco hearing

[43] Testimony of Lawrence Speiser at San Francisco hearing.

[44] Testimony of Joseph G Kennedy at San Francisco hearing

question as to the constitutionality of this sort of delegation of power to police and another point on which I certainly feel more capable of speaking would be, after being in the academic phase of police work for many years and in actual police work for many years, I don't feel that the police are ready for this type or this kind of responsibility

". . . The number 3 section I would certainly recognize as a very progressive move in the law The question that I raise would be with reference to subsections 1 and 2 .

" I think various proposals might be presented by police agencies themselves saying, 'We handle this particular situation in this particular way' Still, this is the law at the present time and within the law itself we have a situation where, although it hasn't been mentioned here I can very well see in the situation a great deal of opportunity for corruption I'm not assuming that there is any nor am I assuming that there will be But I'm saying that the section very definitely provides a fertile ground for this type of activity Getting back to my original statement, I'm also saying that police agencies have not developed to the extent, ethically and professionally, that I feel in my mind that we could afford to place this type of responsibility upon them

". . I think it's the type of responsibility that should be lodged elsewhere .

Q "Do you think that section was intended or may very well be used as a means for interrogation of suspects—

A "This sort of thing has been used for that and I think it can be used for those purposes now

" My complaint is the fact that a greater percent of the offenses handled by the police are misdemeanor offenses and a greater percent of these offenses are handled strictly by the police, making the decisions, of course, as to whether an arrest should be made and also making an added decision as to whether a release should be had, which in my opinion, creates a fertile ground for corruption to say the least It also places too much responsibility into the hands of the police

Q "Are you suggesting then that a possible improvement in Section 849 might be the elimination of B (1) and an amendment to B (3) which would make it apply to both felonies and misdemeanors?

A "That's right "[45]

Those persons who favor the retention of Section 849(b) in its present form contend that it is a convenience both to the police and to the arrested person

Opponents of the section argue that whatever convenience adheres to the arrested person under this arrangement is outweighed by the danger that police arrests and releases, unchecked by judicial supervision, may make for a greater number of unwarranted arrests The feeling is that the necessity of supervision encourages the police to make

[45] Testimony of Dr Allen Gammage, Supervisor, Law Enforcement Training, Sacramento State College, at Sacramento hearing

sure that probable cause exists before the arrest is made. Of this point the Public Defender of San Francisco testified as follows:

> Q "Is it your feeling that Section 849 as amended in 1957 permits the arrest of a person without probable cause?
>
> A. "We haven't any doubt about it, . . ."[46]

It is impossible to learn from arrest records just what the practice has been throughout the state with regard to the use of this section. First of all, it is not necessary to make any record whatever of such a detention. Section 849(b)1 merely states "Any record of such arrest shall . . ." It does not require that such record be made. Police departments throughout the State follow widely varying practices of reporting such arrests. Some departments make no record at all; others report the arrest and show a release under Penal Code Section 849; still others simply say "released" or "no complaint" without mentioning any specific section. The reason for the latter practice has been attributed to reluctance on the part of a police officer to use Section 849(b)1 because it states that the release may be made whenever "He is satisfied that there is no ground for making a criminal complaint against the person arrested."

The variation may best be illustrated by a felony arrest as a result of mistaken identity. In at least one city[47] the disposition would show that the arrest was the result of a mistake. In other areas, the same disposition would vary from "detention only" to "no complaint filed." The disposition shown upon such an arrest record can have a serious effect upon the social and economic future of an arrested person. Apart from such considerations, the lack of any uniform booking procedure makes it impossible to evaluate the results of different enforcement policies. For example, some departments show a remarkably high percentage of felony arrests in the "dismissed by police" category.[48] Others show fewer felony arrests dismissed but release a great many who have been booked on "vagrancy"[49] or "en route" charges. Still others show none of these dispositions in a disproportionate degree, but simply arrest and release under Section 849(b) without making any record at all.

The need for uniform booking procedures was pointed out by a number of witnesses:

> " . . . 'I submit that in an overwhelming majority of the cases in which an arrested person is booked enroute, he is not wanted elsewhere and the arresting authorities are resorting to subterfuge, in order to prevent his release on bail.' In a majority of cases involving enroute bookings, the person held is of no great importance, in a criminal sense, and presents no problem to society. . . .
>
> " . . . It seems to us that standardized methods of booking need to be established by the entire State. We feel uniform methods which are established should eliminate the enroute booking, excepting cases where the arresting authorities have actual knowledge, either by way of teletype, wanted circular, or other methods

[46] Testimony of Edward T. Mancuso, Public Defender, City and County of San Francisco, at Sacramento hearing.
[47] See testimony of District Attorney John Price at Sacramento hearing.
[48] See Appendix F.
[49] See Appendix G.

equally reliable, that a defendant is wanted in another jurisdiction. . . . "[50]

"It is evident from the testimony that there has been a crying need for standard booking procedures There are no standard booking procedures It was explained that nothing is said about booking. You will not find booking in the code The only thing is a section on "Keepers of a jail shall keep a register.' . . "[51]

Q. "Dr. Gammage, what kind of overall statewide booking procedure, if any, would you recommend? A partially overall program or one that varies in each—

A "Yes, partially overall program I think very definitely that when you're dealing in procedural matters you have such differences in size of agencies, such differences in regard to the manpower of the agency, that many agencies would be tremendously handicapped if they were required we'll say, by law, to pull a procedure which is spelled out specifically for all agencies in the State I think this would be very detrimental However, I do think that in these situations a degree of uniformity can be established through discovering the core of the situation and requiring uniformity in this respect

Q. "In some matters?

A. "Right "[52]

This opinion is, of course, not entirely unanimous Reservations upon a local control basis were expressed by at least one witness and there are doubtless others who share his view.

"I think that question more probably belongs in a police department, as a matter of policy. I think there is a tendency towards uniformity all the time, by virtue of the CII, with a big part of these turned in to them These meetings are held; police get to know each other, they check methods, and if the other fellow's got a better method than you have, then you think about instituting it in your town. I think all of these are driving toward a uniform procedure Our distances are less and we're getting more in each other's territories Crime becomes a bigger business, so police detection has to become equally big, but whether or not you want uniform statistics, every time you make a uniform requirement, you take away from local authorities, local governments—and the whole United States is built on the idea, as I take it, that we don't want the government doing anything that the citizens can do best for themselves And if the towns want to run it this way and it's still good, there's two choices—(a) or (b) If they want (a), why not let them have it, but I do think that you're driving toward these adoptions of uniform statistics "[53]

[50] Testimony of Edward T Mancuso, Public Defender, City and County of San Francisco, at Sacramento hearing

[51] Testimony of Lawrence Speiser at San Francisco hearing

[52] Testimony of Dr Allen Gammage, Supervisor, Law Enforcement Training, Sacramento State College, at Sacramento hearing

[53] Testimony of Robert Burns, Assistant City Attorney, Los Angeles, at Sacramento hearing

In view of the severe penalties involved, felony arrest statistics are of great importance However, considered from the aspect of total numbers of people involved, the effects of misdemeanor arrests are far greater The greatest point of contact between the citizen and the criminal law is through a misdemeanor arrest At the time of the first such arrest, an individual forms his attitudes regarding all aspects of the administration of the criminal law It is at this time that the greatest opportunity exists to attack the problem of the growing crime rate through a program of prevention Unfortunately, it is exactly at this point that we find the greatest lack of information

Not knowing the causes of crime and the effects of various factors upon the crime rate makes it difficult to adopt legislation with a high degree of assurance that it is the most effective possible The expense of collecting meaningful information regarding the administration of justice at the misdemeanor level could easily be outweighed by the financial savings made possible by such a program For example, could the cost of the present ANC program be cut significantly by an earlier and less costly program of vocational guidance at the local level? Does the handling of prisoners in certain types of institutions (jail camps, farms, overcrowded facilities, etc) affect the rate of recidivism?

Various programs for the treatment of alcoholics are in operation throughout the State There is, however, no effective followup of prisoners released A reporting program on the misdemeanor level might make it possible to compare different treatment programs in terms of expense, rate of recidivism, etc

At the request of the committee, Mr Ronald H Beattie, Chief of the Bureau of Criminal Statistics, submitted the following statement on this subject·

> "Under the Criminal Statistics Act,[54] the Bureau of Criminal Statistics under the Attorney General may request almost any type of information with respect to crime and delinquency from any of the public officials in the State concerned with this subject Over the past 14 years of the bureau's existence, there has been developed a collection of information on all adults arrested for felonies and their police dispositions More recently, data have been developed on juveniles arrested and their police dispositions These data are submitted in the form of monthly summary reports by each law enforcement agency of the State In addition, there has been developed a system of individual reports on each person prosecuted in the superior courts of the State, placed on probation by the superior courts, and each juvenile referred to probation departments and juvenile courts This has permitted a fairly comprehensive picture of the number of persons involved in serious crime, and for those who are prosecuted on felony charges, the outcome in the superior courts At the present time, there is almost no information reported or available concerning persons prosecuted in the municipal courts on misdemeanor charges or persons held in jail, either awaiting disposition or committed under sentence
>
> "In order to take steps to meet the need for information on local detention, an item for funds was placed in the "B" Section of

[54] California Penal Code, Part 4, Title 3, Sections 13000-30

the bureau's budget for the fiscal year 1959-60, but this item was not granted The request was repeated in the 1960-61 presentation of items to be included in the budget which will be submitted to the Legislature this spring

"While the Bureau of Criminal Statistics has the authority to request information regarding local detention, there is no point or purpose in attempting to do so until a staff is available to process, compile, and analyze the information reported This was the reason for the request in the last general budget session and in the current budget session If the present request to establish a section in the bureau to develop local detention information on both adult and juvenile criminal offenders is approved, efforts will immediately be made to evolve a reporting system which will give information on persons booked into jails, jail camps, and local juvenile facilities If accurate data are to be developed regarding exactly what happens in these situations, it will require reporting on an individual case basis This will provide data relating to the persons involved—age, sex, race, offense—as well as the specific data relating to the time held, the reason and circumstances of release

"Whether or not such a reporting plan would attempt to cover all persons booked for criminal offenses is a question for further consideration Certainly, it should cover all persons booked into county jails The use of city jails involves so many very short-term commitments for such offenses as drunkenness, vagrancy, and disorderly conduct, that the effort to develop detailed information on them would not seem to be commensurate with the value that might be received

"The total crime picture in California now involves reports from 400 independent law enforcement agencies, besides 58 (each) county prosecuting agencies, superior courts, and probation offices, as well as county jails At the present time there is no information available from the several hundred municipal and justice courts. In order to obtain complete information, at least in those areas of crimes against the person and property, which should be the subject of extensive knowledge, there must be developed some method of obtaining data from the municipal courts as to what has happened to individual persons charged with such offenses

"One proposal which should be given careful consideration is to require that a transcript of the disposition of every person prosecuted in a municipal or justice court be sent to the state identification and statistical bureaus, with a copy to the original arresting agency Otherwise, the record of what happened to persons arrested and charged with offenses is never clear A requirement of transcripts from the inferior courts has already been established by the Legislature, in connection with traffic offenses Transcripts of such offenses are now forwarded to the Department of Motor Vehicles for their records From the standpoint of public policy, it seems equally, if not more important, to require that the outcome of criminal cases be reported to those agencies which have the criminal records beginning with the arrest and charge of each person who is brought before these courts If such a requirement

were made, one of the very important items that should be incorporated in the information supplied is the local or state identification number of each person involved Otherwise, it would be very difficult to determine with certainty whether the person reported as prosecuted and disposed of in court was identical with the person whose arrest record was on file with the local law enforcement agency and the state identification bureau." [55]

Apparently no legislation is required to collect statistical information regarding local detention practices This committee believes that it would be to the advantage of the State for the Legislature to approve a budget item providing for the collection of such information by the Bureau of Criminal Statistics We also recommend that a transcript showing the disposition of every person prosecuted in a municipal or justice court be sent to the Bureau of Criminal Identification and Investigation

COMPARATIVE ANALYSIS OF STATUTE BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
850. A justice of the supreme court, or a judge of a superior court, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held an original warrant issued by the magistrate making the indorsement	850 A telegraphic copy of a warrant may be sent by telegraph or teletype to one or more peace officers, and such copy is as effectual in the hands of any officer, and he must proceed in the same manner under it as though he held the original warrant issued by a magistrate

Section 850

This change is one which simplifies the sending of a warrant by telegraph or teletype The committee knows of no objection to this amendment

SECTION 851 5 ADDED IN 1959

Section 851 5 (Right of person arrested to make at least one telephone call completed to his attorney, employer, or a relative: Deprivation of rights granted by section · Penalty)

(a) Any person arrested has, immediately after he is booked, the right to make, at his own expense, in the presence of a public officer or employee, at least one telephone call from the police station or other place at which he is booked, completed to the person called, who may be his attorney, employer, or a relative

(b) Any public officer or employer who deprives an arrested person of the rights granted by this section is guilty of a misdemeanor. (Added by Stats 1959, ch 1862, § 1)

Section 851 5

Although this section was not a part of the 1957 legislation, but was added in 1959, we are including it because it is an important one and closely related to some of the sections under consideration.

This section, as originally proposed, provided for one completed call at no expense to the arrested person. However, many objections were

[55] Statement submitted to committee by Mr. Ronald H. Beattie, Chief of the Bureau of Criminal Statistics

made on the ground that the cost would be prohibitive. The committee heard the following testimony on this point:

> Q "You probably recall that the original bill did not have the provisions that the arrested person—and many police chiefs, in fact one in particular, said this was going to run into millions of dollars. I disputed, and I think the majority of the members of the Committee disputed, but this was what we were confronted with and they had the statistics and we couldn't disprove it
>
> A ". . I don't want the Committee to be misled, but there is only a small percentage of people that are arrested and taken into custody that have an interest for making a phone call, . . . in order to contact an attorney or contact an employer or contact a friend." [56]

The committee asked the Los Angeles Police Department how much their budget had to be augmented because of the adoption of Section 851 5 and we were informed that the expense to the city had been reduced·

> "Your question concerning the size of the budget item necessary to maintain the policy of allowing one completed phone call to each person booked cannot be directly answered in terms of dollars and cents However, by an analysis of the procedural changes brought about by the phone call policy, perhaps you will be able to estimate the figure in which you are interested.
>
> "Prior to the adoption of the present policy, the Los Angeles Police Department completed one phone call for each prisoner at city expense, exercising the degree of control necessary in order to prevent prisoners from establishing alibis, warning their accomplices, etc When the change in the law made a completed phone call a matter of right for each prisoner, pay telephones were installed at each city jail facility Since that time, the number of calls made at city expense has been reduced to include only those calls for prisoners who have not had enough money to place their own call As a result, the expense to the city has been reduced by the operation of the new policy It is not known to what degree this expense has been reduced as there are no separate records for expense of these phone calls as opposed to other phone calls for city business
>
> "The expense for rental of the pay telephone from October, 1959, through May 15, 1960, amounted to $300, while gross receipts from the paid calls were $504 So it would appear that the new policy has saved money for the city rather than created an additional expense
>
> "We trust this information will be sufficient for your needs." [57]

Not all police departments followed the Los Angeles policy before 1959 with regard to telephone calls Apparently not all of them today

[56] Testimony of Edward T Mancuso, Public Defender, City and County of San Francisco, at Sacramento hearing

[57] Letter from City of Los Angeles, Chief of Police, W H Parker, by Thomas Reddin, Deputy Chief Commander, Bureau of Corrections, June 23, 1960, to Assembly Interim Committee on Criminal Procedure.

follow the requirements of Section 851 5, for reasons unconnected with the expense involved·

"One excuse after another is being used to prevent a liberal interpretation of this section, such as, the lines are all busy or that they have no change, or in the case where they take the money away from the person in custody Since there is no money on the person or the individual, they cannot make any call The right of a person taken into custody to telephone for the purpose of contacting an attorney or his employer, or a member of his family is, in our opinion, one of the rights that should be guarded and protected by this committee, wherever possible We believe that this section should be restudied, that the person taken into custody should be allowed more than one completed call, together with the fact that the words 'at his own expense' must, under all circumstances, be deleted from this section The legislation, as it now stands, in the statute books, might just as well not be there, as it is not accomplishing the purpose for which it was intended, nor are the people being taken into custody being given the opportunity of making contact with an attorney, their employer, or their family, which was the original intention of the legislation

"The only question was that in cross-examining the three deputies that handled these problems . . . they were all unanimous in the fact that they had and do continuously receive complaints that they haven't been able to make telephone calls." [58]

The committee recommends that the section be amended to delete the words, 'at his own expense' It would seem reasonable to allow the police to charge such toll against any money in possession of the person at the time of arrest, but no person should be prevented from contacting an attorney, relative, or friend for lack of funds

COMPARATIVE ANALYSIS OF PENAL CODE SECTION BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
1524 It may be issued upon either of the following grounds	1524 A search warrant may be issued upon any of the following grounds.
1 When the property was stolen or embezzled; in which case it may be taken on the warrant from any place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be	1 When the property was stolen or embezzled
2 When it was used as the means of committing a felony, in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be	2 When the property or things were used as a means of committing a felony.

[58] Testimony of Edward T Mancuso, Public Defender, City and County of San Francisco, at Sacramento hearing.

COMPARATIVE ANALYSIS OF PENAL CODE SECTION BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
3 When it is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it	3 When the property or things are in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered
4 When the property is a cask, keg, bottle, vessel, siphon, can, case, or other package, bearing printed, branded, stamped, engraved, etched, blown, or otherwise attached or produced thereon the duly filed trademark or name of the person by whom, or in whose behalf, the search warrant is applied for, in the possession of any person except the owner thereof, with intent to sell or traffic in the same, or refill the same with intent to defraud the owner thereof, with such intent, and without such owner's consent thereto, or unless the same shall have been purchased from the owner thereof, in which case it may be taken on the warrant from such person, or from any place occupied by him, or under his control, or from the possession of the person to whom he may have delivered it	4 When the property or things to be seized consist of any item or constitutes any evidence which tends to show a felony has been committed, or tends to show that a particular person has committed a felony. The property or things described in this section may be taken on the warrant from any place, or from any person in whose possession it may be

Section 1524

The Legislative Counsel describes the changes made in this section as follows

> "The cases relating to the section prior to the 1957 amendment indicated that the courts would not enlarge the classes of property for which a warrant could be issued (see *People* v *Citrono*, 46 Cal 2d 288; *Stern* v *Superior Court*, 76 Cal App 2d 772). The 1957 amendment added a new class (4), to wit, 'When the property or things to be seized consist of any item or constitutes any evidence which tends to show that a particular person has committed a felony' "[59]

[59] Legislative Counsel Opinion No 1012, Feb 3, 1958

The committee has heard testimony from only one witness on this section as amended in 1957. District Attorney Thomas C Lynch of San Francisco expressed his approval as follows.

Q ". . . I would assume then that you are generally satisfied by the changes made by the legislature in the laws of arrest in 1957?

A. "That is correct, and most particularly with one subject that has not even been discussed and that is the law on search warrants.

Q. "We did broaden the law . . .

A. "That is right.

Q. ". . . giving law enforcement authorities the power to obtain warrants where they otherwise . . .

A. "I think the most important change, Mr. O'Connell, was that as it was we could only look for a bottle, a keg, or a siphon and a few archaic things in the old days and now we can look for evidence which answers the question of the general public every time we appear looking for evidence, 'why don't you go and get a search warrant?' Well, we couldn't in the old days. Now we can and I think as peace officers realize the possibility of the application of the new section that you will find a much more extensive use of search warrants." [60]

COMPARATIVE ANALYSIS OF PENAL CODE SECTION BEFORE AND AFTER 1957 AMENDMENTS

BEFORE 1957	AFTER 1957
1526. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them	1526 The magistrate may, before issuing the warrant, examine on oath the person seeking the warrant and any witnesses he may produce, and must take his affidavit or their affidavits in writing, and cause same to be subscribed by the party or parties making same

Section 1526

The Legislative Counsel's analysis of the 1957 changes in this section states:

"Section 1526 of the Penal Code, relating to procedure prior to issuance of a search warrant, was amended by Chapter 1882, Statutes of 1957. The amendment made it permissive, rather than mandatory, that a magistrate, before issuing a warrant, examine on oath the person seeking the warrant and any witnesses he may produce. The amendment further modified the section by substituting 'affidavit' for 'deposition' in the provision requiring the magistrate to take the deposition of the complainant and the depositions of such witnesses as he may produce This does not appear to be a substantive change, as, prior to the 1957 amendment, issuance of a search warrant on an officer's affidavit was sanctioned by the courts (see *People* v. *Acosta*, 142 Cal. App 2d 59; *Modern Loan Co.* v *Police Court*, 12 Cal App 582). The amendment of the section to refer to 'person seeking the warrant,' rather than 'complainant' appears to be nonsubstantive in character" [61]

The committee has heard no objections to this section as it now stands

[60] Testimony of District Attorney Thomas C Lynch, at San Francisco hearing
[61] Legislative Counsel Opinion No. 1012, Feb 3, 1958.

PART III

RECORDS OF ARREST

FINDING No. 1

The committee *finds* that the employment application form used by the California State Personnel Board at the present time asks:

> "9a Have you as a juvenile or adult ever been detained by law enforcement officers, or arrested, or convicted of any offense other than traffic violations?"

RECOMMENDATION No. 1

The committee *recommends* that it be made unlawful for any employment application form used by the State of California to ask whether the applicant has ever been detained or arrested We believe that forms of this type should inquire only as to convictions.

FINDING No. 2

The committee *finds* that hundreds of persons are arrested and released in California every year without a complaint ever having been filed against them Each of these persons acquires a permanent arrest record which presents a serious handicap to his prospects of employment.

RECOMMENDATION No. 2

The committee *recommends:*

A That the Commission on Peace Officers Standards and Training place special emphasis in its training program upon the necessity to establish probable cause before making an arrest

B That a transcript showing the disposition of every person prosecuted in a municipal court be sent to the Bureau of Criminal Identification and Investigation

C That in those arrests which do not reach court, and where a record of the arrest was sent to the CII or FBI, the arresting agency shall forward the disposition to the same agency.

D That the Bureau of Criminal Identification and Investigation define uniform categories to be used by reporting agencies throughout the State in showing dispositions on arrest records in those cases in which the arrest does not result in a conviction.

FINDING No. 3

The committee *finds* that there is no law prohibiting the disclosure of arrest records to other than law enforcement agencies.

RECOMMENDATION No. 3

We recommend that legislation be enacted prohibiting the divulgence of records of arrest to any person other than a bona fide law enforcement officer

RECORDS OF ARREST

Statistics compiled by the Department of Justice show that 80,661 felony arrests were reported to the Bureau of Criminal Identification and Investigation in 1959 Of these 23,363, or 29 percent, were released. Comparable figures for misdemeanor arrests are not available but it seems reasonable to assume that the number of such arrests followed by release is substantial [1]

From the above figures it can readily be seen that thousands of Californians who have never been convicted of a crime have permanent arrest records on file with the Bureau of Criminal Identification and Investigation and, also, with the Federal Bureau of Investigation These records cover cases ranging from mistaken identity [2] to cases in which a conviction was impossible because of some factor such as the death of the complaining witness The problems created for an arrested person at either end of this scale are much the same

The most important result of such an arrest record appears to be financial For some time legislators have received complaints from persons who have either lost jobs or been unable to obtain employment because of an arrest record As a result of such letters A B 2016 was introduced during the 1959 Session of the Legislature by Assemblymen John A O'Connell and William Munnell The provisions of the bill were summarized as follows by the Legislative Counsel:

> "Provides that upon the determination of a criminal action or proceeding against a person, in his favor, his photographs, fingerprint impressions, and records of arrest, made by direction of the police after the arrest giving rise to the action or proceeding, or made during pendency of same, and copies thereof, shall be returned to him on demand Makes failure to comply with demand a misdemeanor "

A B 2016 ran into strong opposition from law enforcement organizations and was referred to this committee for interim study. We have asked for information and advice from jurisdictions which use such a rule and we have taken testimony from interested witnesses at a hearing in Los Angeles on November 12, 1959.

This committee did not have enough staff or budget to allow a thorough search to determine how many states or countries allow the destruction of records of arrests which do not result in conviction From readily available materials we learned that the states of Michigan, Illinois, New York, and Ohio have some provision for expunging such records Most Australian states either have such a legislative provision or follow the practice of expunging such records upon request England has such legislation and strictly adheres to it

Following is a brief description of these provisions and modifications to date

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[1] For one indication of the misdemeanor release picture, see Appendix G

[2] See Appendix H for one of a number of mistaken identity cases coming to the attention of the committee as described in a UPI release of September 25, 1959

New York

Section 944 of the Code of Criminal Procedure derives from former Section 622 of the Correction Law Section 622 of the Correction Law was amended by Laws of 1929, Chapter 243 and the subject matter of that section was contained in former Prison Law, Section 32, as added by Laws of 1926, Chapter 702

"Section 944.

Upon the determination of a pending criminal action or proceeding against a person, in favor of such person (unless another criminal action or proceeding is pending against him or her or unless such person has previously been convicted in this State of a crime or of the offense of disorderly conduct or of being a vagrant or disorderly person or has previously been convicted elsewhere of any crime or offense which would be deemed a crime or the offense of disorderly conduct, vagrancy or being a disorderly person if committeed within the State), his or her photograph, photographic plate or proof, fingerprint impressions, photographic copy or photographic plate taken or made while such action or proceeding is pending by direction or authority of any police officer, sheriff, peace officer, or any member of any police department, and all duplicates and copies made thereof during such action or proceeding, shall be returned on demand to such person by the police officer, sheriff, peace officer or any member of any police department, having any such photograph and fingerprints, photographic plate or proof, copy or duplicates in his possession, or under his control, and such police officer, sheriff, peace officer or member of police department failing to comply with the requirements hereof, shall be guilty of a misdemeanor Added L 1958, c 881, § 3; amended L 1959, c 647, § 1, eff Jan. 1, 1960 "

The language within parentheses was added during the 1959 Session at the request of law enforcement agencies

Michigan

Until Act 92 of the Public Acts of 1958, an arrested person who was discharged without a warrant being issued or a defendant who was acquitted was entitled to his arrest records back upon application to the appropriate court Many members of the bar felt that this was an unfair procedure in that it penalized those who were in ignorance of the law As a result, the above-mentioned act was passed, requiring the mandatory return of all fingerprint cards and arrest records where the person arrested was not brought to trial, or if brought to trial, was acquitted.

The Attorney General of Michigan commented on the adoption of Act 92 as follows·

"The principal objection of the police to this bill has been that it is often difficult to find the person to return his records to him, and that it puts an undue burden on the police officials to have to track down such persons in order to return their records. It has been recommended, therefore, by such police officials that the

statute provide for destruction of the records in lieu of actually returning them to the persons involved.

"In addition, the police have complained that the purpose of the act is defeated by requiring return of records where a person already has a prior conviction and that as a result such cases should be the exception to the statute This office is not necessarily in accord with this particular objection.

"Police officials have also been concerned in cases involving indecent liberties and other sexually motivated crimes because of the fact that they feel it is necessary to have a record in such cases for future use They further point out that in such cases the complainant often will refuse to prosecute because of the embarrassment involved, and the accused may then go free without any record of his activities for future reference This office is not necessarily in accord with this objection either, although we do feel that in exceptional cases the law should possibly contain a provision allowing the prosecuting authorities to petition the court for the purpose of not having to return the records.

"Enclosed herein find Enrolled Senate Bill No 1107, which has passed both houses of the Legislature of the State of Michigan, and is now on the Governor's desk awaiting his decision as to whether or not it should be vetoed This bill sets forth the present law in the State of Michigan with the exception of the last paragraph which has been added at the request of police authorities As you will note, it eliminates two of the objections of police authorities to the bill, as set forth above There is some question at the present time as to whether or not the Governor will veto this amendment "[3]

The last paragraph of Senate Bill No 1107 is as follows·

"The provisions of this section requiring the return of the fingerprints, arrest card and description shall not apply (1) where the person arrested has any prior conviction excepting misdemeanor traffic offenses or (2) where the person arrested was charged with the commission or attempted commission, with or against a child under the age of 16 years, of the crime of rape, sodomy, gross indecency, or indecent liberties unless a judge of any court of record, excepting the probate court, by express order entered of record, orders the return."

The Attorney General does not comment upon another rather extensive change made by the bill. On line 6 of Section 3 the bill adds a requirement that records of arrest be forwarded immediately upon arrest not only to the state identification bureau but also to the Federal Bureau of Investigation. In the 1958 measure these records were forwarded to the FBI only after conviction Since these records cannot be recalled by state action, this provision would mean that even in those cases in which local records were returned or destroyed, they could be replaced at any time from the files of the FBI.

[3] Letter from the Attorney General of Michigan, August 4, 1959 (The bill was signed by the Governor)

Ohio

Baldwin's *Ohio* Revised Code and Service, v. 6, Bureau of Criminal Identification and Investigation 5149 05:

> "Upon a nolle prosequi being entered under provisions of former Sec 2919, any photographs, pictures, descriptions, fingerprints, measurements and such other information as may be pertinent, taken by virtue of this section of an accused who is not a well-known and habitual criminal, or who is not confined in any workhouse, jail, reformatory or penitentiary, for the violation of state laws, shall be given to the accused upon his request 1927 OAG 6"

In regard to the above provision, Mr John L Francis, Director, Legal Aid Defender Society of Columbus, Ohio, says·

> ". . In practice it has been our observation that fingerprints and photographs are nevertheless taken by local police departments of any person being arrested or booked for any offense, whether a misdemeanor or felony It has been our experience that where the defendent is found not guilty after trial that these fingerprints are not usually returned In a case where a man has been held for investigation, it has been our observation that the prints are returned upon request our Statute does not refer to duplicates nor does it refer to prints which have been forwarded to other agencies We suspect that even though fingerprints are returned to the Defendant that there is nevertheless a copy retained in the files of the police department or some copies may have been forwarded to other agencies which copies are not returned."[4]

Illinois

> "All photographs, fingerprints or other records of identification so taken shall, upon the acquittal of the person charged with the crime, or upon his being released, without being convicted, be returned to him " (Ill Rev Stats 1957, chapter 38, par 780e, Sec 5)
>
> ". Illinois has recognized and given effect to concept of right of privacy . . Judicial notice would be taken that records of identification of persons arrested, retained by police department of Chicago after their acquittal or release without conviction, are not open to general public .
>
> "In absence of a specific mandate of legislature ordering return to an arrested person all records of identification held by sheriffs or police departments, sheriffs and police departments may retain in their files records of identification recorded upon arrest, after acquittal of arrested persons or their release without conviction for purpose of exhibiting such records to victims of crime in order to enable them to make an identification, such records otherwise not being open to the general public, and rights of privacy are not thereby violated " *(Morris Kolb et al v Timothy J O'Con-*

[4] Letter from John L Francis, Director, Legal Aid Defender Society, Columbus 15, Ohio, dated August 3, 1959

nor, Com. of Police, July 18, 1957, Illinois Appellate Court Reports 14 2d Series, 1957)

The effect of this ruling is to limit the application of the statute to the State Bureau of Criminal Identification.

New Jersey

The New Jersey statute requiring police authorities to take fingerprints and photographs of arrested persons and forward them to a central identification bureau was tested in 1945 in the Court of Chancery of New Jersey (137 N J Eq 24) The following are excerpts from the opinion of the court

> "Equity will intervene to protect the right of privacy . . . The 'right of privacy' is the right of an individual to be free from unwarranted publicity, or, in other words, to be protected from any wrongful intrusion into his private life which would outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities The right of privacy is one of the 'natural and unalienable rights' recognized by the Constitution and no authority has the power to change or abolish it . . There is no justification for the taking of fingerprints, photographs, and other measurements in advance of conviction except where the sole purpose to be served is to identify accused as the person charged with the offense for which he is taken into custody or for the purpose of using them to facilitate the recapture of accused who becomes a fugitive The statute requiring the dissemination of photographs and fingerprints of divers persons is unconstitutional as applied to persons not convicted of indictable offense and not fugitives from justice "

This opinion was upheld upon appeal to the Court of Errors and Appeals of New Jersey, January, 1946 However, when related cases on the same question were heard in the Court of Chancery in 1947, the court said·

> " the statute in question is within the proper exercise of the police powers of the State for the purpose of facilitating crime detection and punishment in the interest of society generally and that one who has been indicted must submit to such slight invasion of his claimed right of privacy as may accompany the performance of the police duty required by the statute .
>
> " . the charge against him had been presented to the grand jury and no indictment was found, whereupon he sought to compel the police to surrender his photograph, fingerprints and measurements This court declined to grant him the relief sought . in the case of one who had been cleared of a false charge, the discretion as to whether the police should destroy his fingerprints and photographs rested with the police and not with the court " *(McGovern* v *Van Riper et al.; O'Brien et al* v *McGovern; Jenkins et al* v *Same; Anzer et al* v. *Same*. 54 AR2d 469)

These cases were all considered in one opinion as they rested upon the same defense on the same question

Australia

The Australian practice was outlined for the committee by the Australian Attorney-General's office:

"(1) *Queensland:* Section 43 of the Vagrants, Gaming and other Offenses Act, 1931-1958 provides—

"Where a person has been arrested on any charge in respect of which a person may be arrested under this Act, or is in lawful custody for any offence, punishable on indictment pursuant to 'The Criminal Code,' the officer in charge of police at the police station to which he is taken after arrest or where he is in custody, as the case may be, may take or cause to be taken all such particulars as may be deemed necessary for the identification of such person, including his photograph and finger prints:

"Provided that if such person as aforesaid is found not guilty or is not proceeded against, any finger prints or photographs taken in pursuance of the provisions of this section shall be destroyed in the presence of the said person so concerned."

"(2) *Western Australia:* Regulation 105 of the Regulations and Instructions for the Government and Guidance of the Police of Western Australia provides—

"Every prisoner shall submit himself or herself to be photographed, and to have the prints of his or her fingers, measurements, and other particulars taken and recorded on reception and discharge; and also at any other time when ordered by the Comptroller General of Prisons. Any photograph or finger prints taken of any person under remand or committed for trial, who shall not be ultimately convicted, shall with the plates, be destroyed and not recorded."

"In practice the records referred to are destroyed in the presence of the person acquitted on his application. If no such application is received the records are automatically destroyed after a lapse of a period of three months.

"(3) *New South Wales:* There is no legislative provision for the destruction of fingerprints or other records in the event of a charge not being sustained against a person. Any decision to destroy such records is solely in the discretion of the Commissioner of Police and action is taken only when representation is made by the person charged. Such cases are rare.

"(4) *Victoria:* No legislative provisions exist. All records are retained unless the person acquitted makes application for their destruction in which case they are destroyed in the applicant's presence.

"(5) *South Australia:* No legislative provisions exist, the practice is to destroy fingerprints and photographs on the application of the person acquitted.

"(6) *Tasmania:* No legislative provision exists, nor has any person applied to have such records destroyed. It has been indicated, however, that such an application would in all probability be complied with.

"It is difficult to assess the effect of the destruction of police records on the work of the police in view of the fact that, with the exception of Western Australia, their destruction is dependent on the application of the person acquitted, and the actual number of applications received in various states has apparently been negligible."[5]

England

"All police forces in Great Britain must send to the Criminal Record Office the fingerprints of every person sentenced to imprisonment for serious crime . . . The fingerprinting and photographing of prisoners is usually done in prison. In England, Wales, and Northern Ireland the fingerprints of an arrested person cannot be taken without his consent until he has been sentenced to imprisonment or remanded for a further hearing (in the latter case the court's permission must be obtained)." (*The Police in Britain.* Central Office of Information. H. M. Stationery Office, London. Chapter V.)

In response to an inquiry from this committee, the Home Office described the English practice as follows:

"It may be helpful if I first described the circumstances in which in England and Wales the fingerprints may be taken of a person who is in custody and charged with an offence or who has been sentenced to a term of imprisonment. The statutory provisions are as follows:—

"1. Under Regulations made by the Secretary of State (i.e. the Home Secretary) prison governors are required to cause the fingerprints to be taken of all persons sentenced to a term of imprisonment on conviction of any one of the more serious indictable offences and for them to be forwarded to the Central Criminal Record Office, New Scotland Yard. The prescribed offences, which are known as the 'fingerprintable offences,' cannot be varied without the express approval of the Secretary of State.

"2. Under Section 40 of the Magistrates' Court Act, 1952, which enables the police to apply to a magistrate for an order to be made enabling them to take the fingerprints of a person in custody and charged with an offence. A copy of Section 40 of the Magistrates' Court Act, 1952 is attached together with an extract from a home office circular to clerks of justices explaining the purpose of this section of the Act.[6] In advising chief constables on the application of Section 40 of the 1952 Act, the Home Office has said that it is important that the spirit as well as the letter of the statutory provision should be observed and that no person who would otherwise have been dealt with by summons should be taken into custody merely because it is desired to obtain his fingerprints. You will notice that subsection (4) of Section 40 requires that fingerprints taken by order of a Court under the section and all copies and records thereof, shall be destroyed if the person is

[5] Letter received by committee from Australian Consulate-General, 153 Kearny Street, San Francisco 4, California, 4th March 1960.
[6] See Appendix I.

acquitted, or the justices determine not to commit him for trial, or the information against him is dismissed.

"3. The fingerprints of a person remanded in custody may be obtained on application by an officer not below the rank of Superintendent to the Prison Governor. In the case of a refusal in prison, the application form must be signed by a Justice of the Peace. (Regulations made under Section 8 of the Penal Servitude 1891, now embodied in Section 16 of the Prisons Act, 1952).

"Fingerprints are also taken by the police from persons who are in custody and charged with an offense provided they consent to having their fingerprints taken. The police procedure in England and Wales for obtaining fingerprints by consent is not covered by statutory provision and may vary in detail from force to force. It can be exemplified, however, by the procedure of the Metropolitan Police which is generally similar to that followed by the provincial police forces. The procedure of the Metropolitan police is as follows:

"Provided they consent, the fingerprints of the following persons may be taken:

(i) Persons in custody for any of the more serious offences for which a convicted person would be fingerprinted in prison.

(ii) Aliens charged with an offence.

(iii) Prostitutes charged with soliciting, behaving in a riotous or indecent manner.

(iv) Any unknown person who is charged with committing an offence which is not one of the 'fingerprintable offences' and there is reason to suspect that he has previously been convicted.

"Any person whose fingerprints it is proposed to take is notified of his right to object and if he does object, his fingerprints are not to be taken. In any case where the charge against a person who has consented to the police taking his fingerprints is subsequently dismissed or if he is found not guilty, by a court, all records and fingerprints are destroyed.

"It will be seen that it is a well-established principle in this country that where the police have obtained the fingerprints of a person who has not been convicted of an offence or who is acquitted by a court, the fingerprints of the person and all records of the case are destroyed. If it is so desired, this will be done in the presence of the accused person. This, of course, would also apply to fingerprints taken for elimination purposes.

"There is no evidence that the destruction of these records causes any administrative difficulty or that it involves additional expenditure.[7] There may, of course, be occasions when the detection of crime would be greatly facilitated by the retention of the fingerprints of all persons who have been charged with an offence, but there is considerable public sentiment in this country against fingerprinting of unconvicted persons and there is no

[7] It might be well to point out that the English have very few cases in which persons are arrested but not prosecuted. They apparently follow the practice of making a thorough investigation before making an arrest. See "Criminal Statistics," Home Office, London.

reason to suppose that the police are seriously embarrassed by the destruction of these records. . . . "[8]

California

This committee asked the Attorney General's Office to outline the California practice with regard to fingerprinting and photographing arrested persons:

"When one is arrested and booked on a felony or high-grade misdemeanor charge, his fingerprints, and often his photograph, will be taken, and copies sent to the Federal Bureau of Investigation in Washington, D.C., and to the State Bureau of Criminal Identification and Investigation at Sacramento . . . When fingerprints are forwarded to the bureau, such action is normally taken immediately after the arrest, in order that pertinent information to the 'wants' for other offenses, or past arrests for the same type of offense, or prior convictions, may be forwarded to the authorities.

". . . there is a very serious question as to the power of the State to request the return of these records from the Federal Bureau of Investigation."[9]

This committee held a one-day hearing on this subject in Los Angeles on November 12, 1959. One question put to the witnesses was, "What economic handicap does an applicant for employment face if he has an arrest record?" The testimony, with very few exceptions, was in general agreement with the comments made by District Attorney William McKesson:

". . . There is a very real handicap to an applicant for employment by the existence of an arrest record. I certainly would never question that statement. Bonding companies frequently refuse to write surety bonds where such an arrest record is found and this may preclude the arrestee from obtaining employment where a surety bond is a necessary prerequisite to obtaining the job. An employer may refuse to employ a person where the information of a prior arrest is uncovered. Many large employers cannot make their determination on an individual employee basis—that's one of the penalties we pay for growing so big. They adopt a general policy on this matter which requires rejection of any employee having an arrest record regardless of what happened after the prospective employee was arrested; whether he was dismissed by the police, or dismissed by a court, or acquitted by a jury or a court. In my opinion, this is manifestly unfair. How can we honestly contend that a person is presumed to be innocent until he is proven guilty, and then have that person discriminated against by an employer merely because the person is arrested and charged with an offense? . . ."

Although the witnesses who testified before the committee on this subject generally agreed as to the nature of the problem, they offered

[8] Letter received by committee from F. N. Woodward, Home Office, Whitehall, London, S.W.1., 20th October, 1959.
[9] Letter received by committee from Raymond M. Momboisse, Deputy Attorney General, California, August 28, 1959.

widely varied solutions One approach, offered by the City Attorney of Los Angeles, was to educate employers about the problem.

> "The hard core of the problem is, of course, the person whose life has been a thoroughly honest one, but who unfortunately, was arrested, rightfully or wrongfully, and now has to truthfully admit the fact of his arrest Fortunately, most enlightened employers today, not only permit an explanation of the arrest, but make inquiry into the background of such an event Proof that it does not eliminate consideration may be found in the many positions of trust and responsibility held by persons today, who do have arrest records with law enforcement agencies However, there are still certain employers who do not look beyond the affirmative admission by the applicant. It is submitted that the cure lies in educating the employer, not by making a secret of a person's background "[10]

On September 12, 1956, the Citizens Advisory Committee to the Attorney General on Crime Prevention issued a report on California jails which touched upon the problem of employer attitudes:

> "(c) It is recommended that a serious effort be made to rectify the present attitude of government, which is rejective of people with records who apply for employment in government The federal, state, county, municipal bodies generally refuse to employ such people It is difficult to approach private enterprise with a program of enlightenment when government, which in one of its phases, has stamped the applicant with its approval, refuses to demonstrate the courage of its own convictions by hiring the applicant
>
> "A study of government regulations should be made to arrive at the validity of such rejections If they are found not to be valid an effort should be made to modify such rules "[11]

The present official application form used by the California State Personnel Board asks the following question with regard to arrests

> "9A Have you as a juvenile or adult, ever been detained by law enforcement officers, or arrested, or convicted of any offense, other than traffic violations?"

This committee is of the opinion that questions of this type should inquire only as to convictions. After the committee hearing on arrest records, the Personnel Board submitted to us the following revision which they proposed to make to question 9A

> "Have you ever been arrested, charged or held for any offense? (You need not include anything that happened before your 16th birthday or any traffic violations for which a fine of $25 or less was imposed)"

The staff of the Personnel Board explained that the above wording is based upon a similar question on the federal civil service application

[10] Statement of Roger Arneberg, City Attorney of Los Angeles, Assembly Interim Committee on Criminal Procedure hearing, November 12, 1959.

[11] Citizens Advisory Committee to the Attorney General on Crime Prevention California Jails Report to Edmund G Brown, Attorney General of California September 12, 1956

form We fail to see that there is any discernible difference between being detained and being held.

This committee asked the Department of Employment whether their application forms asked any question regarding an arrest record We received the following reply.

> "Pursuant to your request I am enclosing two sets of forms. One set of forms deals with applications for employment which are prepared by people who come to our offices The other set of forms deals with claimants for unemployment insurance. In neither set of forms is any question asked about arrests or convictions
>
> "You will note one exception, however, with respect to the form for Christmas employment in the Post Office Department This form, in question 32, asks the question in which you are interested. This form is not a California Department of Employment form, however, but a United States Government form which we sometimes pass out for the post office." [12]

The United States Post Office application form asks:

> "32 Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for any violation of any federal law, state law, county or municipal law, regulation or ordinance? Do not include traffic violations for which a fine of $25 or less was imposed. All other charges must be included *even if they were dismissed* If answer is 'yes,' show on separate sheet for each case the approximate date, charge, place, action taken, and age at time of arrest See warning below regarding falsification of application " [13]

Our information is that any applicant who answers this question in the affirmative is automatically disqualified because it is simpler and cheaper to hire an applicant without any record whatever than to investigate the circumstances of an arrest

The task of educating employers would require extensive efforts with respect to governmental entities, bonding corporations, semi-governmental employers such as defense industries, and many private corporations. This is a task beyond the purview of the California State Legislature We recommend, however, that official state agencies limit their question on their subject to convictions

The approach embodied in A B 2016 was supported by several witnesses One of these said.

> "I do know that police do the best jobs they can I do know, under certain circumstances, records are good to keep, but why would they want records of people that are completely innocent and have so been proven innocent when they have those informal records? Why would they want them? Is it so they can harass them and maybe make the rest of their lives miserable? Why don't they give these people a chance, a chance to do something with their lives? Now my son was full of bitterness for a long time, most of it is gone—he still has some However, he . . . we were able to

[12] Letter from Irving H Perluss, Director, Department of Employment, State of California, 800 Capitol Avenue, Sacramento 14, California, November 3, 1959

[13] Post Office Department, Application for Christmas Employment POD form 1744, July, 1956 Our emphasis

help him overcome it and he does look forward to being able to help humanity in some way in the future, especially those that were in the same position that he was in. There are many ways, and you will hear many ways of perhaps expunging the records. One of them . . might be . . for the police not to release any record until after the case is determined—the determination of the case Another one would be not to . . that when a case is completed and it is found that a person is innocent, and found so by law, the judge should immediately order all of the papers expunged There's no sense of torturing a person when it isn't necessary "[14]

Another witness who favored this general approach was Edward T. Mancuso, Public Defender of San Francisco:

". . We strongly urge this committee to give serious consideration to the introduction of legislation to provide that suspicion booking should never be made a matter of public record.

Q. ". . . it's your opinion that these records should not be permitted to be forwarded until there's more of a find, at least until they are held to answer on a felony or something like that, is that your . . .

A "There isn't any question about it. We've seen some very fine young men who have had records established against them . . . because of suspicion bookings or felony charges . . . never had any complaints charged against them The charges were dismissed and nothing can be done about it . . Recently a lady that—mother—wrote a letter to us and I sent a copy to your committee here, that just begs us to do something to get the record expunged I took it all over, to the chief of police, and showed it to him and asked if anything could be done, and I don't know what followed after that.

Q "In other words, it would be your suggestion that the department be required to communicate with CII, wanting to know if such and such a man is wanted elsewhere, but not to indicate any arrest record until there has been some disposition of the case, is that in essence your suggestion?

A. "The suggestion would be the only fair solution . ."[15]

Witnesses who were connected with the enforcement of the law were inclined to agree with the approach suggested by George H Brereton, Deputy Director of the Department of Justice:

" . . With reference to this particular question it would appear to be far more practical, and valuable to any person who has been wrongfully accused, identified, or arrested, to establish some procedure whereby the 'disposition of the case' is placed on the record of an individual Although in the Bureau of Criminal Identification and Investigation today we receive a great number of 'disposition of arrest' forms, for a variety of reasons, we do not receive the dispositions on all arrests and it is often necessary

[14] Testimony of witness at Los Angeles hearing, November 12, 1959
[15] Testimony of Edward T Mancuso, Public Defender of San Francisco, at Sacramento hearing, February 18-19, 1960

to teletype or write to police and sheriffs' departments or to district attorneys, court officials, or others in order to obtain, and place in the individual's record, the final disposition of the case upon which he or she was arrested Although there would be some problems of accurately identifying the person referred to, some procedure which might make mandatory the reporting of the final dispositions of persons arrested; i.e, 'case dismissed for lack of evidence,' 'victim refuses to sign complaint,' 'case reduced to petty theft, etc,' 'no complaint,' or 'case dismissed because subject wrongfully accused or identified,' etc, by arresting officers and court officials would be beneficial to the arrested party as well as to law enforcement officials I have never known during my 30 years of law enforcement experience of any instance when a person who has been arrested and fingerprinted, but has been acquitted, or when no complaint has been issued, which has prevented that person's employment "[16]

The importance of filing such dispositions was pointed up by District Attorney John Price of Sacramento.

A. ". . I agree that the recordkeeping is poor. It's probably the local agency's fault that the records aren't as complete because I get CII reports all the time where they showed no disposition of—and I think it's unfair . . .

Q. "That's not your fault, though, is it? That's the function of the police department, the sheriff's office.

A. "Well, yes, but in a case just recently, we had a case of mistaken identity. That is, the man was arrested, was identified by the victim of a robbery. There was some corroboration pointing to this particular defendant Additionally, he demanded a lie detector test and failed it and positive identification by the two victims had been made About two weeks later, we picked up another man on armed robbery and he copped out on this robbery as well Well, of course, there's always the possibility that he was going to take the fall for the possible friend, but we determined that this was not the case On identification, that is the mug shots and standup shots, although there were 10 years difference in age, you could hardly tell them apart and the second arrestee described the interior of the home to the point where it couldn't be anybody else but him Now, in that case, of course, the first man's record shows 211, I mean he's charged. Then it's incumbent on our office to notify CII that his was clearly a case of mistaken identity.

Q " . . All right, let's take the most extreme case Now, how can we solve this problem? Let's take the man who was just a victim of circumstance, say he was at the wrong place at the right time so he comes in, the police investigate He's been arrested and he's released Now, this man has a record He's been photographed, he's been fingerprinted. It's gone through the various agencies. Now, what can we do for that man?

[16] Letter received from George H Brereton, Assistant Director, Chief of Bureau of Criminal Identification and Investigation, October 29, 1959

A. "Well, the only practical thing I can think of, Mr Francis, unless you set up some system to judge which should be expunged and which should not be, would be to have a complete record-keeping of exactly what happened in the case In my case of this boy, a complete disclosure to CII that it was clearly a case of mistaken identity and that—I don't know how you're ever going to solve the problem where—

Q "Well, I think you've got a good point now.

A "—have you ever been arrested? The word arrested is on the books and a person in this situation has been arrested, there's no question about that "[17]

Simply requiring that dispositions be filed in all cases in which the arrest record has been forwarded to the CII would not necessarily alleviate the problem because of the wide assortment of dispositions used in different areas of the State to cover the same type of release. For example, Mr. Price testified that the disposition in the case he discussed would be labeled "mistaken identity" However, in other areas of the State the same case would have dispositions ranging from "released under PC Sec 849" to "no complaint filed" It is apparent that such a disposition on a felony arrest record would not be of much help to a job applicant Uniform disposition categories must be used throughout the State We recommend that the Bureau of Criminal Identification and Investigation define certain categories to be used by all reporting agencies In making this recommendation we have in mind such categories as suggested by George H. Brereton's statement to the committee

[17] Testimony of John M Price, District Attorney, Sacramento County, at Sacramento hearing, February 18-19, 1960

PART IV

ADULT AUTHORITY

FINDINGS AND RECOMMENDATIONS

FINDING No. 1

We find that, due to a variety of causes discussed in the text of this report, the creation of the Adult Authority has not entirely accomplished the aim of establishing an equitable sentencing procedure More-over, there is no appeal to the courts from a decision of the Adult Authority.

RECOMMENDATION No. 1

The committee recommends that further study be given this situation to learn whether a special review procedure can be worked out for prisoners who have served sentences far in excess of that usually served by prisoners committed on the same charge. The implementation of this recommendation would require the most careful drafting to insure appeals in proper cases and, at the same time, avoid unnecessary litigation

FINDING No. 2

We find that the revocation of parole is such a drastic remedy that it should be done only after the parolee has had an opportunity to present his case fully to the members of the Adult Authority

RECOMMENDATION No. 2

The committee recommends the adoption of Section 305.21 of the Model Penal Code relating to revocation of parole [1] This section would provide:

(1) That the parolee be given reasonable notice of the charges filed.

(2) That he be permitted to advise with his own legal counsel.

(3) That he shall be given a hearing at which he may admit, deny, or explain the violation charged, that he may present proof, including affidavits and other evidence.

(4) That parole may be revoked upon substantial evidence and with a majority vote of the board.

FINDING No. 3

We find that Penal Code Section 1203.01 requires that the judge and the district attorney shall cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with such reports as the probation officer may have made relative to the prisoner, and that such reports are considered by the Adult Authority in setting sentence No such statement is required of the defense attorney

[1] See Appendix D

RECOMMENDATION No. 3

We recommend that Section 1203 01 be amended to make it clear that a voluntary statement of this kind from the defense attorney would receive the same consideration as the statements required under this section.

FINDING No. 4

We find that occasionally disturbed prisoners are transferred to the care of the Department of Mental Hygiene and that, at the expiration of their sentences, they are not accorded the right to demand a jury trial on the issue of their insanity We find nothing in the Penal Code or case law which would, in our opinion, justify such a procedure.

RECOMMENDATION No. 4

We recommend that, at the expiration of the prisoner's sentence, if he is confined in a mental institution he shall be entitled to demand a jury trial on the issue of his sanity; he shall be entitled to the advice of counsel; and he shall have the right to all other protections which he would have enjoyed had he never been convicted of a crime

FINDING No. 5

We find that the effectiveness of the Adult Authority depends, to a large extent, upon the quality of the staff available to them through the Department of Corrections.

RECOMMENDATION No. 5

We recommend that the Legislature support efforts of the Department of Corrections to maintain the highest possible staff qualifications.

INDETERMINATE SENTENCING AND THE ADULT AUTHORITY

Indeterminate sentences, in which penalties are not fixed by a court but by an administrative agency, are neither new nor unique to California A study made by the United Nations traces the use of an indeterminate sentence back to Philip II of Spain Under his Pragmatic Sanction of 1566 prisoners were sent to the galleys for an indeterminate period Spain also developed an additional refinement in the "retention clause" under which a prisoner could be held after his sentence expired Various indeterminate sentences were employed in continental Europe before 1700. For the most part these were workhouse situations involving vagrants, beggars, prostitutes, and dissolute persons.

In the middle of the 19th century, Captain Alexander Maconochie was placed in charge of an infamous Australian penal colony on Norfolk Island. He instituted a revolutionary experimental program including an indeterminate sentence and, although his work was aborted by his less venturesome superiors, his innovations greatly influenced other penologists throughout the world.

Historically, the first objective of proponents of the indeterminate sentence was to extend detention as long as it was thought necessary by the governing authorities At a later period the idea of "reformation" or "rehabilitation" as it is now called, was more often cited as the basic justification of its use. Another advantage often claimed for it is a

greater consistency in sentencing practices. Each of these contentions has been criticized either on the ground that it is politically undesirable or that it is practically impossible of achievement

European intellectuals have considered the indeterminate sentence as an outgrowth of the deterministic philosophy which in its extreme form assumes that man has no control over his behavior due to biological, cultural, or psychological determinants. This extreme position allows man little more leeway than the Greek myth of the three fates

At the other extreme are the neoclassicists who desire a fixed penalty for each crime, the idea being that such automatic punishment will serve as a deterrent.

With neither of these positions being strong enough to rule out the other, a modified form of indeterminate sentence has been adopted in certain areas—notably the Scandinavian countries. Even here the resistance to complete indeterminacy is strong For example, Sweden already specifies a minimum term and there is a strong movement to adopt a statutory maximum

English prison administrators apparently feel that the practical disadvantages of the indeterminate system outweigh the theoretical advantages. They generally support the contention that indeterminacy of sentence creates an element of unrest and discouragement for the offender. Serious doubts are held as to whether the paroling board will ever be able to make enough good guesses about the behavior of the prisoner after release to justify such a system [1]

The Belgian Social Defense Act of 1930, setting up an indeterminate sentence program, went out of its way to create a special court for ruling on the continuance of detention

Europe's numerous experiences of unlimited administrative power also affect the attitudes expressed there regarding the indeterminate sentence

In France indeterminateness is achieved only in the use of such measures as conditional release. There is a trend toward less rigid penalties but any real degree of indeterminacy in sentencing is opposed by strong fears of arbitrary administration

In general, most indeterminate systems outside the United States are held within statutorily defined limits and supervised by the courts

It is in the United States, however, that the indeterminate sentence has received its warmest acceptance and the state of California was one of the first to adopt it In 1917 California adopted its original indeterminate sentence law which has undergone a number of modifications since that time. At first, the Board of Prison Directors had the term fixing and paroling function as well as the duty to administer the prisons This overlapping of power was felt to be incompatible and an additional board, the Board of Prison Terms and Paroles, was created and existed until 1944 when the present Adult Authority was established. It has substantially the same duties as its predecessor but its powers were enlarged somewhat For example, it is also the Advisory Pardon Board to the Governor Later, in 1948, the Legislature repealed the statute authorizing "good time" credits, thereby giving the Adult Authority more discretion in many cases.

[1] Lionel W Fox, *The English Prison and Borstal Systems*, 1952, p 305, cited in *The Indeterminate Sentence*, United Nations Publication, 1954, p 56

PUNITIVE DETENTION

The earliest objective of the indeterminate sentence—that of allowing the authorities to hold an inmate until they consider him "safe" or "rehabilitated"—is not mentioned as often in California as the more popular concepts of consistent sentencing practices and individual treatment of prisoners It may, however, be an important part of current attempts to redefine criminal insanity Though most comments on this effort stress the altruistic aim of saving the lives of insane criminals who are sentenced to death, it must not be forgotten that the other side of the coin is to allow for absolutely indeterminate sentences for those minor criminals who are adjudged to be mentally irresponsible At the present time, a citizen of California who is certified to a mental institution can demand a jury trial on the issue of his sanity A prisoner being transferred to a mental institution just before the expiration of his sentence has no such recourse because, at the time of the transfer, he is without civil rights[2] Since a demand for jury trial must be within 10 days, and he has no civil right within that time to make one, he is thereafter confined to the mental institution totally at the discretion of the staff Such a situation, combined with an enlarged definition of insanity, would make possible the most dangerous abuses

In 1951 the Maryland Legislature provided for a completely indeterminate sentence for certain criminals whom they termed "defective delinquents " Under that plan, *after conviction*, and at the instigation of the court, the state's attorney, the defendant himself, or the Department of Corrections, the defendant is referred to a special institution for psychiatric evaluation Then.

> " . the institution staff makes thorough psychological and psychiatric studies of him, obtaining all available records and reports of his background which may be of assistance On the basis of these, a report is made to the court with recommendations as to whether the individual should be indeterminately committed to the institution If, in the opinion of at least three institution staff members, two of whom must be a psychiatrist and a psychologist, the other a physician, the individual is a defective delinquent, he is retained at the institution pending court determination. Otherwise, defendant is returned to the correctional institution of original commitment to complete the prison sentence
>
> "The hearing for determination of defective delinquency is conducted in the normal manner of civil proceedings The burden of proof is upon the state to show by a preponderance of the evidence that defendant meets the definition of a defective delinquent The state is represented by the State's Attorney's office, the statute makes mandatory that the defendant be furnished with counsel of his own choosing, and be allowed to obtain independent psychiatric examination and testimony, both at the state's expense He may elect jury trial Two years after the orginal commitment, and at intervals of three years thereafter, the defendant is entitled to rehearing under identical conditions It is interesting at this

[2] Attorney General Opinion U S —5813, May 31, 1945, *In re Laggett* 187 Cal 423, and *People* v *Harmon*, 54 Adv Cal Reports

point to record that in more than 99 percent of the cases, psychiatrists privately selected by the defendants, their families or their counsel have agreed with the findings of the staff of Patuxent Institution.

"In addition to court determination, the status of individuals committed to the institution is under the continual scrutiny of the Institutional Board of Review. The statute requires that this board consist of an attorney and a professor of constitutional law who are members of the Advisory Board, along with members of the institution staff. Each committed case must be reviewed at least once annually, and a written report and recommendation filed on it The Board is empowered to grant parole, and to make recommendations to the courts for unconditional release or return of the individual to complete prison sentence "[3]

This committee does not wish to be understood as endorsing this program, we merely wish to point out that under this legislative program careful attention was given to guarding the rights of the individual prisoner. No plan can operate perfectly in this area at the present stage of scientific knowledge In expanding the ambit of criminal law with regard to mental illness, the greatest care must be taken to assure that arbitrary imprisonment is not allowed in the name of treatment This is tremendously important in view of the fact that decisions of the Adult Authority are, at present, subject to extremely limited review by any court of law.

DISPARITY IN SENTENCING PRACTICES

One of the reasons always put forth in support of the indeterminate sentence is that it ends the problem of wide disparity in the sentencing policies of many different judges

Theoretically, the method which would most nearly eliminate such disparities in judgment would be to revert to the classical "eye for an eye" type of statutory penalty with no deviation whatever Such systems are impossible to maintain in civilized democratic countries because jurors refuse to convict defendants of crimes carrying severe penalties when they feel that there are mitigating circumstances

It is true that no two crimes are exactly alike and this fact makes necessary a certain amount of flexibility in sentencing. The question then seems to be, who is to determine the length of sentence, and within what limitations?

The absolutely indeterminate sentence (one day to life for any crime from petit theft to murder) has not proved to be generally acceptable Certain statutory limitations, both as to offenses included and length of sentence, have usually been imposed upon the sentencing authority.

Wide variations in judicial sentences have often been cited in urging the adoption of indeterminate sentencing. However, it is plainly evident that the rehabilitative aspect of the indeterminate sentence necessarily entails disparate sentences For example, of two first degree robbers, the one who made the better and earlier adjustment, that is to say, the one who was first rehabilitated, would be released earlier. This would be true if one of them were rehabilitated in two years and the other one

[3] Jerome Robinson, "The Maryland Approach to Defective Delinquent Criminals" (*State Government*, Summer Issue, 1959), p 181

stayed in prison for the rest of his life This could hardly be called consistency in sentencing policy—at least from the aspect of time served in prison It has been pointed out that the sentence is definite—it is the term of imprisonment that is indefinite. There are a number of offenses from which widely differing prison terms could result.[4] Clearly then, there are factors other than time served which must be considered

It has been suggested that, despite the above mentioned differences in periods of incarceration, one term-setting board is better able to adopt a unified policy with regard to all individuals in the prison system. In this respect it is interesting to consider that the Adult Authority originally had three members It was later enlarged to five and finally to seven members At first it considered cases with all members sitting together Later the press of work made it necessary to split up into panels as well as adding more members. At present there are often panels consisting of one member of the Adult Authority and one member of the staff. This is perfectly understandable when a consideration is made of the number of cases to be reviewed annually At the same time, it quite obviously is a dilution of the original theory of uniform decisions There appears to be no reason to expect the workload of the Adult Authority to decrease and allow a reversal of this trend The effect of this problem is described by Paul W Tappan as follows

> "While the point would seem to be obvious, it must nevertheless be remarked that it is not enough that an elaborate file be prepared on the prisoner before his parole hearing If the accumulated information is to play the significant role that it should in parole, the record must be studied carefully and objectively by board members before their decisions are made It appears to be common practice, unfortunately, for boards under the pressure of onerous duties to be content with a hurried reading of a brief summary at the time of the parole hearing and to arrive at a decision at that time. Under these circumstances, excessive weight may be given to the impressionistic observations of the board members, to the formal criminal record of the offender, or to the inferences contained in the parole summary. When only five or ten minutes are given to study of the record and interview of the prisoner, judgment cannot be adequately informed Where only one member of a parole board consults the record and makes the parole decision, there is grave danger of bias Frequent errors are inevitable."[5]

Many critics feel that whatever gains were made by adopting California's present system were outweighed by the dangers inherent in such an administrative tribunal. Chief Judge Louis E. Goodman of the United States District Court, Northern District of California, has commented:

> "It may be a dangerous innovation with far reaching consequences to turn over the sentencing function to the executive branch, because that branch does not have the independence and immunity from outside influence inherent in the judiciary"

[4] See Appendix A

[5] Paul W. Tappan, *Crime, Justice and Correction* (New York McGraw-Hill Book Company, Inc, 1960), p 727

Such apprehensions as those expressed by Judge Goodman are accentuated by the fact that decisions of the Adult Authority are only theoretically subject to judicial review The only appeal therefrom is to the pardon powers of the Governor—and the members of the Adult Authority constitute the Governor's Advisory Pardon Board

SENTENCING PRACTICES OF OTHER STATES

Sentencing practices of the various states are described by Tappan as follows

> " at the present time the indefinite sentence has been adopted as the exclusive form of prison sentence for felons in eight states In an additional 22 states and the District of Columbia, it is used more than any other type of sentence Statistical reports of recent years indicate a very substantial continuing use of definite sentences, however Thus, in 1950, while 26,768 state sentences were indefinite, 19,728 state and 11,492 federal sentences were definite Considering only state sentences, there was an increase in the use of indefinite sentences from 46 6 percent of all sentences in 1940 to 57 6 percent in 1950 As has already been implied, such figures present an oversimplification of the picture because of the existing diversity in sentencing practices Variations occur in the length of sentence imposed in different jurisdictions, in the method of determining parole eligibility and in the way that ultimate discharge from official control occurs These variations are far more important than the formal title of the sentence system used by a state The establishment of parole in all jurisdictions has resulted in a *de facto* system of indefinite terms for felons nearly everywhere The relative merits of different systems depend upon the consequences of the various specific practices employed "[6]

The following chart was prepared by Paul Tappan to illustrate varying sentence patterns·

Indefinite Sentences

Judicial determination of minimum and maximum within statutory limits

Arizona, Colorado, Connecticut, Illinois, Maine,[a] Massachusetts,[b] New Hampshire, New Jersey,[c] New York, North Carolina, North Dakota, Pennsylvania,[d] Utah,[e] Vermont, Wyoming, District of Columbia.[f]

Minimum and maximum determined by statute. No judicial control:

Indiana, Kansas,[g] Nevada,[h] New Mexico, Ohio

Judicial determination of minimum, maximum determined by statute:

Michigan

Judicial determination of maximum, minimum determined by statute.

Wisconsin.

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[6] Tappan, *op cit*, p 437

No minimum, maximum determined by statute
Idaho, Iowa
No minimum, judicial determination of maximum within statutory limit:
Minnesota, Oregon.
Jury determination of minimum and maximum within statutory limits.
Georgia [e]
Term fixed by administrative agency [i] within statutory limits:
California,[j] Washington,[k] West Virginia [k]

Definite Sentences

Judicial determination of sentence within statutory limit:
Delaware, Florida, Louisiana, Maryland, Montana, Nebraska, Rhode Island, South Carolina, federal
Sentence determined by statute
Mississippi.
Sentence determined by jury within statutory limits:
Alabama, Arkansas, Kentucky, Missouri,[l] Oklahoma, Tennessee, Texas, Virginia
Sentence fixed by administrative agency within statutory limit.
South Dakota.

(a) Minimum may not be more than one-half maximum term in statute,
(b) Minimum not less than 2½ years;
(c) Minimum not less than 1 year;
(d) Minimum not more than one-half maximum prescribed by court
(e) Parole may occur before expiration of minimum;
(f) Minimum to be not more than one-third maximum;
(g) Governor may parole at any time;
(h) Court may fix minimum or maximum when they are not fixed in statute,
(i) The "term-fixing" powers of the boards are in effect no more than a setting of parole release dates within limits fixed by statute.
(j) Minimum and maximum are fixed by statute.
(k) No minimum, maximum is fixed by statute
(l) Board may release at any time [7]

FEDERAL SENTENCING PRACTICES

The Judicial Conference of Senior Circuit Judges, at its October, 1940 session, gave its approval to a bill relating to sentencing which was later introduced into the Senate as Senate Bill No 1638 Strong judicial opposition to the bill soon developed and the conference determined to make a further study of the subject. The committee appointed included the following. John J Parker, chairman, Learned Hand, Orie L. Phillips, John C. Collet, Carrol C Hincks, Bolitha J. Laws, and

[7] Tappan, *op cit.*, p 438

Paul J. McCormick The following quotations are from the report of this committee to the Judicial Conference in June of 1942

"This bill is not a true indeterminate sentence law, but contains certain features of such a law, and is modeled on the statute of California. Its distinguishing characteristic is that it provides that all sentences for more than one year shall be for the maximum term, with provision that thereafter a board of sentence and parole shall fix the definite term of imprisonment that the prisoner shall serve. The effect of this, of course, is to take all control over sentences of more than one year out of the hands of the judges and to vest it in the board of sentence and parole We find that the district judges of the country are strongly opposed to the measure Of 62 who gave indication of their views in response to the questionnaire sent out by the committee, 10 were in favor of the law and 52 were opposed to it The views of these judges, which are entitled to great weight, are to the effect that it is unwise to take the sentencing power in the case of serious crimes entirely out of the hands of the judges and vest it in an administrative board not subject to review or control of any sort

"The merit of the bill heretofore indorsed by the conference is that it provides a scientific and intelligent approach to the question of sentencing. Under it, sentence is deferred until the prisoner can be thoroughly studied and his reaction to imprisonment ascertained Opinions of psychiatrists and criminologists, as well as prison officials, are available to the sentencing board; and the board will be the same body that will ultimately have the power of parole with respect to the prisoner Definite policies in punishment can be carried out on a nation-wide scale and shocking disparities in sentences can be avoided District judges have pointed out, however, that a weakness of the system is that all judicial control over the matter of punishment, in the case of serious crimes is removed, and the matter is left to the unreviewable discretion of an administrative board, which will lack many of the features which have given the public confidence in the courts. Integration of the sentencing and paroling functions is attained in the case of serious crimes, but it is attained only by vesting the sentencing power in the parole board and abolishing the power in the courts.

Power to Admit to Probations Unimpaired

"With respect to all offenders, the proposed act leaves in the hands of the judge, as it now is, the power to admit to probation, without power on the part of anyone to review the judge's action

Recommendation by Board Where Sentence More Than One Year

"The proposed act leaves the matter of sentence in the hands of the judge, without change of existing law, except as to sentences for more than one year. Where the judge is of the opinion that a sentence of more than one year should be imposed, he is required by the act to impose at first a general sentence of imprisonment which shall be for the maximum term prescribed by law; but he is empowered to modify this sentence after he has had opportunity to be advised by the Board of Corrections with regard to it The

act provides that the Board of Corrections, in those cases, shall within six months after the offender begins service of his sentence recommend what in its opinion the definite sentence ought to be, and that the judge shall thereupon fix the definite sentence, which shall be the sentence to be served by the prisoner The board shall state its reason in its recommendation If the judge disapproves the sentence recommended, he is required to state his reasons, but is not bound by the recommendation and may proceed to fix the definite sentence to be served by the prisoner in accordance with his judgment If the board fails to recommend sentence within six months, the judge acts without its recommendation If he fails to act upon its recommendations within 60 days, the recommendations become the sentence

"It will be observed that this provision of the act leaves the sentencing power of the judge unimpaired, but provides that he shall have expert advice in fixing the sentence in the case of serious offenses which, in his opinion, merit a sentence of more than one year. This advice will come from the board which is charged with the duty of ultimately passing upon the prisoner's parole, and it is believed that the plan proposed will result in a satisfactory integration and coordination of the sentencing and paroling functions The board, with opportunity to observe the prisoner under confinement, to take account of his reaction to punishment, to study his record, and to have the advice and assistance of experts, will recommend to the court the sentence which, in its opinion, he should serve The judge will receive the recommendation and follow it, or decline to follow it, as appears to him to be wise This means, of course, that ultimate power in the matter of fixing sentence remains with the judge and that the judge reviews the board and not the board the judge. This is in accord, not only with the idea that the sentencing power is judicial in character, but also with the concept that administrative agencies should be subject to judicial review to the end that fundamental rights of the individual may not be impaired "[8]

It was August 25, 1958 before the federal sentencing procedure was modified by legislation and then the change did not go as far as suggested in the above report[9] Instead of making all sentences for more than one year subject to the delayed sentencing procedure suggested by the judicial conference, several alternative methods of sentencing were provided The ultimate choice of sentencing procedures, however, was left to the judge It is to be noted that, in addition to setting up sentencing procedures, the legislation attempts to reduce disparities in sentencing policies throughout the federal courts by creating institutes and joint councils on sentencing

IS THE INDETERMINATE SENTENCE A LONGER SENTENCE?

The trend toward longer sentences under the indeterminate sentence system is criticized by many persons concerned with the administration

[8] *Report to the Judicial Conference of the Committee on Punishment for Crime* (Washington United States Government Printing Office, June 1942), pp 6, 7 and 13

[9] See Appendix B for Public Law 85-752 and Congressional Conference Report

of justice[10] For example, Francis A Allen, Professor of Law at the University of Chicago has written

> "The tendency of proposals for wholly indeterminate sentences, a clearly identifiable fruit of the rehabilitative ideal, is unmistakably in the direction of lengthened periods of imprisonment A large variety of statutes authorizing what is called civil commitment of persons, but which, except for the reduced protections afforded the parties proceeded against, are essentially criminal in nature, provide for absolutely indeterminate periods of confinement Experience has demonstrated that there is a strong tendency for the rehabilitative ideal to serve purposes that are essentially incapacitative rather than therapeutic in character "[11]

Sol Rubin, Legal Consultant to the National Probation and Parole Association, states, with relation to the same problem·

> " Advocacy of the indeterminate system is allegedly based on the flexibility of such a sentence, which provides a framework for individualized treatment Earlier advocates of the indeterminate sentence were more concerned with lengthening the period of incarceration for 'hardened' criminals than with shortening the time for others Has this viewpoint persisted in practice?
>
> ". Excluding death sentences, sentences of five years and over comprised 76 percent of all the maximum indeterminate sentences, whereas all definite sentences of five years and over were only 32 4 percent of the total
>
> " . A definite sentence law gives the judge greater responsibility to fix a sentence than the indeterminate sentence law, and the allocated responsibility is one of the things needed to avoid the automatic long terms A parole law affording complete discretion, coupled with a definite sentence system, more truly meets the intent of the indeterminate sentence idea than an indeterminate sentence system, even with a flexible parole law A four-year definite sentence combined with complete parole authority, is in effect an indeterminate sentence with no fixed minimum, but with a maximum of four years fixed by a court which knows it is responsible for considering the individual defendant in fixing that maximum
>
> "Assuming that a competent, adequate parole staff is available to a professional, full-time parole board, the third legal element is a law that gives the board complete discretion within the maximum sentence
>
> "Under those circumstances, we can achieve a measure of individualized treatment without the injustice of automatic sentences Until that is achieved, I believe that, by and large, the indeterminate sentence is a handicap to reformation of offenders, rather than a help "[12]

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[10] See last paragraph of conference report, Appendix B

[11] Francis A Allen, "Criminal Justice, Legal Values and the Rehabilitative Ideal," *The Journal of Criminal Law, Criminology and Police Science, Sept -Oct , 1959,* Vol 50, No 3, p 229

[12] Sol Rubin, *Focus* (New York City National Probation and Parole Association, 1948), V 27-29, 1948-50, pp 47, 48 and 52

SENTENCING POLICY IS A POLITICAL DECISION

The completely indeterminate sentence (one day to life for any criminal conviction) seems to have few fervent supporters today. The same thing can surely be said about fixed penalties without alternatives There is still much room in between for variations in sentencing policy These variations are not choices that can be made solely by attorneys, psychiatrists, parole boards, sociologists, judges or any other group They are political decisions of the utmost importance because they affect the basic relationship between the individual and the concerted power of the government The issues involved should be considered carefully by the people and their elected representatives. Only in this way can they make choices which reflect their deliberate value judgments

CLASSIFICATION

Initially, most people who were sent to an institution by governmental action found themselves all locked up together—men, women, youngsters, insane persons, felons, or debtors Some of the earliest prison reforms were made in the beginning of classification, men were separated from women, felons from debtors, young people from adults

Today the heart of the indeterminate sentence system lies in an extensive classification and treatment program Under this program, a prisoner is sent directly from the sentencing court to a reception-guidance center operated by the Department of Corrections Here he is studied by a team of doctors, sociologists, psychologists, and in some cases, psychiatrists He is given any necessary dental and medical treatment He is subjected to a battery of tests in an attempt to measure his I Q, his educational level, his emotional stability, and any special abilities he may have Letters are written to his friends, former employers, relatives, and any other interested parties, in an effort to learn as much as possible about him On the basis of this accumulated information, the staff at the reception-guidance center makes recommendations as to the degree of security necessary for the inmate (i e., medium, maximum, etc), the type of work assignment thought suitable, possible education or training program, and treatment desirable (medical, psychiatric, etc) After these recommendations have received the approval of the Director of Corrections, they are known as the "approved program" for that individual

The Department of Corrections' Manual of Procedures for Classifications states

> "The approved recommendations shall be closely adhered to by the Institutional Classification Committee and its subcommittees as institutional facilities and the changing needs of each inmate permit "[14]

An extensive classification program is of little value without an extremely diversified prison system In this respect, California is enjoying the results of its postwar prison building program Under the outstanding leadership of Richard McGee, the Department of Corrections has established facilities to satisfy widely varied needs—from

[14] *The Manual of Procedures for Classification in the Department of Corrections of the State of California* (State of California, Department of Corrections, Sacramento, 1955), p 10

the minimum security farm type institution to maximum security facilities at Folsom and San Quentin These institutions offer a correspondingly wide selection of work and training programs

Theoretically, when the staff of the reception-guidance center has finished studying the incoming prisoner, they know enough about him to prescribe the program and treatment most likely to bring about his rehabilitation

The *Handbook on Classification*, prepared in 1947, by the American Correctional Association points out as advantages of classification.

1 Proper segregation of different types of offenders,
2. More adequate custodial supervision and control,
3 Better discipline,
4 Increased productivity of inmates,
5 More effective organization of all training and treatment facilities;
6 Greater continuity in the training and treatment program;
7 Higher personnel morale,
8 Better inmate attitude,
9 Reduced failures of men released,
10 Better guides in long-range planning of building requirements,
11 Classification reports have many values (for use for parole boards, by institutions in other states, etc) [14]

In studying the actual probabilities for success, at least two questions must be answered

1. Has behavioral science advanced to the point at which it can accurately determine the cause of criminal behavior and prescribe effective correctives?

2. If so, are highly trained people available in sufficient numbers to do the job?

In respect to the first question the following quotations from various specialists may be illuminating:

(1) "It is not only in the diagnosis of psychopath that we see confusion in the use of diagnostic labels A study of over 800 psychiatric admissions, with several diagnostic re-evaluations of the same patients within a rather brief period of time revealed that 65 percent of those patients seen by more than one psychiatrist received at least two different psychiatric diagnoses There was some indication that the more psychiatrists an individual saw, the more widely differing diagnoses the patient received Several individuals in the group received diagnoses of neurotic, psychotic and character disorder, all referring to the same psychiatric disturbance . .

"It is indicated that final prognosis in any individual case will often depend not so much on what is diagnostically predicted as it will on subsequent treatment or environmental influences. . .

[14] Harry E Barnes and Negley K Teeters, *New Horizons in Criminology* (Englewood Cliffs Prentice-Hall, Inc, 1959), p 468, citing *Handbook on Classification in Correctional Institutions*, 1947, p 2

"There are certainly other psychiatrists who, because of their own personality makeup, do not tolerate hostility comfortably from their patients So simply finding a psychiatrist to see an offender does not assure an objective, unbiased approach "[15]

(2) "The most trenchant criticism of modern classification clinics, as we find them in prisons today, is that they fail in treatment There is little criticism regarding diagnosis, but it is debatable whether the prison will ever be able to do very much in the field of treatment The clinic can point out many physical defects in prisoners, and the facilities available will be able to clear up many of these But there is little evidence that a program can be developed that has meaning for the inmate except in a few isolated cases One can admire the shiny filing cabinets in which are kept the complete records of each inmate, one can respect the professional staff for their skill and dedication to long hours of toil But he can have little enthusiasm for results Imprisonment nullifies most of the efforts of even the most conscientious members of the classification clinic "[16]

(3) " 'Individuals who are clinically, psychiatrically, or psychologically abnormal to any significant degree, constitute a minor segment of the criminal population as a whole The insane, the neurotic, and the mentally defective all together do not exceed more than four or five percent of the total of individuals who are involved in major types of crimes ' This was the finding of a survey of 71,296 psychiatric examinations given by the New York County Psychiatric Clinic between 1932 and 1957 'Consequently, from the standpoint of treatment, correction, rehabilitation and supervision, only one out of 20 felonious offenders should need the professional services of psychiatric or ancillary personnel

" 'One is led to the conclusion that the management of the great mass of adult criminal offenders, rightly is, and should remain, in the hands of penologists, judicial and correctional authorities, parole boards, and probation bureaus .

" 'It is our distinct impression, gained from the observation of thousands of recidivists in our clinic and elsewhere, that generally, stern, practical penological measures have a more salutary and longer-lasting restraining effect than hopeful but misguided 'psychiatric guidance ' "[17]

(4) "We try to classify prisoners and segregate them to prevent the worst from infecting the best Classification becomes more than this It discloses the inmate's 'individual needs' and the staff works out a 'program' for him—shop for some, school for others, and so on Classification indeed becomes the heart of

[15] Jack V Wallinga (Psychiatrist), "The Probation Officer's Role in Psychiatric Cases," *The Journal of Criminal Law Criminology and Police Science, Nov-Dec, 1959*, Vol 50, No 4, pp 364, 365

[16] Harry Elmer Barnes and Negley K Teeters, *New Horizons in Criminology* (Englewood Cliffs, N J Prentice-Hall, Inc, 1959), p 477

[17] Emanuel Messinger and Benjamin Apfelberg, *New York County Court of General Session Psychiatric Clinic, a Quarter Century of Court Psychiatry* (New York, 1958), p 46 (mim) cited in *California Public Survey* Bureau of Public Administration, University of California, Berkeley, October 1959.

rehabilitation We employ inmate counselors who help them with their prison-made problems—the wife who is running around with another man, the former business partner who is absconding with the assets. We employ decent guards who will not abuse the inmates and may even, by upright example and sympathetic advice, aid their rehabilitation

"Well, does it work? It does not, and it cannot The toilet in the cell, the gleaming kitchen, the school and the shop—these are the things that we think we would like to have if we were in prison They have nothing whatever to do with the things that made John Doe a criminal Of course it is desirable to teach an illiterate to read, but it was not his illiteracy that brought him to prison, and when he goes out, whether he can read or not, he will return, unless we have changed the thing, whatever it was, that made him a criminal It is fine to teach a young armed robber the trade of tinsmith, but he wasn't a robber because he lacked a trade, and unless we get at the thing that made him a robber he will prefer the robber's trade to tinsmithery Putting a man in a minimum-security institution may teach him the wisdom of not running away from custody, whether it will prevent him from committing another crime is a wholly separate and unrelated question "[18]

(5) "An improved methodology in psychiatric work should, in time, dispel the popular notion that psychiatric conclusions are, for the most part, inferential guesses Knowledge of the offender today is, in fact, greater than ever before and has enabled the clinician to reduce the phenomenology of crime to a few basic categories.

"The theoretical advances, moreover, once well-established, will undoubtedly have greater influence on the penology of the future They may, for example, lead to a further acceptance of the indeterminate sentence on a more universal basis and the expanding of legislation dealing with pathological offenders—both of which would not in any way lessen the social safeguards and, at the same time, would increase the prospects of rehabilitation "[19]

(6) "As has been pointed out above, this treatment viewpoint has been present from the very beginning, despite the fact that no technique for treating delinquent behavior had been adequately formulated and tested. Even today, with the many advances of the basic sciences, such techniques are but imperfectly understood and do not, as many sophisticated therapists have recognized, meet expectations. In study after study, this fact has been demonstrated The fact remains, however, that during the 59 years since the founding of the Juvenile Court, the clamor concerning the need for treatment, nature of treatment, correct treatment procedure and treatment facilities has continued to

[18] John Bartlow Martin, *Break Down the Walls* (New York Ballantine Books, 1954), p 212

[19] Ralph Brancale (Psychiatrist), "Diagnostic Technique in Aid of Sentencing," *Law and Contemporary Problems, Sentencing* (Durham Duke University School of Law, Summer, 1958), V 23, No 3, pp 448 and 453

fill the pages of the professional journals, newspaper supplements, and professional lectures on delinquency to various community groups.[20]

"The study further indicates that of the 133 psychiatrists employed in American prisons, only 53 were reported to be certified by the American Board of Psychiatry and 27 to be 'board eligible.' It was not ascertained how many psychologists were academically qualified. While many persons doing treatment work in our prisons are labeled 'social workers,' there are actually few who are entitled to that appellation. In other words, not many are graduates of an accredited school of social work or members of the National Association of Social Workers."[21]

(7) "The limitations of our knowledge and diagnostic tools inevitably lead us to incomplete and commonly inaccurate diagnoses of causation. Psychological testing and casework investigation provide clues to the existence of emotional and social problems but do not portray the dynamic relationship of the variables out of which criminality develops."[22]

(8) "Philip Ash, in a study of psychiatric diagnoses, found that in using 60 diagnostic categories, agreement by three psychiatrists was reached in only 20 percent of the cases studied and that even when these categories were reduced to only five classifications there was agreement only on 46 percent of the cases."[23]

Outside the realm of opinion, legal cases have illustrated the fallibility of psychiatric diagnosis. The example below is from *People* v. *Stephen A. Nash*.

"Defendant's (Stephen A. Nash) first killing was in December 1955. A few days thereafter he was arrested for assault upon another homosexual 'pickup,' convicted of a misdemeanor, and served six months. At this time he was examined by two psychiatrists who determined that he was not a sexual psychopath. After his arrest on the present charges defendant, in talking with Dr. Kelley, described these examinations and explained 'how you go about fooling some psychiatrists.'"[24]

The Nash case represents both sides of the insanity problem which must be considered in lawmaking.

(1) Nash was not recognized as a sexual psychopath early enough to prevent his depredations upon society.

Since he was studied by two psychiatrists, the question inevitably presents itself—might not they have made errors of judgment in the other direction, diagnosing as sexual psychopaths, persons who really were not?

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[20] H. Warren Dunham, "The Juvenile Court: Contradictory Orientations in Processing Offenders," *Law and Contemporary Problems, Sentencing* (Durham: Duke University School of Law, Summer, 1958), V. 23, No. 3, p. 516.

[21] Barnes and Teeters, *op. cit.*, p. 473.

[22] Tappan, *op. cit.*, p. 537.

[23] Philip Ash, "The Reliability of Psychiatric Diagnoses," *J. Abnorm. Soc. Psych.*, Vol. 44, 1949, P. 272. Cited in Tappan, *op. cit.*, footnote No. 53, p. 537.

[24] *People* v. *Stephen A. Nash*, 52 Cal. 2d 36, 43.

(2) Nash was executed, several murders later, after a psychiatric diagnosis that he had "an underlying paranoid, megalomanic, schizophrenic psychosis" He was, however, legally sane under present California law

On the question of the indefinite commitment of prisoners until they are rehabilitated, we have come to the conclusion that Professor Francis A Allen is correct in saying.

> ". . the values of individual liberty may be imperiled by claims to knowledge and therapeutic technique that we, in fact, do not possess and by failure candidly to concede what we do not know At times practitioners of the behavioral sciences have been guilty of these faults At other times, such errors have supplied the assumptions on which legislators, lawyers and lay people generally have proceeded Ignorance, in itself, is not disgraceful so long as it is unavoidable But when we rush to measures affecting human liberty and human dignity on the assumption that we know what we do not know or can do what we cannot do, then the problem of ignorance takes on a more sinister hue It is no paradox to assert that the real utility of scientific technique in the fields under discussion depends on an accurate realization of the limits of scientific knowledge" [25]

It may be that the techniques of the behavioral sciences will be perfected in the comparatively near future Great advances have already been made in creating drugs which appreciably alter man's behavior by changing his brain chemistry [26] Experiments are continuing in hypnosis, various therapy techniques, and other methods of modifying man's personality When science reaches the point at which it is able to alter man's personality to fit any desired pattern our problem will have changed. Such an achievement will rank with splitting the atom Man will be able to cure criminality and mental illness.

However, this breakthrough, like "harnessing" the atom, will have a Jekyll-Hyde character and will demand as much of man's ingenuity and wisdom as living with the atom

CLASSIFICATION AND TREATMENT PERSONNEL

Many people believe that psychiatric care of prisoners is impossible because the success of the treatment depends upon its voluntary nature —the patient must want to be helped and must enter actively into therapy

Assuming that effective psychological reorientation of prisoners is possible, do we have enough skilled personnel to do the job?

As of October 1960, there were 20,773 inmates under the direction of the Board of Corrections Comparatively, California is in a favorable position regarding its prison system It attempts to maintain high

[25] Allen, *op cit*, pp 230 and 231

[26] See Robert S deRopp, *Drugs and the Mind* (New York Grove Press, Inc, 1960), and Aldous Huxley, *Brave New World Revisited* (New York Harper & Brothers, 1958), Chapter VIII

standards of personnel selection and training, but even here the familiar financial squeeze on prisons is evident in the following figures:

DEPARTMENT OF CORRECTIONS

Position	Number authorized	Filled
1. *Psychiatrists*		
Psychiatrist full-time	10	8
Psychiatrist ¼-time	6	6
Psychiatrist, chief, correctional facility	3	2
2. *Psychologists*		
Vocational psychologist	1	0
Clinical psychologist I	6	0
Clinical psychologist II	19	14
Clinical psychologist III	2	3 *
3 *Correctional Counselors*		
Correctional casework trainee	12	11
Correctional counselor I	86	78
Correctional counselor II	44	34 *
Correctional counselor III	19	18

* Including one in central administrative office

Highly trained specialists in psychiatry, psychology, and sociology are not often interested in the low salaries and working conditions offered by prisons.

It is apparent that the treatment staff available is not able to give any significant amount of time to each of California's 20,773 prison inmates

Much of the psychiatrists' time is absorbed by administrative details In addition, a psychiatrist must sit with the Adult Authority panel which hears the Special Report Calendar This calendar includes the murder firsts, sex offenders, and others who receive special attention in parole considerations These special cases account for roughly one-third of all hearings and require a high percentage of the psychiatric time available.

Considering the ratio of clinical psychologists employed by the Department of Corrections to the number of inmates, it is doubtful whether anything more than the initial testing is done by psychologists This means that the bulk of treatment is done by the correctional counselor

The clinical psychologist, grade I, must have completed Ph D. requirements (except for foreign language exam and dissertation) and an internship of at least one semester The correctional counselor grade I minimum requirement is the equivalent to college graduation plus one year as a paid trainee in the Department of Corrections The top salary for a grade I clinical psychologist is $530 per month The top salary for a grade I correctional counselor is $613 per month The higher degree of training and the lower salary probably account for the fact that of six positions authorized in this bracket, not one has been filled. At the same time, of the 86 correctional counselor I positions, 78 have been filled.

The typical tasks of a correctional counselor I are outlined by the State Personnel Board as follows·

> "Interviews inmates and evaluates their adjustment to and progress in correctional treatment programs, counsels inmates on

personal, institutional, and family problems, collaborates with social agencies in preparing inmates and their families for inmates' eventual release on parole, interprets conditions of parole to prospective parolees and prepares inmates for release on parole or discharge, collects, evaluates, and records social, behavioral, and vocational data on inmates, abstracts and contributes to cumulative case history data and makes recommendations pertinent to classification and assignment planning and to subsequent study and treatment programs; interprets social summaries in diagnostic conferences, identifies critical factors in inmates' emotional and social maladjustment which have resulted in criminological behavior and evaluates these factors as basis for possible explanation of the deviant behavior, prospects for change in attitude and activities, and prognosis concerning expected adjustment in the institution and upon release, evaluates inmate educational and vocational background, significance of work experience, and vocational interests, aptitudes and skills, identifies and reports on special, educational, and vocational problems as basis for recommending appropriate programs of vocational training; administers, scores, and interprets results of educational, psychological, and vocational tests used in counseling and placement work; assists inmates in preparing vocational and educational plans and programs; conducts vocational classes on job requirements and job opportunities in various areas of employment, *does technical therapeutic work involving the examination, classification, diagnosis, group and individual therapy;* as assigned, assists in the application of various group therapy techniques, aids inmates in recognizing forces in their environment which have influenced them, in becoming more skilled in solving their problems, and in exercising self-direction and self-restraint; maintains case histories on inmates during confinement and *makes recommendations on changes in classification or assignments, use of leisure time* and need for psychiatric treatment, prepares board reports on inmates' activities in the institution, visitors, medical examinations, attitudes, behavior, and *comments for the use of the Adult Authority in determining sentence or parole eligibility;* prepares pre-release reports for field use and includes detailed information on vocational accomplishments, environmental factors, prospective employees, and recommendations to field [27]

It is apparent that the manner in which these duties are performed has a considerable effect upon the prisoner, both as to his possible rehabilitation and the length of his imprisonment.

PAROLE

In California the parole function has been the responsibility of the Adult Authority since it replaced the Board of Prison Terms and Paroles in 1944

Most of the statutory provisions setting out the powers and duties of California's Adult Authority are in Penal Code Sections 3000 through

[27] Our emphasis

3065 and 5075 through 5082 A number of related sections such at 2940 and 2081 5, are scattered throughout the Penal Code

In determining when to parole an inmate, the Adult Authority has access to case records which are required by Penal Code Section 2081 5 to include

> " all information received by the Director of Corrections from the courts, probation officers, sheriffs, police departments, district attorneys, State Department of Justice, Federal Bureau of Investigation, and other interested agencies and persons Case records shall also include a record of diagnostic findings, considerations, actions and dispositions with respect to classification, treatment, employment, training, and discipline as related to the institutional correctional program followed for each prisoner "

When the court retains control of the sentencing function, the length of a defendant's sentence depends not only upon statutory maxima and minima, but also upon the judge's evaluation of facts peculiar to his case

Under California's indeterminate sentence system, in addition to statutory maxima and minima,[28] the length of the sentence is affected by a great many people who evaluate the facts of the case to provide the records required by Section 2081 5.

It is important that each of these persons repress emotional reactions to the prisoner and his particular crime Impartiality and objectivity, implied by the word "judicious," are imperative in making these judgments A prisoner can adjust to a severe penalty, he cannot adjust to an unjust penalty

The Adult Authority makes parole decisions based upon a personal interview with each inmate and a study of the case record described above In view of the thousands of cases which must be heard annually, it is apparent that personal interviews cannot average more than a few minutes each Great weight, therefore, must be given to the findings and recommendations contained in the case records This points up the necessity to maintain the highest possible standards for staff recruitment in the Department of Corrections

In an effort to develop consistent parole standards, the Model Penal Code of the American Law Institute suggests that a prisoner be released when he is first eligible unless

"(1) There is undue risk that he will not conform to the conditions of parole, or

(2) His release at that time would unduly depreciate the seriousness of his crime or promote disrespect for law, or

(3) His release would have a substantially adverse effect on prison discipline, or

(4) His continued correctional treatment or vocational or other training in the institution or medical treatment will substantially enhance his capacity to lead a law-abiding life when released at a later date "[29]

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[28] A number of penalties involve extremely wide minimum-maximum periods Quite a number of penalties involve maxima of life imprisonment See Appendix A

[29] Tappan, *op cit*, p. 735 Also, see Footnote No. 59, Model Penal Code, Sec 305 13(1)

In addition, the code sets forth criteria by which these over-all policies can be maintained:

"(1) The prisoner's personality, including his maturity, stability, sense of responsibility and any apparent development in his personality which may promote or hinder his conformity to law

(2) The adequacy of the prisoner's parole plan.

(3) The prisoner's ability and readiness to assume obligations and undertake responsibilities

(4) The prisoner's intelligence and training

(5) The prisoner's family status and whether he has relatives who display an interest in him, or whether he has other close and constructive associations in the community

(6) The prisoner's employment history, his occupational skills, and the stability of his last employment

(7) The type of residence, neighborhood or community in which the prisoner plans to live

(8) The prisoner's past use of narcotics, or past habitual and excessive use of alcohol

(9) The prisoner's mental or physical makeup, including any disability or handicaps which may affect his conformity to law

(10) The prisoner's prior criminal record, including the nature and circumstances, recency and frequency of previous offenses

(11) The prisoner's attitude toward law and authority

(12) The prisoner's conduct in the institution, including particularly whether he has taken advantage of the opportunities for constructive activity afforded by the institutional program, whether he has been punished for misconduct within six months prior to his hearing or reconsideration for parole release, whether he has forfeited any reductions of term during his period of imprisonment, and whether such reductions have been restored at the time of hearing or reconsideration

(13) The prisoner's conduct and attitude during any previous experience of probation or parole and the recency of such experience" [30]

The California Adult Authority has access to staff reports containing all of this information regarding every inmate under the control of the Department of Corrections Moreover, the Adult Authority is made up of men of outstanding qualifications and dedication What then, could possibly be done to improve the present system?

In answering this question, the committee would like to call attention to three factors (1) human fallibility, (2) one and two member panels, and (3) the lack of any review or appeal procedure [31]

(1) In respect to the first factor, we would like to point out that a number of offenses involve penalties with an extreme variation between the statutory minimum and maximum, for example,

[30] Tappan, *op cit*, p 736
[31] See Appendix C

robbery second degree—with a sentence of from one year to life imprisonment

The Adult Authority has the power to determine and redetermine the length of an inmate's confinement after he has been in prison for six months In cases with a maximum of five years or less, such a determination may be made after 90 days. The Adult Authority has worked out a schedule of first appearance dates for various offenses These can be found in the extreme right column of Appendix A

The power to choose any sentence from one year to life imprisonment gives the Adult Authority more discretionary authority than we believe it should have, especially in view of factors 2 and 3, as outlined below

(2) The second factor involves the natural result of an enormous workload for the Adult Authority The Adult Authority, when created in 1944, had three members The large number of hearings required soon led to the addition of two members Still later another two members were added At first the Adult Authority met in a group to hold its hearings, then it split into panels At the present time, some panels consist of one member of the Adult Authority and a staff member On this subject the following quotations may be of interest

"At the end of the period under observation, the chairman, a sociology professor, had served five and a half years, the oldest member, a journalist, seven years, the youngest member, an expolice chief one and a half years The journalist seemed to have the sharpest insight into the reaction of the larger society to the crime under consideration, the law-enforcement man was the least likely to be taken in by a smooth but fictitious convict story and was more likely to think in terms of deterrence; the sociologist was most concerned with backgrounds, attitudes, and future prospects An advantage of varied backgrounds such as these is that they tend to balance each other The net result will probably show less variability than sentences set by individual judges "[32]

"Thirty-three jurisdictions require only a majority for parole decisions From first hand experience in the federal system, the author has observed that differences of opinion and voting are normally to be expected when several board members study the file and take action Consistent unanimity suggests that decisions are being made by one member It was the practice in the federal parole system until a few years ago for the member of the board who conducted the hearing to determine the action to be taken, other members merely signing the docket. Dr George G Killinger was responsible for changing the practice because of the palpable danger of serious errors of judgment on the part of a single hearing member Since that time, a quorum of the board studies the files of every prisoner considered for parole The New York State Board of Parole encountered serious

[32] Norman S Hayner, "Sentencing by an Administrative Board," *Law and Contemporary Problems Sentencing*, V. 23, No 3, 1958, pp 491, 492

trouble in 1957 as a result of allowing a single member of the board to decide on parole revocation "[33]

(3) The fact that decisions of the Adult Authority are not subject to judicial review is a serious problem even when such decisions are made by all the members.[34] Under the present conditions, we find it a deeply disturbing delegation of power

Decisions made by a one-member panel are subject to review by other members of the board Nevertheless, if they are reviewed thoroughly, the other members must spend as much time in the review as they would have spent in the hearing and no time is saved by the use of a one-member panel If they are not reviewed thoroughly, we feel that the prisoner has not received the careful consideration he should have had In any event, the prisoner has had an opportunity to present his case in person, to only one member of the Adult Authority

REVOCATION OF PAROLE

When a prisoner is released on parole, he is subject to return under two conditions (1) A new criminal conviction, or (2) violation of a condition of parole

It is the universal practice in parole to set out certain conditions to which the prison inmate must conform if he is to be released on parole These conditions may vary widely, as may the parole officers' toleration of minor infractions

A parolee who is returned to prison for failure to conform to a condition of parole (such as moving or buying a car without permission) is known as a "technical violator"

Since granting of parole is an act of grace, the Adult Authority may revoke the parole at any time, subject only to the requirement that the cause for revocation must be stated in the order revoking the parole The written order of any member of the Adult Authority serves as a warrant for the return of any parolee

It has been suggested that there should be some penalty, short of revocation, for certain cases.[35] For example, if the parolee finds himself in a situation in which he is under great stress, he might welcome a temporary stay in some type of readjustment center At times a parole agent may feel that such a procedure would prevent the commission of a new crime or a serious technical violation

Complete revocation of parole is an extreme measure, particularly so in states which, like California, provide no hearing upon the revocation order This was recognized by the Model Penal Code,[36] which provides that the parolee should be advised of the charges against him; be given a hearing, and allowed access to counsel in preparing for such hearing In addition, any revocation would be made upon substantial evidence and by a majority vote of the Board

In evaluating the desirability of such a proceeding, it may be helpful to consider a hypothetical case Inmate John Doe was committed on a sentence of robbery, 2d degree This offense carries a statutory penalty

[33] Tappan, *op cit*, p 723.
[34] See Appendix C
[35] Tappan, *op cit*, p 742
[36] Model Penal Code, No 5, Sec 305 21

of one year to life After five years, John Doe was released to serve five years on parole Time served on parole is considered a part of his sentence. Thus, his sentence had been fixed at a total of ten years After completing four years of parole, Doe was returned to prison as a violator Upon his return to prison his sentence automatically reverts to the original maximum, in this case life imprisonment

It is our belief that Section 305 21 of the Model Penal Code, Draft No 5, should be adopted in California

This committee asked the Legislative Counsel whether there is any general prohibition in California law against disclosure of records of arrest to private persons, e g, employers We received the following reply.

> "You have asked whether there is any general prohibition in California law against disclosure of records of arrest to private persons, e g, employers
>
> "There is no such prohibition
>
> "The Bureau of Criminal Identification and Investigation appears to be restricted in this regard, so that such information could be disclosed only to certain public officers (Sec 11105, Pen. C ; Sec. 13128, Ed C) In the sex offender registration statute (Sec 290, Pen. C), there is a prohibition against inspection, by persons other than law enforcement officers, of the reports required to be filed under that law However, there is no general law of this nature. While it is at least arguable that arrest records are not public records which a private person could demand to see (see *Runyon* v *Board*, 26 Cal App 2d 783), even if that is true it does not follow that a public agency possessing such records could not voluntarily make the records available to a private person "[18]

We recommend that legislation be enacted prohibiting the divulgence of records of arrest to any person other than a bona fide law enforcement officer

CONCLUSION

We are mindful that the existence of arrest records has often resulted in an unjust handicap for individual citizens We do not wish to support the collection and maintenance of dossiers on individuals We believe, however, that if law enforcement officials will exercise greater care in establishing probable cause before making an arrest and will record dispositions as recommended in this report, it will be unnecessary to resort to the more drastic remedy of destroying arrest records in cases which do not end in conviction

[18] Letter from Office of Legislative Counsel, Sacramento, January 21, 1960

PART V

SERVICES OF THE PUBLIC DEFENDER

RECOMMENDATIONS

Recommendation No. 1

We recommend that the provisions contained in A B 1852 not be adopted.

Recommendation No. 2

We recommend that Government Code Section 27700 be amended to make the establishment of a public defender's office mandatory in counties of the first through the tenth class

One of the measures referred to this committee for interim study was A B. 1852 This bill was introduced by Assemblyman George A Willson at the request of the Criminal Courts Bar of Los Angeles and proposes certain changes in the law with respect to the services of public defenders The following digest of these proposed changes, prepared by the office of the Legislative Counsel, appeared on the original bill.

> "Amends Sec. 27706, Gov C, and Sec 1203 1, Pen C
>
> "Provides that in any case in which defendant in a criminal case is free on bond in the sum of $1,000 or more, it shall be presumed that he is financially able to employ counsel, and the public defender shall not be appointed to represent him Requires applicant for services of public defender to furnish financial information, and prescribes form therefor.
>
> "Provides that court may impose as condition of probation the payment of a reasonable fee to the public defender for services rendered to probationer, to be paid to the probation officer Provides that fees, as well as fines, collected by probation officer as condition of probation be paid into county treasury "

This committee solicited comments and suggestions on the bill from 21 public defenders throughout California, and from other individuals and organizations connected in some way with the administration of justice. We held a one-day hearing on the bill in Los Angeles on November 13, 1959. A list of witnesses who testified at that hearing will be found in Appendix J

Three significant changes would be made by the adoption of A B 1852. (1) mandatory financial statement; (2) posting of bail in the amount of $1,000 or more would make defendant ineligible for services of public defender; and (3) court might impose charge for services of public defender as a condition of probation Since the same witness often took varying positions on these three changes, we shall treat them individually.

(1) *Financial Statement*

Subsection (e) of A B 1852 sets out a detailed statement of information to be provided by the defendant before any assistance can be given him by the public defender

Most of the public defenders who responded to the committee's inquiry stated that they already follow the practice of using a similar questionnaire. One objection was expressed upon the basis of added cost.

> "The proposed addition requiring that an affidavit be supplied has been under study for the last four or five years in this office About four years ago someone made the suggestion this should be done. We asked that an analyst from the county administrative office be assigned to check on the feasibility of such procedure Their report indicated that it would cost more than any amount saved. In an office such as ours, it would require one man to devote his time entirely to this task The very few people that it may eliminate is so negligible that the cost of having an affidavit would far exceed the supposed savings "[1]

A number of defense attorneys spoke in favor of a required affidavit One such witness said

> Q "Mrs. Root, did I understand you correctly to say that the majority of the defendants that have the public defender represent them, can pay the necessary fee? In other words, they do have the means and the ability to pay for legal service, but just want to get free legal services?
>
> A "That's my opinion "[2]

Mr. Cuff testified that, because of the cursory nature of the examination in the superior court, he occasionally gets an assignment of which he later asks to be relieved

> Q "So the usual case is, he doesn't request that you represent him The court tells you to represent him
>
> A. "That's right
>
> Q "Now, in the superior court stage, does the court tell you to represent him before the court has conducted an examination of the ability to pay?
>
> A "No, he stands up there in court and the judge sees him there; he says, 'Have you an attorney?' 'No' 'Have you any money to hire an attorney?' 'No' Sometimes the fellow is kind of a ragamuffin looking fellow, and the courts might ask two or three more questions—public defender appointed—is appointed If the man is well-dressed, if he's on bail, the court will very likely ask him more questions, more or less to satisfy himself It was pointed out here that Judge Ambrose used to raise his bail
>
> Q "Well, then actually it's a pretty cursory examination, isn't it?

[1] Letter from Ellery E Cuff, Public Defender, County of Los Angeles July 16, 1959, to Assembly Interim Committee on Criminal Procedure

[2] Testimony of Gladys Towles Root, Attorney, Los Angeles, at Los Angeles hearing on November 13, 1959

A "That's right, it pretty near of necessity has to be, but as long as we get the case, then we make a further examination after we get the case

Q "And then do you go back into court and say 'this man is able to hire a private counsel?'

A. "That's right, we put it back on the calendar and tell the court—we generally do it this way to avoid embarrassment to everybody. We will tell him to get his own attorney—under the law, we cannot very well handle him .

Q "Well, now—

A "And usually it's handled automatically then within a week or two the attorney will call us up If the attorney doesn't call us up, then we put it on the calendar and advise the court

Q "If he gets his private counsel, then do you go back into court and you withdraw from the case?

A "Yes, we make a motion that we be relieved of the case and a private attorney be appointed "[3]

Superior Court Judge Allen Miller suggested that any extensive financial inquiry be made after the time of representation for arraignment and plea

" My suggestion is, you contemplate this bill, with the possibility that you would exempt, if you required the affidavit as indicated here—that you would exempt the requirements of that affidavit at the particular time of representation for arraignment and plea, because there isn't time to evaluate it, and that you would permit the public defender to enter a limited appearance, as many attorneys do, incidentally, solely for the purpose of arraignment and plea Then, later on, after that has been permitted for that purpose alone, then you could—the public defender would be appointed by court, solely for that purpose and limited for that purpose Then the information could be gathered later on, whether he was qualified—then, if in the opinion of the public defender, he did have sufficient assets to employ an attorney, then the bill otherwise would come into play But I see some difficulties in requiring the ascertainment of all of these factual things in the affidavit, in this short, fast period of time that's necessary when the man is before you on an arraignment in plea "[4]

Mr Goscoe Farley testified that the State Bar had taken a position favoring this subsection

" I represent the State Bar and, as several witnesses have pointed out, this bill has three different parts to it really One, the affidavit, two, the provision for restitution; and three, the presumption in the case of bail. Our Board of Governors, there are 15 members of our board, as you know, elected by the members of the Bar—have considered this bill and they are in favor of two

[3] Testimony of Ellery E Cuff, Public Defender, County of Los Angeles, at Los Angeles hearing, November 13, 1959

[4] Testimony of Allen Miller, Judge of Superior Court, Los Angeles County, at Los Angeles hearing, November 13, 1959

provisions—the provision for the affidavit and the provision for restitution . . .

Q. "But, what do you think of Judge Miller's suggestion that there should be no real inquiry into the financial ability of the accused until after the arraignment?

A "I think that might be an excellent idea What I think, one reason the courts like to appoint the public defender, is that the deputy is right in the courtroom and there is going to be no delay about the case If the case is put over for three or four days or the arraignment is continued three or four days for the defendant to get private counsel, he may come back three or four days and still doesn't have private counsel, so it delays the arraignment, so I think it would be a good idea not to require that, perhaps."[5]

This committee is of the opinion that the nature and extent of this problem do not require legislative action It appears that public defenders make a real effort to avoid taking cases which do not qualify for their services If abuses develop in individual cities or counties of the state, it appears to us that the proper avenue of appeal is to the judicial council or the county board of supervisors

(2) Defendants on Bail

"(f) In any case wherein the defendant in a criminal case is free on bail in the sum of $1,000 or more, whether posted by said defendant or by some other person, it shall be presumed that said defendant is financially able to employ counsel, and the public defender shall not be appointed to represent said person "

Although a few witnesses testified in favor of this provision, the great majority opposed it Speaking for the State Bar, Goscoe Farley said

". . the board does not favor the presumption in the case of bail Now, I might speak about that part first, if I may. It seems to me that this may be read as something more than a mere presumption, because it provides that in the case of bail of a thousand dollars or more, the public defender shall not be appointed, etc It has two prongs to it, and I'm reading on page 3, of course, lines 23 to 27. It reads that In the case of bail of a thousand dollars or more, number one, there is a presumption, and number two, the public defender shall not be appointed. So it could be read, I believe, that this is an absolute prohibition, but of course, if that's not the intent, it could easily be changed to a presumption which would be rebuttable, but our board of governors felt that bail is something so important to not only the defendant, but to society in general, that nothing and not the slightest hurdle should be put in the way of the defendant's being able to obtain bail, and the effect of this might be or would be in some cases, of a defendant having to decide whether he's going to use his limited financial means to obtain bail, or to obtain counsel, and it would seem to be better for the defendant and better for society because of permitting the defendant to earn a livelihood and support his

[5] Testimony of Goscoe Farley, Legislative Representative, the State Bar of California, San Francisco, at Los Angeles hearing, November 13, 1959

family and not be a public charge in jail, that he should certainly be encouraged to use his assets to obtain his liberty on bail "[6]

This subdivision drew almost unanimous disapproval from the public defenders who answered the committee's questions regarding the bill One typical comment on this subsection was made by George Nye, Public Defender of Alameda County

"Subdivision (f) seems to me to be most ill-advised We see many cases in which friends, employers or legally nonresponsible relatives bail prisoners out, but thereafter either cannot or will not advance funds for an attorney's fee The proposed presumption, if conclusive, would force many defendants to go to trial without a lawyer, unless some attorney contributed his time without charge Even then there would be no provision for the expenses of investigation and so forth

"A man whose bail is $1,000 is often released because his friends have scraped together $40 or so toward the 10 percent premium required by the bondsman, who gives credit for the balance of the $100 The expenditure of this much money is no indication that a reasonable fee of perhaps hundreds of dollars can also be paid Only a lawyer who would have handled the case for the $40 can feel that he has been deprived of a part of his practice It is a crying shame that any lawyer can become so exercised at the sight of these petty sums being spent on bail One is bound to remember that abuses by a few lawyers led to the establishment of the public defender system in the first place A partial return to the conditions previously existing would do great harm to the bar's public relations "[7]

A Californian with many years experience in the field of law, both as a district attorney and later, as a teacher, filed the following objection with the committee

"My reaction would be strongly against this recommendation . . .

" . let me tell you why I am opposed to the assumption that a defendant who is released on bail should not be eligible for the services of a public defender I understand that frequently bail is put up by an employer in order to keep a man on the job and to protect him in the performance of his work This seems a very commendable action upon the part of the employer and one which should be encouraged rather than discouraged because an employer, in most cases, would not be willing to pay the cost of an attorney and the burden would fall back upon his employee The result might be, in many cases, that a man would lose his job, his family would become a public charge, and he, a loafer in jail waiting the long process of trial I understand that the present cost of a bail bond premium is approximately 10 percent which on a $1,000 bond would be $100 This is a much smaller sum than it would cost to employ an attorney and if the choice lay between staying in jail and finding money to pay an attorney, the cost of which would

[6] *Ibid*
[7] Letter from George Nye, Public Defender, Alameda County, to Assembly Interim Committee on Criminal Procedure, July 22, 1959

amount to a minimum of $200 to $250, and in the case of a jury trial might run up into the thousands, against paying $100 premium on a bail bond, the alternative certainly would be in favor of the bail bond—from the point of view of the accused person From the point of view of the county, if the accused had a family, the cost of the family on relief would certainly be far more than the cost accrued by the public defender's office in defending the accused person Or if the result were to force the mother to seek employment, the result would be an unsupervised home and the imminent probability of juvenile delinquency, again with the potential of expense to the county.

"Application of the presumption proposed in the new bill would encourage shiftlessness upon the part of the accused, a willingness to spend his time in jail to avoid the responsibility of employment and the family, which would certainly not be desirable from any point of view

"Such a rule of thumb in the administration of justice it seems to me is highly unwise in any event If it were thought desirable to put discretion in the hands of someone other than the public defender himself to determine whether he should represent an accused person, it would be much better to put it into the hands of the judge where, as a matter of fact, I understand it now frequently rests When the public defender decides that the case is not one in which he should appear, and the judge decides that it is one in which the accused is entitled to counsel, and appoints a lawyer to defend at a much greater cost to the county, as I am sure the records will reveal "[8]

This committee believes that the adoption of this provision, subsection (f), would result in unfortunate consequences which would not be outweighed by any advantages to be gained We recommend against its adoption

(3) *Fee as Condition of Probation*

The proposed change in Section 1203 1 is

"In addition to any other terms and conditions the court may impose as a condition of probation, in those cases in which the defendant has been represented by the public defender, the court may in its discretion fix and determine a reasonable fee to be paid for the services of the public defender, and order that the same be paid by the defendant to the probation officer at such times and in such amounts as the court deems reasonable "

The Board of Governors of the State Bar has taken a position in favor of this subsection and a number of attorneys supported the proposal at the Los Angeles hearing One of these, Mrs Gladys Towles Root, testified as follows

Q "Well, that was my point You don't have any objection then, I take it, to the court fixing the fee——

A "Not at all .

[8] Letter from Justin Miller, Attorney, Los Angeles, to Assembly Interim Committee on Criminal Procedure, Nov 5, 1959

Q. "——in criminal cases where—at least where it's marginal as to whether a man really can afford the services of his own attorney, or whether it's a proper case for the public defender

A. "I certainly believe that that is quite adequate. There's nothing wrong with it at all, and particularly where it's made a part or a condition of the probation In other words, restitution, if it isn't paid, they can be violated and I know that in two or three instances, Judge . . when the record could be searched and could be found where they didn't pay the fee—they were violated I say that no man is going to be indigent forever I say that, give them maybe this year or the second year, that they have to go to work sometime and, as long as they have to work, there is no reason why a person couldn't pay so much per week Why should the taxpayers pay it—they get into trouble

Q. "You testified, I believe that judge . as a condition of probation, at times required the defendant to pay so much a month for—to his attorney for his fee

A "That is correct

Q "Now that, I suppose, doesn't require any legislation If the judges can do it now, why they can continue to do it, but apparently under the existing law, a judge may not require a sum to be paid to the public defender's office——

A. "That's the point.

Q "And this is the proposal here that the judges or the courts be given this power . . .

A "For the reason that the judges do not do it privately because they say they have a public defender's office, why should we add to that—in other words, they just carte blanche appoint the public defender's office How many times do you walk up here to Department 100 and see a man on bail that has the public defender's office? Now if he can make bail and he's working, whether his mother made the bail or his uncle made the bail or whoever made the bail, he has to make some money to eat on If he didn't have this liberty, he wouldn't be making that money to eat on; therefore, let him pay as much for his liberty as it is what he's going to eat out of what's he's making every week. Is that reasonable?"[9]

The Public Defender of Los Angeles County stated that the court is already in a position to make such an order if it sees fit.

"Now, about four years ago, Judge . . here, said that he thought that several of the men during the year could have employed a counsel, because he found that they had been earning a pretty good salary, consistent to the public All they asked the court to do if they find that to be true, to impose a fine which the law already allows—to impose that fine and that in all those cases they found the court did impose a fine, and ordered restitution too, and all this he ordered, as strange as it may seem, to be paid to the probation officer, in such sums and at such times as

[9] Testimony of Gladys Towles Root, Attorney, Los Angeles, at Los Angeles hearing on November 13, 1959.

the probation officer may direct I said, 'Why did you put that in there? If he had the money in the first place, why didn't you just fine him, and he could pay it right now?' 'Well,' he said, 'you have to give the fellow a chance to earn his money ' Well, that's true The man didn't have the money and he didn't have the money at the time of the probation hearing So he had to be pulled back in the future. Now, whether you feel you'd like to put that as a proviso in the law, that it be paid to the public defender—I don't like to have it paid to the public defender, because that would necessitate us setting up a separate record I'd rather see it paid into the public funds and a separate organization account for that money rather than burden us with that particular problem We would like to keep our hands off the finances, just as much as we possibly can, because there's where too much trouble ensues frequently—working with finances "[10]

Other public defenders commented on this proposal as follows:

"As to the next to last paragraph in proposed Sec 1203 1, give some thought to the philosophy behind the office of the public defender If the man is going to be made to pay for the services of his defense counsel, then why not provide that he may choose his own And, then let him pay for such service through the probation office If he is unable to pay, are you going to provide that the board of supervisors pay such counsel. Isn't this just what we were trying to obviate when we set up public defender offices?"[11]

"The amendment to Section 1203 1 would probably be harmless, unless it led to an assumption by the courts that fees should be collected through the probation officer in all cases I have heard that this development has occurred in connection with the assigned-counsel-for-the-indigent system of Michigan, and as a result that the rehabilitative aspects of their probation program have badly deteriorated, with the probation officers becoming mere collection agents However, I don't know a great deal about this matter "[12]

"If we have once truly determined that the man is financially unable to pay then it appears to me that that principle should govern At least 90 percent of my clients could not make a substantial payment within the usual three-year term of probation and at least half that number could not make any payment at all "[13]

The committee is of the opinion that any such repayment required by a court should be made to the general fund of the county rather than to a specific fund to be handled by either the public defender or the probation officer Generally, where care is taken to insure eligibility in the first instance, we feel that the adoption of this procedure would be unwise.

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[10] Testimony of Ellery E Cuff, Public Defender, County of Los Angeles, at Los Angeles hearing, November 13, 1959

[11] Letter from Leonard A Thomas, Public Defender, County of Marin, to Assembly Interim Committee on Criminal Procedure, August 31, 1959

[12] Letter from George Nye, Public Defender, Alameda County, to Assembly Interim Committee on Criminal Procedure, July 22, 1959

[13] Letter from Donald R Fretz, Public Defender of Merced County, to Assembly Interim Committee on Criminal Procedure, November 4, 1959

RIGHT TO COUNSEL

Our misdemeanor laws, formulated in 1873, contemplated that low grade misdemeanors would be handled by local justices of the peace. These were crimes involving penalties of not more than six months in jail. The high grade misdemeanors in which the penalty could be over six months, were handled by the superior court When the municipal court laws went into effect these lower courts were given jurisdiction of all the high grade misdemeanors with the single exception of contributing to the delinquency of a minor

The services of the public defender, as outlined in Government Code Section 27706, are limited to offenses triable in the superior court In addition, the establishment of a public defender's office is purely voluntary under Government Code Section 27700 [14] and many counties, including some of the larger ones, offer no public defender services for any offense We are aware of only four areas [15] of the State which provide the services of a public defender in misdemeanor cases

All persons accused of crime in *any* court in the State have a right to counsel [16] We find that this right is not safeguarded in all areas of the State of California Very often persons charged with a misdemeanor offense are not informed by the court of their right to counsel.

The Public Defender of the City and County of San Francisco has represented indigents in misdemeanor cases since 1955 He says of this phase of his operations:

> "Experience has shown that there is a greater possibility of a miscarriage of justice at the misdemeanor level than at the felony level This is due to the fact that before a trial and conviction in a felony case there must have been a preliminary screening of the evidence before a grand jury or a committing magistrate
>
> "It is generally conceded that a person charged with a misdemeanor who is unable to employ counsel has the same right to a fair trial and an adequate presentation of his defense as a person charged with a more serious offense Any other procedure would prevent effective administration of justice, as well as a failure to provide equal justice for all
>
> ". Serious and unanticipated consequences may follow when an uninformed and inexperienced person pleads guilty to save time or trouble or to win an expected suspension of sentence . .
>
> "Since many serious crimes are designated as misdemeanors and carry severe penalties, our experience has convinced us that the constant presence in the municipal court of a deputy public defender greatly decreases the possibility of any miscarriage of justice, and aids in the speedy and equitable disposition of many cases " [17]

This committee is of the opinion that equal protection of the law will not be a reality until a poor man has, as nearly as possible, the

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[14] See Appendix K

[15] City of Los Angeles, City of Long Beach, City and County of San Francisco, and Alameda County

[16] See Amendment VI United States Constitution, California Constitution, Art I, Sec 13 *People v Mattson* 51 Cal 2d 777 788-790, *In re Newbern*, 168 C A 2d 472

[17] San Francisco, City and County, Public Defender *Annual Report*, July 1, 1958-June 30, 1959

same opportunity in litigation as a rich man In this connection we repeat the words of William D Guthrie

> "It must always be borne in mind that our system of democracy could not long endure if the poor in our populous and congested cities became convinced that they were being denied redress, protection, and equality before the law, because of inability to pay for legal services "[18]

Our democratic society would be greatly strengthened by an improvement in the administration of justice as it affects those who are financially unable to defend themselves California has one of the best public defender systems in the country The costs have been negligible in view of the results achieved

Some advocates have even contended that the provision of a public defender's office effects a saving to the county

> "(Office of public defender expedites trial and disposition of case and by eliminating unnecessary trials and waiving jury trials where that can be legitimately done effects a tremendous annual savings to the county, far in excess of expense of maintaining office of public defender)"[19]

The following chart of cost per case of public defenders' offices, is the latest comparative data in our possession:

CHART 2

COST PER CASE OF PUBLIC DEFENDERS' OFFICES, 1954-55

State and county	*Population*	*Appropriation*	*Number of applications*	*Cost per case*
California				
Alameda	852 700	$78,540	1,889	$42
Imperial	150,000	9,400	--	--
Inyo	12 000	3 600	50	72
Los Angeles	5,400,000	300,000	8,268 crim	--
			20,081 civil	11
Marin	115,000	11 898	116	102
Orange	350 000	34 000	798	43
Riverside	200,000	13 000	220	59
Sacramento	400,000	25 000	872	29
San Francisco	1,000,000	85,000	--	--
San Joaquin	225,000	21,000	--	-
Sutter	27,000	2,000	65	31
Tulare	145,000	7,711	453	17
Yolo	52,000	5,100	--	--
Yuba	35,000	5,000	264	19
Long Beach City	300,000	13,913	2,489	6
Los Angeles City	2,000,000	103,560	183,426 crim	--
			17,295 civil	0 70

In comparing the figures of Los Angeles County with those of the City of Los Angeles it is helpful to consider the following testimony·

> "Before passing on to anything else, I would like to comment upon Mr O'Connell's comparison of $11, in a report of 1955, and similar reports of 70¢ Those two cannot be reconciled For one thing, the county public defender, when they take a case, it's a

[18] Foreword to *Lance of Justice*, John M Maguire, Harvard University Press, 1928
[19] Rhode Island Legislative Reference Bureau in 1934 Public Defender *Analysis of Laws of the Several States*

case, the same as a private attorney handles a case He might have to interview that fellow one time, 10 times, or 50 times And the trial may last one day or it might last weeks, it's still one case In the city's public defender's office, I, at one time, asked him myself, 'How do you get such astronomical figures here of the number of clients you have?' Why, I was sure he didn't have that many He said, 'Well, every time we interview a fellow, every time we stand up in court for that fellow, it is classified as a different case' So, it's pretty hard to reconcile the two That troubled me so much that I later on put in all my reports what constituted a case, what we considered a case, so that there would be no confusion in trying to compare with some other group of statistician's records" [20]

The chart does not show cost figures for the City and County of San Francisco We do not have those figures for the same year, but for the year 1958-1959 that office submits a cost per case figure of $21 and a cost per appearance figure of $8 13 [21]

The problem of providing counsel for the frequently arrested chronic alcoholic could be mitigated by adopting a treatment approach to alcoholics instead of the present arrest-release merry-go-round

[20] Testimony of Ellery E Cuff, Public Defender, County of Los Angeles, at Los Angeles hearing, November 13, 1959

[21] San Francisco, City and County Public Defender *Annual Report*, July 1, 1958-June 30, 1959

APPENDIX A

MINIMUM AND MAXIMUM TERMS ON THE MOST FREQUENT OFFENSES AND INITIAL ADULT AUTHORITY APPEARANCE

CRIME	*Code Sec*	*Sentence*	**Initial AA Appear (in Mos.)*
Abortion	274	6 mo–5	7
Annoying Children	647a	1–LIFE	12
Arson (burn dwelling house, etc.)	447a	2–20	12
Arson (burn public bldgs., etc.)	448a	6 mo–10	10
Arson (burn personal prop., etc.)	449a	6 mo–3	7
Arson (burn insured prop., etc.)	450a	6 mo–5	7
Attempt to Commit Arson	451a	6 mo–2	7
Other Attempts (excluding Escape, Fict. check and Forg as indicated below) If Crime Attempted is Punishable by SP Sentence of			
(1) 5 Yrs or More But Less Than Life	664 1	6 mo–½ Max	
(2) Life, Indt Life, or Death	664 1	6 mo–20	12
(3) Max SP Term of Less Than 5 Yrs.	664 2	NONE (Misdmr)	
Assault With Intent To Commit			
(1) Murder	217	6 mo–14	10
(2) Rape, Mayhem, Robb or Crim vs Nature	220	1–20	12
(3) Other Felonies Not In Sec 220	221	6 mo–5	7
Assault With			
(1) A Dead Weap or Other Means Likely/Harm	245	6 mo–10	10
(2) Caustic Chemicals	244	6 mo–14	10
(3) A Deadly Weapon By Life Convict	4500	LIFE OR DEATH	8 Y or None
Bigamy	281	6 mo–10	10
Bookmaking	337a	6 mo–1	5
Bring Narc or Liquor Into Prison or Jail	4573	6 mo–5	7
Bring Expl or Firearms Into Prison or Jail	4574	1–LIFE	12
Burglary 1st Degree	459	5–LIFE	18
Burglary 2nd Degree	459	6 mo–15	10
Burn Insured Property	548	6 mo–10	10
Burn Bridge, Stacked Grain, Etc	600	6 mo–10	10
Burn Growing Grain, Trees, Etc	600 5	6 mo–10	10
Checks, Fict (Including attempts)	476	6 mo–14	10
Checks, NSF	476a	6 mo–14	10
Child Stealing	278	6 mo–20	12
Compounding a Crime	153 1	6 mo–5	7
Compounding a Crime	153 2	6 mo–3	7
Crime vs Nature	286	1–LIFE	12
Crime vs Children Under 14 Yrs of Age	288	1–LIFE	12
Desertion of Minor Child	271	6 mo–1	7
Embezzlement	503	6 mo–10	10
Escape From Reformatory, Etc (Including attempts)	107	6 mo–10	10
Escape From State Prison (Including Attempts)	4530	1–LIFE	21
Escape From Prison Custody (Including Attempts)	4531	1–LIFE	21
Escape, County-City Facility (Including attempts)	4532b	6 mo–10	10
Escape, County-City Facility, with force (Incl Att.)	4532a	6 mo–10	10
Escape, County-City Facility w/o force (Incl Att.)	4532a	6 mo–5	5
Extortion	518	6 mo–10	10
Felony, Where Penalty Not Otherwise Prescribed	18	6 mo–5	7
Forgery (Including attempts)	470	6 mo–14	10
Grand Theft (Includes GTA or GTP)	487	6 mo–10	10

CRIME	Code Sec	Sentence	*Initial A A Appear (in Mos.)
Hostage Held By Prisoner	4503	5–LIFE	21
Incest	285	1–50	12
Indecent Exposure (w/like Prior or 288-PC Prior)	311 1	1–LIFE	12
Injuring Prison or Jail	606	6 mo–5	7
Kidnapping	207	1–25	12
Kidnapping For Ransom, Reward, Etc	209	LIFE	7 Yrs
Kidnapping, Victim Suffers Bodily Injury	209	LIFE w/o PAR	10 Yrs
Kidnapping (pose as Kidnapper)	210	5–LIFE or LIFE	18–7 Yrs
Lewd & Lascivious Conduct	288	1–LIFE	12
Manslaughter	192 1–2	6 mo–10	10
Manslaughter—By Motor Vehicle	192 3	6 mo–5	7
Mayhem	203	6 mo–14	10
Murder 1st Degree	187	LIFE OR DEATH	7 Y or None
Murder 2nd Degree	187	5-LIFE	3 Yrs
Perjury	118	6 mo–14	10
Petit Theft With Prior Petit Theft	666 3	6 mo–5	5
Petit Theft With Prior Felony Conviction	667	6 mo–5	5
Prostitution—Placing Wife in House of	266g	6 mo–10	10
Rape (Except Statutory)	261	3–LIFE	18
Rape (Statutory)	261 1	6 mo–50	12
Robbery 1st Degree	211	5–LIFE	18
Robbery 2nd Degree	211	1–LIFE	12
Receiving Stolen Property	496	6 mo–10	10
Receiving Stolen Property (Junk Dealer)	496a	6 mo–5	7
Sex Perversion (See following exceptions)	288a	6 mo–15	10
If Abs states victim under 14 & S/10 yrs older		3–LIFE	18
or S compelled victim by force, duress, etc	288a	3–LIFE	18
Sodomy	286	1–LIFE	12

CALIFORNIA VEHICLE CODE

Fail to Stop and Render Aid After Accident	20001	6 mo–5	7
Driving While Drunk	23101	6 mo–5	7
Theft of Vehicle	10851	6 mo–5	7

HEALTH AND SAFETY CODE — EFFECTIVE JULY 1, 1959

Possession of Narcotics	11500	6 mo–10	10
With Prior Narc Conv	11500	2–20	12
Sale (Trans, Furn, Adm, etc) Narc	11501	5–LIFE	18
With Prior Narc Conv	11501	10–LIFE	3 Yrs.
Induce Minor to Violate Narc Law	11502	5–LIFE	18
With Prior Narc Conv	11502	10–LIFE	3 Yrs
Sell (Del, Furn, Adm) Substance in Lieu of Narc	11503	6 mo–10	10
Possess (Plant, cultivate) Marijuana	11530	6 mo–10	10
With Prior Narc Conv	11530	2–20	12
Sale (Transp, Furn, Adm, etc) Marijuana	11531	5–LIFE	18
With Prior Narc Conv	11531	10–LIFE	3 Yrs
Induce Minor to Violate Marijuana Laws	11532	5–LIFE	18
With Prior Narc Conv	11532	10–LIFE	3 Yrs
Plant (Cultivate) Peyote	11540	6 mo–10	10
With Prior Narc Conv	11540	2–20	12
Operate Place for Use or Sale of Narcotics	11557	6 mo–10	10
With Prior Narc Conv	11557	2–20	12
Forg Narc Prescription	11715	6 mo–6	10
With Prior Narc Conv	11715	6 mo–10	10

CONTROL OF DEADLY WEAPONS	Code Sec	Sentence	*Initial A.A Appear (in Mos.)
Tampering With Name on Firearms	12090	6 mo–5	7
Mfg., Sale, Poss. of Blackjack, etc.	12020	6 mo–5	7
Poss. of Firearm by Alien Addict, Ex-Felon	12021	6 mo–5	7

*NOTE Time shown for "Initial A.A. Appearance" applies to first term prisoners whose cases are not aggravated by weapons, priors, or CS sentences. The Adult Authority may order an earlier appearance as provided in A.A. Res. No. 184. See attached chart for the various ramifications.

Initial A. A. Appearance—Indeterminate Sentences

(See AA Res 184 or Departmental Chart for Life Sentences)

The "Minimum Term," as used below, is that which is aggravated by charging and proving prior felony convictions and/or deadly weapons or consecutive sentences.

Initial A.A. Appear.	Includes: First Termers	Includes: Recidivists	Restricted to
1) 5 MOS	X	X	Offense is Bookmaking, Escape w/o Force under Sec. 4532a PC and all PT cases EXCEPTION: CS sentences
2) 7 MOS	X		Maximum term is 5 years or less EXCEPTIONS: Para. 1, above and CS sentences
3) 10 MOS	X		Minimum term is below 3 years Maximum term is 15 years or less EXCEPTIONS: Para. 1 and 2, above and CS sentences
4) 12 MOS	X		Minimum term is below 3 years Maximum term exceeds 15 years EXCEPTION: CS sentences
5) 15 MOS		X	Minimum term is below 3 years Any maximum term, i.e., 1-LIFE EXCEPTIONS: Para. 1, above and CS sentences
6) 18 MOS	X	X	Minimum term is 3 years or more but is below 10 years, including all CS sentences if min. term is below 10 years EXCEPTION: Murder Second
7) 21 MOS (From date of crime.)		X	For crimes committed in prison (See AA Res 184 for ramifications) EXCEPTION: Escape is 21 mos. from date of return WNT for escape
8) 3 YRS	X	X	Murder second cases Minimum term is 10 years or more

NOTE If the Abstract of Judgment recites that the Court specified a 6-Mos. Minimum Term under Sec. 1202b P.C., the minimum term is recorded at 6 mos. (i.e., 6 mo-LIFE for Robb. 1st, instead of 5-LIFE) and the foregoing applies.

If consecutive sentences are involved, the minimum term is likewise recorded at 6 mos. but Initial Board Appearance is 18 mos., since Sec. 3043 P.C. recites that such prisoners cannot be paroled until 2 years are served in prison.

APPENDIX B

FEDERAL SENTENCING—INSTITUTES AND JOINT COUNCILS

For Legislative History of Act, see p 3891
PUBLIC LAW 85-752, 72 STAT 845
[H J Res 424]

Joint Resolution to improve the administration of justice by authorizing the Judicial Conference of the United States to establish institutes and joint councils on sentencing, to provide additional methods of sentencing, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Chapter 15 of title 28, United States Code, is amended by adding the following section [12].

"§ 334. Institutes and joint councils on sentencing

"(a) In the interest of uniformity in sentencing procedures, there is hereby authorized to be established under the auspices of the Judicial Conference of the United States, institutes and joint councils on sentencing. The Attorney General and/or the chief judge of each circuit may at any time request, through the Director of the Administrative Office of the United States Courts, the Judicial Conference to convene such institutes and joint councils for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States The agenda of the institutes and joint councils may include but shall not be limited to (1) The development of standards for the content and utilization of presentence reports; (2) the establishment of factors to be used in selecting cases for special study and observation in prescribed diagnostic clinics; (3) the determination of the importance of psychiatric, emotional, sociological and physiological factors involved in crime and their bearing upon sentences; (4) the discussion of special sentencing problems in unusual cases such as treason, violation of public trust, subversion, or involving abnormal sex behavior, addiction to drugs or alcohol, and mental or physical handicaps; (5) the formulation of sentencing principles and criteria which will assist in promoting the equitable administration of the criminal laws of the United States

"(b) After the Judicial Conference has approved the time, place, participants, agenda, and other arrangements for such institutes and joint councils, the chief judge of each circuit is authorized to invite the attendance of district judges under conditions which he thinks proper and which will not unduly delay the work of the courts

"(c) The Attorney General is authorized to select and direct the attendance at such institutes and meetings of United States attorneys and other officials of the Department of Justice and may invite the participation of other interested Federal officers. He may also invite specialists in sentencing methods, criminologists, psychiatrists, penologists, and others to participate in the proceedings.

"(d) The expenses of attendance of judges shall be paid from applicable appropriations for the judiciary of the United States. The ex-

[12] 28 U S C A § 334

penses connected with the preparation of the plans and agenda for the conference and for the travel and other expenses incident to the attendance of officials and other participants invited by the Attorney General shall be paid from applicable appropriations of the Department of Justice."

Sec 2 The chapter analysis of chapter 15 of title 28, United States Code is amended by inserting before section 331 the following item:
"334. Institutes and joint councils on sentencing"

Sec 3 That chapter 311 of title 18, United States Code is amended by adding the following section [13]

"§ 4208 Fixing eligibility for parole at time of sentencing

"(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may become eligible for parole at such time as the board of parole may determine.

"(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study After receiving such reports and recommendations, the court may in its discretion (1) Place the prisoner on probation as authorized by section 3651 of this title, or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law The term of the sentence shall run from date of original commitment under this section

"(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the board of parole a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent The board of parole may make such other investigation as it may deem necessary

[13] 18 U S C A § 4208

"It shall be the duty of the various probation officers and government bureaus and agencies to furnish the board of parole information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case

"(d) The board of parole having jurisdiction of the parolee may promulgate rules and regulations for the supervision, discharge from supervision, or recommitment of parole prisoners"

Sec 4 That chapter 311 of title 18, United States Code, is amended by adding the following section [14]

"§ 4209 Young adult offenders

"In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there is reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U S C Chap 402) sentence may be imposed pursuant to the provisions of such act"

Sec 5 The chapter analysis of chapter 311 of title 18 is amended by inserting before section 4201 the following items

"4208 Fixing eligibility for parole at time of sentencing

"4209 Young adult offenders"

Sec 6 Sections 3 and 4 of this act shall apply in the continental United States other than Alaska, and in the District of Columbia so far as they relate to persons charged with or convicted of offenses under any law of the United States not applicable exclusively to the District of Columbia

Sec 7 This act does not apply to any offense for which there is provided a mandatory penalty

Approved August 25, 1958

CONFERENCE REPORT

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two houses on amendments of the Senate to the joint resolution (H J Res 424) to improve the administration of justice authorizing the Judicial Conference of the United States to establish institutes and joint councils on sentencing, to provide additional methods of sentencing, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report

The Senate amendments to the instant joint resolution (H J Res 424) restore the additional sentencing procedures which were embodied in section 3 of the resolution as it was introduced and as it was favorably reported by the House Committee on the Judiciary This section provides the chief means by which the judiciary and the executive branches can co-ordinate efforts to protect the public by formulating

[14] 18 U S C A § 4209

sentences which carry out more fully the purposes of deterrence, incapacitation, and reformation

The purpose of the principal Senate amendment (sec 3) is to provide the court with optional procedures which will enable it to impose sentences indeterminate in nature This will permit the court, at its discretion, to share with the executive branch responsibility for determining how long a period a prisoner should actually serve The court will be authorized to impose a term of imprisonment either under the existing definite sentencing system, or fix the maximum term of the sentence and (1) direct that the prisoner shall be eligible for parole at any time up to one-third this maximum, as now provided by law, or (2) specify that the Board of Parole shall decide when the prisoner will be considered for parole In other words, if a court is so disposed, it may give the Parole Board greater latitude in a particular case or, if it is not so inclined, may follow the present sentencing system

This section will also permit the court, in particularly complex cases, to commit the defendant to the Attorney General for a three- to six-month period for study and observation After the court receives a summary of the Attorney General's findings it may impose final sentence under any applicable statute The net result of this provision is to extend to a maximum period of six months in selected cases the court's power to modify the sentence, now restricted to 60 days under rule 35, Federal Rules of Criminal Procedure (18 U S C , ch 237).

This section will further authorize the Board of Parole to promulgate rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners The board now controls such matters and this section merely spells out in detail its authorization to make regulations covering them

The proposed amendment, together with the other provisions of House Joint Resolution 424, represent the product of many years of study by judicial law, and administrative groups and by other persons associated with the administration of criminal justice and of the problem of sentence disparities. The proposals embodied in the legislation, including the Senate amendment, have the support of the Judicial Conference of the United States, the American Bar Association, the Federal Advisory Corrections Council, the American Correctional Association, and the National Probational and Parole Association The Department of Justice also recommends the proposed legislation, as amended by the Senate, except for the one provision in regard to the Federal Youth Corrections Act.

It should be emphasized that the provisions of the proposed legislation, including the Senate amendments, do not embody a softening of criminal penalties Testimony submitted at the hearing on this legislation disclosed that terms served under indeterminate sentences average longer than do terms under the fixed system

EMANUEL CELLER,
E E WILLIS,
WILLIAM M TUCK,
KENNETH B KEATING,
WILLIAM C. CRAMER,
Managers on the Part of the House.

APPENDIX C

CITATIONS RELATING TO DECISIONS OF PAROLING AUTHORITY

67 C J S "Pardons" Sec 20, p 606
In re Gough, 112 Cal App 218
In re Kornor, 50 Cal App 2d 407
In re Stewart 24 Cal 2d 344
Attorney General Opinion N S—5813, May 31, 1945
In re Liggett, 187 Cal 428
People v Harmon, 54 Adv California Reports

APPENDIX D

MODEL PENAL CODE, SECTION 305.21

Revocation of Parole for Violation of Condition; Hearing

(1) When a parolee has been returned to the institution, the Board of Parole shall hold a hearing within 60 days of his return to determine whether his parole should be revoked The parolee shall have reasonable notice of the charges filed The institutional parole staff shall render reasonable aid to the parolee in preparation for the hearing and he shall be permitted to advise with his own legal counsel At the hearing the parolee may admit, deny, or explain the violation charged, and he may present proof, including affidavits and other evidence, in support of his contentions A verbatim record of the hearing shall be made and preserved.

(2) The board may order revocation of parole if it is satisfied, upon substantial evidence, that:

(a) The parolee has failed, without a satisfactory excuse, to comply with a substantial requirement imposed as a condition of his parole; and

(b) The violation of condition involves:
  (i) The commission of another crime, or
  (ii) Misconduct indicating a substantial risk that the parolee will commit another crime; or
  (iii) Misconduct indicating that the parolee is unwilling to comply with proper conditions of parole

(3) Parole revocation shall be by majority vote of the board.

APPENDIX E

JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES' REPORT TO THE UNITED STATES CONGRESS IN 1942

TITLE II

Section 1. When the judge, after a hearing in open court, determines that a sentence of imprisonment for more than one year should be imposed on an offender, the original sentence shall be to imprisonment generally, which shall be for the maximum term prescribed by law Within six months after an offender commences to serve the original sentence, or within an additional period not exceeding six months if authorized by the court, the division shall recommend to the court the term of imprisonment to be fixed by the definite sentence, stating the reasons therefor The judge who imposed the original sentence, or any other qualified judge duly designated to act, may thereupon fix the definite sentence by modifying or affirming the original sentence If the judge fixes a definite sentence different from that recommended by the division, he shall state his reasons, which shall be reduced to writing and become a part of the records of the division If the division shall not make its recommendation within the time herein limited, the court shall fix the definite sentence which the offender shall serve If the division files its recommendation within the time herein limited and the court does not fix a definite sentence within two months, the sentence recommended by the division shall become the definite sentence and the clerk shall thereupon enter judgment accordingly In no event shall the definite sentence be longer than the maximum term prescribed by law.

APPENDIX F

TABLE 13

FELONY COMPLAINTS FILED AFTER ARREST, 1958 AND 1959
By Area of State and Rate per 100,000 Population

Area	1958		1959		Percent change from 1958 rate
	Number	Rate per 100,000	Number	Rate per 100,000	
Total	36,830	249 7	35,954	235 3	—5 8
Los Angeles County	17,197	269 9	17,306	261 6	—1 8
9 other Southern California counties	7,164	240 1	6,513	204.2	—14 9
San Francisco Bay area	6,348	181 8	6,351	176 0	—3 1
Alameda County	1,682	189 7	1,543	171 6	—9 5
San Francisco County	2,045	258 5	2,189	276 8	—7 1
7 other counties	2,621	144 4	2,619	136 6	—5 4
Balance of State	6,121	246 5	5,784	227 1	—7 9
10 Sacramento Valley counties	1,808	227 7	1,654	198 7	—12 8
7 San Joaquin Valley counties	2,723	256 3	2,675	248 0	—3 2
22 other counties	1,590	253 7	1,455	228 7	—9 9

APPENDIX G

SUMMARY REPORT OF THE DISPOSITION OF CHARGES AGAINST PERSONS ARRESTED FOR VAGRANCY IN SAN FRANCISCO—1957

San Francisco Police Department

Disposition of arrest charges (persons)	*Code 001 Begging*	*Code 002 Common Vag*	*Code 003 $1,000 Vag*	*Code 005 Violation 647a P C*	*Code 006 Vag Lewd*	*Code 008 Vag Prowler*	*Totals*	*Distribution in percent*
Total persons charged [a]	199	1,355	2,547	39	28	81	4,220	100 0
Dismissals								
By court	16	234	489	4	6	11	700	17 0
Motion of DA	5	279	1,143	9	6	2	1,444	34 2
No prosecution	3	144	465	3	3	15	633	15 0
Not guilty	4	39	117	10	2	11	183	4 3
Total dismissed	28	696	2,214	26	17	39	3,020	71 4
Found guilty								
Fined	3	22	13	2	3	2	45	1 1
County jail term	81	311	105	7	3	17	524	12 4
Suspended sentence	74	243	145	1	2	13	478	11 3
Probation	13	61	66	3	3	10	156	3 7
Other	--	2	4	--	--	--	6	1
Total guilty	171	639	333	13	11	42	1,209	28 6

NOTE This table portrays the disposition of persons charged with the crime of "vagrancy" as the primary charge The table does not include the disposition of cases wherein the subject was charged with a greater offense and the "vag" charged was placed as a second charge

[a] The grand total of 4,229 cases differs from the arrest grand total of 4 234 by a count of 5 This was due to the time lag between the time of arrest and the actual disposition in court which occurred at the close of the calendar year

Persons listed under Code 001 "Beggars" were actually charged with violation of Section 120 of the San Francisco Municipal Police Code which was used in lieu of Section 647 (2) of the Penal Code

Code 002 refers to all bookings under 647PC except those shown under Code 003, Code 006 or Code 008 Code 003 is a vagrancy charge with a minimum bail of $1000 Code 005 lists all arrests and booking for violation of Section 647a (1) and (2) Code 006 includes all violations of Section 647 (5)—"lewd person" Code 008 includes all violations of Section 647 (12)—"prowler—peeping tom, etc"

B C I-S F P D, July 15, 1958

APPENDIX H

"MAN IS HELD NEARLY MONTH FOR THEFT HE DID NOT COMMIT"

"LOS ANGELES—UPI—How can five solid citizens point to you and say, 'That's the man, officer'? What happened to cause my arrest? And why was I kept in jail for nearly a month for a crime I didn't commit when I had nine witnesses who said I was miles away from the clothing store when it was held up?"

The questions were asked by John Doe, 22, a tall, dark and handsome former Marine who says he is not bitter even though the imprisonment cost him a fine job opportunity, a month of his life, attorneys' fees, confidence in the law and, possibly, future security because of circulation of his picture among many police departments

Doe was released Wednesday after two men who were arrested in Montana admitted the clothing store holdup

Doe was arrested August 28th at his apartment 60 miles from here in San Bernardino as a suspect in a $1,242 robbery August 22d of a chain clothing store in nearby Pico Rivera His roommate also was arrested—on the same tip from an unidentified person—but was released several days later when the victims failed to identify him

But they were firm in their identification of Doe—all five witnesses to the holdup.

"Witnesses Are Mum"

--------, manager of the store and one witness, said witnesses have been instructed not to discuss the case

"I've been instructed by my employer and others not to comment on it," -------- said "It's kinda touchy."

Doe, originally from Stockton, said he lost his respect for detectives handling the case four days after he was arrested when one of them told him, "I'll see you behind bars."

"If one of those detectives felt he was doing his job honestly, then I don't understand him," Doe said "If he thinks that what he did is all that's required of him, then I'm disappointed in him They all thought I was guilty."

"Honorable Discharge"

Doe said since his 1956 honorable discharge from the Marine Corps he has been attending college and working in groceries He said he recently passed an insurance selling job aptitude test with top grades but that he does not know if he can qualify now because of the arrest

"I've been told that these people feel I may have a record," he said "There's some question about mug shots of me being all over the State and the next time there's a robbery, victims will start looking at my pictures again, and you can see what might happen"

Doe's lawyers, George Dell of Los Angeles and Phillip Kassel of San Bernardino, said they do not know if all trace of the episode can be removed from the records They also were mum as to whether Doe will try to take action against the government for his jailing [1]

[1] UPI Release appearing in the *Sacramento Bee*, Sacramento, California, September 25, 1959

APPENDIX I

MAGISTRATES' COURTS ACT, 1952

15 & 16 GEO 6 & 1 ELIZ 2 CH 55

Section 40

(1) Where any person not less than 14 years old who has been taken into custody is charged with an offense before a magistrates' court, the court may, if it thinks fit, on the application of a police officer not below the rank of inspector, order the fingerprints of that person to be taken by a constable

(2) Fingerprints taken in pursuance of an order under this section shall be taken either at the place where the court is sitting or, if the person to whom the order relates is remanded in custody, at any place to which he is committed, and a constable may use such reasonable force as may be necessary for that purpose

(3) The provisions of this section shall be in addition to those of any other enactment under which fingerprints may be taken

(4) Where the fingerprints of any person have been taken in pursuance of an order under this section, then, if he is acquitted, or the examining justices determine not to commit him for trial, or if the information against him is dismissed, the fingerprints and all copies and records of them shall be destroyed

Extract from Home Office circular to Clerks of Justices concerning Section 40 of the Magistrates' Courts Act, 1952

"The purpose of this provision is to assist the police in their investigation of crime The police may have in their possession fingerprints taken in the course of inquiries into the offense with which the accused is charged, or in the course of inquiries into other offenses, e g fingerprints left at the scene of a crime, and the taking of the fingerprints of the accused will enable the police to determine whether these fingerprints are the fingerprints of the accused The taking of fingerprints is not only a means by which the identity of the perpetrator of an offense may be established it is also a means by which an innocent person suspected of committing an offense may be cleared of suspicion It will be for the court to decide in its discretion whether to make an order upon application by the police in such a case, but it will not always be possible for the police to give reasons for this application, since this might prejudice the hearing of the charge before the court, e g where the person charged is believed to have previous convictions and the police wish to have fingerprints for comparison with the records in Scotland Yard, or where he is suspected of having committed other offenses, and the police wish to ascertain whether his fingerprints are identical with those found at the scenes of these offenses"

APPENDIX J

WITNESSES—NOVEMBER 13, 1960

LOS ANGELES HEARING

Augustine, Jr., Paul, Attorney at Law, Los Angeles
Boags, Robert L., Legislative Committee, NAACP, Los Angeles
Cuff, Ellery E., Public Defender, Los Angeles
Erwin, Richard E., Criminal Courts Bar Association, Los Angeles
Farley, Goscoe, Legislative Representative, State Bar of California, San Francisco
Gaiber, Elvis T., President, Criminal Courts Bar Association, Los Angeles
Joblin, Joseph, Attorney at Law, Los Angeles
Matthews, Al, Ex-Public Defender, Los Angeles
Miller, Allen, Judge of Superior Court, Los Angeles
Root, Gladys Towles, Attorney at Law, Los Angeles

APPENDIX K

GOVERNMENT CODE SECTIONS

"SEC 27700 Establishment of Office Joinder of Counties The board of supervisors of any county may establish the office of public defender for the county Any county may join with one or more counties to establish and maintain the office of public defender to serve such counties

"SEC 27701 Qualifications A person is not eligible to the office of public defender unless he has been a practicing attorney in all of the courts of the State for at least the year preceding the date of his election or appointment

"SEC 27702 Determination of Appointment or Election At the time of establishing the office the board of supervisors shall determine whether the public defender is to be appointed or elected

"SEC 27703 Appointment to Serve at Will Appointment of Public Defender of Two or More Counties If the public defender of any county is to be appointed, he shall be appointed by the board of supervisors to serve at its will The public defender of any two or more counties shall be appointed by the boards of supervisors of such counties

"SEC 27704 Election Appointment of Interim Administrator Time of Election Term of Office If the public defender is to be elected (a) The board of supervisors shall appoint a public defender who shall hold office until the first Monday in January following the next general election of county officers

"SEC 27705 Devotion of Full Time to Duties of Office In counties of the first, second and third classes, the public defender shall devote all his time to the duties of his office and shall not engage in the practice of law except in the capacity of public defender

"A SEC 28022 Counties of First Class Counties containing a population of 900,000 and over are counties of the first class.

"B SEC 28023 Counties of Second Class Counties containing a population of 750,000 and under 900,000 are counties of the second class

"C SEC 28024 Counties of Third Class Counties containing a population of 600,000 and under 750,000 are counties of the third class

"SEC 27705 1 Defense of Persons Accused of Crime A public defender shall not during his incumbency defend or assist in the defense of, or act as counsel for, any person accused of any crime in any county, except as set forth in this chapter

"SEC 27706 Duties of Public Defender The public defender shall perform the following duties (a) Upon request of the defendant or upon order of the court, he shall defend, without expense to the defendant, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior court at all stages of the proceedings, including the preliminary examination The public defender shall, upon request, give counsel and advice to such person about any charge against him upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted in the reversal or modification of the judgment of conviction (b) Upon request, he shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforcible in the courts (c) Upon request, he shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed (d) Upon order of the court, he shall represent any person who is not financially able to employ counsel in proceedings under Chapter 4 of Part 1 of Division 6 and under Chapter 1 of Part 1 of Division 6 of the Welfare and Institutions Code "

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People v Grace, 156 C A 2d 68 332 P 2d 811

ASSEMBLY INTERIM COMMITTEE REPORTS
1959-1961
VOLUME 22 NUMBER 2

REPORT OF THE

Subcommittee on Correctional Facilities of the Committee on Criminal Procedure

MEMBERS OF THE INTERIM COMMITTEE ON CRIMINAL PROCEDURE

JOHN A. O'CONNELL, *Chairman*

BRUCE F. ALLEN
TOM BANE
PHILLIP BURTON
ROBERT W CROWN
LOUIS FRANCIS
VERNON KILPATRICK
NICHOLAS C. PETRIS
JEROME R WALDIE

PAMELA C. THOMPSON, *Consultant*
MAXINE MOORE, *Committee Secretary*
MILTON L. McGHEE, *Legislative Intern*

December, 1960

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ASSEMBLY
OF THE STATE OF CALIFORNIA

HON. RALPH M. BROWN
Speaker

HON CARLOS BEE
Speaker pro Tempore

HON. WILLIAM A. MUNNELL
Majority Floor Leader

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Minority Floor Leader

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Chief Clerk

COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE
SACRAMENTO, JANUARY 2, 1961

HONORABLE RALPH M BROWN
Speaker of the Assembly and
Members of the Assembly
Assembly Chamber, Sacramento, California

GENTLEMEN: Enclosed is the Report on Correctional Facilities of the Subcommittee on Correctional Facilities of the Assembly Interim Committee on Criminal Procedure

This report is treated in a comprehensive and balanced manner, and deserves the attention of the Legislature

Respectfully submitted,

JOHN O'CONNELL, Chairman

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE
SACRAMENTO, JANUARY 2, 1961

HONORABLE JOHN A. O'CONNELL, *Chairman*
Assembly Interim Committee on Criminal Procedure
California Legislature
State Capitol, Sacramento

DEAR MR. O'CONNELL: In accordance with the provisions of House Resolution No 378, we are herewith submitting the report of the Subcommittee on Correctional Facilities

We urge that the Legislature give its careful attention to the recommendations included in this report.

Respectfully submitted,

VERNON KILPATRICK
Subcommittee Chairman
ROBERT W. CROWN
LOUIS FRANCIS

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I. INTRODUCTION

"California reported more crime during the first six months of 1960 than in any previous six months period . since 1954 The overall rise in crime reported is proportionately greater than the increase of the total population in this same period"—*Crime in California*, Midyear Summary Report 1960

"A narcotic problem of major proportions confronts the State of California."—*Narcotic Arrests in California*, July 1, 1959-June 30, 1960

When observations such as the above are made, supported by statistical data, the need for constant study and evaluation of our correctional institutions and programs cannot go unnoticed To briefly illustrate the magnitude of the problem, in 1959 the Department of Justice in its report, *Crime in California* 1959, reported 589,531 misdemeanor and 80,661 felony arrests in the State for the year For 1960, a similar picture is emerging In the Midyear 1960 Report, covering the period from January to June, 323,414 misdemeanor and 38,789 felony arrests were reported. In addition, in the first report by the newly created narcotic unit of the Bureau of Criminal Statistics, Department of Justice, *Narcotic Arrests in California*, July 1, 1959-June 30, 1960, over 17,000 arrests were reported.

From these statistics, no matter what the final dispositions are, one can see that today over 600,000 persons spend some time in the jails of the State each year Such a sizeable operation is costly, not only in terms of losses in human resources but also in terms of losses through high costs in law enforcement, court administration and detention

Such losses and costs compel us to constantly rethink and re-evaluate our local detentional programs (indeed state programs as well), the traditional and present role of our local jails against a backdrop of a constantly mounting rate of crime, its causes and origin, and a host of new concepts of penology, rehabilitation and correction The challenge is not new, rather it is the need for speedy and effective solutions.

It is therefore fitting to briefly set forth the basic principle which underlies our recommendations and which was uppermost in the minds of the members of the subcommittee in pursuing this study The trend in modern penological thinking—and this shift has been particularly evident during the past 10 years—has been to de-emphasize the objectives of punishment and retribution in detention facilities, and to place increasing emphasis on the concept of protecting society through the treatment and rehabilitation of the offender Through this approach, it is believed, not only is the possibility of readjustment in society enhanced, but the rather high and alarming rate of recividism is reduced also

Hence it is not enough to administer our local detention facilities as if their only functions were that of temporary and short-term holding —purely custodial functions A rather encouraging trend extant in the local jails is the abandonment of the belief that treatment and rehabilitation of inmates are functions solely within the realm of the responsibilities of state penal institutions, and an increasing acceptance of the

view that rehabilitative programs are possible and practicable—indeed necessary, on the city and county level. Today 24 counties and three cities have jail farm camps. Within these localities, there are 40 separate institutions. Thus with such facilities, treatment programs can be put into operation. We submit that the impact of this trend cannot be readily assessed at this juncture, but the potentialities of this change in terms of improving the effectiveness of our local correctional systems, rehabilitating and restoring errant members of society to useful and productive lives, and reducing the costs of government in law enforcement, detention and court administration are unlimited, for the local jails remain as the Board of Corrections stated in its publication, *Minimum Jail Standards,*" . . . our most important penal institutions"

In pursuing our study, this subcommittee visited and inspected the detention facilities of the Cities and Counties of Los Angeles, San Francisco, Sacramento, San Joaquin County and the lockup in the City of Stockton, the Alameda County facilities and the Oakland City Jail. Through personal observation, conversations with sheriffs, chiefs of police, jailers, matrons and other members of the jail staffs, concerning jail functions such as booking procedures, health and sanitation procedures, rehabilitative programs and disciplinary practices, we gained helpful and illuminating information. We were also greatly aided by the published studies and reports that have been made by other legislative committees and special study commissions. The subcommittee was also greatly assisted by the helpful co-operation it received from many private civic groups which are conducting very effective treatment programs in many local communities in connection with the local jails, and governmental agencies we had occasion to consult.

In our study, we examined a plethora of proposals and recommendations. We were particularly interested in, and have discussed in our report, many of the proposals having to do with such problems as (1) reducing the jail population—overcrowding; (2) improvement of the programs for those where incarceration is necessary and its effect on court costs and the overall costs of crime; (3) improvement of the jail physical facilities and personnel; (4) extended use of probation and parole; and (5) treatment of alcoholics and narcotic addicts.

The subcommittee's findings and recommendations are set forth in detail in the report. We commend them to your careful consideration.

II. PAST ASSEMBLY AND SPECIAL STUDIES OF LOCAL CORRECTIONAL INSTITUTIONS

Fifteen years ago, the Assembly at the 1945 Session of the Legislature, created its first committee to undertake a study of the local jails in the history of the State. At that time, California jails were recognized as being among the worst in the nation

This committee, known as the Assembly Committee on City and County Jails (and colloquially referred to by the press as the "Kilpatrick Committee"), was composed of five members with Assemblyman Vernon Kilpatrick as chairman It is reported to have been the first legislative committee set up to study local corrections in the Nation.

During the first two years of its work, the committee visited and inspected several jails in the state and at least one jail, the old central jail in Los Angeles, was closed, due to committee disclosures and recommendations, as being unfit for human use

The committee's first report was well received and many of its recommendations were written into law. Copies of the report were in great demand by federal and state officials through the United States and many foreign countries

At the 1947 session, the committee was recreated and held extensive hearings throughout the State. In many instances, the work of the committee generated public interest which resulted in effective remedial action and tangible accomplishments, such as passage of bond issues to finance construction of new detentional facilities, and larger appropriations from boards of supervisors and city councils, for jail operations

During the 1947 session the members of the committee introduced or co-authored 37 bills designed to correct evils unearthed, and to implement committee recommendations. And since 1947, over 110 bills have been authored or co-authored by members of Assembly local correctional committees. A list of these measures is included in the committee's partial report in 1953. See, *Journal of the Assembly,* Vol 1, (Regular Session 1953, pp. 709-13). Among the more important and widely known measures adopted as a result of the committee's work are.

(1) Minimum jail standards;
(2) Outlawing kangaroo courts;
(3) Outlawing the fee system of feeding prisoners;
(4) Authorization of Department of Corrections to set quality and quantity standards of food, clothing and bedding;
(5) Approval by Department of Corrections of all new jail plans or alterations over $1,500

Just recently in a statement to the subcommittee the Board of Corrections advised that "over 300" plans have been studied and

reviewed by the department This service has resulted in better planning of detention facilities in many localities where the department's recommendations have been followed

At the 1949 session, the Asembly again recreated the committee under a different designation, the Assembly Interim Committee on Crime and Correction, and expanded its powers and scope of study to include state prisons and notable institutions and their programs in other states and of the federal government

Pursuant to this direction, members of the committee attended the conference of the American Prison Association in Milwaukee, Wisconsin, and visited federal and state penal institutions throughout the country These visits greatly increased the knowledge, insight and wealth of information of the committee members in dealing with the problems extant within the State All of the exemplary institutions visited were discussed and illustrated in the committee's report, *Partial Report of Interim Committee on Crime and Corrections.* April 3, 1950

The committee also studied the adult penal institutions of the State, the "prosecution methods in the widely-publicized 'Marjorie Massow Case' (the Madge Meredith affair)," and the problem of the juvenile offender and the correctional system for handling juvenile delinquents in the State See, *Report of Subcommittee on Marjorie Massow* (Madge Meredith), March 1951 (Partial Report of Assembly Interim Committee on Crime and Corrections)

After the committee submitted its report, the Governor commuted the defendant's sentence to time served It has been said this was the first legislative review of a judicial proceeding in the history of the State. This study sharply pointed up the need for some type of assistance to be given to defendants in felony cases in order that they may be able to utilize very extensive investigative services which most cannot afford, even though they retain an attorney.

At the 1951 Session, the Assembly Interim Committee on Crime and Corrections was continued but was made a subcommittee of the Social Welfare Committee Following the period after the 1951 session, the committee held public hearings on the operations of nonscheduled airlines, and the narcotic problem As a result of quick action by the chairman, Assemblyman Kilpatrick, many veterans returning from Korea and other areas were refunded their money spent for nonexistent air transportation (See, Partial Report of the Subcommittee on Crime and Corrections of the Assembly Interim Committee on Social Welfare, Journal of the Assembly, Vol 1, Regular Session, 1953, pp 703-39)

The narcotic phase of the committee's 1951 study also evoked considerable interest from other states, schools, civic groups and the press (Final report of the Subcommittee on Crime and Correction of the Assembly Interim Committee on Social Welfare relative to *Control of Juvenile Delinquency in Los Angeles County,* March 12, 1953)

Perhaps no statement so aptly sums up the reason for, and answers the "why" of, a legislative study of local detention facilities as the answer given by a predecessor committee in 1953 It observed· "We have been asked, 'Why a committee to investigate crime or why is a legislative committee interested in its correction?' Our answer is, crime is big business in California and its correction costs an astounding

amount of money for the maintenance of the apparatus, which begins with the policeman on the street and ends with prisons "

Not only has the Legislature conducted specialized studies, but special commissions have studied local correctional systems as well. In 1949 the Commission for the Study of Adult Corrections and Release Procedures studied the problem, *A Study of the County Jails of California,* June 30, 1949 During this same period, we may add, a predecessor Assembly Committee was pursuing a similar study, *Report of the Assembly Interim Committee on Detention Homes and County and City Jails,* January 13, 1949, and the two studies came up with many similar conclusions and recommendations In 1956 the Citizens' Advisory Committee to the Attorney General on Crime and Crime Prevention made a study *California Jails,* September 12, 1956, which was shortly followed by a monumental study by the Special Study Commission on Correctional Facilities and Services, *The County Jails of California: An Evaluation,* in March, 1957.

All of these studies have helped to improve local correctional systems. They have also stimulated public interest, and in many instances, have generated the necessary impetus to change indifference to intolerable conditions in many local jails to dedicated efforts to "do something about the situation " In addition, a wealth of knowledge has been gained which is invaluable in approaching the problems of our local jail systems Such accomplishments as these too well illustrate the worth and value of legislative and special studies of local corrections As a predecessor committee observed in 1953 in commenting upon the work of prior Assembly local corrections study committee, " the results of its work are indelibly written into the Penal Code of the State " It is our hope that the Legislature and particularly the Assembly will continue its interest in the progress and status of local correctional systems and will periodically visit these institutions to observe and learn of their progress, conditions, and problems first hand With such knowledge, sound and effective legislative decisions can be made

III. ROLE OF THE DEPARTMENT OF CORRECTIONS AND BOARD OF CORRECTIONS WITH RESPECT TO LOCAL JAILS

"The history of prison management in California reveals scandal after scandal and a sordid record of mismanagement The conditions . . found to exist in our penal system are a challenge to every public-spirited citizen of this State The solution lies in a complete reorganization of this function of state government"

—*Final Report of Governor's Investigation Committee on Penal Affairs, January 21, 1944*

The multitude of problems faced by the Department of Corrections when it was created in May, 1944, realistically determined the direction of its activities.

Foremost was a desperate race against time to keep from being engulfed in a flood tide of prison commitments Though it had been evident there would be a vast increase in the prison population, no effort had been made to prepare for it

Keeping pace with California's general population increases, the prison population exploded from a May 1, 1944, total of 5,711 to a current total of some 21,000—a gain of almost 1,000 a year.

Needed facilities were planned and constructed with imagination, economy and in relation to each other. This has been a continuing task.

The Correctional Training Facility at Soledad, a medium custody institution, was opened in temporary quarters in 1946, to fill the gap between the existing maximum type institutions at Folsom and San Quentin and the minimum California Institution for Men at Chino. The permanent facility was opened in 1951

The Deuel Vocational Institution was also opened in temporary quarters in 1946 to serve the needs of the growing group of young men too mature for juvenile correctional schools, but too immature in crime for confinement in a prison Permanent facilities were opened in 1953.

The California Medical Facility, opened in 1950, and the California Men's Colony, opened in 1954, represented milestones in the advance of correctional treatment as well as relieving the strain of excessive population in other institutions.

The unique medical facility, combining the legal features of a prison with the climate of a hospital, was a dynamic step forward in the growing recognition that crime in many cases is but a symptom of serious mental and emotional disorders that can be successfully treated The principal treatment at the medical facility, selected not only for economy but for effectiveness, is group psychotherapy

The Men's Colony marked the first recognition by any state of the need for a specialized institution for the older, handicapped prisoners —the prisoners shunted aside in most institutions because of their inability to participate in a normal program Treatment at the colony offers an opportunity for research into the problems of the aging

A new, larger California Institution for Women was completed near Corona in 1952 and opened somewhat prematurely when the existing institution at Tehachapi was extensively damaged by an earthquake. The Tehachapi facility was renovated and reopened in 1955 as a branch of the California Institution for Men

Population pressures continued to mount and so did economic pressures As a result a new concept in prison design was introduced. Its objective: to combine the safety, efficient management and improved opportunity for corrective treatment of the small institution with the economies of the large one.

The Correctional Training Facility, North, at Soledad, opened in 1958, was the first planned, designed and constructed to take advantage of the central services of an existing institution Built on state-owned land, the new facility utilizes existing services of the parent institution such as water supply, light, heat, power, sewage disposal, fire protection, laundry, warehousing, food preparation, hospital, business services and others. It is conservatively estimated this saved approximately $4 million in construction costs and saves about $400,000 in operating costs each year.

The inmate population does not normally come into contact with the 1,500 inmates of the central institution nor the 500 or more in the barracks unit. Indeed, the new facility is divided into two separate 600-man living units and each group separately uses joint classroom, shop and other common facilities.

A second institution embodying this concept is nearing completion at Los Padres on the site of the Mens Colony It is a 2,400 inmate medium custody facility.

Construction was started in 1960 on another unique facility. This is the California Conservation Center in Susanville, to be the hub of the conservation camp program Instead of cell blocks, there will be two facing 608-man units separated from each other by a core of central facilities such as the messhall, kitchen and laundry.

Each of the two units is divided into 16-man dormitories, the same number of men as on a camp crew. This will promote pride in their unit and facilitate other correctional treatment such as group counseling.

Expansion and conversion of the camp program came in 1947 when the emphasis was shifted from highway construction to forestry conservation. The program was further accelerated by Governor Edmund G. Brown in 1959.

At the present time there are 25 year-round camps of which three are highway camps and the others State forestry Three of the forestry camps are mobile. In addition a few seasonal camps are operated with the U S. Forest Service. Many more year-round permanent camps are planned.

The forestry camps not only provide accommodations currently for some 2,000 men, but almost equally important, they also provide constructive employment for them full-time.

Destructive idleness was another problem in 1944 despite the wartime manpower demands It threatened to become even more serious in the postwar period

A special fund was set up in 1945 to finance industrial expansion. In 1947 the Correctional Industries Commission was created to provide work programs without interference with private industry or organized labor

These herculean accomplishments were possible only because of the implementation of a number of reforms These included.

1 The spoils system of recruitment and promotion was eliminated by placing the personnel both of the institutions and the central office under the state civil service system.
2 A realistic, thorough, continuous training program for institution employees was established.
3 Institution staffs were reorganized and departmentalized in line with modern concepts
4. A statistical system was developed to account for the total number in institutions, the number on parole and the characteristics of the prisoners
5 The notorious "con boss" system which involved the placing of prisoners in the position of authority and trust was completely eliminated
6 A system of food administration based on sound scientific principles was developed.
7 A scientific classification system for the study, analysis and treatment of prisoners was developed

In addition, existing rehabilitative services were rejuvenated, professionalized, and supported. Academic and vocational educational programs were established at all institutions taught by credentialed instructors Facilities for religious services were provided and inservice training begun for chaplains

On this foundation there have been erected significant new programs of treatment and research which may represent the start of a new era of correctional treatment of offenders

One such program is group counseling.

From a small pilot program at the California State Prison at Folsom, group counseling has spread to include a large majority of the inmates at all institutions of the department except, of course, the Medical Facility

This realistic program economically extended the benefits of group treatment by tapping the treatment potential of large numbers of the custodial, business and industrial staffs With professional guidance, these lay leaders conduct group sessions which lead to a greater understanding by the inmates of their own problems. The sessions, incidentally, have also given the employees a better understanding of the prisoners Group counseling has already proved its value in improvement of institution morale and reduction of disciplinary problems

Another such is the pioneering development of group living or therapeutic community experiments This concept is being tried at a camp and in small units at several institutions

The basic concept of the therapeutic community is the creation of a condition in which inmates assist staff in their own corrective treatment and the treatment of other inmates, primarily through frank group communication concerning all types of problems.

The essence is the focusing of the natural group relationships which always develop in an institution away from the traditional antisocial attitudes and toward recognition of the mutual interests among the inmates, the staff and the community.

A third program is the Narcotic Treatment Control Project.

The basic mission of the project is to prevent the readdiction of former narcotic addicts released on parole through more intensive supervision, frequent nalline testing to prove chemically whether they are using narcotics, and swift reconfinement of those threatened with readdiction

The narcotic project is just one example of the practical, operational research in which the Research Division, formed in 1958, is engaged. The narcotic project, incidentally, is an outgrowth of the division's first report, a factual study of narcotics addiction issued in February, 1959

Other major projects include the development of a "base expectancy" scale and a new method by which prisoners can be classified on the basis of their interpersonal maturity

Use of these techniques will permit a more accurate evaluation of the effect of specific correctional treatments on specific types of inmates.

One of the specific duties of the State Board of Corrections is the provision of advisory services to cities and counties concerning jail and detention facilities

The Board of Corrections was established by the Legislature in 1944. It is composed of the members of the Adult Authority, the Youth Authority, the Board of Trustees of the California Institution for Women, two citizens appointed by the Governor, and the Director of Corrections, who is chairman

The advisory services include studies of the detention needs of a city or county, review of plans for detention facilities, and advice on the operation and management of detention facilities.

Upon request by the jurisdiction involved, the board will also inspect a jail

One of the board's first actions, taken in 1945 at the request of the sheriffs' association, was a thorough survey of all of the State's county jails

After reviewing the results of the survey, the board developed a written set of minimum jail standards These were published in 1946

In accord with a 1947 law, the board established "Minimum Jail Standards for Feeding, Clothing and Bedding." This was published in interim form and widely distributed for the comment of interested local officials.

Appropriate revisions were made in both publications and a revised edition combining the two was issued in 1952 as a service to city and county jail administrators in promoting more effective handling of jail inmates and by insuring increased efficiency in jail management.

The law requires that the county supervisors provide the sheriff with the means to meet the standards

Plans and specifications for the construction or remodeling of any city or county jails or facilities for the detention of juveniles must be submitted to the board for its review and recommendations if the cost is to exceed $1,500.

The board has to date reviewed more than 300 such projects. From this wealth of accumulated experience, it has been frequently able to pass along valuable ideas developed in one jurisdiction which could be incorporated in the plans of another.

On the request of any California city or county, the board is required to study entire jail programs and make recommendations. This service has been requested by a number of jurisdictions as a basis for budgetary requests, to justify bond issues, and to secure technical advice from a variety of specialists.

Studies may include recommendations as to the size and type of facilities required to meet future needs.

In an effort to be helpful, the board has issued several publications. One of these is the "Prisoner Transportation Manual." It describes methods of transporting persons under restraint. It is available to all peace officers at a nominal charge from the State Printing Division. It was also reprinted by the National Sheriffs' Association.

As a further service to those responsible for jail management, the board published in 1959 a compilation of "California Laws Pertaining to County and City Adult Detention Facilities." A supplement was issued in 1960 bringing it up to date.

Over the years several special commissions appointed by the Governor to assist the board in its crime studies have studied various facets of jail administration and made constructive suggestions.

The board has supported legislation that would assist in the proper management of jails but has never asked for administrative authority over them.

IV. GENERAL APPRAISAL OF COUNTY AND CITY JAILS OF CALIFORNIA BY SUBCOMMITTEE

Through visits, inspections and consultations with the staffs of the detentional institutions of Sacramento, San Francisco, and Los Angeles, both county and city, San Joaquin County, City of Stockton, Alameda County and the City of Oakland, this subcommittee was privileged to observe some of the practices and procedures extant in our local jails first hand. We were also greatly assisted in this effort by the reports of the Special Study Commission on Correctional Facilities and Services, which made a very careful and valuable study, *"The County Jails of California: An Evaluation,"* in 1957. In addition we were greatly aided by the study and report of the Citizen's Advisory Committee to the Attorney General on Crime Prevention, entitled, "California Jails," in 1956. The latter study covered not only the county but the larger city jails as well.

While our on-the-scene study was much too limited, we were in a realistic sense able to look once more at some of the local institutions.

Thus, our study is the first of its kind to be conducted by a legislative committee within the State in almost ten years.

A. SAN FRANCISCO CITY AND COUNTY JAILS

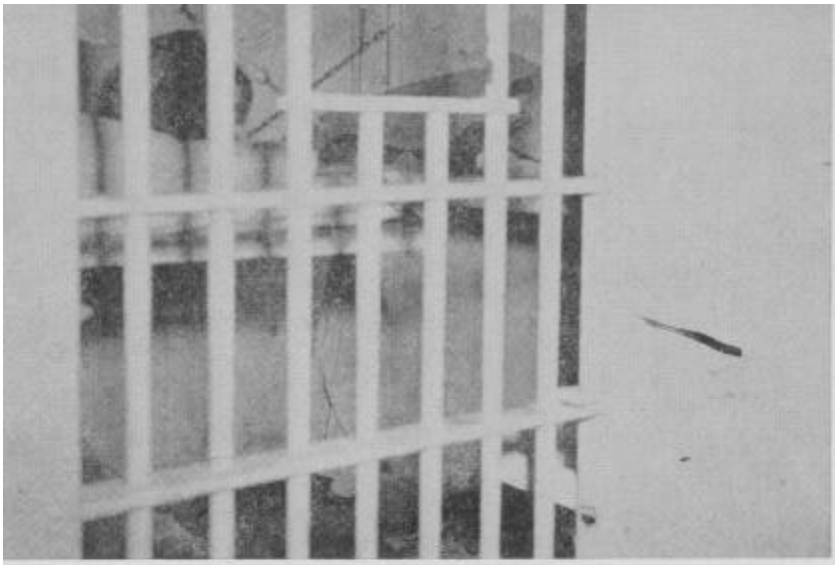
On our visit to San Francisco County, we inspected: (1) County Jail No. 1; (2) County Jail No. 2 (San Bruno branch); and (3) City Prison.

(a) *City Prison*

The San Francisco City Prison, located on the fifth floor of the Hall of Justice, was found to be entirely unsuitable as an adult detention facility for a metropolis as large and progressive as San Francisco. This facility epitomizes the dark, dingy and filthy stereotype of the American local lockup. It's physical upkeep has been allowed to fall below even minimal standards of decency and cleanliness. Such sordid conditions as dried vomitus and excrement were observed on the floor. In one cell, a belt was hanging from the ceiling—a potential suicide hazard; much of the plumbing in the cells was out of order, thus leaving the inmates without operational toilet facilities. In many instances mattresses were not provided, consequently inmates were compelled to sleep on the floor or on springs of the cell cots. The floors of the cells and hallways were littered with debris, and large containers filled with trash were sitting around the hall.

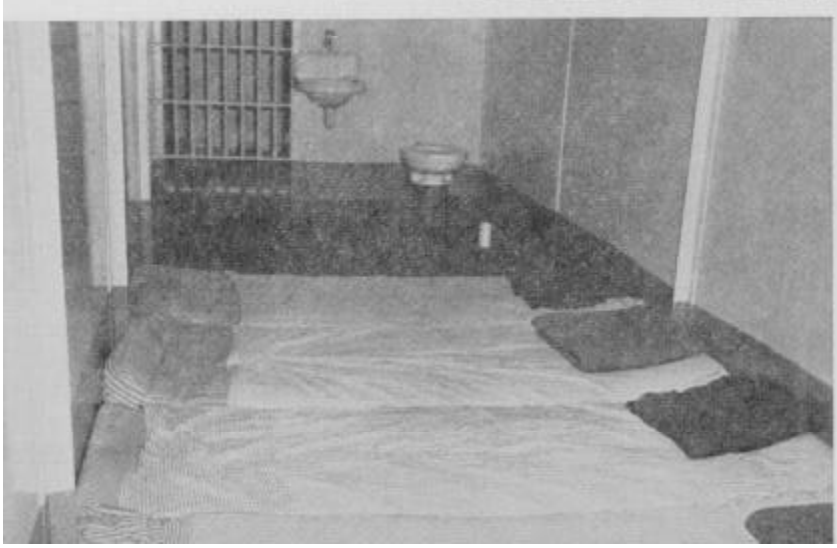
The rated capacity of the prison is 170 beds. However, if capacity were to be determined in accordance with criteria established by the Board of Corrections,[1] it would approximate accommodations for 80 inmates. Yet the average number of inmates held far exceeds the limits, which presents an acute problem of chronic overcrowding.

[1] Minimum Jail Standards (1952 ed.) pp. 13-14.



San Francisco City Prison
Cell, felon section.

San Francisco City Prison—
Cell, misdemeanor section.
Mattresses are provided
only for felons.



San Francisco City Pris
Women's drunk tank.

A study of the menus indicates that the food served does not meet the nutritional standards established by the Board of Corrections[2] The principal meal is served at noon, when the least number of inmates are confined—after the morning release rush is over and before the evening intake rush begins There are, of course, a "light breakfast" and an "evening snack" served

There are no facilities for fumigating or delousing the bedding and clothing Vector control is attempted by use of DDT sprayed from hand dispensers, "every two or three days " While the use of DDT as a delousing agent is regarded by some to be a safe practice, there is still need to use this compound with discretion and care Indiscriminate use, or repetitive use in circumstances where much of the DDT dust finds its way into the body cavities and subsequently into the gastro intestinal tract and bloodstream of those subjected to such practice, can cause injurious effects[3]

There are no rehabilitative programs in operation at the city prison.

Strictly from a physical, functional point, much could be done by merely employing—with use of inmate labor, possibly—rudimentary housecleaning procedures We recognize that there may be difficulties in initiating rehabilitative or recreational programs in an old and antiquated facility, but no reason can be perceived which would justify discontinuance of basic cleaning and sanitary procedures What we observed in the San Francisco City Prison forcefully brought to mind conditions extant and reported in many jails 15 years ago It was then recommended, as a first and practical step, and we here recommend· "Many of the deplorable conditions could easily (be) remedied by a little soap and water, paint and ingenuity."[4]

This subcommittee first visited the city jail in June, 1960, and found the above described intolerable conditions We again visited the facility on Sunday evening, November 20, 1960, and found substantially the same sordid conditions

As of the date of our November, 1960, visit, we were advised that over 65,000 inmates have been incarcerated in the prison We were also told that there are only 47 blankets for the 26 three-man cells in the men's section of the jail This means that there are approximately two blankets per cell, yet, we observed (and were told) that there were as many as seven inmates incarcerated in these three-men cells, which measure roughly 6 feet by 7 feet The floors of the cells were, as we had observed six months earlier, dirty and littered The walls of the cells were dirty and marked In many instances, particularly the visiting and interrogation rooms, profane markings were prominently on the walls without the slightest indication that an effort had been, or would be, made to remove these indecent markings

We again inspected the kitchen maintained within the facility and found it untidy and unsanitary. Food was sitting out, uncovered and unrefrigerated, yet it could not be explained to us whether the food was refuse or would be used at a subsequent meal. Dirty mops were stored in a corner, and the floor of the kitchen was in need of scrubbing Filled trash and garbage containers were sitting around the kitchen,

[2] *Id* pp 20-23
[3] See, Hayes & Durham, "The Effects of Known Repeated Oral Doses of Chlorophe Nothane (DDT)," 162 *Journal of Am Med Ass'n*, October 27, 1956
[4] Report, Assembly Interim Committee on County and City Jails, 1946, p 42

and greasy dishwater had been left standing in the utility sinks These conditions were observed by the subcommittee approximately at 10 o'clock p m, long after the close of regular duty hours in the kitchen

On revisiting the women's section of the prison, we were impressed with the cleanliness and tidiness of this section Each cell bunk is furnished with a mattress and blankets Even in the women's drunk tank the floor was covered with mattresses, while in the men's section we were advised that it is standard operating procedure not to pad the drunk tank cells with mattresses because of the possibility that the "drunks will soil them." The same procedure is followed on the row of cells provided for male narcotic addicts.

We have discussed the conditions of the San Francisco City Prison in detail not as an expose, but to factually show what can happen when basic and essential custodial functions are neglected or, for whatever reason, discontinued.

We were advised during our first visit that the present facility is to be discontinued in use upon completion of a new facility in 1961 We made a second visit to the city prison aware of these plans. While we commend the city for this step in recognizing the need and making provision for a new facility, we cannot accept this fact as an apologia for present conditions. We strongly condemn and deplore the conditions extant in the present facility. The obvious indifference and absence of effort to maintain the present facility according to acceptable standards cannot be condoned. As we noted in our discussion of the Oakland City Jail where a new facility is currently under construction also, a continuous effort is made to maintain the present facility as an acceptable custodial institution.

The possibility of boarding some of the San Francisco City prisoners out to Alameda County for an agreed upon *per diem* charge was suggested to the chief jailer. Such an arrangement would be an effective short term alleviative for the overcrowded conditions at the city prison On our visit to the Alameda County facility, Sheriff Gleason advised us that, even though the county currently boards city prisoners from several cities within the county in addition to those from Marin County, there is still ample space to accommodate additional inmates from other jurisdictions. We strongly recommend to the City of San Francisco that this and other similar arrangements be explored in order that the present chronic overcrowding problem at the city prison may be cured pending completion of the new jail for those inmates held long enough to justify such "boarding-out" detention

In its 1956 study of the detentional facilities of the City and County of San Francisco, the Board of Corrections recommended that a study be made "to determine the feasibility of consolidation of the city and county jail facilities under the administration of the sheriff." [5] It was pointed out in the report that under law, administration of county detentional facilities is a primary function of the sheriff, while administration of the city facility is merely a secondary function of the chief of police; his primary function being that of law enforcement It was pointed out in the report that in Santa Clara County, a neighboring county, a similar consolidation arrangement has worked well and, more important, consolidation would reduce many areas of duplication of

[5] At page 12

services The overlapping was sharply pointed up.[6] "Within an area of one city block, there are two separate jails, each a self-contained unit. There are two booking systems, two dispensaries, two commissaries, two kitchens, two laundries and last, but not least, two personnel organizations . . "

Duplication is costly. Proper correctional services are costly, and where savings can be effected and services improved by eliminating inhibitive practices without imperiling the two programs, we heartily recommend such a course In addition, in San Francisco, because of the dual nature of the local governmental units, consolidation of correctional services and facilities would appear to be not only desirable from the standpoint of efficiency and simplicity in organization and operation, but would mutually represent savings in tax dollars to both units of government.

(b) *County Jail No. 1*

The central county jail can be described as clean and generally well operated. The physical structure, however, is very old, poor and unserviceable for present-day needs.

This facility is strictly a custodial establishment Except for those retained to do janitorial work and other maintenance services on the premises of Jail No. 1, all sentenced prisoners are transferred to Jail No 2, at San Bruno.

In the Assembly Interim Committee on County and City Jails' report in 1946, the San Francisco central jail was favorably commented upon [7] It was noted that, although the facility was generally clean, well administered and serviceable, there was need for much improvement. This observation is still applicable today. It is commendable for a county to maintain clean and on the whole acceptable facilities

As is generally true of all city and county central jails, there are no rehabilitative programs in operation at Jail No. 1. Religious services and Alcoholics Anonymous meetings are in operation, however.

(c) *County Jail No. 2—San Bruno*

San Bruno is the main facility of San Francisco County. Like county jail No 1, it is administered by the sheriff's department. Practically all sentenced prisoners, both male and female, are sent there

This facility was first opened in 1934 It is a maximum security institution with a capacity for 600 men, housed in the main structure, and 50 women, kept in a separate building.

During our visit at San Bruno, we were impressed with the general cleanliness. It was very evident that a high premium is placed on healthful and sanitary surroundings. Yet on the whole, the San Bruno facility has not progressed in the area of initiation of treatment programs for the inmates Like the downtown facility, the San Bruno branch was favorably commented upon 15 years ago by the Assembly Interim Committee on County and City Jails But as we observed earlier, to maintain the status quo when there is urgent need for constant progress, improvement and change in local correctional systems is, realistically, a backward step

[6] *Ibid*
[7] *Op cit supra*, note 4, p 45

The facility's layout encompasses approximately 150 acres A farm program is carried on by the male prisoners, and a sewing industry by the women The farming generally absorbs approximately 400 of the male prisoners, leaving 200 or more idle It has been stated that Sheriff Carberry generally assigns only those with relatively long sentences to do the work, only those with short sentences, such as five to ten days, are left idle.

We found no objectionable practices with respect to the handling, preparation or service of food. And on the whole, the daily diet was such as would satisfy the Board of Corrections' nutritional requirements

The major objectionable feature of the San Bruno facility is the lack of definite rehabilitative programs The present facility is in essence a bastille, it was set up, as we described earlier, as a "maximum security" institution, yet the vast majority of prisoners sent there do not need such close detention In its present state, then, this facility is ill-adapted to the correctional needs of the prisoners who make up the bulk of its inmate load The consequences of this hiatus between purpose and function of the county's main facility naturally is reflected in what is being done or is contemplated

There is a noticeable void in rehabilitation programs Currently, the major treatment program at San Bruno is conducted by the Northern California Service League, a nonsectarian, private organization The NCSL's program consists of, primarily, (1) social services such as assistance in employment and contacting friend or family and (2) counseling, which has been described in detail by Mr Joseph Silver, executive secretary, *infra* While the worth and effectiveness of these programs cannot be questioned, it is a matter of concern as to whether NCSL, because of its own budgetary and personnel limitations, can provide an extensive enough program to meet the needs of a facility the size of San Bruno Our suggestion is that the county itself should expand needed rehabilitative programs while at the same time cooperating and working with NCSL

Because of the high percentage of chronic inebriates committed to San Bruno, there has also been a real effort to initiate a treatment program In the facility itself, a part-time psychiatrist, psychologist and two case workers (employed full time) operate a treatment center The primary job of this group is to operate what may be termed an inpatient clinic for alcoholics Inmates are screened and counseled in an effort to get them to seek further care and treatment from an outpatient clinic upon release

This program is to be commended It represents a step in the right direction, and we recommend that other localities examine this program and its effectiveness

B. SACRAMENTO CITY AND COUNTY JAILS

(1) *Sacramento City Jail*

The physical plant of the Sacramento City Jail is very poor The structure is, as unfortunately too many other local structures, old and dilapidated. In 1959, however, the city installed very elaborate drunk tanks to accommodate the rather large percentage of drunk arrestees.

The drunk tanks are, according to penological standards, considered

very good They are enclosed with tempered glass fronts and a desk is situated in a central location so that there is complete observation of all tanks at all times We are advised that these new features have greatly reduced the number of "accidents," fights and injuries that generally occur in a drunk tank

With respect to cleanliness and other sanitary conditions, the city facility falls far below acceptable standards Conditions could accurately be described as bad

While this facility has improved from the sordid conditions found in 1946, there is still a very urgent need for improvement Here much could be done simply by employing basic housecleaning procedures

There are, no treatment programs in operation The facility is strictly for short-term holding—custodial, consequently, nothing more is attempted

The subcommittee believes that the Sacramento City Jail should be among the exemplary penal institutions in the State Here we have a facility located in the capital of the State, close to all of the services and advantages a seat of government has, yet we find the city's custodial facility operated in such a way that basic health and sanitary standards are violated

(2) *Sacramento County Central Jail*

The central county jail which is situated across the street from and connected to the city jail, is an old and generally antiquated facility A new wing to this facility was recently added

The overall physical condition of this facility was good There is, however, much room for improvement and housekeeping But when present-day conditions are contrasted with conditions reported and condemned in 1946, there has been a real measure of progress made at the Sacramento County Central Jail Conditions today cannot be described as "deplorable," as was the case in 1946

Yet we must emphasize that all is not well While the overall administration of the facility is good, that is, maintenance, general sanitary conditions, and acceptable food, there are no treatment programs in effect There are, we are advised, a weekly group counseling service conducted by a representative from the Department of Corrections and a female county probation officer for women inmates, but nothing for men There is also an exercise dock on the roof of the jail, but only trusties are permitted to use it, which means that most prisoners must sit in total idleness for the duration of their sentences It has been suggested to us that due to the shortage in staff, it has not been possible to assign a staff member to the task of supervising the exercise dock, hence it is not utilized to the fullest extent

There are no library facilities available despite the fact that sufficient proffers of books and other assistance have been made The problem here seems to be one of indifference, rather than concern As we have repeatedly stated, one of the great and almost totally untapped sources for assistance in improving local jail programs is private, interested groups and individuals Too often, unfortunately, this source of aid is overlooked or simply not sought

The sheriff does, however, permit friends, etc, to give magazines to inmates, provided the publication is on the sheriff's approved list

Sacramento City jail, shoe storage, Assemblyman Bane.

Sacramento City jail—Auxiliary kitchen, Assemblyman Kilpatrick.

Sacramento City jail cell inspected by (from l. to Assemblymen Bane, Kilpatrick and Crown.

While this practice is basically a good one under the circumstances, a too rigorous censorship may well defeat the potential good such a program offers Understandably there may be a need for some kind of censorship of materials to be read by inmates in a penal institution, but when this procedure is used without proper evaluation of the types of publications that are to be approved, much is lost by keeping out not only innocuous popular paperbacks, but other publications of scholastic, scientific and literary merit.

(3) *Sacramento County Jail at Franklin*

From the standpoint of physical structure, the Sacramento County branch jail is a very good facility. It has a capacity of 750 and is essentially a road camp It is maintained according to acceptable standard of cleanliness From the menus, the food served is nutritional and would meet the basic calorie requirements set up by the Board of Corrections

But despite such a commendable physical outlay, space and cleanliness, there is a very definite absence of treatment programs at Franklin. As we stated *supra,* the camp is essentially a road camp, consequently many of the inmates are employed in public building and construction work But there is also truck gardening, cement block making, and a brick plant operated by the Franklin branch This of course provides additional sources of employment for the inmates But apart from these work programs, there are no treatment programs as such in operation. This circumstance sharply points up the real values in a prison system The worth of a facility is not the value of its physical plant or the amount of money spent on its operations, but what the stay in the facility does for the inmate. Manifestly, little can be accomplished in the way of effective assistance to those in need of specialized treatment and care where no programs designed for this purpose are utilized While we are impressed with the Franklin branch jail, we strongly urge immediate action with respect to the institution of treatment programs at Franklin The full measure of this facility is yet to be realized because of the one-sided program now extant

C SAN JOAQUIN JAIL CENTER

The San Joaquin facilities are located about seven miles south on Highway 50 from Stockton In 1955, the county added a women's section to the facility, and in 1959, a central jail facility was added primarily for custodial purposes. Thus, all of the San Joaquin detentional facilities are located in the same general area

As discussed in detail *infra,* the City of Stockton uses these facilities exclusively It has no municipal lockup

Generally, employment, library facilities, religious services, food, clothing, etc , are very good, but there is little in terms of rehabilitative programs

It has been said that San Joaquin "has the best exercising arrangement in the State " The exercise area is arranged and enclosed in such a way that every prisoner, including those who present real security risks, can go out and freely exercise We were advised that the area is used daily.

Sacramento County jail.
Day room cell.

Sacramento County jail laundry storeroom, inspected by, (from l. to r.), Mrs. Pamela C. Thompson, consultant, Assemblymen Bane and Kilpatrick.

Sacramento County jail kitchen, (l. to r.), Assemblymen Bane and Kilpatrick.

Another interesting feature of the exercise area is that there is an entrance to the library from the exercise area. And because the entire area is adequately enclosed, prisoners are allowed to travel freely to and from the library while in the exercise area We may also add that there are separate library facilities for both the central and branch units even though the two are located in the same area The staff appeared to have a genuine interest in the inmates, but there was no tangible expression of this attitude in concrete treatment programs.

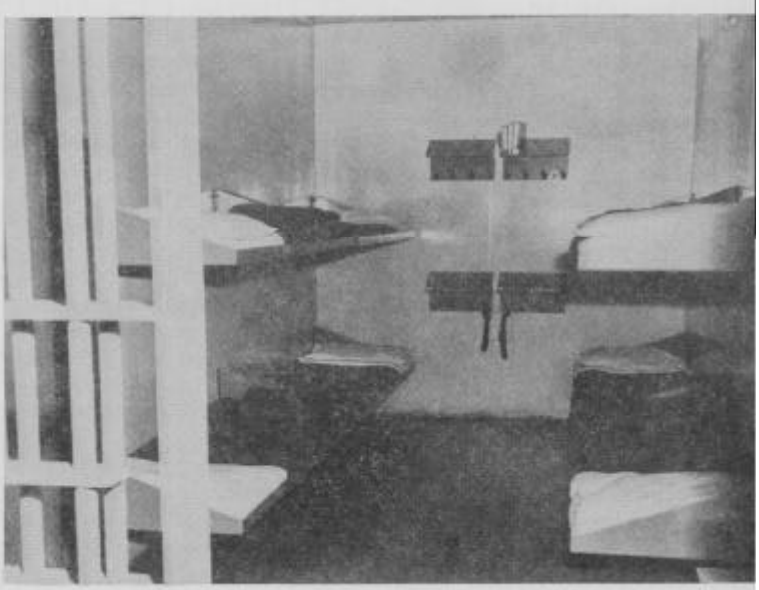
One of the notable advantages of this combined system is that of food preparation. All food for the three units is prepared at the farm. And the food served, as we have indicated above, is very good and is well within, if not beyond, the nutritional standards set by the Board of Corrections

The San Joaquin facility represents real progress since 1946. Like the Sacramento County facilities, San Joaquin too had been the object of much criticism because of the conditions found to exist at that time. While we were encouraged and impressed with recent developments in San Joaquin, we nevertheless must urge immediate action with respect to the institution of treatment programs As we have many times stated, a physical plant no matter how modern, serviceable and habitable, cannot replace the need for systematic care and treatment programs With such a physical facility, it should be much easier to institute needed rehabilitative programs.

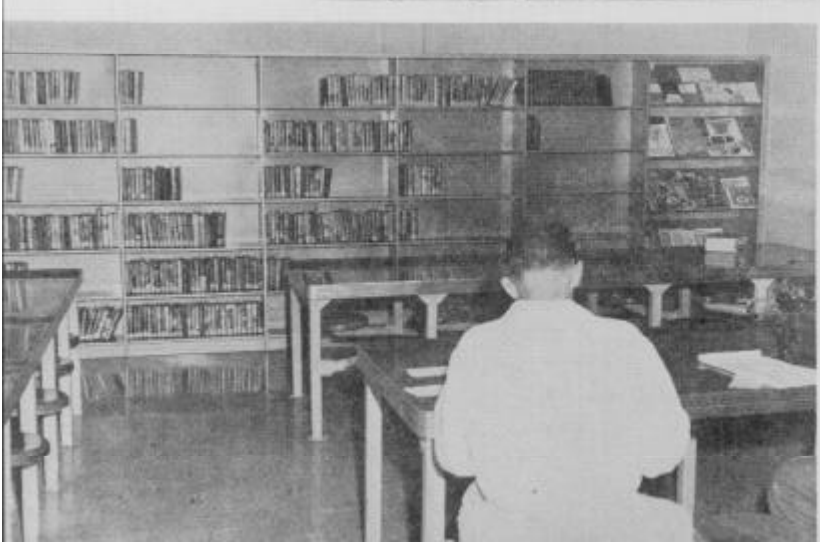
While inspecting the San Joaquin facility, we observed the visiting area and the use of intercommunication type phones provided for visitors and inmates We were advised that attorneys, on professional visits with inmate-clients, often use the regular visiting facilities, even though special consultation facilities are available Use of the regular visitors' facilities by attorneys is not wholly voluntary, a specific request for permission to use the special facilities must always be made, consequently, attorneys unfamiliar with this practice, often use the regular visitors' facilities

This alone would not necessarily be objectionable But we were also told that the visiting intercommunication phones "are tapped." And in these circumstances, the attorney-client privilege is violated, for the cloak of confidentiality of a client's disclosures to his attorney is meaningless when enforcement or custodial officers can freely monitor such conferences (See Penal Code Sec 875) The confidential nature of this relationship in criminal cases has long been recognized by the courts of our State, and has generally been protected whether the accused is at-large or incarcerated. For example, it has been held that a regulation preventing a prisoner from consulting with counsel otherwise than through a close mesh wire screen *(In re Synder*, 62 C A 697, 217 P 777 (1923)); limiting the hours for consultation that are outside those which an attorney normally devotes to professional work *(In re Qualls*, 58 C A 2d 330, 136 p 2d 341 (1943)), insisting upon the presence of an alienist in the conference such as a court-appointed hypnotist, interpreter or psychiatrist *(In re Ochse*, 38 Cal. 2d 230, 238 P. 2d 561 (1931)); or granting the right to confer with counsel "under the surveillance of officers" *(Cornell* v *Sup Ct*, 338 P. 2d 447 (1959)), constitute a deprivation of the right to free and confidential consultation between attorney and client

San Joaquin County jail barracks, women's quarters.



San Joaquin County jail, men's cell.



San Joaquin County jail, library.

In our view the practice followed in the San Joaquin jail is patently contrary to decisional law. The right to assistance by counsel includes the right to an adequate opportunity for consultation in the preparation of a defense. And where attorneys, in treating with their incarcerated clients are in effect compelled to use a "tapped phone" in order to communicate, such a practice makes a mockery of the right of unfettered consultation. We are at a loss as to why such an illegal practice persists, except that, perhaps, no effective steps have been taken to change it. We strongly urge that this practice be discontinued, for it can bring no credit to the correctional system of San Joaquin County.

D. CITY AND COUNTY JAILS OF LOS ANGELES

(1) *City Jails*

In the City of Los Angeles the police department, similar to the arrangement in San Francisco, operates the city jail system. All jail activities within the department are placed under a bureau of corrections, headed by a deputy chief of police.

The City Bureau of Corrections is composed of two divisions: (1) the jail division and (2) the welfare and rehabilitation division. The jail division operates the main jail and has functional supervision of the several substation jails. Its primary function is the care and custody of both sentenced and unsentenced male and female inmates. The welfare and rehabilitation division also has a custodial function, but

TERMINAL ISLAND, WOMEN'S JAIL, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
It was reported that the women prisoners have fashioned 1,830 dolls and toys for distribution to underprivileged children during the 1960 Christmas Season.

in addition, it is concerned with the administration and operation of rehabilitative programs, social agency contact, parole investigation and supervision of parolees

In 1954 the new facility at Saugus was added to the city jail system. The citizens of Los Angeles voted a municipal bond issue in excess of $2,000,000 for construction of this rehabilitation facility

The new facility is a minimum security institution Most of the inmates are alcoholics

During our visit we were greatly impressed with the overall conditions of the farm and the programs in operation The farm is very clean and attractive We were advised that inmates are required to bathe at least twice each week Three meals are served each day, with a minimum caloric value of 2,500 Much of the food used in the city jails including the center at Saugus is produced at the Saugus Farm Consequently, the city not only saves by producing many food items on the farm, but this activity—farming—itself a form of vocational training, offers an additional avenue of activity to many of the inmates

There are several effective vocational programs in operation at Saugus. Perhaps here, the objective of seeking to make each inmate productive, is more closely followed than at any other local facility As we pointed out above, a vegetable farm is operated, a garage, a machine shop, and a carpenter shop and a concrete block plant Whether it be nursery work, welding and forge, carpenter or garage, classes are conducted by officers so that some formalized training is provided. Visual aids are also used Thus an inmate may receive enough training and experience not only to occupy his time during his sentence duration in a wholesome way, but also prepare him for possible future work upon release.

We found the medical staff to be nominal; it clearly was not adequate enough to meet the needs and demands on it Although the Saugus facility primarily accommodates alcoholic inmates, there was no systematic followup program for released alcoholics to assess the rate of cure of those treated

With respect to the central city jail, the subcommittee was informed that there were 247,000 bookings made in 1959 by the city police. And while the recordkeeping system used appeared to be a good one, we were advised that dispositions are not always sent to the Criminal Identification and Investigation and Federal Bureau of Investigation This of course means that many persons are arrested on a felony charge, their photographs and fingerprints are forwarded to the CII and FBI with a felony arrest report, but no subsequent information is forwarded to show that no complaint was ever filed or other nonprosecutive disposition made Thus a case of mistaken identity, for example, can create a lifelong felony arrest record with serious social and employment consequences

In the central jail facility we observed a large sign in the booking area notifying prisoners of their right to make one telephone call after booking However, we were advised that here, as was the case in many of the above institutions, the prisoners were not booked until after they had been interrogated; thus, the primary aim of guaranteeing the telephone call is effectively negated

In addition, with the veto of Assembly Bill No 276 (requiring booking within three hours after arrest) after the 1960 Legislative Session, it is still possible to hold an inmate incommunicado for a time (See P C. Sec 825) with impunity

The cleanliness, good food program, and alert personnel of the Los Angeles City jails reflect the driving personality of Chief of Police William Parker In these respects the subcommittee found the Los Angeles City jails outstanding[8]

(2) *Los Angeles County Jails*

The structural makeup and operation of the county jail system is briefly described elsewhere in this report The county's central jail serves as a detentional facility only, and like those of many other counties, unfortunately, it is vastly overcrowded As is always the case, this problem generates many others To mention a few of the more salient ones observed (1) the limited exercise yard on the roof has forced a reduction in the amount of time each male inmate may utilize this facility Female inmates have no similar facility (2) Male inmates can have access to a shower only once each week; and (3) the visiting room is so small and crowded that no privacy is possible

We found the food to be both plentiful and fairly appetizing

We were told that an arrestee is allowed to make a telephone call before booking (See P C Sec 851 5) unlike the practice followed in the city jails Everyone booked is given a medical examination for social (VD) diseases and a chest X-ray

Shortly after the subcommittee visited this facility, the Los Angeles electorate approved a county bond issue to finance a new women's jail, and the new central jail for male inmates is being financed by funds borrowed from the Retirement System, so that present objectionable conditions should be eliminated in the near future

The branch farm and rehabilitation centers are described and commented upon elsewhere in this report But to underscore our favorable impression, particularly with the Wayside Rancho and Mira Loma facilities, we again commend Los Angeles County for such an exemplary correctional system Fifteen years ago when the Interim Committee on County and City Jails visited the Los Angeles County facilities there were hopeful expressions of continued progress and improvement in their penal system, and on our recent visit to Los Angeles County, we witnessed many of the tangible accomplishments that have been made during the past 15 years

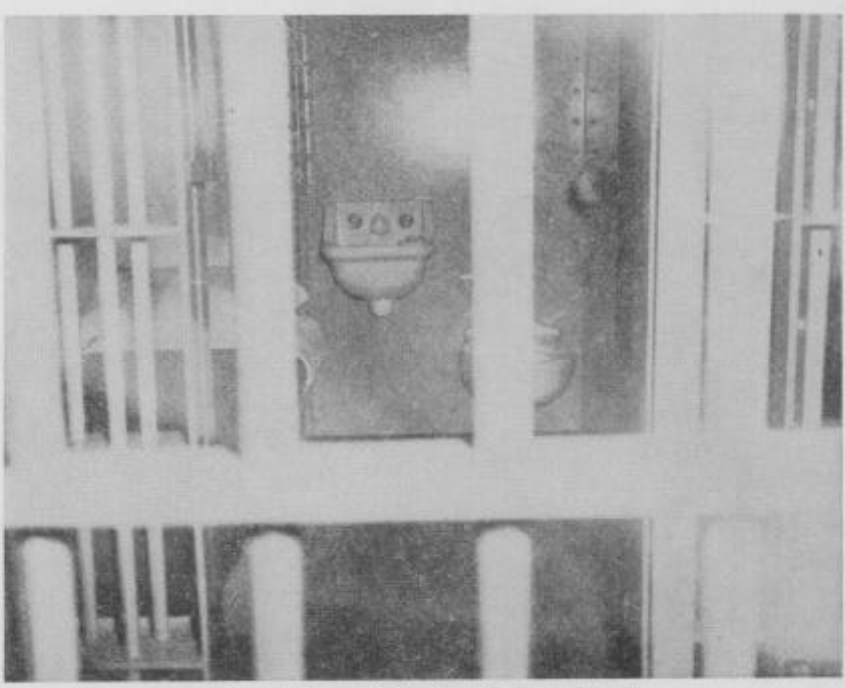
E. ALAMEDA COUNTY JAILS AND OAKLAND CITY JAIL

(1) *The "Court House Jail"*

The Alameda County jail system is administered by the sheriff's department The central jail, commonly referred to as the "Court House Jail," is a maximum security holding facility It has a rated capacity of 120 men, but oftentimes houses many more, temporarily, until the excess of inmates can be transferred to the Santa Rita Rehabilitation Center

[8] The Saugus branch facility has been designated as the center for municipal governmental operations in case of a nuclear attack

Alameda County "Court House" jail, dayroom cell.



Alameda County "Court House" jail, men's cell.

We found the facility very clean and sanitary and well ventilated. We were advised that the bedding is changed and laundered weekly for holdover inmates. New inmates are given clean issues of bedding upon incarceration A small laundry is operated within the facility by trustees to take care of the laundry needs.

From the menus, the food is very good and clearly measures up to the Board of Corrections' standards. It is prepared in a kitchen within the facility by trusty cooking Two and one-half meals are served each day consisting of (a) breakfast, (b) lunch or the "main meal" and (c) a light snack (e g. sandwiches and drink) in the evenings We were advised that this arrangement is much better for inmates who are closely confined

A small barbershop facility is maintained for the inmates.

A dayroom type cell is provided for the inmates so that, during the day, inmates are removed from their cells and can engage in recreational activities such as card playing, checkers and reading. We were told that an effort is made to "keep the prisoners out of the cells as much as possible."

A small library collection and magazines are available for the inmates. In addition, radio programs are provided through a series of amplifiers situated in the cell dayrooms The radio programs are modulated in such a way that, for those inmates who do not wish to listen, they are not disturbed by the constant play of radio programs.

Two hospital cell rows are maintained within the central facility and are especially equipped for ill and convalescing inmates.

What was said by our predecessor committee in 1946 concerning the Alameda County Central Jail is equally applicable today:

> The Alameda County Jail could well be a source of inspiration to anyone believing that jails must be by [the] very nature of the population and circumstances dirty and have a bad odor, filthy beds and unwholesome food Great credit must go to Sheriff Gleason and the Alameda County Board of Supervisors for setting an example for doubting Thomases to follow.

(2) *Santa Rita Rehabilitation Center*

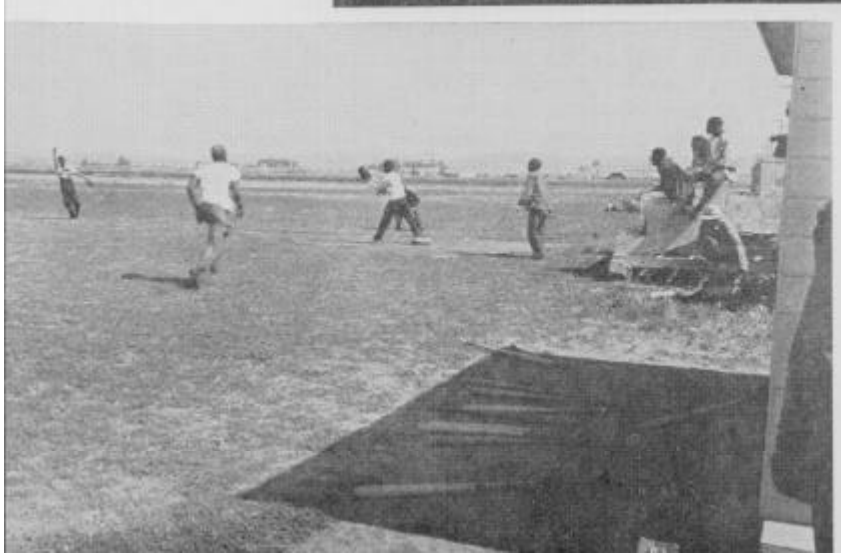
The Santa Rita Rehabilitation Center is the branch facility of the Alameda County correctional system It contains a custodial, rehabilitative, investigative and patrol division of the correctional system. This facility was first opened in 1947 to introduce a rehabilitative approach to the handling and treatment of miscreants. Since we have discussed this facility and its programs in detail elsewhere in this report, we will not restate that discussion here, except to briefly describe the conditions and our evaluation of the Greystone maximum security unit located at Santa Rita.

The Greystone facility has a rated capacity of 175 men It was clean and sanitary. Similar to the "Court House Jail" two cell-type dayrooms are provided for the prisoners so that, during the day, the inmates are removed from their cells and put into the dayrooms where limited recreational activities may be engaged in.

The food is the same as that provided in the minimum security area, except that only two and one-half meals are served. Feeding is done in the dayroom cells and in the individual cells.

Aerial view—Santa Rita Rehabilitation Center.

Santa Rita, men's dormitory.



Santa Rita, outdoor recreation.

The women's maximum security section, located within the women's section, was likewise very clean, well ventilated and spacious The procedures in this unit follow much the same course as those followed in the men's unit

To underscore our favorable impression of Santa Rita and its exemplary programs, we again commend Sheriff Gleason and his staff for their fine and effective work

The program at Santa Rita has also been the subject of special interest by our predecessor committees In 1950 the Assembly Interim Committee on Crime and Corrections favorably reported on this facility, and described the institution as another outstanding example "to make rehabilitation a meaningful word "

(3) Oakland City Jail

The city jail, located in the city hall, is a custodial, maximum security facility administered by the city police department In spite of antiquated equipment, and cramped space, the staff of this facility is doing an excellent job

The facility was on the whole very clean and tidy We were told that the bedding is changed weekly for holdover inmates, and new inmates are given clean issues Blankets are laundered on the average of once every three months A small laundry is maintained within the facility, operated by trusties

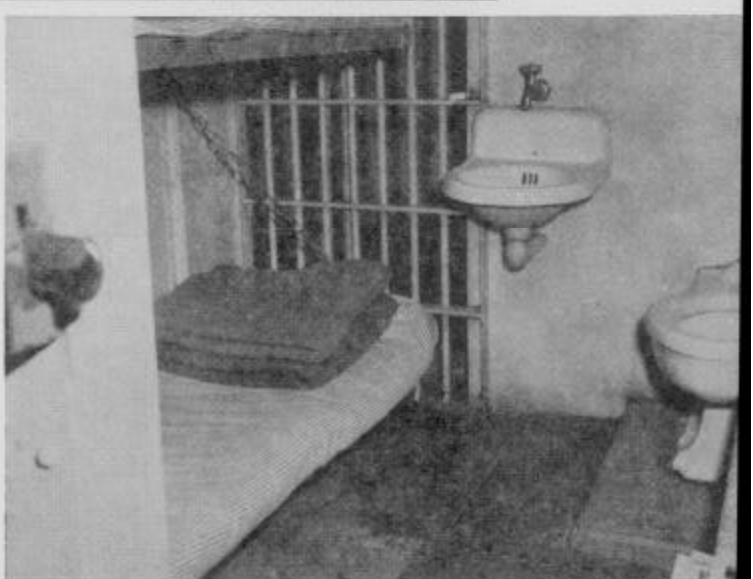
The rated capacity of the jail is 250 inmates In the men's section, the holding facilities are (1) the "back cells," used to house felons and security risk, and (2) the misdemeanant dormitories Drunk arrestees, which we were advised constitute over "50 percent" of the arrestees, are also housed in a dormitory used as a drunk tank A trusty is assigned to each dormitory whose duties are to "assign bunks," and report any "disturbances" to the floor officer While this practice, without more, appears to be innocuous, conceivably an improperly supervised trusty left to oversee a dormitory cell could re-institute the infamous "kangaroo court" practices which were outlawed after our predecessor committee exposed this practice in 1946

Two and one-half meals, similar to the arrangement at the Alameda County central jail, are served each day And from the menus, the food provided would meet recommended nutritional standards The food is prepared in a kitchen within the facility And while it was generally clean, the floor quite noticeably was in need of scrubbing One of the several commendable features of this facility, however, was the dining room facility All inmates, we were told, except those housed in the "back cells," are brought into the dining room for their meals

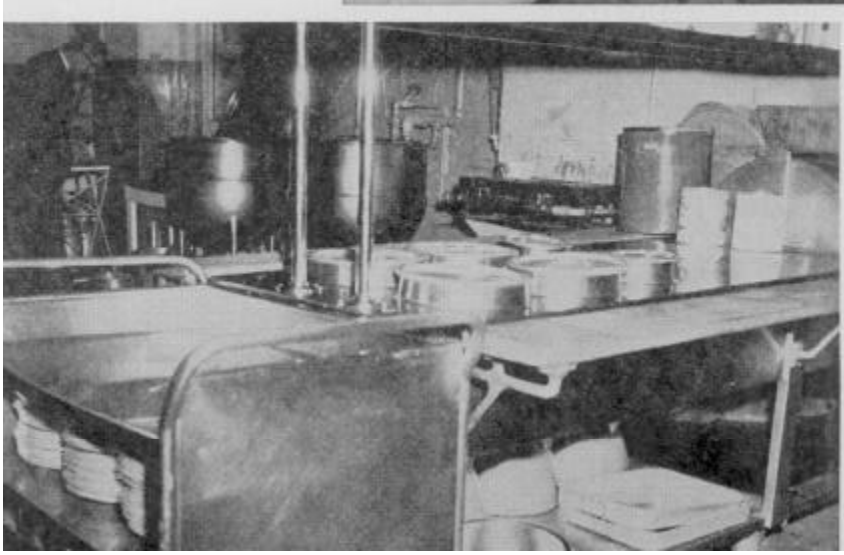
A barbershop is provided for the inmates, and trustees with a tonsorial know-how are utilized for barbering The jail's physician visits twice each week (Monday and Wednesday) and checks the inmates Emergency cases are sent out to Highland Hospital, a county institution A small dispensary is maintained within the jail and a staff member "holds sick call" each morning and administers whatever medication is prescribed in special cases by the jail physician

Although there is a small exercise dock on the roof of the jail, it is not used except for the purpose of "getting the prisoners out of their cells" during the cleaning period While this is not a condemnable

Oakland City jail, men's misdemeanor dormitory. (From l. to r.) Assemblymen Kilpatrick and Petris.



Oakland City jail, men's "Back Cell," felon section.



Oakland City jail, kitc
Assemblyman Kilpatric
in background.

practice, we suggest that, with this facility, prisoners could be regularly taken out on the dock for a prescribed period if for no other reason than to get a bit of sunshine and fresh air, because within the jail we noticed a definite lack of proper ventilation and an odor in the men's dormitories and "back cells"

We were also advised that the jail maintains a small collection of books and "the more popular" magazines for the inmates.

In the women's section, we found the dormitories very clean, spacious and better ventilated than in the men's section Tables suitable for reading, card playing, checkers and the like were in this section, although they were not provided on the men's side

As we pointed out above, the county jail which is adjacent to the city prison in the same building, was clean and sanitary compared to the city prison And the Oakland city jail, when compared to the San Francisco city prison, likewise is an excellent facility

The Oakland jail is 46 years old and a new jail is currently being constructed The San Francisco city jail is 48 years old, and similarly a new jail is being readied for use in 1961 Here the similarity ends In San Francisco the contemplated move to new quarters has become the standard explanation for present sloven conditions and ineptitude; whereas in Oakland, the facility is maintained as if no move were contemplated This is as it should be The Oakland city jail is an example of what a locality can do with an old, antiquated facility In our view, we can perceive no reason or circumstance which would relieve a jail staff of the basic necessity of maintaining minimal standards of decency and cleanliness within the facility

V. FEDERAL LISTING AND SPECIAL STUDY COMMISSION'S RATING OF CALIFORNIA JAILS

A. FEDERAL LISTING

The U S Bureau of Prisons inspects local jails throughout the country because of the necessity of boarding some federal prisoners in local facilities The inmate boarding function is performed by a locality under contract with the federal government But before a contract is let, an inspection of the facility in question is made

The overall rating generally covers 16 functional categories, such as administrative organization, food, clothing and bedding, housing, sanitation, light and ventilation, laundry facilities, medical care, discipline, segregation, work program and recreation [9] In a communication to this subcommittee, the assistant director of the Bureau of Prisons transmitted a listing of California jails now on the "authorized list" for federal use

It can be seen from the illustration that, of those on the approved list, there are variances as to the approved purposes All listed were approved for merely a custodial function for male offenders awaiting court action or removal to commence serving of sentence, while only about two-thirds of the approved jails were authorized for sentence serving

Still fewer jails are approved for custody of female offenders as to a purely custodial function, while an even lesser number are approved for custody of females serving sentences These comparisons underscore our observations concerning the need for facilities and programs for females in local jails

Few local facilities were approved for detention of juveniles This, too, underscores the need for greater effort in this regard, in view of the fact that, by law, all facilities must maintain juvenile inmates separately

B. SPECIAL STUDY COMMISSIONS' RATING

The Special Study Commission devised a special rating chart covering the functional categories listed above with a numerical value ranging from 1 00 to 3 00. Jails rated from 1 00 to 1 50 were characterized as "very poor," from 1 51 to 2 00 as "poor," and from 2 01 to 2 50 as "fair," and 2 51 to 3 00 as "good" These numerical valuations, while fraught with inherent limitations and oversimplifications, do provide a rough method of contrasting the various jail facilities and the areas where high or low ratings are most prevalent The rating "good," it should be said, approximates that of the Board of Corrections' minimum standards

The total ratings of all county jails (58) were as follows· 4-good (or standard), 19-fair, 24-poor, and 11-very poor. In summary, it

[9] The Bureau of Prisons discontinued publication of jail ratings in 1951 Our illustration is merely a listing of the local jails approved for federal use

CALIFORNIA JAILS ON FEDERAL LIST

Location	Custody of male prisoners awaiting court action or removal for service of sentence	Custody of male prisoners for service of sentence	Custody of female prisoners awaiting court action or removal for service of sentence	Custody of female prisoners for service of sentence	Custody of juveniles awaiting court action or removal to detention home	Approved for security cases	Special time limit
NORTHERN							
1 Alameda	*	*	*	--	--	*	--
2 Butte	*	--	--	--	--	--	--
3 Contra Costa	*	*	*	--	*	--	--
4 Humboldt	*	--	--	*	*	--	--
5 Lassen	*	*	--	--	--	--	--
6 Marin	*	--	--	*	--	--	Sentence not to exceed 30 days
7 Mendocino	*	--	--	--	--	--	--
8 Monterey	*	*	*	--	--	--	--
9 Sacramento	*	--	--	*	--	--	--
10 San Francisco	*	*	*	*	*	--	Sentence not to exceed 30 days
11 Stanislaus	*	*	*	*	*	--	--
12 Solano	*	*	*	*	--	--	--
13 Tehama	*	--	--	--	--	--	Sentence not to exceed 10 days
14 Yolo	*	--	--	--	--	--	Sentence not to exceed 10 days
SOUTHERN							
15 Alhambra City	*	--	--	--	--	--	--
16 Culver City	*	--	--	--	--	--	--
17 Fresno	*	*	*	--	--	*	--
18 Imperial	*	*	*	--	*	--	--
19 Kern	*	--	*	*	--	--	--
20 Los Angeles	*	*	*	--	*	*	--
21 Orange	*	--	--	--	--	--	--
22 Riverside	*	*	*	--	--	*	--
23 San Bernardino	*	--	--	--	--	--	--
24 San Diego	*	*	*	--	--	*	--
25 San Diego City	*	*	--	--	--	--	--
26 San Luis Obispo	*	--	--	--	--	*	Sentence not to exceed 30 days
27 Santa Barbara	*	*	--	--	--	--	--
28 Ventura	*	*	*	--	--	*	--

can be seen that slightly more than 60 percent of the jails were rated as poor or very poor. In the specific areas, as summarized by the commission,[10]

> "The typical jail was functioning best in the areas of (1) inmate discipline; (2) employment; (3) records and booking; (4) sanitation; (5) food and feeding procedures; and (6) personnel standards. Intermediate quality of performance was found in: (7) condition of inmates; (8) physical plant; (9) medical services; (10) administrative organization and philosophy; (11) release procedures; (12) bedding; and (13) clothing The poorest performance was in respect to functions of: (14) inmate activites; (15) social and psychiatric services; and (16) canteen services
>
> "When adjusted for size of population, the performance of the jails was found to be best in: (1) personnel standards; (2) inmate discipline, (3) medical services; (4) sanitation, (5) records and booking; (6) employment, and (7) food and feeding procedures "

These ratings and listings point up one fact: progress has been made, but much more is needed And while the Special Study Commission confined its concern to county jails, the conclusions there drawn can generally be applied to city jails as well

[10] Part I, p 11 of the report

VI. NOTABLE INSTITUTIONS, PROGRAMS AND PROCEDURES

This subcommittee was greatly impressed with many of the excellent and effective rehabilitative programs now in operation in many local facilities These efforts, it seems belie the view widely held that local jails should and can perform only custodial functions We need not elaborate here on the deleterious effect idleness has on inmates housed in unsavory and ill-adapted lockups It prevention of crime and recidivism are our basic objectives, then programs to achieve these ends should naturally be our main approach We commend these localities for their efforts and pilotage in initiating such programs We recommend to the Members of the Legislature, local correctional personnel and interested private, civic groups, that they visit and study the programs hereinafter discussed We strongly feel that much can be learned from them, and where possible, such programs or modifications thereof tailored to specific local needs, can be initiated in other areas Our list and discussion of selected programs of course is not all-inclusive, there are, to be sure, many other programs which present an encouraging contrast to yesteryears.

A SAN DIEGO COUNTY CONDITIONAL RELEASE AND PAROLE PROGRAM

San Diego County operates five honor camps These camps are administered by the county board of supervisors, with a superintendent and staff selected through civil service processes Inmates are screened for transfer to the honor camps by the county classification committee, consisting of the sheriff, chief jailer, honor camp superintendent and jail physician While in the screening process, all men are placed in a receiving unit for a minimum of three weeks, where they are oriented to the philosophy of the program They are also given a clinical interview and psychological tests Each screenee's case is then evaluated and presented to the classification committee No screenee may be classified for minimum custody camp placement without appearing before the county classification committee It should be pointed out that alcoholic cases may also be committed to the honor camps by the superior court on recommendation of the county psychiatric board

Although the men in this program are short-term inmates, the program is operated on the philosophy that the men received are to be prepared for conditional release on county parole, and eligible inmates may seek release through such procedures Upon application, the camp staff evaluates the applicant and makes a recommendation to the committing court in the case where the subject-inmate is serving a summary probation sentence, and to the county parole board when the subject-inmate is in custody on a "straight sentence " Those inmates on formal probation are ineligible for conditional release on

parole, but those serving (and this group constitutes the bulk of inmates on the program) summary probation sentences and are otherwise eligible, may apply for a conditional release under the furlough program Those serving "straight sentences" are only eligible for parole

As part of the program, there are a limited occupational training, planned recreational and leisure time programs In addition, inmates are paid a small daily wage, based on the type of work done

This program, as has been convincingly demonstrated in a brochure published by the superintendent, entitled, "How to Save $100,000," is illustrative of a good rehabilitative program which renders a service to the inmate and monetary savings to the county [11]

Mr Joseph R Silver, executive director, Northern California Service League, describes the new therapeutic community recently initiated by the county in a statement to this subcommittee

B LOS ANGELES COUNTY WAYSIDE HONOR RANCHO AND MIRA LOMA

The progress made since the first Crime and Corrections Committee inspected the facilities of Los Angeles County during its 1945 investigation is an omen to the value of legislative studies of local detentional facilities The 1945 study of course signaled the beginning of many new innovations not only in Los Angeles County, but throughout the State And the contrast between the findings 15 years ago and the tangible progress of today is remarkable We were indeed encouraged and impressed

The sheriff's department operates the county jails in Los Angeles, Biscailuz Center for Juveniles, a women's facility, six road camps, the Wayside Honor Rancho and Mira Loma The Rancho was opened in 1937, and Mira Loma in 1952

Wayside Rancho accommodates three degrees of security inmates, minimum, medium and maximum Much of the acreage of Rancho has been converted from desert wasteland into good farmland The principal work projects are farming and animal husbandry The Rancho also operates a cement block plant and a bakery, the latter serves the other department facilities and, according to a 1956 estimate, is credited with saving the county approximately $30,000 annually

The Rancho and Mira Loma are operated by the department's Division of Corrections Each institution is managed by a captain, but the rehabilitative services are managed by the division's Care and Treatment Section

Medical services at all the department's institutions are under the direction of the senior jail physician There are limited medical services provided at each institution with a male nurse on duty at each 24 hours a day

In the treatment of tuberculosis cases, the Tuberculosis Association supplies an occupational therapist who is supplied with equipment by the department There is no specific treatment program for alcoholics at either institution except full utilization of the services of Alcoholics Anonymous, a private organization However, the work program and

[11] See, *California Jails* (Citizens' Advisory Committee to the Attorney General on Crime Prevention, September 12, 1956), pp 48-50

outdoor life, it is believed by those administering the facilities, are promotive of physical rehabilitation It also felt that the religious, educational, library, hobby-craft, recreational and other activities have a beneficial effect on the mental health and emotional state of all inmates, particularly alcoholics

An educational program was formerly carried on at both institutions under the State Adult Education Program until the latter's termination by the Legislature in 1953 Today a rather limited program is in operation financed by the county At Wayside Rancho, as reported at the 10th Annual Training Institute for Probation, Parole and Institutional Staff in 1958, the education program is considered one of the most important phases of the rehabilitation program; with an annual fund of $50,000, the sheriff's department has authorized a local school district to maintain a fully accredited adult school. A classification committee evaluates the inmates for enrollment. Those approved are then transferred to Wayside Rancho and after further screening they are enrolled in a course Classes in such subjects as basic English, basic arithmetic, social studies, group counseling and civics and vocational mathematics are offered During the school year 1957-58, 41 men earned either 8th grade promotion certificates or high school diplomas All credits are transferable to other schools No reference is made on the transcript or on the diploma as to where the credits were earned.

The need for such a program was manifest because it was found that many of the inmates have never attended school, and tests conducted revealed that of those who had attended, the average grade level was only 6 4 years of training This alarmingly low rate of formal training points up the need for continued and sustained efforts in this area when it is recalled that the average American daily newspaper is geared to the level of an 8th grade education. The question comes, "how can we, in these circumstances, hope to restore those who have for many reasons run afoul of the law?" Certainly it would seem that basic to any corrective or rehabilitative approach would be some provision for raising the general level of the subject's education The by-products from such training and conditioning are immeasurable In addition, the success of many of the treatment programs that may be utilized is directly related to the educational training of the subject.

The Wayside Rancho statistics are not the isolated and exceptional instance; rather, it is indicative of the common case Perhaps, statewide, the percentage is higher. It is therefore of urgent need that educational programs be instituted or re-instituted in our local facilities where such programs may be effectively administered This committee, therefore, recommends that the Legislature re-establish an adult education program with appropriate safeguards relative to administration to insure against abuse.

Two projects in operation at Mira Loma that should be mentioned are the print shop and book repair project These programs offer excellent vocational training, and are good rehabilitative measures.

Hobby-craft work is encouraged for recreation and training rather than for the financial profit of individual inmates. Profits from these endeavors go into the Inmate Welfare Fund, as do canteen profits and barber shop earnings Inmates at both institutions, as part of the de-

partment's service program, repair toys to be distributed through the probation department's toy loan service, repair radios, make toys for underprivileged children, and devices for hospital use.

Both institutions have branch libraries of the Los Angeles County Main Library, through which they are given new as well as old books. The library loan service is also used Religious and recreational services are highly organized and, in the latter case, a variety of activities are provided In addition, inmates are given rather free and full access to care and treatment officers of private organizations in order to get assistance with their personal problems

C. SANTA RITA REHABILITATION CENTER

As we previously pointed out, the Santa Rita Rehabilitation Center consists of many divisions including the rehabilitation division The most interesting aspect of the Santa Rita program is not the institution itself, but the thinking behind its establishment In its 1958 Progress Report, the Sheriff's Department, Alameda County, reported Sheriff Gleason's concern. "Disturbed by the high incidence of recidivism prior to 1947, Sheriff Gleason felt that the basic requirement of helping the miscreant readjust to society was not being fulfilled in the jail atmosphere Thus, he resolved to organize Santa Rita in such a manner as to correct this In this process he directed that studies and research be initiated to examine the problem of recidivism more closely The result of this work revealed that medical and physical disabilities, lack of formal education, aptitude for trades or lack of skills leading to gainful employment were primary among the factors leading persons into conflict with the law" Thus by clearly identifying the problem and attempting a solution, Santa Rita came into being

In order to deal with the personal and physical problems of the inmates, a medical staff is provided A program of adult education under the auspices of the local school district was inaugurated to fulfill educational needs. This program was in operation from 1949 until 1955, at which time it was curtailed because of the termination of the state adult education program But during this period of operation, it is reported that 86 inmates completed their high school educational training and received diplomas, while an additional 14 inmates received grammer school certificates The educational program was reopened in May 1958 but on a somewhat limited basis

Trade schools such as bakery, machinist, carpenter, cabinet maker, sheetmetal, plumber, electrician and masonry are operated by the center under the supervision of highly skilled artisans Thus many inmates are given an opportunity to receive limited training in the specialized vocations

A research and treatment program operated for chronic alcoholics was established at the center in 1949 The details of this division is discussed elsewhere in this report A narcotic treatment clinic is also in progress. The details of this operation is also discussed elsewhere in the report.

One of the highlights of the Santa Rita program is its farming activities This enterprise was started in 1947 and has steadily increased in rate of production In the Annual Farm Report, 1958, the following output was reported:

FIELD CROPS

Crop	*Amount*	*Value*
Cucumbers	59 tons delivered to pickle company	$3,330 05
Tomatoes	72 tons delivered to cannery	1,552 12
Sugar beets	446 tons delivered to Holly Sugar Co (78 5 tons sugar)	6,795 58
Sugar beet subsidy		1,791 20
Hay	400 tons @ $18 00 per ton (includes barley)	7,200 00
Banana squash	40 tons @ $80 00 per ton	3,200 00
		$23,868 95

MEAT PRODUCTS

Beef—25 butchered, 12,399 lbs @ $ 40	$4,821 67
Pork—426 butchered, 87,576 lbs @ $ 32	28,396 83
Lamb—51 butchered, 2,000 lbs @ $ 225	431 60
Rechurned grease—Deposited in General Fund	1,202 56
Hides	54 42
Wool	110 47
Wool subsidy	23 19
Sale of excess pigs	4,540 53
	$39,587 27

During our visit to Santa Rita, we were advised that the hog raising enterprise now supplies 100 percent of all pork consumed at the center and the "Court House Jail" In addition, the truck gardens provide fresh vegetables throughout the year for the center, the "Court House Jail," several county hospitals and the juvenile hall and boys' camp

With this kind of activity it can be readily seen that two objectives are accomplished with one operation First, by operating a farm, the sheriff's department is able to reduce operational costs incurred in the purchase of foods. Thus operational expenditures are kept down, food is more economically provided and monetary savings are realized Second, by providing such an activity, a large percentage of the inmate population is absorbed in useful and rewarding work Thus, a form of rehabilitation is realized.

In addition to the successful farm and meat producing enterprise, many of the center's other needs are fulfilled by the various divisions. For example, the Supply Section refurbishes matresses used by the center and "Court House Jail" and manufactures pillows, in addition to many other functions The bakery, as we briefly noted earlier, currently prepares all bakery goods consumed by the inmates at the center and "Court House Jail" In 1947, to illustrate the rapid growth of this activity, all bread was purchased commercially, only pastries were prepared in the center's mess

Another major productive enterprise at the center is the clothing manufacture project This project is located in the women's section, and only female inmates work in this activity

Almost all items of inmate clothing, for both male and female, are produced by this unit In addition, table linen, slippers, machine covers and other sundry items are made In the 1958 Progress Report it was reported·

> "Each year 4,000 to 12,000 articles are made, depending upon the needs of the institution Industrial sewing machines have been installed for the project In addition to recovering the purchase

price of all machines bought, the activity has consistently saved the county from $2,500 to $5,600 a year on the purchase of clothing alone "

In addition to the manufacture savings, additional savings are realized through the repair (mending and altering) activity carried on in this project.

Before briefly noting the additional activities provided for the women inmates at the center, we should point out that the women's section is entirely separate It is complete with dormitories, kitchen, dining hall, chapel, library, clinic, school, laundry, commissary, security quarters, booking and property rooms, projects and garden areas In addition, a vocational and occupational program is available for women inmates, which includes such activities as sewing, housekeeping, cooking, clerical and other office skills Another noteworthy project carried on in the women's section is dollmaking and repair for distribution to indigent children and orphanages

With respect to both the men and women's sections, we found the facility immaculately clean and habitable The atmosphere was wholesome and conducive to physical restoration—an important ingredient in treatment programs

The inmates are served three meals per day, in modern clean cafeterias, except those in the holding sections A variety of recreational outlets are provided such as reading rooms, a gymnasium which is convertible to a theater, weight lifting, horseshoe pitching, baseball, handball and many other activities Religious and counseling programs are also in operation

We cannot accurately express our very favorable impression of this exemplary facility As we stated before, Santa Rita was rated first by the United States Bureau of Prisons jail inspectors in overall excellence among 571 county jails throughout the country in 1956 This recognition and rating was earned in less than 10 years of operation Not only does such renown reflect the dedication and great work of Sheriff Gleason, but his staff at Santa Rita as well

Another program operated at the facility is the Sector Headquarters of the United States Border Patrol This sector was first located in Sacramento, however, due to the lack of space in the Sacramento jail, it was moved to Santa Rita early in 1954

The primary function of this program is to handle illegal entrants into this country The largest group of offenders encountered are entrants from Mexico

A probation office is also maintained at the facility Persons placed or probation by courts, and who have been incarcerated as a condition of probation, are regularly counseled by two probation officers stationed at the facility "in an effort to prepare them for the continued probation process once [they are] returned to community life " Thus a kind of prerelease counseling program is effectuated

We cannot too strongly recommend to the members of the Legislature, local correctional personnel and interested community groups to visit this facility and observe its programs

D. TULARE COUNTY—SLEEP THERAPY

The sleep therapy program is designed to reorient an offender's thinking of himself and his maladjustment as manifested by his conduct which runs counter to law and the norms of society As described in a report on the practice, it is not "brainwashing " In integrates the subconscious mind of the subject with his conscious mind, and thus makes possible a deeper analysis of the inner drives and motivations And through this uncovering process, the subject is said to be consciously made aware of his inner contradictions

Scripts are recorded on tapes At the Woodlake Road Camp the tapes are played for 30 minutes each hour and a half during the night At Terra Bella Road Camp eight-hour tapes play continuously, and the tapes are changed each week The Tulare County peace officers and the Visalia Kiwanis Club each have contributed to the cost of securing the necessary recording and playback equipment The script for the tapes are composed by a minister, a former recreational therapist, and two public defenders Inmate participation is purely voluntary

Through the device of continuous, repetitive play of ideas and ideals concerning all aspects of a wholesome life, while the subject-inmate is asleep, it is believed that a somnic conditioning can, and does, reshape the thinking of the subject in such matters as life and the resolution of its problems The county is currently studying the effects of this program on the first one hundred subjects released from the camp

In a 1958 analysis report to the county board of supervisors, the Department of Corrections commended this program and recommended its continuance [12]

E. INTER AND INTRA COUNTY BOARDING OF INMATES

Marin County has, as a temporary remedial measure, entered into contracts with Alameda, San Francisco and Sonoma Counties for detention of prisoners sentenced in Marin for whom adequate quarters are not available in the county This arrangement, as expressly stated, is merely temporary and is not regarded as a permanent solution to the problem of jail overcrowding

A very similar arrangement, which the subcommittee had an opportunity to observe, is in operation in Stockton where all city arrestees are taken to the county jail and are detained for the City of Stockton on an agreed upon *per diem* charge between the city and county

We were advised of similar arrangements by Sheriff Harry P Gleason of Alameda County with several municipalities within the county in addition to the Marin agreement

These arrangements, as the Department of Corrections pointed out in its analysis report, "Adult Detention Facilities and Treatment Program," to Marin County, are useful and effective "temporary stop gaps," but are not great value when promised on a permanent basis First, the contracting parties, whether it be two counties or cities within a county, can, at any time, terminate their agreement In addi-

[12] *Detention and Treatment Program For Adult Prisoners* (Analysis and Recommendations for County of Tulare, March 1958), p 5

tion, there may be legal limitations imposed such as those incorporated in the Marin-Sonoma agreement, dated March 15, 1960, para F, p 2, on the handling of inmates, types and number Also, these contracts generally stipulate that the host county may, if conditions warrant, refuse to accept inmates on contract should local needs and demands overtax their facilities So that the host county's inmates are given a first preference. This factor becomes important in view of the constant increase reflected in prison population

There is also the problem of transportation and cost—transporting the inmates to the host jail, returning them to the city or county for trial or hearings and the like. This can become quite expensive and prohibitive.

Our observations of course are not to be taken as a blanket condemnation of these arrangements They have merit Our purpose here is merely to point out some of the inherent deficiencies of this system and to underscore their usefulness in the limited circumstance of a temporary arrangement

Many counties could, on an intercounty and intracounty basis, where cities within a county enter agreement with the county, utilize this approach with much success pending improvement and expansion of detention facilities in their own localities And for this limited purpose, we commend these arrangements and recommend their emulation where practical and possible.

One of the problems, however, in addition to those relating to the functional aspects of such arrangements discussed above, is that of reaching agreement pertaining to an equitable charge to be made for the rendition of this detentional service by the host county. Of course the most preferable method for dealing with this problem is voluntary agreement between the contracting parties And as a first step this committee strongly recommends this approach

However, in case of nonagreement, there should be some method or procedure whereby the negotiating parties can proceed to agreement in the matter of what charges are to be made This subcommittee, therefore, recommends that, in the matter of inter or intracounty boarding of offenders, the State Department of Corrections be authorized to conduct cost analysis at the request of the interested counties and submit its findings and recommendations to the parties These recommendations should not be binding on the parties, but merely advisory. And thus with this mediative function lodged in a third neutral party who, based on objective data, makes a study of the costs involved and recommends a charge supported by this data, such a service could well pave the way for agreement and, it is perceived, even promote arrangements of this kind. More important, such arrangements may well pave the way to implementation of joint county jails and farms as presently authorized by law

F. SAN MATEO COUNTY. GOVERNMENT-PRIVATE REHABILITATION PROGRAM

Serapio R. Zalba, Jr, supervisor, San Mateo County Program Northern California Service League, San Francisco, submitted the following statement to the subcommittee

The Northern California Service League has long been concerned about rehabilitation treatment programs, or the lack of them, on the

county jail level Citizen groups privately, and through their local governments have also, from time to time, been concerned about this problem area In San Mateo County the result of such interest was a study committee which, after consideration of the problem, recommended that the county enter into a contractual agreement with the league, whereby the league would provide rehabilitation services for the county jail inmates and their families, both during the period of incarceration, and afterwards This was done and our San Mateo County program began in 1957 When the program was first put into operation, we hoped that the United Fund would admit the league as a participating agency, and take over the financial support of its San Mateo program, as is the case in San Francisco for the league, and most other private casework agencies This has not been possible, so the league's activities, which were expanded in 1958 to include the function of county parole officer, are still being financed by the San Mateo county government

The NCSL's rehabilitation program in San Mateo County is an attempt to meet a variety of problems with a variety of services Foremost of these problems is the essentially asocial orientation that most jail inmates seem to have The laws and rules of conduct that apply to society in general, our clients tend to reject Because they can show where other people are less than perfect, they seem to feel that they have the right to do what they know is considered wrong by others. They feel that other people don't really care about them, so why should they care about others And, when they get caught and are put in jail, they tend to feel that they were unfairly convicted, or that the judge was too severe in the sentence he imposed

We are using group counselling methods to deal with this problem area In our two weekly counselling groups (a voluntary one at the jail, and a compulsory one at the jail farm) the inmates are encouraged by the professionally trained rehabilitation worker, and by their fellow inmates, to think of incarceration and criminal activity as symptoms of their own personal problems within the group, rather than on the problems of environment outside the group For example · the subject matter in group discussions gradually shifts from complaints about law enforcement, jail food, correctional personnel (society-in-general) to tentative explorations of how the inmates in the group tend to use their criminal activity to meet psychological needs ("I couldn't admit to myself, or to my wife, that I wasn't making enough money to meet our bills, so I wrote some checks until things got better at work"). Inmates often continue the discussions in their cells after the group meetings are over, so the process of self-examination that begins in a group meeting does not stop there

Another problem area we try to deal with is that of "dissocialization " A person who has spent a period of time in jail has had to adjust to an environment different from that on the outside The opposite process has to take place when a person is released from jail. He has to "readjust" to the outside world He may have no clothes, no funds, no job, no family, or person he can turn to; or he may feel that he's completely out of contact with the outside world, that his friends will shun him and his family resent him

To meet these situations we offer postrelease planning and casework services to the inmates and their families. In some cases we give tem-

porary financial assistance In others we refer clients to other agencies that can give the specific help that is required We may help a client look for work, or housing, or help him return to his family, at a time when his anxiety is high, and his self-confidence is low

Clients who voluntarily seek help from a private casework agency usually feel freer to talk about personal matters, including their criminal activity, than do the clients of a public agency On the other hand, a position which carries public authority provides an opportunity for using a different concept in the treatment of offenders That concept is that the use of invested authority in an appropriate, nonpunitive, though limit-setting way, by a person who takes an interest in the client over whom he has authority, can be the means by which a client comes to see that authority is not inherently arbitrary, that authority relationships are bound to exist and so they must be faced and dealt with in one way or another This is our treatment rationale in performing the function of County Parole Officer of San Mateo County We interview the parole applicants, make investigations, present written and oral reports to the Parole Board, then help the applicants with either accepting the fact that parole was denied, or planning for their period of parole if it was granted, then supervising them while they are on parole There is a real advantage in our having had contact with parolees while they were in jail, relationships which are established in the jail tend to help the parolees perceive the Parole Officer as a possible source of help on the outside, rather than as someone who will try to catch them doing something wrong

There is a possibility that the function of supervising county parolees in San Mateo County may be transferred soon to the Adult Probation Department County parole has proved itself feasible and practical from the security, as well as the rehabilitative, and economic points of view. The league's demonstration function in this area has thus been carried out

It must now turn its attention to other areas where services seem necessary and lacking One such area is work with untried prisoners At present there is no social service intake process whereby those arrested are interviewed for the purpose of determining which arrests are the result of situations that could be resolved without court action An example of this would be the arrest of a husband as a result of a family fight Often the situation calls for family counselling, rather than a jail term, and often the wife has changed her mind the next day, and wants her husband back home

In addition, arrestees often have cars left parked on the streets, clothes in hotels, and paychecks due them, and they are unable to make appropriate arrangements without someone's help In these situations early arrangements often avoid hopelessly complicated situations later

As the NCSL representative in San Mateo County, I sit on the Farm Classification Committee which meets weekly to decide which inmates can be safely assigned to work at the jail farm, which is a minimum security installation At the present time approximately 15 to 20 men go out daily to the jail farm at the Half Moon Bay Airport When the new jail farm site and buildings are established, many more inmates will be transferred from the main jail which is essentially a maximum security institution

San Mateo County's "hope for the future," as far as a jail rehabilitation program is concerned, lies in its proposed New Jail Farm If a jail farm is conceived of as a treatment facility for misdemeanants, where frank discussions of personal feelings are encouraged and accepted by all personnel, where personal problems are taken seriously, where some hope is offered that an inmate can change his pattern of delinquent behavior, and where skilled help is offered to those who seem to want to try, then it can truly be an institution where rehabilitation can take place

There are proposals by responsible persons in our county government that the New Jail Farm be conceived of and operated on such a basis. They propose that in addition to a treatment program patterned on the "Therapeutic Community" concept as outlined above, a work furlough program be added in which certain inmates could leave the jail during their working hours to work at their regular jobs in the community. In addition to the rehabilitative advantages this offers to the inmates, who can keep their regular jobs and continue to exercise some of their responsibilities, it lessens the tax burden on the community because the inmate continues to provide for his own maintenance, and that of his family

G. THE SAN DIEGO THERAPEUTIC COMMUNITY, THE NEW HAVEN COUNTY JAIL, CONNECTICUT, AND THE PENNSYLVANIA PRISON SOCIETY

Mr Joseph R Silver, executive director, Northern California Service League, describes the above programs in addition to commenting upon his across-country trip visiting local jails

"It has become increasingly apparent to me, through contacts with correctional personnel across the country and in the course of a 10,000-mile trip that I conducted in the summer of 1960 in which I contacted correctional personnel and jail programs, that there is a growing ground swell of interest in providing training and treatment programs in city and county jails.

"A word should be said about what is meant by training and treatment at the jail level The jail is full of people who are beset by problems—problems of social adjustment and problems of personal, psychological adjustment For example, some people manage adequately after finding a job their problem of adjustment is relatively simple. The cause of their getting into jail is situational Others have deep-seated problems that lie behind their inability to hold a job once one is found These people have gone to jail because of basic psychological problems that cannot be solved by the mere finding of a job As a matter of fact, it is more often than not found that the external problems of handling money, environment, etc, stem from these inner or psychological problems Therefore, to help a person only with his material, concrete problem is to treat only the symptom. It is a little like concentrating on the spokes of a revolving wheel rather than the hub.

"Treatment therefore must be based on a recognition of the existence of psychological and personality problems among jail inmates; the acknowledgment that without help in solving them

there will continue to be a high rate of recidivism; the acceptance of responsibility by the community, for giving help in solving their problems, either through the jail administration or through private resources in the community.

"This help must be provided, in addition to the other elements of a proper atmosphere or environment that I have already mentioned, in the forms of counseling, casework, and therapeutic services that can be given only by people of training and skill Since this is more than a mechanical manipulation of factors easy to control, it requires insight on the part of the worker—understanding of his own motivation, blocks, prejudices; understanding and acceptance of his own problems; and mature organization of his own personality before he can help others to the maximum It also requires an appreciation of what the possibilities are of helping another person discover and marshall his own inner resources, and the mastering of the skills used in helping another person to do this

"To illustrate what I mean by a treatment program, and by the fact that there is a ground swell of interest in this type of program, four or five specific instances can be mentioned

"First The San Diego Honor Camps, under the administration of The San Diego County of Honor Camps This program is administered separately from the Sheriff's Department of San Diego

"The program consists of five camps located in the hills surrounding San Diego, California. They have a total population of a little over 300 inmates They are minimum security, and receive prisoners through a classification committee consisting of representatives of the Sheriffs Department and the Honor Camp administration The program includes the elements alluded to earlier as requisites of a good jail program—minimum security, outdoor environment, attention to good diet, medical care, full work and occupation for all able-bodied inmates, a limited occupational training, planned recreational and leisure-time program. All inmates are paid a small daily wage, the amount varying with the type of work done.

"In its statement of philosophy of the program it is said that the basic concept upon which the program will be built is democracy, and that each inmate is to be considered as an individual needing different degrees of treatment and supervision In the three week classification period after reception each inmate receives a battery of psychological tests, participates in group therapy and is involved in individual non-directive interviews.

"All of these factors make for good morale among both staff and inmates and in themselves would make for a superior jail But, perhaps, its most unique aspect is a therapeutic, community-type living group, which is being conducted at the Montezuma Camp In this camp, the staff and inmates live in one barrack, eating and sleeping together and functioning as a unified living group The total group of 20 inmates is divided into smaller groups of 5 or 6 who meet three nights a week, with a member of the staff, in a group therapy session in which many things involving the individual adjustment of the inmates are discussed. Each member

of this group makes a written, signed evaluation of each other member of the group once a month These evaluations are read within the group and discussed, making for a great deal of serious discussion of the inmates' problems in which they are unable to evade the facts due to the pressures from the peer group In addition to these small groups, the whole camp group, with the staff, meets one night a week for the discussion of common problems which, again, is apt to include many problems of personal relationships and adjustments Because the staff lives so intimately with the inmates, the relationship between staff and inmates becomes one of a therapeutic nature It is not at all uncommon for an inmate to awaken a staff member in the middle of the night to talk over some problem which is keeping him awake

"This program is an adaptation to the short-term misdemeanant institution of Dr Maxwell Jones' Therapeutic Community, which involves doctors, staff and patients, all of whom live together with special attention given to the therapeutic aspects of their community life This is a program which has been given serious study by the State Department of Corrections and is being experimented with in a number of its institutions

"This program is giving a valuable demonstration of what can be achieved when the jail administration is responsibly convinced of the need for treatment and throws all of its resources into providing an adequate treatment program

"The second program to be mentioned is the New Haven County Jail Project in New Haven, Connecticut This program was initially financed by funds from the National Institute of Mental Health but is now being administered by the State of Connecticut, which, since the fall of 1960, administers all county jails in that State

"This plan, in brief, provides for a psychiatric team consisting of a part-time psychiatrist, a clinical psychologist, a phychiatric social worker, a group therapist and a sociologist, to cooperate with and supplement the existing program in the jail Its purpose is to demonstrate the feasibility and desirability of providing psychiatric care and treatment to a jail population It operates by giving a psychiatric screening to all inmates, hoping to identify pre- and masked psychotic conditions, giving care and treatment for those having psychological problems, including individual and group psychotherapy Help in post release planning is given, as well as after care

"They have found that, while continued intensive psychotherapy has a place, and an under-estimated place, in the kind and treatment of offenders, the broad base of the clinic must be maintained by social workers who are trained in the professional casework approach

"The Pennsylvania Prison Society, at 311 Juniper Street, Philadelphia, has conducted a unique piece of work in providing casework services to the untried prisoner They visit regularly the detention quarters and provide casework services which have definite therapeutic aspects to them to the prisoner awaiting trial

This is increasingly recognized by the community of Philadelphia as an important service

"The Wisconsin Service Association, at 526 W Wisconsin Avenue, Milwaukee, Wisconsin, is providing a program of counselling and casework services in the Milwaukee County Jail very similar to those provided by the Northern California Service League

"These references illustrate a few of the instances where jail administrators are recognizing responsibility for providing some form of treatment over and above so-called work therapy, and over and above providing an institution run on humane, progressive lines with a view to proper food, cleanliness, medical care, space, etc.

H. GROUP COUNSELING IN THE SAN MATEO COUNTY JAIL: A NEW EXPERIMENT

Mr Serapio R Zalba, Jr, supervisor, San Mateo County Program of the Northern California Service League, submitted the following statement to this subcommittee concerning the techniques of this new procedure and lists the tentative conclusions drawn from its operation

"In the San Mateo jail the Northern California Service League has been conducting counselling groups under two different sets of conditions in an effort to explore the effectiveness of using groups in a jail setting

Group I

"Weekly sessions of 1½ hours in the jail's TV room, attendance voluntary, average attendance of 15 men, membership open to any inmate at any time during any session, guards attending 3 meetings during 6 months This group was set up on a modified "therapeutic community" basis, in that the whole inmate population was welcome

Problems encountered· There was resentment generated in taking over the only source of TV at a prime viewing hour There was an enormous amount of turnover due to the relative shortness of jail terms (one day to one year) There was a problem of confidentiality because some inmates would inform guards about certain gripes discussed in the meetings. Since I, as leader of the group, was also performing the function of county parole officer, there was a certain amount of "selling," by inmates, of themselves as possible parole applicants

Group II

"Weekly sessions of 1¼ hours at the farm which is worked by inmates who are trucked out each day and returned to the jail at night, attendance is compulsory for the inmates and the guard/foreman who is with them, average attendance of 11 men This group was formed to operate with a natural living/working group which already has an identity of its own

Problems encountered: Inasmuch as attendance is mandatory, there are some poorly motivated group members. There is enough turnover in group composition to require frequent orientation New

group members tend to take the group back over material already explored by the older group members Some "selling" of themselves by prospective parole applicants takes place

General Results

"The culture in a correctional institution usually dictates that the focus for feelings of anger, disappointment, frustration, and anxiety must be the authority figures closest at hand So, you expect (and get) a great deal of complaining about the food in the jail, the jail rules, the police, the judge, etc You also get expressions of how society is not moral, of how some people who might look down on jail inmates are just as delinquent, but haven't been caught, etc This process that Dr Eric Berne calls "playing the game" of "Ain t It Awful," seems to be a necessary beginning for a jail group My occasional attempts to cut this process short in order to get on to what seemed like more meaningful material almost invariably failed The group seemed to need to express a certain amount of feeling in this way before it was ready to move on to the next stage, which is "What are you going to do for us?" At this stage, the inmates test me, tease me, get belligerent, wistful, etc In fact the group as a whole expresses itself in the traditional role of the social psychopath They seem to feel that they are in a situation of dependecy (partly true), and that therefore I should do things *for* them It is at this point that they can be helped to make the shift to discussing "What can we do to help ourselves?" (both in the immediate situation of the jail, and in the longer span of their whole lives) If the group leader can pass the test of not taking responsibility for the group, and can convince the group, through his actions and words, that he really thinks they can help themselves, and that he will be available as a helper, rather than as an agent, he will have made an important contribution, and he will be called upon to prove his sincerity on this point time and time again

"In these groups various problems were brought to the meetings after the groups had been established for about 2½ months In one cell, an inmate wouldn't bathe, though there were hints, comments and threats made to him by his cellmates Finally the cell occupants brought the problem to the group and discussed it in front of the "offender " Talk was substituted for the usual action of beating the inmate up, or scrubbing him with a stiff brush after lights were out As a result, the man bathed, his cellmates became aware of his extreme physical modesty (which was why he didn't bathe) and the group explored the idea that it might be acceptable to other inmates to report such an offender to the head jailer, rather than take a chance on direct action, and subsequent punishment to the members of the "Kangaroo Court " It was a significant shift in the jail culture to consider using the authorities as policemen of their own society, and it was movement toward assuming more social responsibility for themselves

"In addition to using the groups in order to explore more acceptable and effective ways of operating as members of a society (in jails or in outside social units), some individuals receive help with more personally emotional problems One young inmate's

constant use of swearing was challenged and discussed by the older, more mature inmates Over a period of two meetings, the young inmate's reaction to the group changed from one of defiance, and "I'll talk anyway I want," to recognizing that on the outside he tended to do what he thought people expected of him (getting into trouble), to feeling some satisfaction that the group in jail felt that *he didn't have to* get into trouble This young man then opened up and expressed much intense feeling of needing help to straighten out, and wonder as to whether he could follow through and actively *seek* some kind of helpful guidance on the outside The experience was significant not only to the young inmate, but also to the group, which identified with him The group seemed also to strengthen its feelings of identification with society-at-large in the way it handled the situation

Tentative Conclusions

"Groups exist in the jail with or without the conscious design of the authorities It appears to be fruitful to use groupings already in existence, or form specific groups, for the purpose of leading the group processes toward more socially acceptable goals Realistic goals in a jail counselling group might be

"1. To help inmates take a less dependent (regressed) role while incarcerated,

"2 To help them examine their personal situations, attitudes, and life goals more objectively and realistically,

"3 To offer some opportunity for working out social action procedures among the inmates as alternatives to the "Don't talk to jail guards," and "beat 'em up," approach;

"4. To provide some feeling of inclusion in, and acceptance by society-at-large by the very fact that provisions are made for a rehabilitation-oriented program in the jail,

"5. To provide an opportunity for a prospective parolee to get to know, and form a working relationship with his future parole or probation officer

I. THE LOS ANGELES POLICE DEPARTMENT REHABILITATION CENTER IN BOUQUET CANYON

Since this facility has been extensively discussed and described by Judge Robert Clifton, Municipal Court, Los Angeles District, in his statement to the subcommittee and in our appraisal of local jails in the State, we will not restate those discussions here

To underscore our favorable impression of the facility, however, we again state what we have before: the effective programs at the facility, the dedicated staff, and the driving personality of Chief William Parker, all have made the L A P D Rehabilitation Center a first-rate detention and treatment institution

VII. THE PROBLEM OF THE ALCOHOLIC AND THE LOCAL JAILS

A. GENERAL

Perhaps the largest inmate group constituting the local jail population are those arrested and charged with drunkenness The high incidence of alcoholism generally in the State directly influences the make-up of the population of local jails The alcoholic inmate presents many problems to the local constabularies Because of the consistently high rate of alcoholic arrests, a major problem of housing these arrestees arises There is also a problem with respect to giving proper treatment, medical or otherwise, to the inmates after incarceration, and as an adjunct to these problems, an overall problem of the adequacy and calibre of the jail staff to effectively handle all of the problems of alcoholic inmates, arises Consequently, when an inebriate is arrested, a chain of problems is put into motion.

Although there is a wide variety of terms used in the literature dealing with alcoholism and addictees, such as "normal," "moderate," "excessive," or "problem" drinkers as well as the more common "alcoholic," "acute alcoholic" and "chronic alcoholic," there is general agreement that alcoholism (however described), is not a moral or ethical ill to be enjoined by law; rather, it is a socio-medical problem which requires medical and other specialized care In 1950 the American Medical Association officially designated alcoholism as a disease. Fifteen years ago, the Interim Committee on County and City Jails received much testimony recommending a medical rather than legal approach to the problem of the alcoholic

We have, then, a situation where ill-adapted legal processes constitute the primary method of dealing with a concededly socio-medical problem. In these circumstances, success cannot be what it should or might This is not to suggest that we should repeal our laws relative to drunk offenders; however, we do recommend that there is an urgent need to look anew at our practices and policies with respect to the treatment and care of alcoholic inmates, and evaluate their effectiveness.

Drunk tanks are presently used merely as custodial facilities, and as such are not the answer They only serve to effectuate the condemnable "revolving door" policy where alcoholics are repeatedly jailed at almost every instance of drunkenness without any treatment towards cure or prevention. Not only is this approach costly, it does not touch the basic problem of treatment and cure, and thus prevention or a reduction in the rate of alcoholism

There are many informative sources on which localities may draw for helpful assistance in shaping policies and treatment programs. There have been numerous studies made of the alcoholic problem within the nation and in other areas and countries, and within our state The problem in a more generalized form has also been the subject of special studies by other legislative committees,[13] the State Depart-

ment of Public Health, Division of Alcoholic Rehabilitation, and the Special Study Commission on Correctional Facilities and Services examined the problem as it relates to local jails and reported its findings in a March, 1957, report[14] The extensive documentation of these specialized studies provide a storehouse of useful information which can be of invaluable assistance to the many local correctional systems in formulating new alcoholic treatment programs

The findings of the Special Study Commission reflected, as did those of this subcommittee, that there is a great need for some kind of treatment program at the local jail level Traditional methods of incarceration overnight, drying out or sobering up of those arrested, without more, is a fruitless and costly task Given, then, the ineffectiveness of many of the approaches of our present methods of dealing with the problem, new methods must be devised and implemented.

Several approaches have been suggested and some implemented on a trial basis The Study Commission recommended and the Legislature considered, for example, a proposal which would empower the state to establish and operate facilities for the treatment of alcoholic misdemeanants For over forty years, New York City has had a law providing for a similar program but has done little to implement it.[15] Under the law, a Board of Inebriety was created whereby alcoholics were to be committed to the care of the board for indefinite periods, hospitalized, given medical attention, and otherwise rehabilitated before release The law specifically states that "It (the board) shall provide for the care, treatment and occupation of inebriates in accordance with methods approved by medical science " Under this approach, alcoholics are committed to treatment centers rather than incarcerated in a jail, thus a total break is made from penological to medical approach

A proposal such as recommended by the Special Study Commission obviously would be a major undertaking and should be given very careful and full consideration Not only should we concern ourselves with the effectiveness of immediate remedial procedures, but long-range programs and their effect as well

As we indicated above, the Public Health Department, Division of Alcoholic Rehabilitation, has done much in exploring possible treatment methods for alcoholics One of their long-range goals is to "make the treatment of the alcoholic a part of the professional skills within each community, and alcoholism programs a part of community health services "[16] In 1956 the Legislature authorized the establishment of eight pilot alcoholic rehabilitation clinics Six were established, located in San Diego, Los Angeles, Stockton, Sacramento, San Jose and Oakland

These clinics are staffed by physicians, psychologists, social workers and public health nurses Their activities include diagnosis, treatment

[13] E g , Senate Interim Committee on Treatment of Mental Illness, *Treatment and Rehabilitation of Alcoholics in California*, 3d partial report, April 3, 1957 The Assembly Interim Committee on Public Health is currently engaged in a study concerning the research and treatment programs now in operation under the auspices of the Public Health Department, Division of Alcoholic Rehabilitation, and will report to the Assembly during the 1961 Regular Session

[14] *The County Jails of California An Evaluation*, Part XI

[15] Chapter 551, Laws of New York, 1910

[16] *Alcoholic Rehabilitation, Treatment, Research and Education*, 1954-1959 (State Public Health Dept , Div of Alcoholic Rehabilitation), p 11

and rehabilitation, public and professional consultation, community organization and co-ordination; evaluation of treatment results, and data reporting

Many of the clinics are complementing and assisting local correctional systems' alcoholic rehabilitation programs In Alameda County, for example, the clinic provides, among other services, a psychiatric consultation service to the Probation Department and the Santa Rita Rehabilitation Center In the City of Los Angeles, the clinic provides inservice training for city and county probation officers, and group therapy and orientation meetings have been held for prisoners in the Lincoln Heights Jail and the Saugus Rehabilitation Center of the Los Angeles Police Department In San Diego a citizens' advisory committee was formed to assist the clinic in working with the various local agencies and groups including the county honor camps And the practice has been initiated whereby county honor farm prisoners are interviewed prior to discharge by the staff of the clinic and many released prisoners later apply at the clinic for outpatient treatment In San Joaquin County, one of the many notable services of the pilot clinic there is group therapy for alcoholic inmates at the county's honor farm And finally, in Santa Clara County the Elmwood Rehabilitation Center of the county jail and the welfare and probation departments use the clinic as a referral source for their alcoholic subjects The clinic also conducts orientation sessions for county law enforcement officers and co-operates with the district attorney's office in evaluating the condition of persons arraigned on alcoholic commitment petitions

These are commendable and worthwhile projects Their ultimate value to the local correctional systems cannot be fully assessed at this early date But it is certain that much has been learned and uncovered by these experimentations, which will point the way in fashioning new treatment programs for alcoholics We strongly recommend further experimentation with these projects

Another notable program is the Adult Guidance Center of the San Francisco Department of Public Health, one of the nation's largest and best-known medical-psychiatric outpatient clinics for the treatment of alcoholics This subcommittee was privileged to visit this exemplary facility and observe its work Since the director of the center has submitted a statement to us concerning its structure and activities, which is included in this report, we will not elaborate on the activities of the center here We do, however, recommend to other localities, members of the Legislature, and the general public, that they visit the center and observe its work in the care and treatment of alcoholics Such a program is worthy of emulation

(1) *Suggested Approaches for the Treatment and Care of Alcoholics*

The Department of Public Health, Division of Alcoholic Rehabilitation, generously assisted us in our study of the problem of treatment and care of alcoholics In an expression of views, Dr John R Philip, chief of the division, suggested three approaches which could be initiated on a trial basis (1) Boarding of alcoholic releases from local jails for a limited time in order that post-release treatment procedures

can be started and assistance in readjustment in the community given; (2) detoxification station or center whereby drunk arrestees would be taken entirely out of the penal system and (3) more extensive use of private agencies and organizations that provide assistance for alcoholics.

Elaborating on these proposals, Dr. Philip stated:

"So much money is currently being spent by state and local government for custodial care and it has always seemed to me that through demonstration and trial, new approaches should be tried. These approaches should in general have as their basic consideration the alcoholic as a sick person who can be helped, rather than a criminal who requires punishment We believed that experience to date has indicated that percentage of these alcoholics can be rehabilitated or at least assisted to become relatively self-supporting individuals One such demonstration which we are presently starting in San Francisco, with the assistance of the Northern California Service League, is the provision of room and board for a period of one or two weeks for the men who are being released from the San Francisco County Jail Farm at San Bruno These men are alcoholics who have been under treatment while in the jail Rather than suddenly turning them loose on the streets of San Francisco, it has been the feeling of many that if some place could be provided where they might live, where their room and board was taken care of for a limited period of time, where they could be seen on a daily basis by the treatment staff that worked with them in the jail, and where they could be assisted to locate more permanent housing and a continuing plan for treatment and rehabilitation that many of these individuals could be rehabilitated rather than revert to their former drinking habits and skid road type of living. Only time will tell whether this is true, but after a year or so of experience with adequate evaluation, we will be able to make more definite statements about this type of program for the men who are released from jail custody

"Another approach which has never been tried could be some type of detoxification station or center Rather than arrest, booking, jail, and sentencing to county jail or jail-farm, an entirely different approach to the handling of the common drunk might be worth trying One different approach could be the establishment of a detoxification station or center whereby, under modern medical management, the drunk could be detoxified or sobered as rapidly as possible Wherever possible this would be followed by a plan for treatment and rehabilitation Perhaps through this type of a program, if the common drunk was given medical care instead of arrested and offered a plan of treatment and rehabilitation instead of a jail sentence, many of these people could be prevented from deteriorating into chronic drunkenness offenders My thought is that such a program could be started on a demonstration basis in order to learn about and measure its value

"Within California there are probably around 30 halfway houses of various types and sizes operated by various organizations and individuals Practically all of these offer A A programs and many

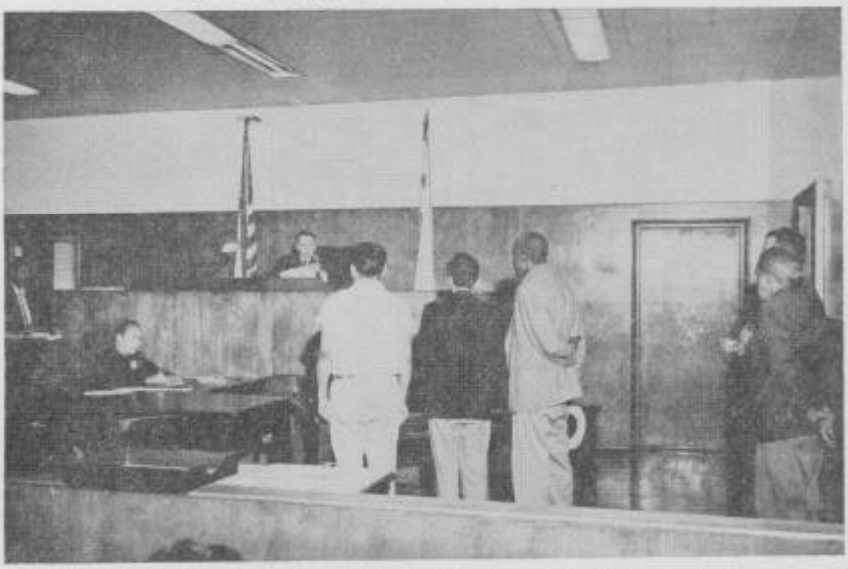
of them require adherence to the A A program as a prerequisite to admission to the halfway house. In Los Angeles, the Volunteers of America has operated an alcoholism treatment clinic in the skid road area for several years. Apparently there is a need for a new type of halfway house, a type not presently in existence. Many of the men who are being seen at the skid road clinic in Los Angeles are at the point where they are ready for some type of life other than their skid road existence What is needed is a halfway house program and halfway house facility which is adjacent to, but not part of skid road and which is professionally directed. Men who attend the clinic and who reach the point where they desire to change their living arrangements could then be moved into this halfway house and continue under the same treatment regime as provided at the clinic We believe this to be a worthwhile program and again one which should be tried initially on a demonstration basis with complete evaluation of its relative merits and value.

"There are obviously a number of individuals who we might call marginal people who have never amounted to anything and who perhaps form a sizeable percentage of the common drunkenness offender group This is the group which we can probably not expect to rehabilitate at the moment and perhaps it is even a waste of professional time and money to attempt treatment of these individuals. However, they do result in a heavy expense to the taxpayer since they are in and out of jail at regular intervals. What needs to be considered here is some type of low-cost facility whereby room and board could be provided and as much productive work as possible obtained from these men. This type of facility should not be a jail or a jail-farm and there is probably no reason to believe any security precautions are necessary.

"In other words, this would be a facility where these individuals could live, eat, sleep and work. They could be free to come and go as they chose There is good indication that if these basic needs are taken care of in this way, the men generally will get along pretty well; will prefer living in the facility rather than on the outside, and will do little or no drinking. These concepts still need to be tested on a demonstration basis. This type of program or facility for the apparently non-rehabilitable chronic drunken offender might provide a much more efficient and economical, as well as humane, method of dealing with the problem in our present state of knowledge.

"There are probably other types of programs or facilities which also are worth trying. It has always been our hope within the Division of Alcoholic Rehabilitation that some day funds would be available whereby through the state program, we could undertake some of the projects mentioned above on a demonstration basis. Those methods or approaches which prove to be successful and which are a more economical way of handling this problem, could then be adopted and put into practice by local agencies and local government."

B. THE LOS ANGELES CITY PROGRAMS



The Los Angeles City "Drunk Court"—Judge Robert Clifton, presiding.

In a speech before the First Annual California Conference on Alcoholism, August 1-12, 1960, Judge Robert Clifton of the Municipal Court, Los Angeles District, among other things reported on the practices of his court in handling drunk arrestees in the City of Los Angeles. With Judge Clifton's permission, we include here relevant portions of his report, *Legal Responsibility and Law Enforcement:*

> "For more than five years I have presided in the division of the Los Angeles Municipal Court handling the majority of the cases of arrests for drunkenness (not including drunk driving cases, which are handled in our traffic divisions) and during that time myself have handled an average of 60,000 cases per year. So my paper will deal chiefly with arrests for intoxication. At the outset, however, it seems appropriate for me to call particular attention to two of the most significant conclusions I have reached. While these are not revolutionary or altogether unique, I believe that they differ from the ordinary beliefs or practices. The conclusions:
>
> "1. Emphasis should be placed on the early treatment of alcoholism.
>
> "2. Compulsory or 'directed' treatment of alcoholics is beneficial and should be used by those who are attempting to treat or aid alcoholics or incipient alcoholics.
>
> ### *Cost of Arrests—Other Costs of Alcoholism*
>
> "Statistics show that more than one-half of the prisoners in the city and county jails are there because of drunkenness arrests, and from these statistics one can realize the tremendous cost—police cost—of arresting and imprisoning people who become drunk. But these costs, of course, are as nothing compared to the hidden costs

of alcoholism—that is, the economic loss of people who are non-productive because of alcoholism, the relief costs of caring for the dependents of alcoholics, the hospital costs of caring for people who fill our county hospitals—their health broken largely because of the misuse of alcohol, and the results in juvenile delinquency, and crimes caused by the homes broken by alcoholism

"Plain Drunk" Arrests—Their Nature

"Now, as to the arrests It is probable that most people think of drunk arrests in terms of bums or derelicts on Skid Row, and it is true that the majority of arrests are in the Skid Row area We think of the arrests as 'plain drunk' as distinguished from 'drunk driving.' 'Plain drunk' covers a multitude of situations. In the first place, the person arrested may be a model citizen, one who has never been arrested before On the other hand, some of the people arrested have been arrested many times, some as high as more than 300 times for being drunk, and have committed countless other offenses also. 'Plain drunk' may cover a man simply staggering down the street, an ordinary person who is not an alcoholic—who has had 'one too many'—or a person unconscious in the gutter or a doorway, one horribly battered or beaten up in a saloon fight, the drunken victim of a robbery, or a man or woman who has drunkenly attempted suicide with a razor, gas or off a fire escape, or has been pulled from a smoldering mattress and saved from suffocation by the fire department before being turned over to the police The arrest may have been by an officer on patrol or as the result of a frantic call to the police, who rushed out and found a scared family huddled in the street, the father going berserk in the house and making a shambles of the furniture in a drunken attempt to show that he is the boss 'Plain drunk' might cover a motorist drunkenly trying to start his car and not yet guilty of drunk driving, or one who has drunkenly stalled his car in the middle of an intersection, or worse still, in the middle of a freeway 'Plain drunk' certainly covers a lot. Most frequently, of course, it cover the chronic drunkenness offenders who exist in the Skid Row areas

"Los Angeles' Drunk Court" Aims of This Specialized Court

"In Los Angeles we have a specialized court handling nothing but intoxication arraignments, and just as our traffic courts do not act merely to punish defendants, set fines or jail sentences, but attempt to educate our citizens for their own safety and that of others, so this court likewise performs not only the function of enforcing our laws against intoxication, but attempts to educate and to help those who have drinking or related problems Here the court uses all of the new public and private facilities available and applies all the recent knowledge and techniques of group psychotherapy, Alcoholics Anonymous, and medicine to aid the defendants and prevent recidivism — certainly to avoid the 'revolving door' method of jailing and releasing drunks with no attempt to do anything about the defendant's drinking or other problems Here we take the view that if the citizen's drinking problem is brought to

the view of the government—that is, to the police department and the courts, something should be done to bring the knowledge and the facilities of the government to the aid of the citizen and his his problem, not only for his own benefit but for the benefit of his family and that of the community

"Education in Court

"At the opening of court, the judge ordinarily in simple language attempts to get a defendant to see if his drinking has seriously affected his own life, job, health, reputation, or any other important phase of his life and, if so, to treat his drinking as if it were a problem, and then suggests doing something about the problem by going to a doctor or a psychiatrist, to the State Alcoholism Clinic, to the priests and ministers, and also to Alcoholics Anonymous, and to treat excessive drinking as if it were a serious illness

"Patterns of Fines, Sentences, and Other Measures

"The handling of the cases, the fines and sentences, etc , although fitted to the individual case, form a rather definite pattern or procedure We certainly try to keep away from the 'revolving door' type of procedure—where a defendant is arrested, sent to jail—gets drunk again, goes back to jail, ad infinitum In some cases, first offenders have their cases dismissed; that is, slight violations are excused and the defendants are admonished to keep their records clean, and thus a defendant is allowed to go forth without a conviction that might seriously harm him if he were a student, teacher, executive, or handling responsible matters where even one conviction might wreck his career Such dismissals usually are not given where automobiles are involved, serious disturbances or home difficulties are evident, and where different handling is indicated Fines or short jail sentences are imposed as a deterrent to public drunkenness where no drinking problems seem evident, or where the defendant from various circumstances seems unlikely to benefit from intensive handling of the case. A drunk who has beaten someone or endangered life by being in a car may receive a stiff fine or jail sentence as a punitive measure In some cases, a jail sentence is imposed just for overnight, or four or five days or a longer period of time to sober up the defendant, keep him away from liquor or to get over the shakes or D.T.'s, get him to eating again and off liquor, out of jail without 'butterflies' in his stomach, and get him back to work soon

"Compulsory Attendance at A.A. Meetings

"Now we come to the type of cases where treating the defendant as if he had a problem or the beginnings of one, and getting him to realize that he has a problem and should do something about it, may bring results. When the defendant's arrest record shows a number of arrests—three, four, five, six or seven—or possibly several within the last few weeks or months, or his physical condition or dress or the place where he is arrested, or other information shows that he may have have a problem, we require him to do something about it In some cases, he is put on summary probation

without referring him to the probation officer, and is required to attend three Alcoholics Anonymous meetings within the next 30 days, and is given a slip to bring back to the court within 30 days, with signatures showing his attendance at the A A meetings This kind of program has worked out very well Formerly, at each court session, several A A members were present and were introduced to some of the defendants and they extended invitations to attend the meetings and sometimes gave them a short 'pitch' about the A A program In many cases, the defendant showed up at the meetings and kept on attending, but in too many cases his good resolutions never got him inside the door of a meeting In the large majority of the cases now, they get to the meetings and get their slips back In one year we had more than 1,200 defendants who had attended the three A A meetings At first, there was some opposition with the A A groups to this method, but now practically all groups agree that it has great merit and many people are now attending A A meetings and staying sober because of our introduction to the A A program through this method We attempt to handle this compulsory attendance for three meetings with a light touch, telling the defendant that this is just an introduction, and that he doesn't have to attend if he doesn't wish to after the three meetings; or we tell him this is education instead of jail, and ask him if he would rather go to jail, and sometimes we merely adopt his own admission that he should do something about his drinking, and require him to attend so that he will carry on his own good resolution without putting it off any longer A A referrals for men on skid row are not overly productive The men are poorly dressed and have been disassociated from normal groups, and are often embarrassed to go to meetings outside of the skid row area, and, besides, have no permanent address, and hope to disappear on skid row if they fail to follow the order to attend the meetings On the other hand, people with an address in the other parts of the city respond very favorably to this sort of outpatient treatment.

"Compulsory Treatment at State Alcoholism Clinic

"Since the opening of the Los Angeles State Rehabilitation Clinic under the direction of Dr A W Pearson, we have made considerable use of this facility The defendant is put on summary probation, ordered not to drink intoxicating liquor for a year, and ordered to report to the clinic within five days and work out a program to do something about his drinking problem and then to report back to the court in about six weeks The clinic reports back as to his attendance in the clinic, a probable diagnosis, and suggestions towards the continuation or discontinuation of clinic services, or, perhaps, recommends other treatment When the defendant appears in court, he is questioned as to his feelings about the benefit of the clinic, and if further attendance seems indicated from his statement and the report of the clinic, he is ordered to continue at the clinic usually for 90 to 120 days, it being explained to him that we want him to continue with his treatment until he can see the possibility of results, not to drop the attendance because no miraculous cure has been attained Usually, the defendants appear to feel

that the clinic referral was of benefit, and in many cases they have definitely thanked the court for putting them in touch with the clinic In many cases, it appears that at the clinic many defendants admit for the first time that they have a definite drinking problem, which is a decided step forward The referrals to this clinic are made in preference to the A A referrals when a small number of arrests, or the defendant's attitude or other factors indicate that he is likely to refuse to identify himself with the people in the A A movement because many of them may have gone farther in their drinking problem than he has A doctor or psychiatrist at the clinic who has the man's arrest record and who can question him quickly about drinking's effect on his job, family life, health, etc , may soon touch enough 'tender spots' so that the defendant himself sees the problem

"Formal Probation Referrals

"In a few cases the matter is referred to the county probation officer for the regular probation office recommendations and report, and in most instances the defendants are released on little or no bail until they come up in court in two or three weeks for their weeks for their sentences Probation office referrals are made sparingly because of the time and money involved, and usually in cases in which children and family problems are involved, or some cases when a son or daughter is arrested in the home and complicated relationships may have to be worked out In these cases, it may be necessary to work out a program of mental health for alcoholism or other problems Budgetary programs may be needed, ordinary domestic relations counseling, or just simple planning In working out such a program, of course, a probation officer quite often suggests referrals to the usual aids, that is, doctors, psychiatrists, Alcoholics Anonymous, clinics, and the churches Benefits from probationary referrals seem to be about what one would expect In those cases where attention is given to the problem at an early stage, the defendants may be helped, but where deterioration has been great, that is, a defendant has broken loose from the usual patterns of stable employment, family relationships and residence, the results are very discouraging

"Compulsory A A, or Clinic or Probation Outpatient Treatment

"The A A program, the clinic referrals, and referrals to the probation officers may be considered in the nature of outpatient treatment in which one tries to keep the defendant in his normal setting of home and job, and yet working on his drinking and other problems Sometimes, of course, a short term in jail as a condition of probation furnishes a shock and the evidence of authority which is necessary to make him realize his problem and respond to direction And, of course, in some cases, the initial jail term serves to get the liquor out of him and get him in physical shape so that he can start out on a program

"Commitments to L.A P.D. Rehabilitation Center

"Now, we come to the men on Skid Row who seem to be bogged down because of alcoholism or other factors, and who need to be

taken off Skid Row, cleaned up, built up in health, and given an opportunity to make some plans, and also to have some little education on alcoholism and mental health These we send to the Los Angeles Police Department Rehabilitation Center in Bouquet Canyon Located some 40 miles from Los Angeles on about 600 acres of ground and costing in the neighborhood of $4,000,000, it now has a capacity of 1,200 housed in barracks-type, one-story buildings which are not locked Surrounded by a small fence and landscaped by the inmates, the facility is beautiful and well-kept. Several hundred acres are planted in vegetables and with orchards, and furnish a great deal of the food of the inmates and also for those at the city jail Some vocational training or brushing up on skills is provided in course in nursery and gardening, welding, woodworking and shoe repair, but gardening and agricultural work furnish most of the inmates with tasks The only therapy, outside of the valuable work therapy, good food and abstinence from liquor, is provided by Alcoholics Anonymous meetings It is hoped that soon an alcohol educational program on films can be given to classes of inmates, supplemented by group discussion under the direction of trained lay employees, in the nature of the group classes described in the work of Dr Norman Fenton * * * The Los Angeles Police Department deserves the highest praise for its conduct of this institution

"The defendant is ordinarily put on probation, and the imposing of sentence is suspended for one year on condition that he shall not drink nor commit any violation of law, and that he will spend an initial period of time (ordinarily 120 days) at the Rehabilitation Center "Good time" of five days per month is ordinarily earned so that the maximum term is not more than 100 days Under the probationary law, the sentence may be modified or shortened at any time The defendants are encouraged to work out plans to get off Skid Row and back to a regular job, to their families, and in some cases to their homes or jobs in other cities, (these plans are reported to the court by the officers at the Rehabilitation Center) and they are released when such plans are practical and the facts warrant them In such a way, the sentence is an indeterminate one, for some sentences are modified at 30 days, 45 days, 50 days, etc Sentences to the Rehabilitation Center are practically all made at the direction of the court, although the police department, of course, has the right to use this facility for the housing of any prisoner, as it is part of the jail system However, it has been used almost exclusively as a rehabilitation center for alcoholics selected by the court When the center was first opened some four years ago, those sent there were usually persons who had been arrested 5, 6, or 7 times in six months, who appeared from their records to be definitely revolving between the jail and Skid Row, with little or no normal work or normal living on the outside of the jail However, it was found that men with such heavy arrest patterns were those with a large total number of arrests, and they were of such an age and had such a long history of drunkenness and deterioration that only a few could be helped.

"Use of Rehabilitation Center for Rehabilitation of Younger Men

"In the past year or two, the court has taken more time to talk to younger men with fewer arrests, and where the place of arrest, residence, and lack of employment and lack of money (as shown on their property slips) shows that they are broke, jobless, and on Skid Row, and drinking excessively, they are sent to the Rehabilitation Center in an effort to get them off Skid Row The thought is, 'Why should we wait until a person has been arrested 20, 30, or 50 times to do something about his problem? If he's down and out and on Skid Row, why not do something about it now?' Frequently, of course, by talking to a defendant, you find that although his arrests have been few, he has left his home state because of his drinking, he is separated from his family because of his drinking, he has no job because of his drinking, and no money because of his drinking, and obviously he needs help now, and we shouldn't wait until further deterioration sets in He is on Skid Row and may remain there unless we do something about it

"The (Halfway House)

"A very big part of the program to help these men sent to the Rehabilitation Center consists in trying to get them off of Skid Row and keep them off However, it is difficult to do this when a man goes into a jail broke and comes out without any money Wherever possible with such men, we attempt to get them in touch with the "halfway houses" that are operated in and around Los Angeles, usually by people who believe in Alcoholics Anonymous (Alcoholics Anonymous operates no sanitariums, hotels, or any other facilities Their sole function is to encourage the holding of A A meetings) There are some half dozen or more such 'halfway' boardinghouses, and some four or five large hotels which cater to people who have a drinking problem and are trying to do something about it The services furnished are similar· room and board for seven days a week for from $20 to $25, and A A meetings are held at or near these establishments, and members encouraged to follow the program Definite attempts are made to make the men feel a part of this nondrinking group instead of the groups that make up the subculture of Skid Row Many are brought into these places by A A. members who 'sponsor' them They are helped to find employment and encouraged to aim toward a normal life as soon as they can function away from the encouragement and protection of the A A atmosphere of the establishments A limited number of men are accommodated by these wonderful establishments on a credit basis until they can find employment and pay their way Thus, a man is given a chance, not charity, and these establishments are self-supporting

"Some of the men at the Rehabilitation Center make contacts with these 'halfway houses,' and their sentences are modified with these as part of their plans A number of such referrals have been made for men who have not gone to the Center—with good results—but a stay at the Center insures physical fitness

"Placement of Old or Unemployable in B P.A. Camps—Partial Use of Rehabilitation Center to House Such in Farm-type Facility

"Many of the chronic drunkenness offenders who spend most of their time in jail, punctuated by short drunken interludes, are physically handicapped or too old to work, and not old enough to qualify for pensions or social security We have attempted to keep them out of the skid row area and out of jail by referrals to the Bureau of Public Assistance, sometimes even having the police department welfare officers take them to the office of the B P A Temporary lodging and meals may be provided, but in the short interval required to investigate, many of the men get arrested and never get back to the B P A Now we hold some of them at the jail under a probationary-type sentence and through arrangements made with the B P A , the men are interviewed by the bureau representatives, and if eligible and willing, they are released to be transported immediately to the B P A single men's camps at Warm Springs and Camp Acton Camp Acton has some hospital facilities At both camps, there is a program for alcoholics directed by Dr Pearson and members of his staff from the Los Angeles State Alcoholism Clinic Through referrals to the B P A , the physically handicapped may be directed to programs of vocational training and assistance with artificial limbs, etc , which may affect their employability and drinking problems Such persons, naturally receiving sympathetic treatment resulting in quick release after intoxication arrests, build up astounding yearly totals of arrests Some need help and direction rather than release to get drunk again Recently, with the enlargement of the Rehabilitation Center, several barracks were opened for the use of this type of chronic alcoholic recidivist, for whom placement cannot be made at B P A or private facilities, and they are now housed at the Rehabilitation Center where they get the benefit of open air and great freedom instead of the no-work tanks of the city jail where they have been held because their physical condition has prevented them from being given the work and freedom of trusties Epileptics, who were housed in the no-work tanks, are now kept at the Rehabilitation Center with very good results Medication is provided and few seizures have resulted, and the epileptics work as do the other inmates Light tasks have also been provided for some of the old or handicapped men

"Aid for Mentally Ill, Attempted Suicides, and TB Sufferers

"The police officers arrest people who have been drunk and who have other major problems If a person who has been arrested for intoxication turns out to have active TB, i e , communicable to others, he is referred to the city health department and is held on a probationary sentence until a bed can be obtained for him at the county sanitarium at Olive View or one of the veterans' hospitals, if he is eligible If he has walked away from one of these and it is dangerous for him to be around, he is sentenced to the county jail with the recommendation that he be sent to the sheriff's Mira Loma branch of the jail at Lancaster where they have a hospital and facility for treatment TB

"Attempted suicides are referred to the probation officer or to the welfare offices so as to receive assurance that a successful attempt will not take place on release. . . .

"Those people who appear to be mentally ill are held until they can be interviewed by the officers of the psychopathic division of the police department or the sheriff's office, and if committable, petitions are filed with the superior court Occasionally, where a probation report indicates such illness which may be dangerous to the person or the public, the probation officer or police department is requested by the court to file such a petition

"The Women

"The arrests of women for intoxication in Los Angeles are about 7 percent of the total number of intoxication arrests, whereas estimates as to the number and proportion of women alcoholics show the ratio of the men to the women is about 5 5, that women alcoholics number about 18 percent of the total number of alcoholics Relatively speaking, the women who come to court seem to be more deteriorated physically than the men The fines, sentences and referrals to A A , the clinic and the probation officers are handled in about the same manner as with the men However, there is no women's facility corresponding to the Rehabilitation Center Women are usually sentenced to the city jail There they attend A A meetings and are counseled by the police department welfare officers Many are sentenced on a probationary-type sentence which may be modified where the defendant is in good shape and has a place to go The welfare officers place many women who have a drinking problem in the Women's 12th Step House or Friendly House Smaller numbers, those who have no place to go, may get temporary lodgings, etc , arranged through the police welfare officer with the Salvation Army, Sunshine Mission, Big Sister League, or Catholic Welfare Association, and a few go to one of the "halfway house" hotels, the Fimini Some, of course, when they appear in court after being bailed out, are well dressed, fine looking and intelligent, for, like the men, they are sometimes arrested, not on skid row, but outside restaurants, or in their parked or stalled cars, or at their homes or apartments, and their drinking may or may not have brought them to the point of alcoholism

"Chronic Drunkenness Offenders Sentences and Use of Trusties

"Then there are the chronic drunkenness offenders, some of whom have been arrested more than 300 times, men who just do not seem to be able to cope with life outside of institutions and who get drunk immediately after they are released from custody and who would be arrested 30, 40, 50 or 100 times a year in a drunken condition if it were not for the fact that longer sentences are imposed on them This keeps down repeated arrests at a tremendous cost of arresting the same man over and over again Here the court by keeping adequate records and recognizing the pattern of behavior of these chronic drunk offenders can keep them from cluttering up the streets, and cutting down the expenditures of

police work, the time of the courts and public defenders, city attorneys and others in repeated handling of the same offenders.

"In January of 1957, it was decided to keep more adequate records as to these repeated offenders and to impose longer sentences, not the maximum of 180 days, but 90 days instead of 30 days A chronic offender who will get a repeated series of 30-day sentences can still account for some 20 arrests per year, at a cost of $20 to $40 per arrest in police man-hours, whereas a 90-day sentence cuts down considerably the cost of handling these men In either event, the offender is in custody practically all of the time This policy of longer sentences brought immediate results. For the first three months of 1958, the arrests totaled some 5,000 less than the similar period in 1956, 1,700 less arrests per month, a tremendous saving in cost to the police department and other governmental agencies and to the taxpayers Prisoners with long sentences are used at the jail, at the police substations, receiving hospital, and police training center as trusties, furnishing valuable kitchen, janitorial and clerical tasks This forms a way of life for those who appear unable to stay sober or compete on the outside "

C. SANTA RITA REHABILITATION CENTER: ALCOHOLIC CLINIC

As we noted earlier, the Alcoholic Clinic at Santa Rita was opened in 1949 Like the center in general, this specific rehabilitative program has gained world renown As reported in the Sheriff Department's Progress Report for 1958, the objective of the clinic is "to rehabilitate and return to society all possible of the formerly unfit due to excessive use of alcohol "

The staff of the clinic consists of a physician who is also a psychiatrist, four mental therapists and two registered nurses

About 50 percent of admissions to Santa Rita are moderately to intensely involved with alcohol

As authorized by the provisions of the Welfare and Institutions Code, the clinic treats.

(1) All inmates received by the sheriff's department are interviewed, and those whose trouble is found to be due to excessive alcohol are processed through the clinic

(2) Persons who are voluntarily committed under civil process, who are classified as intemperates (W & I Code Sec 5400)

(3) Individuals who are found to have problems due to the use of narcotics are also treated in the clinic

Several therapeutic programs are in operation at the clinic, such as direct counseling techniques and use of various medicines. Antabuse, an anti-drink medicine, has been used extensibly at the clinic It is reported that several former inmates still return to the clinic for antabuse tablets

Carbon dioxide therapy has been found especially effective in the treatment of marked anxiety reactions, and occasionally, has assisted those exhibiting speech impairment, as reported in the Sheriff Department's 1958 Progress Report

Alcoholics Anonymous hold open and closed biweekly meetings at the clinic. These meetings are open to all inmates and attendance by inmates is strictly voluntary

In the 1958 Progress Report, it is reported that "approximately one person out of every three does not return and readjusts to community life Of the balance, some return subsequent times but have eventually been helped "

In its *Ten Year Report: 1949-59*, the clinical staff observed "The treatment approach with alcoholism is as broad as we can possibly make it This concept is fundamental What we are actually trying to do is to offer each alcoholic something appealing and interesting to him We must have the patient's cooperation or so little is ever accomplished "

Thus with such an all embracing approach, dedicated staff, coupled with medical and scientific techniques, the Santa Rita alcoholic program has and continues to be the subject of international interest and a concrete example of the worth of a medically oriented treatment program for those addicted to alcohol

D. ROLE OF PRIVATE AGENCIES AND ORGANIZATIONS IN TREATMENT AND CARE OF ALCOHOLICS AND THEIR ASSISTANCE TO LOCAL JAILS

A discussion of the custody, treatment and care of alcoholics in our local jails would be incomplete without a discussion of the work of the many private welfare, religious, educational and civic groups in providing treatment and care to inmates while incarcerated and after release from jail

During our study we were privileged to visit several of the organizations' rehabilitation facilities in San Francisco and observe their programs in operation We visited the Men's Social Service Center of the Salvation Army, the Protestant Episcopal Hostel of San Francisco (Henry Ohloff House), Alcoholics Rehabilitation Association of San Francisco (First Step Home) and the San Francisco Adult Guidance Center, a public medical-psychiatric outpatient clinic.

Equally, we were greatly impressed with all of the facilities and commend the directors and their staffs for a worthwhile and valuable community service Unquestionably much of the success in the treatment of alcoholics has been realized through these private, unselfish efforts

Brief descriptive statements of the facilities and their programs have been submitted to us for inclusion in our report

1. *Alcoholic Rehabilitation Association of San Francisco, Inc.—First Step Home*

Mr John F. Sheehan, manager, submitted the following statement to the subcommittee concerning the program of the *First Step Home*.

> "*First Step Home* is a guesthouse type of operation All members of the staff and all residents are alcoholic We have accommodations for approximately 35 men and 12 women.
>
> "Our rates range from $20 per week for a three-bed bedroom to $22 50 per week for either a double or a single room This includes three meals per day, seven days per week.

"Our people come to us on referral from the psychiatric social workers in the state hospitals, many through hearsay from other alcoholics, and a very few from the jails One requirement for admission into the home is that an individual be employable, we do not accept those on old age pensions or those disabled in any way.

"On entering the home an individual is interviewed by one of three members of the home staff, he is oriented to the home at that time, and given a booklet, per copy enclosed, to further his understanding of the workings of the home, and how it came into existence.

"At the admission interview, if an individual is obviously in need of medication, he is referred to Adult Guidance Center on their C T P form which will take care of medication during a two-week withdrawal period Some time during this two-week period he is advised by a member of the home staff of the full program available at Adult Guidance Center, so that he may arrange to become a full-time clinic patient if he so desires

"An A A meeting is held at 7 30 p m every Thursday evening in the home; each Thursday at 6 45 p m all new residents who have been admitted during the previous week are addressed by a member of A A who outlines for them the relationship between A A and the *First Step Home*, and also allows an amount of time for a question and answer period After this orientation meeting, the new people then attend the regular A A meeting

"Restrictions in the home are held to a minimum, it being our theory that the alcoholic does not respond favorably to regimentation

"Our program consists briefly of an atmosphere as nearly homelike as it is possible to achieve in community living, a close association with Adult Guidance Center, together with A A meetings in the home

"The above, coupled with the fact that the alcoholic is living with people with whom he relates easily eases the adjustment from the drinking pattern back to a regular routine, ability to assume responsibility and resume his place as a self-supporting member of the community.

"The average stay in the home is from four to six months, no time limit is set on this, it being left entirely to the individual, we do urge at admission that a resident plan on staying for a minimum of three months, preferably six months before he attempts to leave"

2. *Alcoholics Anonymous*

The following statement was submitted to the subcommittee concerning the operation of Alcoholics Anonymous generally and the special programs in connection with penal institutions

"Alcoholics Anonymous is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism The only requirement for membership is a desire to stop drinking There are no dues or fees for A A membership; we are self-supporting through our own contributions A.A is not

allied with any sect, denomination, politics, organization or institution; does not wish to engage in any controversy; neither endorses nor opposes any causes Our primary purpose is to stay sober and help other alcoholics to achieve sobriety Anyone who turns to A A locally or through our international service office, can be assured that his or her anonymity will be preserved

"This central office is supported by 44 registered A A groups, and serves an area which covers Alameda County and parts of Contra Costa County We maintain an 'Alcoholics Anonymous' listing in local telephone books and handle telephone and mail inquiries, routing them to the appropriate local group Personal calls for help are given to the secretary of the group geographically closest to the caller The group secretary contacts a member who telephones and suggests a personal visit for the purpose of outlining his own recovery and suggesting that the newcomer accompany him to a group meeting There are many types of A.A meetings open—for both alcoholics and nonalcoholics; closed—for alcoholics only; speaker meetings—to which 'outside' speakers are invited, beginners' classes—indoctrination for new members

"The central office serves as a communications center for intergroup activities in this area and as a service center for groups and individuals We publish a directory of meeting places and a monthly bulletin. We maintain a supply of all pamphlets and books published by 'A A World Services, Inc '

"Matters affecting A A. as a whole in this area and the affairs of the intergroup are handled by intergroup representatives who meet once a month One representative is chosen from each group A five-man service committee is selected by the intergroup representatives to administer specialized services

"*Office Chairman.* Supervises office activities

"*Beginners' Classes:* Selects and supervises instructors for weekly classes especially designed for the newcomer.

"*Public Meeting and Publicity:* Arranges for monthly public meetings at a downtown location to which all interested persons are invited An effort is made to obtain speakers of special interest Attempts to further our policy of attraction rather than promotion at the public level

"*Telephone Service:* Maintains a list of volunteers, who, in conjunction with a telephone exchange, see that this central office telephone number is answered during the hours that the office is closed This means that all calls to the office number are handled in the same way

"*Hospital and Institutions:* This activity is closely allied with the larger Northern California Hospital and Institutional Committee Members of this committee visit A A groups in city, county, state and federal prisons, correctional institutions and hospitals, where regularly scheduled meetings are held A A groups are established and sponsored by A A. members only at the request of the administration officials

"All A.A work is voluntary, as we follow the A A. tradition that Alcoholics Anonymous should forever remain nonprofessional;

however, our service centers may employ special workers. The only paid employee in the area is the full-time secretary at the central office.

"The Al-Anon Family Groups consist of relatives and friends of alcoholics, who realize that banding together they can better solve their common problem. There are five such groups within the area served by this central office

"The sole purpose of A A. members is to preserve their own sobriety by sharing it with other interested alcoholics As a society, A A has therefore avoided *affiliation* with other programs in the field of alcoholism Individual members, local groups and special service committees do, however, contribute their experience freely to assist doctors, institutional administrators, law enforcement officials and community agencies who seek to help problem drinkers

3. *Northern California Service League*

Mr Joseph R Silver, executive director, NCSL, submitted the following statement to the subcommittee concerning the work of the organization with respect to the local jails.

The Northern California Service League was organized in 1948, as a nonsectarian agency, to demonstrate the need, at the county jail level, of the type of casework, counseling, and therapeutic services found only in the state prisons The Northern California Service League operates in the county jail, in San Francisco and San Mateo Counties Its functions are three-fold·

(1) To provide casework and counseling services to the inmates of the county jail

This service is provided by a staff of psychiatric caseworkers, who visit the jail regularly and make their services available, on a voluntary basis, to any man or woman in the county jail who has a problem they wish to discuss with the service league representative The services consist of many personal services but, most importantly, of counseling with the inmates in regard to the complex and sometimes obscure reasons for the individual's involvement with the law. These services are aimed at better adjustment, in general, for the individual in the belief that by helping the individual with his total adjustment he will be more able to remain out of jail and certainly more able to avoid more serious offenses which might lead to prison sentence

The service league works with the prisoner in jail; and, when indicated, with his family It, also, works with the prisoner and his family after his release from jail, helping him with the many problems of readjustment to the community

From time to time, the service league conducts group therapy programs; for example, it has had such programs with narcotic addicts, with alcoholics, as well as heterogeneous groups.

(2) The Northern California Service League also is concerned with the general conditions in, and administration of, county jails; and, therefore, is interested in any developments in the community that may help improve conditions and administration The league has been instrumental in effecting a number of important changes.

(3) The service league's third function is that of helping the community to understand the problems of the county jail and of the misdemeanant offender The person who acquires a police record runs into many problems in regard to employment and acceptance into the community in general, and, unless the community can accept its responsibility in these areas, the offender is very likely to become a recidivist

"In addition to these three functions, the Northern California Service League is interested in exploring the possibilities of the most effective methods of preventing the recurrence of crime Therefore, it engages in special demonstration and research projects, from time to time, aimed at increasing our knowledge and understanding of the misdemeanant offender and of the best ways to deal with him For example, the Northern California Service League is now writing a report on a three-year Intensive Casework Project aimed at learning what we can by working intensively with a small caseload.

"The Northern California Service League is a private, voluntary agency, supported by the United Crusade and by individual memberships It, thus, is an example of the way in which the total treatment program of the jail can be increased and improved by the use of community resources

4 *The Protestant Episcopal Hostel of San Francisco—The Henry Ohlhoff House*

Father K L Sandercock, priest-director, submitted the following statement to the subcommittee concerning the operation of this facility

"An institution of the Diocese of California, under a board of governors, and directed by the Diocesan Department of Christian Social Relations.

"A residential hostel with a capacity of 40 men.

Sources of residents:

"Men are referred to us from the following

1 Alcoholics Anonymous
2 State institutions
3 Adult Guidance Center of San Francisco
4 Clergy
5 Social workers
6. Jails and judges
7 Word of mouth

"Men come to us from every social group, every class, vocation, and skill Many are highly educated, some are professional men, some have no more than a sixth grade education

"*Requirements for admission:*

"Our three requirements for admission are these:

1 A sincere desire for sobriety We are not interested in men who are thinking only in terms of temporary sobriety, or drying out, of a temporary resting place before another binge If a man has made the decision to try for permanent sobriety, we can help him

2 Compatibility This is required for the sake of all of the men An atmosphere free of friction, and one of warm, mutual understanding, is a most important part of our therapy.
3 Employability A man must be employable, and must go to work He must meet his charges here (about $25 a week), but more important steady employment is essential to his rehabilitation. If a man has lost his "work habits" he may be better off at some such institution as the Salvation Army

Program of Rehabilitation

Screening Each applicant is interviewed, first by one of the assistants, and then by the director The purpose of these interviews is to elicit information about the man's background, his drinking problem, and his compliance with the requirements for admission. If he is not admitted here, he will be referred somewhere else for help If he is admitted, he receives preliminary indoctrination

Therapy

Our therapy falls into five main categories·

First, *the fellowship of the house*, in a warm, accepting, understanding group Men who have been in the house for long periods undertake the education of the new man He is able to talk out his problems and find insight into them. Some 20 percent of the men have been in the house for six months or longer; these now form a solid core who do much to help the newcomer.

"Second, *counseling* from the director and the staff is always available Most of the men take full advantage of this Notes on each counseling interview become part of the man's confidential file

"Third, *group meetings* Attendance at a regular weekly house meeting is mandatory for all residents At these meetings matters pertaining to the house are dealt with, followed by group discussion of some phase of the drinking problem. New residents attend a cycle of six indoctrination meetings on the nature of alcoholism and the paths to recovery These meetings are also open to other residents Films and group therapy are used to the full.

"Fourth, *A A* is strongly recommended to all residents There is one open A A meeting a week at the house which is attended by most of the men and by visitors Men are also urged to attend other A A meetings around the city and to read A A literature The house runs on A A principles, and much A A is talked among the men.

"Fifth, *religion* This is a church house There is a chapel, in which services are held daily, as well as on Sunday Attendance is entirely permissive, men who come do so of their own free will They often make use of the chapel The presence of the chapel, and the atmosphere it gives to the whole house, have given many men help which would otherwise be lacking.

Length of Stay

"At present there is no limit on the length of stay Thirty days is only a drying out period. At least three months is required to bring men to a degree of stability. We desire to keep them for at

least six months, and longer when necessary. During this time we look for a change in personality and thinking If this does not occur, the men do not stay sober.

Jail Records

"Counting as a jail record any incarceration other than 10 days or less for common drunk, we have had only about 10 percent of the men who have come to the house with jail records No special therapy is given them. They are treated as is everyone else Their success has been no worse and no better than that of the other men The principal difficulty, aside from alcoholism, seems to lie in poor employability, and in a loss of ambition and spark

Yale School of Alcohol Studies

The priest-director has recently participated in the Yale Summer School of Alcohol Studies This training has enabled him to improve and broaden the therapy of the house It has also brought national recognition to the work being done by the Henry Ohlhoff House.

5. The Salvation Army Men's Social Service Center, San Francisco

Captain George Duplain, manager, has submitted the following statement to the subcommittee concerning the San Francisco Center's program for the treatment of alcoholics.

"The center exists for the long-term, inpatient treatment of the chronic alcoholic and those suffering from other personality disorders Admission is selective and based on an interview and two short psychological tests On this basis, the applicant may be admitted on 30 days' probation during which he is given a complete physical examination in the center clinic which is staffed by three doctors from St Luke's Hospital and by the center's own R N, and also a battery of psychological tests which take two complete evenings to administer, and which predict the patient's response to psychological treatment and indicate the type of psychotherapy which should be provided

"Treatment consists of the semicontrolled environment, work therapy in connection with the salvage industries which provide the income of the center, medical care, group psychotherapy, individual psychotherapy, organized recreation, and, last but by no means least, religious counseling, education and worship The treatment extends from six months to two years or longer as required

"The residence which was completed three years ago has accommodation for 125 men in multiple (6 men) rooms or in private rooms. It also contains chapel, dining room, reception room, recreation room, complete with snack bar and pool tables, and music and T V rooms There is also a first class library and writing room

"The Work Therapy Building, situated in the same block, has carpenters, paint, radio and T V, electrical appliance, upholstery, stove, refrigeration and bicycle shops, etc.

"The staff consists of Captain Duplain, the manager, assistant officer, chaplain and resident psychologist, two part-time psychologists, eight interns from five universities and colleges working for

ecreation room, Salvation
rmy men's social service
enter, San Francisco.

Chapel, Salvation Army
men's social service center,
San Francisco.

The Salvation Army Lytto
men's social service cente
Healdsburg, California,
Main Building.

higher degrees, three visiting physicians, one part-time R N, residence supervisor, finance officer, public relations secretary, secretarial and clerical help and numerous employees in different catagories, such as, truck drivers, clerks, etc

(a) Federal Grant to Center for Study of Alcoholism

A five-year program of research in the study of alcoholism, involving over $300,000 in federal funds, has been approved for the center by the Office of Vocational Rehabilitation in Washington, D C In commenting on the research project, Captain Duplain stated that "the project will be another step forward in the Salvation Army's program of using available professional resources within reach to assist in bringing wholeness to men who come seeking help with their problems"

According to the report on the purpose and objective of the project, it was stated *

> "The project is to demonstrate by means of a professional study and by resultant improved techniques of treatment, the hypothesis that the rehabilitation potential and employability of the chronic alcoholic can be increased in an in-resident care and treatment center in the city, and to co-ordinate a rural farm project as an adjunct to this program
>
> "The purpose of this project is to demonstrate the relative influence of the several factors involved in rehabilitation as the process occurs in a religiously motivated and oriented therapeutic environment A special purpose would be to determine the response to long-term in-residence care and treatment in a semicontrolled environment and also to demonstrate the willingness to accept prescribed treatment and the response to such treatment through the use of a qualified research team Efforts will be made to demonstrate the possibility of controlling those personality disorders, of which alcoholism is a symptom, to such a degree that the individual becomes employable and capable of remaining in regular employment and enabling him to attain his optimal integration in society"

Such studies can only be richly rewarding in adding to our knowledge and expertise in treating those addicted to alcohol We wish the center success in this undertaking and express our hope that their findings will not only and such programs as those conducted by the center, but the nation, State and localities as well.

6. The Salvation Army Lytton Men's Social Service Center

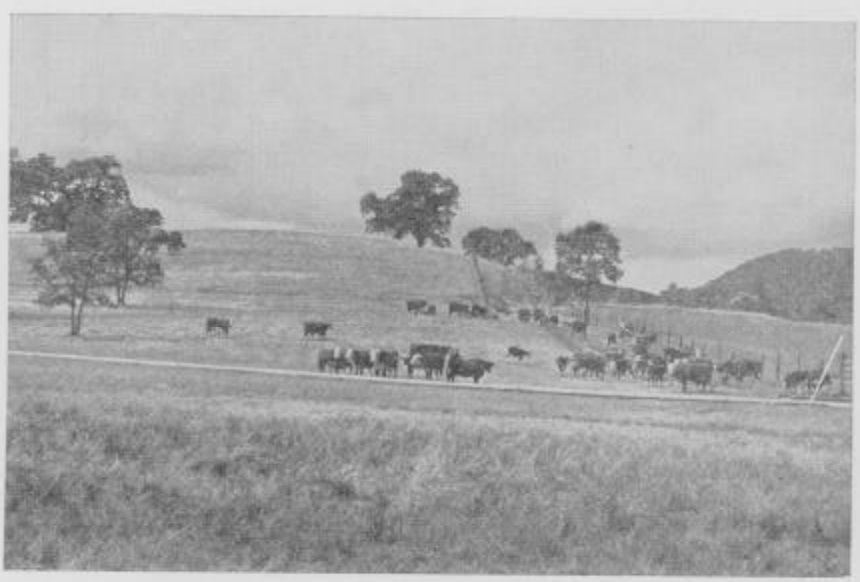
Captain Loren W Foote, manager, has submitted the following statement concerning the program and work of the Salvation Army at the Lytton facility in treating male alcoholics

> *Setting*—The Salvation Army, through its Men's Social Service Department offers a residential treatment program for men with alcoholic or other personality problems, which are sufficiently incapacitating as to render them incapable of functioning in their community or family group Lytton is a new venture in Salvation

* HERE, Vol 1, No 8, Salvation Army, July, 1960.

The Salvation Army Lytton men's social service center, Healdsburg, California, store.

* The products sold are salvage items repaired by enrollees as part of the work therapy program. The income from this activity is used in the maintenance of the facility.



The Salvation Army Lytton men's social service center, Healdsburg, California.

Beef production program.

* While visiting the center, the subcommittee was advised that all of the beef consumed at the center is produced on the farm.

Army treatment centers, in that it is located in a rural setting It is located 75 miles north of the Bay area on Highway 101, in Sonoma County It lies on a full section of land and the facilities include the main building with dormitory, dining, recreational, chapel and office facilities, hospital for medical clinic; warehouse and shop buildings; indoor swimming pool; gymnasium; and a religious education building A setting is provided for the man to gain perspective on and relief from his problems apart from the pressure of urban areas Lytton is able to accommodate 50 men

Philosophy—The Salvation Army believes that the causes which bring men to its centers are complex and varied There is no single cause and no single simple solution It is therefore necessary to have a broad spectrum of treatment methods and to use these in combinations designed to meet the needs of each individual case The program is meant to be flexible and dynamic

Program—The Salvation Army is a Christian religious organization believing that a relationship between God and man is of the utmost importance and the foundation for relationships between men in society. Through it a man finds purpose and a system of values to guide him in life Each man at the center may choose his religious preference and expression The religious program consists of weekday morning devotionals, a week night and Sunday morning chapel services and individual spiritual counseling

"Individual and group psychotherapy is available for those selected who indicate a need and capacity to use this type of help Deep emotional conflicts and a poor tolerance to stress underline the presenting symptoms in most applicants

"Vocational therapy in the form of vocational training and vocational retraining occupies a major portion of the program Many of the men admitted have either failed to acquire vocational skills Sound work habits are a must if a man is to seek the stability of steady employment

"Weekly Alcoholics Anonymous meetings are held at the center Visits to the Healdsburg and Santa Rosa chapters is also encouraged.

"A consulting physician visits Lytton and every man admitted to the program receives a complete medical examination and medical followup.

"*Staff*—The manager of the Lytton Center is Captain Loren Foote Among the staff is a part-time psychological and a medical consultant

"*Referral*—Admission is by referral Admission is entirely voluntary and a man is free to leave at any time It is understood, however, that a man will likely not benefit by a stay of less than six months When admitted, the applicant is screened for suitability A man is accepted on probation where he must demonstrate his suitability and motivation Once in the full program each man's progress is reviewed periodically If it is determined at any time that a man is not making proper use of the program he is terminated and when possible is referred to other help "

7. The San Francisco Jail Alcoholism Clinic

Dr. Thomas G Bond, director, submitted the following statement to the subcommittee concerning the work and program of the Adult Guidance Center of San Francisco in the treatment of alcoholic inmates

"In 1958, the Adult Guidance Center of San Francisco, a city-operated outpatient clinic exclusively for the care of alcoholics, established a branch clinic at the San Francisco County Jail No 2 located in San Bruno, California, for the treatment of incarcerated alcoholic offenders The clinic was subsidized fully for the first year and 50 percent for subsequent years by the Division of Alcoholic Rehabilitation of the California State Department of Public Health The present staff consists of a full-time psychiatrist-director, two full-time psychiatric social workers and one half-time psychologist.

"The program operates in five major areas· (1) pharmacotherapy of prisoners in acute alcohol withdrawal both at city prison (the primary detention facility for San Francisco County) and at the four county jails; in addition ataractic drugs are administered by the psychiatrist and jail physician to disturbed incarcerated offenders, (2) screening, psychological testing, and clinical evaluation of newly admitted offenders, (3) inpatient psychotherapy of offenders, (4) postdischarge care with utilization of a large spectrum of public and private agencies in aiding the offender through this difficult period; (5) consultations, conferences and other liaison with all agencies and individuals concerned with the alcoholic offender

"In the two years of full operation ending June 30, 1960, the clinic rendered services in one or more of the above areas to 3,800 prisoners Service visits totaled over 18,000 with 11,000 additional visits made by the jail physician

"San Francisco, with one of the nation's worst alcoholism problems, last year had over 28 000 drunk-related arrests constituting 62 percent of all arrests, in the last fiscal year 3,400 drunk-related offenders were sentenced to the county jails, constituting 44 percent of all admissions at County Jail No 2 Although many of these offenders suffer from a serious and advanced alcoholism, they constitute, along with the committed inebriate, the largest societal group which comes in contact with behavioral scientists in the age when alcoholism is just beginning to gain public recognition as a symptom of emotional illness rather than a moral stigma Accordingly, the San Francisco Jail Clinic program is aimed at treatment of the alcoholic offender at whatever level and in whatever degree possible, ranging from supportive medication through utilization of concerned agencies to continuing psychotherapy on discharge The basic treatment philosophy is that of the therapeutic community supplying as much help as possible to as many as possible, with treatment firmly based in psychoanalytic principle

"In preparation at this time is a proposal for an expanded treatment program, the San Francisco Medical Facility, which would convert the present San Francisco County Jail No 2 and its ex-

tensive acreage into a treatment facility at county level similar to state-level facilities at Chino, Vacaville and Deuel, and would be available to all misdemeanants sentenced in San Francisco County as well as to court-committed alcoholics and narcotics users The proposal will be submitted to San Francisco's Board of Supervisors early next year and will probably be subsidized by the Division of Alcoholic Rehabilitation in part The aim of the proposal will be primarily to demonstrate the feasibility and immense economy of such a comprehensive treatment facility at county level to other communities It is intended to be similar to, but more active than, similar facilities such as are found in Alameda and Santa Clara Counties

"With the establishment of the San Francisco Jails Clinic, San Francisco has taken its first steps away from atavistic and punitive correctional attitudes and toward a scientific approach to the emotional problems of offenders and effective and economical treatment of these problems The proposed facility will continue and expand the application of intelligent and enlightened contemporary thinking in the treatment of offenders"

E. RECOMMENDATIONS—NEED FOR IMMEDIATE ACTION

From the above discussion it can be readily seen that the basic theme of every approach to the problem of treatment and care of alcoholics is that major emphasis must be placed on the individual and his problem rather than his conduct As we have indicated, in every community the alcoholic presents a major problem This is no isolated, occasional problem, but a constant one of increasing proportions In the Special Study Commission's 1957 report, it was stated that "(t)he average proportion of inmates booked for drunkenness in the county jails on any given day ranges from about 30 percent to about 50 percent or more"[17] The Attorney General's Advisory Committee estimated a similar percentage of drunk arrests in California local jails annually[18] And in our visits we too observed this high rate of alcoholics incarcerated in the local jails At the city jail in Sacramento, for example, we were advised that 17,563 arrests on charge of drunkenness were made in 1959, and of this number, approximately 90 percent of the arrestees were released without court appearance Similar observations can be made with respect to Sacramento County, San Joaquin and San Francisco The situation has not greatly changed from that uncovered 15 years ago. And as late as 1957 the Special Study Commission concluded after its extensive study "In practically all jails, the alcoholic inmate is handled as an ordinary prisoner after he sobers up Only two or three larger counties have developed systematic programs to rehabilitate these prisoners"[19]

Many of the arrestees are repeaters They are picked up and booked "release with sober," and upon release, the same pattern is followed until the alcoholic is arrested again Thus the infamous "revolving door method" is well established

This condemnable practice is indefensible and must be replaced There is little argument that the "revolving door" method is not an

[17] *Op cit supra*, note 13, p 30
[18] *California Jails*, September 12, 1956
[19] *Op cit supra*, note 13, p 12

economical one for handling this group of inmates Huge sums can be incurred in the circuitous process of arresting and re-arresting the same persons In an analysis report to Kings County, the Board of Corrections quite aptly stated the alternatives open. "Treat the prisoner [alcoholic] or expend large sums for detention facilities merely to force sobriety during repeated periods of confinement "[20]

Thus the question is not *whether* treatment programs are needed, but *what* treatment programs are needed. And while there is a contrariety of views as to what programs are best or more effective, there are many approaches which merit study and experimentation. In addition, present practices with respect to the disposition of alcoholic offenders should be re-examined

(1) *Release and Postrelease Followup Procedures*

Release and postrelease followup procedures in local jails must be re-examined For treatment while incarcerated, whether it be compulsory or voluntary, matters little unless there is adequate preparation of the subject for release and followup treatment if such a course is needed Many of the approaches discussed above point up the need for adequate followup procedures It is idle to provide effective treatment programs while incarcerated only to discontinue needed treatment after release We therefore strongly urge, as a practical step, that local correctional systems—no matter what treatment programs are adopted—consider the very important fact of continuance of treatment perhaps by an outpatient clinic or private agency, after an alcoholic has been released from custody

(2) *Unconstitutionality of the "Common Drunkard" and "Habitually Drunk" Statutes*

The State Supreme Court's recent decisions in *In re Newbern*[21] and *People* v *Pureault*,[22] declaring the "common drunkard" and "habitually drunk" statutes unconstitutional, have generated many problems for small municipalities In many localities "vagrants" and "drunks" are committed to county rehabilitation centers when prosecuted under the "common drunkard" and "habitually drunk" sections of the Penal Code This practice had the advantages of alleviating much of the locality's drunk inmate load—although at the expense of the county—and also providing in many cases some type of treatment for the inmate While this practice did not always meet with the wholehearted approval of the receiving county, it nevertheless was used And in response to our request, Judge Harry J Borde, Municipal Court, Santa Monica Judicial District, described some of the problems resulting from the *Newbern* and *Pureault* decisions In part he observed

> "This decision [*In re Newbern*] made it impossible for judges in my position in local city courts to incarcerate persons at the Los Angeles County Honor Farm for a period of up to six months, during which time they were placed in the honor farm where they could receive the benefits of medical attention and regular food, and enough work to keep them occupied in accordance with

[20] *Detention and Treatment Program*, May 1960.
[21] 3 Cal Rptr 364 (1960)
[22] 5 Cal Rptr. 849 (1960).

their physical capabilities This gave a judge in my position the only alternative of one, a fine; second, probation, and third, incarceration in a city jail In my opinion none of these is of any benefit to either the public or the chronic drunkard "

Specifically, the court held in the *Newbern* and *Pureault* cases that the terms "common drunkard" (P C Sec 647 11) and "habitually drunk" (P C Sec 273(g)) were too vague and indefinite to satisfy the constitutional requirement that criminal laws must be clear in their terms and sufficiently definite on their face so that no one is compelled to guess at what is proscribed or made criminal In both cases the court discussed at length the difficulty of uniform enforcement of such uncertain standards, and concluded that the sections could not stand

In view of these decisions, and the use particulary of the "common drunkard" section of the Penal Code by municipalities, we recommend reconsideration of these statutes with a view towards curing the constitutional defects

(3) *Treatment Center for Alcoholics*

In the description of the San Francisco Adult Guidance Center and its work, the value of such an installation is unquestionable Not only are alcoholics in the general community treated, but with such a facility, an inpatient outpatient type treatment clinic can be set up in the local jails, particularly the farm branches where treatment may be continued after release of the inmate Moreover, such a center can serve as a co-ordinator for public and private agencies and groups that operate alcoholic treatment programs We believe this type of center offers great possibilities and therefore we recommend that municipalities, counties and state efforts be co-ordinated in this regard and more such centers be established in key localities throughout the State in order that each locality may have access to such a service

Much has been learned from the pilot programs of the Division of Alcoholic Rehabilitation The initial results from these experiments have been very encouraging Continuation and expansion of these experiments would indeed be fruitful, particularly with respect to the local jail problem which should have more tie-in such as the type described *supra* with respect to the work of the pilot projects

We also urge careful study of the establishment of detoxification centers. If, as is generally contended, alcoholism is not a criminal act but an illness, then serious consideration should be given to proposals to remove the handling and treatment of alcoholics from local penal systems entirely

(4) *Sentencing of Alcoholics· Flexible or Indeterminate Sentence*

The treatment of alcoholics is not exclusively medical Preparation for release and followup after release, as we have discussed, are equally important But the initial treatment to a great degree determines the success and effectiveness of any followup or postrelease treatment. Consequently, the adequacy and duration of the treatment to a large extent determine the success of followup procedures

Each alcoholic inmate presents a different case from all others There are to be sure basic groupings of alcoholic types, but in fine, each case presents unique and individualized problems These are important considerations in treatment, and oft-time may well determine what type treatment program for a particular subject is needed But under our present scheme, there is no provision in our law which permits a court to adjust a commitment to a needed or recommended treatment program. Thus sentenced alcoholic offenders are given straitjacket-type sentences of a specific number of days and mechanically serve out the imposed mittimus without any attempt being made to adapt the term of sentence to a kind of inpatient treatment program that will enhance the possibility of a cure or improvement Such a practice is futile

In Los Angeles, for example, Judge Robert Clifton, Municipal Court, Los Angeles Judicial District, has described a practice employed in sentencing the skid row type alcoholic offenders which approximates an indeterminate sentence

> "These [alcoholic convictees] we send to the Los Angeles Police Department Rehabilitation Center in Bouquet Canyon Deputy Chief of Police Murdock will probably explain this facility to you at length The defendant is ordinarily put on probation, and the imposing of sentence is suspended for one year on condition that he shall not drink nor commit any violation of law, and that he will spend an initial period of time (ordinarily 120 days) at the rehabilitation center 'Good time' of five days per month is ordinarily earned so that the maximum term is not more than 100 days Under the probationary law, the sentence may be modified or shortened at any time
>
> The defendants are encouraged to work out plans to get off skid row and back to a regular job, to their families, and in some cases to their homes or jobs in other cities (these plans are reported to the court by the officers at the rehabilitation center), and they are released when such plans are practical and the facts warrant them In a way, the sentence is an *indeterminate one,* for some sentences are modified at 30 days, 45 days, etc. (Emphasis added)

We recognize that one of the problems with the use of the "indeterminate sentence" device is the general disapproval by the public of long-term jail sentences for offenders charged with drunkenness But this notion is erroneously premised, for an indeterminate sentence with an overall limitation of two years, for example, would not be imposed to punish the offender, but to treat and therefore help him.

This erroneous notion also points up the need for a more extensive educational program for the general public relative to the nature, cause and effects of alcoholism For if such a widespread erroneous notion is permitted to go uncorrected, when positive, sustained care and treatment programs for alcoholics with effective follow-up procedures are unquestionably needed, the result is a kind of public apathy through ignorance and governmental ineptitude.

Our recommendation, therefore, is that consideration be given to enactment of an indeterminate sentence law for alcoholics and other classes of inmates where a flexible sentence is needed in order to effectively treat and rehabilitate the inmate

(5) Study Should Be Given to the Matter of Proper Booking Procedures for Arrestees Charged With Drunkenness

A rather widespread practice in many local jails is that arrestees charged with drunkenness (and other offenses such as disorderly conduct, malicious mischief or traffic violations) are not booked in the same manner as other arrestees. We observed this practice for example in the city jails of Sacramento, San Francisco and Oakland

The reason generally given for this practice is inadequate space and insufficient personnel. It also reflects a somewhat tacit acceptance of the "revolving door" method of handling this class of offenders Failure to use some type booking procedure conceivably could result in reduced public protection. Conceivably many inmates in this class may have committed other more serious offenses, and thus would escape detection altogether, although they may be arrested many times

This is not to suggest or recommend that a "rap sheet" should be built up on every arrestee, for such a practice could do more harm than good What we do suggest is that alcoholic arrestees should be booked in some way so that it could be ascertained at subsequent times how many arrests had been made, treatment or care administered and other pertinent information. Perhaps our suggestion is part and parcel of the problem of treating and classifying alcoholics as sick people, in need of medical care Perhaps our procedures with respect to handling the mentally ill or tubercular cases can serve as a source of knowledge that would provide needed suggestions Our purpose here is merely to point up the problem and to indicate the need for immediate corrective action

Statistical data such as would be gained from systematic reporting and record keeping is essential in treatment oriented programs Basic information can accurately be known without the necessity of indulging rough approximations.

This problem is part of the larger problem of the lack of uniformity in local jail record keeping There is a distinct need for the formulation of standards for uniform record keeping on the local jail level. Mr Ronald H Beattie, chief, Bureau of Criminal Statistics, Department of Justice, in response to our request, advised of the efforts of his bureau to undertake a program which would lead to the formulation of standards for local detentional record keeping. He stated:

> "We have not up to the present time been asked specifically for advice relating to a system of keeping jail records. We have participated in past years, along with representatives of the Board of Corrections, in completing surveys of jails in Santa Clara and Los Angeles Counties These surveys have indicated that there were data relating to jail inmates which were not readily available, and which should be provided for in any improved system.

"This is a matter that we have not pushed in the bureau simply because we do not have the staff to handle it During the last three legislative sessions we have put in our 'B' budget a request to establish a unit in Bureau of Criminal Statistics to collate materials from detention "

The subcommittee recommends that funds be made available to the Department of Justice, Bureau of Criminal Statistics to undertake the study and collation of materials relative to inmate booking, treatment and handling of alcoholics in local jails

VIII. THE PROBLEM OF THE NORCOTIC ADDICT AND THE LOCAL JAILS

A. GENERAL

The problem of the narcotic addict is quite different from that of the alcoholic At present, an elaborate fabric of local, state and federal laws constitute the chief method of dealing with these offenders rather than treatment oriented programs In its first report, *Narcotic Arrests in California,* July 1, 1959-June 30, 1960, the Department of Justice, Bureau of Criminal Statistics, reports that 17,060 narcotic related arrests were made in the State during the one-year period, and from a study of these arrestees, it was estimated that approximately 10,000 narcotics are in the State The Department of Justice made similar observations in its mid-year report, *Crime in California,* Mid-Year Summary 1960 In its 1959 report, "Narcotics in California," the Department of Corrections estimated the cost of narcotic traffic in California to be over $65,000,000, which includes costs for institutional operations, parole, capital outlay, arrest, trial, transportation, and the economic waste involved Similar estimations were voiced by the Senate Interim Committee on Narcotics in its extensive report in June, 1959, and the subcommittee on Narcotics and Dangerous Drugs of the Assembly Interim Committee on Public Health in a March, 1959, report The common conclusion from all of these reports is that the problem has not lessened; rather, it has increased.

Primarily narcotic offenders are encountered on the local level The offense of addiction, a misdemeanor, punishable by a sentence of 90 days to one year in a county jail, constitutes the major source of narcotic arrestees It should also be noted that a person convicted of addiction may be placed on probation for a period not to exceed five years, but in all cases, convictees must be confined in a county jail for at least 90 days In addition, a large portion of the felony narcotics violations are handled on the local level Consequently, local treatment programs and approaches are important because of the predominance of the problem on this level

B. SOME OF THE NOTABLE NARCOTIC TREATMENT AND DETECTION PROGRAMS IN OPERATION ON THE LOCAL LEVEL

Los Angeles County, which has the largest narcotic problem in the State, has only recently initiated a treatment program

An addict sentenced to jail or probation in Los Angeles is initially placed in the county jail for a period of from two weeks to 30 days Following this period, the addicts are transferred either to Wayside Honor Rancho, where they are treated just as all other prisoners, or to Mira Loma, where a pilot study on narcotic addicts is being conducted The treatment program consists of group therapy, counseling and guidance from occupational therapists and psychologists While testifying before the Subcommittee on Narcotics and Dangerous Drugs of the Assembly Interim Committee on Public Health, the chief of the Divi-

sion of Corrections of the Los Angeles County Sheriff's Department, expressed a somewhat pessimistic view of the success of this venture: "Just as most people feel they have been unsuccessful in curing the alcoholic medically, we feel we are unsuccessful in curing the narcotic addict from this standpoint It requires something much more than that We don't know when an addict is 'cured' If a man stays off the use of the drugs for a year, is he cured? We have just about come to the point of believing that if a man could spend his entire lifetime without a recurrence of the use of narcotics, then, and only then, is he a 'cured' addict We feel the problem is a community problem and that it must be solved in the community * * * Emphasis should be placed on stopping this thing from happening, from creating new customers for our business"

Although San Francisco has a narcotic problem second only to that of Los Angeles, at the county jail no treatment program is in operation The Northern California Service League, a private organization, conducted a pilot treatment program for narcotic addicts in San Francisco between February, 1953 and June, 1956

At Alameda County's Santa Rita Rehabilitation Center a treatment program for narcotic addicts is evolving Previously these addicts were treated in the alcoholic clinic at the center As reported in the clinic's Ten Year Report 1949-1959, about 35 percent of the inmates at Santa Rita "are involved with narcotics to some degree" Thus with such a high incidence of addiction, studies were undertaken by the staff of the clinic to devise new methods of detection and treatment

In 1955 the staff initiated two studies, one pertaining to the social history and makeup of drug addicts (A Special Study of 141 Drug Addicts January-June, 1955), and the other concerned the use of the new antinarcotic drug, Nallinc, in the detection of addictees The social history study provided the staff with valuable background information concerning the character and behavior of addictees, and the latter study led to the adoption of the Nallinc test for detection of addictees by the Oakland Police Department in 1956 Thus the Oakland Police Department became the first metropolitan police department in the United States to utilize the Nallinc test. During the same period, the Alameda County District Attorney's office also adopted the test for detection and prosecution of narcotic addicts Under both programs, however, consent of the suspect must be obtained before a test is given. Both the county and city have reported success with the test In 1959 the District Attorney of Alameda County informed the Senate Interim Committee on Narcotics that the number of crimes attributed to narcotic addicts has decreased 40 to 50 percent In the Oakland Police Department's publication, *Narcotics Addiction and Nallinc*, in a study of nearly 5,000 test results, based on selected offenses characteristic of the addict, the following comparison was made between the year 1955 a pre-Nallinc test year, and 1958, when the test was being fully utilized

Offense	*1955*	*1958*	*Percent of change*
(1) Robbery	731	577	—21
(2) Burglary	3 094	2,694	—13
(3) Auto burglary	1,062	561	—47
(4) Auto clout	877	671	—23
(5) Prostitution	268	201	—25

Success has also been reported in use of the Nalline test with probationees In the Oakland Police Department's publication, *A New Approach to the Detection of Narcotics—Nalline*, 1957, it was reported "To further increase the effectiveness of the Nalline program, Oakland Municipal Court judges agreed to sentence all convicted addicts to from three to five years probation As a condition of probation the subject is required to report at least once a month, on one day's notice from his probation officer, for a Nalline test If the probationer fails to pass the test, his probation is violated and he is returned to custody This knowledge acts as a great crutch for the weak personality who cannot stay off drugs on his own initiative Oakland police files already reflect the case histories of several heavily addicted individuals who are now reporting regularly for Nalline tests—and who now evidently are able to withstand the temptation to return to their former addiction

This therapeutic aspect of the Nalline program has several obvious values (1) it provides the former addict with the help he needs to stay away from drugs while he develops again into the worthwhile and productive citizen, (2) it cuts deeply into the rates of crime against property because the addict-thief may now be kept out of trouble on a more or less permanent basis rather than just for the few months while he is serving a jail sentence; and (3) it tends to reduce the total narcotics problem, since the seller of narcotics will not stay where he has no market, and as the sellers become more scarce, fewer people will be exposed to unlawful addiction "

Nalline has been used for narcotic testing in a number of localities in addition to the above, among them being the cities of Sacramento, Stockton, San Francisco, San Jose, Long Beach, Pasadena, Indio, Santa Ana and the counties of Marin, Riverside, Ventura, Monterey and Los Angeles.

In many of these localities this subcommittee is of the view that the Nalline test has not been utilized to its fullest, consequently the results realized have been meager or nil To mention three instances, in the City of Sacramento, Los Angeles and San Francisco, a stepped-up and competently administered Nalline narcotic detection test program would go a long way towards correcting some of the problems narcotic offenders create We believe that the results realized in Oakland and Alameda County can be similarly realized elsewhere.

We wish also to comment on an observation made by the Joint Judiciary Committee on Administration of Justice in its third and final report, *Crime and Criminal Courts in California*, in 1959, where the practice of many state courts of disregarding a prior offense in sentencing a second offender was sharply pointed up and critized. The practice resulted from the State Supreme Court's decision in *People* v *Burke*, 47 Cal 2d 45 (1956), where it was held that a trial judge may, in his discretion, treat a defendant as a first offender and disregard the prior conviction under Section 1385 of the Penal Code, which authorizes a trial judge to dismiss an action "in the interests of justice" either *sua sponte* or upon application of the prosecuting attorney

This conflict arose after stiffer penalties for second offenders (see Health and Safety Code, Div. X) were enacted in 1953 and 1954 This practice, in our view, points up the core of the problem, namely, whether different approaches to the problem of the narcotic addict should

be explored, rather than to merely continue to make the laws "stiffer" Our recommendation, then, is, that serious and careful study should be given the entire problem The testimony of many of the judges included in the joint committee's report, demonstrates that "stiffer," canonalized laws is not enough, each individual case presents special factors which cannot be accurately assessed or considered under our present scheme.

C. NATIONAL STUDY: NATIONAL ASSOCIATION FOR THE PREVENTION OF ADDICTION (NAPAN)

Recently a national organization "to fight drug addiction with a $7 million program over the next three years" was formed in New York under the leadership of Joseph F Carlino, Speaker of the New York State Assembly The newly formed organization, National Association for the Prevention of Addiction (NAPAN), has three major objectives

> "Development of a program of community education in co-operation with educational departments and school systems, community service organizations, religious denominations and social agencies.
>
> "Research and investigation into the legislative and law enforcement aspects of drug addiction to determine the most effective policies in these fields
>
> "Research into the causes of addiction and improvement of methods of treatment
>
> "A pilot project is planned with establishment of an experimental and research institute and hospital as a center for scientific, medical, legislative and education studies"

Such an undertaking is long overdue It is our hope that NAPAN will succeed in its objectives and that the knowledge gained will be useful in future attempts to fashion and formulate corrective programs for the narcotic addict

IX. PROBATION AND PAROLE

A. PROBATION

Probation has been an important procedure in California corrections since 1903 And through the years it has become one of the basic approaches to aiding offenders in reconstructing their social and personal lives To be sure, probation, being a county and therefore local corrective function, has done much to bring about changes in the traditional role of our local penal institutions

In December, 1957, the Special Study Commission on Correctional Facilities and Services published its report captioned, "Probation in California," in which many of the problems extant in the administration of county probation were studied in detail

While it is not our purpose here to summarize the findings of the commission, which would indeed be a colossal task, or to touch on every point of significance and interest stated in the report, we shall comment on several of the more salient points The commission very ably traces the history of probation in the United States and its widespread growth and use The pattern in California has been typical of the national trend. But of particular interest is the fact that, numerically, probation has become the most important correctional activity in the State since World War II

As reflected in the report, at the end of 1957 there were 90,000 individuals under the jurisdiction of probation departments, which was twice the number in institutions and on parole

But even with this encouraging trend, it nevertheless remains that probation, as a rehabilitative technique, has not kept apace with the increasing and changing needs and demands of present day penal institutions There are serious weaknesses in California probation services Some counties, according to the report, have little more than token departments, even though under our present statutory scheme every county can either singly or collectively effectuate a worthwhile probation program In its midyear report, "Crime in California 1959," the State Department of Justice (Bureau of Criminal Statistics) noted that the per capita rate of probation grants during the first half of 1959 decreased by 12 percent from the first half of the 1958 rate And when measured in terms of offense categories, in homicide, assault and sex offenses, the rate of probation grants increased, while there was a general decrease in all other offense groups It was also reported that during this same period, jail sentences increased in rate by 5 percent for the first half of 1959 over the first half of 1958 on a statewide basis [23]

The consequence of a reduction in the rate of probation grants and an increase in the rate of jail sentences is overcrowding of jails—one of the already chronic problems of the local jails

While the above statistics indicate a general decline in rate of probation grants, they do not reflect the full picture Many of the felony

[23] Page 25.

defendants granted probation (in 1957 49 6 percent out of the 9,014 felons) were given jail sentences as a condition of probation This means that several probationees spent some time in jail which of course increased the total jail population

Using jail sentence as a condition of probation is of particular interest because many countries, notably England, and states, do not employ this procedure [24] Moreover, it is generally regarded as violative of a basic principle of probation—suspension of sentence in lieu of incarceration To be sure it has its merits in some cases It gives, for example, the alcoholic a period for physical rehabilitation It provides supervision on release for jail prisoners who would otherwise have none But the jail sentence very frequently, perhaps most frequently, is imposed as a punitive measure and, as such, runs contrary to the basic principles of probation as a control and treatment process rather than a punitive process

Another problem which is rather widespread in probation today is the wide variance in its use in the 58 counties of the State In its report, the commission set forth detailed statistical data showing the variations between counties and classes of offenses

The commission also reports a steadily increasing total probation caseload which has produced serious problems of efficiency in operation even though there has been a marked increase in probation personnel In departmental organization, the several local probation departments have also shown tangible progress while there were only 11 counties with differentiated departmental structures (separate handling of juvenile and adult cases) in 1948, there were 25 such counties in 1956 During the same period, counties with juvenile halls increased from 36 to 39, county camps or ranches from 7 to 13, and counties with full-time probation chiefs increased from 47 to 51

The work of the study commission and its recommendations were, to be sure, an invaluable service to local correctional personnel, the Legislature and the State We recommend this effort and heartily recommend future studies of this kind

Many of the recommendations of the commission have been enacted into law To mention those relevant here (1) state subsidy for camps for juveniles (Welfare and Institutions Code, Sections, 962-6) The Youth Authority reports that approximately $3,000,000 has been expended or encumbered under this measure [25] (2) Broadening of eligibility for adult probation (Penal Code Section 1203).

Two of the commission's major recommendations, however (state subsidy for additional county probation officers (S B 642) and confidentiality of adult probation case reports (S B 853)), were not acted upon

(1) *Legislative Recommendations*

The need for a state probation subsidy has long been recognized Even before the Special Study Commission's 1957 Report, the Special Crime Study Commission on Adult Correction and Release Procedures

[24] A study of this practice and the extent of its use in California was the subject of a special study, *Some Factors in the Use of Jail as a Condition of Probation*, Dept of Youth Authority Research Rpt No 1, January 5, 1959

[25] Memorandum from Mr A LaMont Smith, former executive officer of the Board of Corrections, March 30, 1960

recommended similar legislation in 1949 The necessity for such legislation has not lessened, if anything, it has increased

As we briefly pointed out above, there is an urgent need to improve the effectiveness of existing services With present caseloads being what they are, of necessity probationary supervision cannot be anything but perfunctory, and ineffective To illustrate the matter, the federal probation service has reduced its average caseload from 117 to 78—to accord with recommended standards, while the average adult caseload in California has risen to 205

For many reasons, there has been little done on the county level to reduce this enormous caseload and reverse this unhealthy trend Much of the problem stems from the fact that many of the smaller counties do not have the necessary resources Hence, some assistance from the State is imperative In these times of high population mobility and growth, local spheres of government, in relation to the State, become relatively less important in dealing with social and economic problems

An additional reason can also be given for a state-local program. a subsidy program would make possible an increased use of probation; thus many inmates now being sent to state institutions could be satisfactorily supervised on the local level at a much lower cost of the present practice of incarceration

We, therefore, recommend ·

(a) *Add Welfare and Institutions Code Section 1760.8 to establish a state subsidy program which would enable counties to enlarge their probation department staffs as required to meet minimum standards in the investigation and supervision of probationers*

With respect to the practical problems of a subsidy formula, the commission recommended: "[T]he commission suggests a simple grant-in-aid subsidy with 50 percent matching funds contributed by the State to counties which add new probation positions following the effective date of legislation, and which comply with the minimum standards This method would insure the simplest administrative arrangement for the start of a subsidy program Following three and four years of operation, it would be desirable to review the formula to determine if considerations of hardship and equity should dictate some changes." [26]

The Youth Authority, probation services section, could be charged with administration of the plan, with the requirement that the Board of Corrections approve local probation standards developed by the Youth Authority.

(b) *Add Section 1760 9 to Welfare and Institutions Code to provide for a state subsidy to counties to cover one-half of the cost of subventions to be awarded persons employed in county probation work for special study and training*

As we discussed earlier, the need for better trained local correctional personnel is one of the major problems facing localities today Without properly trained personnel, the entire correctional program suffers We believe that with the adoption of this proposal many localities would avail themselves of an opportunity to improve the caliber of this phase of their correctional personnel. The need for such a program as we propose assumes added importance in view of the observation of the Spe-

[26] *Probation, Jails and Parole*, January 16, 1957, p 21

cial Study Commission that probation is "the most important correctional activity in the State "

Our proposal is not new It was first considered during the 1957 Regular Session (S B No 852) but was not acted upon Delay is costly We therefore urge early and favorable consideration of this recommendation

Another matter which the Special Study Commission considered was the necessity for confidentiality of probation investigation reports After conducting a survey, the commission reported "A slight majority of the superior court and municipal court judges and a very great majority of the defense attorneys asserted that the probation report should be a confidential document Furthermore, it should be confidential after it is filed These conclusions were approved unanimously by the commission's advisory committee on court processes in probation "[27]

The reasoning behind this proposal is that, although a probation report is an official court document, it is at the same time a "clinical case report " And being the latter, it would be in keeping with basic principles of good clinical practice to prescribe some measure of confidentiality for these reports It would also facilitate the probation officer's access to essential data, result in more complete reporting of information to the court, and safeguard not only the probationee, but also the probation officer's sources of information

One of the main objections to this proposal is that public access to information on which court decisions are bottomed should be preserved, that use of "secret reports" for a judicial decision could result in serious infringements of personal liberties

While our concern too is that due regard must be accorded the personal rights and liberties of each individual, the oft-voiced objection misconceives the nature of probation An award of probation is not a right but a mere act of clemency which may be granted or withheld in the sound discretion of a court. See, *People* v *Goldberg*, 314 P 2d 151, 152 C A 2d 562 (1957) and *People* v *Taylor* 3 Cal Rpts 186, 178 A C.A. 492 (1960).

It would appear, then, that with the two contending considerations, public access to information and confidentiality of probation reports, the former should give way to the latter. Such would be in keeping with the developing trend towards rehabilitation of offenders rather than mere punishment We therefore recommend·

(c) *Penal Code Section 1203 01 should be amended to provide that probation investigation reports be confidential documents, accessible only to the court, the prosecution, and the defense, and to other persons whose official duties require such access*

Another problem which the Special Study Commission considered was the ambiguity in the status of persons who receive probation *after* conviction of offenses for which alternative punishments are prescribed The problem arises out of the practice where a judge grants probation prior to the imposition of sentence. If the offense is one of the type which can be either a felony or misdemeanor, the true classification is

[27] *Ibid*

sometimes undetermined for an indefinite period Yet it would be desirable to have a determination at the time of sentence Where of course the offense type is specified, there is no problem, but in the absence of such a specification, the misdemeanor classification should prevail This would be but another instance of the built-in equity of the law Presently, for example, a similar equitable presumption operates where there is an ambiguity in the service of consecutive or concurrent sentences In such cases, the law resolves the doubt in favor of leniency. In addition, these built-in protective devices have the added advantage of influencing the sentencing practices of courts This proposal was before the Legislature in 1957 and approved in S B 856 (redefining felony), but was subsequently vetoed While the two problems, definition of felony and ambiguity in designation of offense classification as it relates to probation, are related, rejection of the former should not be taken as rejection of the latter The proposal we urge here is to cure an ambiguity when a sentencing court fails to make its conclusions clear. The problem remains no matter how felony is defined We recommend

(d) *Section 17 of the Penal Code be amended to provide that if a person is convicted of a crime which is punishable by imprisonment in the state prison, but is also punishable by fine or imprisonment in a county jail, and the court grants probation but does not specifically provide that the offense shall be deemed a felony, the crime should be deemed a misdemeanor, unless such person's probation is revoked*

B. PAROLE

In present day penological thinking it is commonly accepted that parole is not leniency, but a technique for releasing inmates, under supervision, to permit gradual reintegration and adjustment in society Although statistical data is not comprehensive on the extent and use of parole on the local level, it is generally felt that in the past two years there has been a marked increase in the use of parole by the counties of the State This trend towards greater use of parole has, of course, both rehabilitative and economic advantages to the counties.

In 1957 the Legislature adopted a measure reconstituting the membership of the Board of County Parole Commissioners to include the sheriff, the chief probation officer and a citizen member (P.C. Sec. 3075) While uniformity in organization is promotive of sytematic parole policy provided the parole boards function effectively, an equally important consideration is the attitude of the parole board towards parole as a rehabilitative technique[28] In a March 1957 report, the Special Study Commission on Correctional Facilities and Services, entitled *The County Jails of California: An Evaluation,* set forth its findings relative to the attitudes of sheriffs and jailers concerning parole While the general tenor of opinion was that parole is a privilege rather than a right, in actual practice, many inmates are granted parole for personal, family or hardship reasons These factors, while bearing on the rehabilitation potentialities of the subject, should not be

[28] This problem was effectively dramatized in a workshop forum—a scene dramatized by the Alameda County Parole Board—at the 10th Annual Training Institute for Probation, Parole and Institutional Staff at Berkeley, California, 1958 See 10th Annual Report, pp 122-24

controlling Yet, it should be emphasized that through the proper use of parole, accompanied by the requisite proper supervision of the parolees, parole can as a practical matter go far to reduce jail population, and therefore overcrowding, while at the same time achieving a degree of readjustment for those paroled With the transition in organization of local parole boards under the 1957 law, it would seem to be an opportune time for local bodies to re-evaluate and re-vitalize parole practices and procedures. This sub-committee, therefore, strongly recommends such a course of action.

X. SUMMARY AND RECOMMENDATIONS

"The mood and temper of the public in regard to the treatment of crime and criminals," Winston Churchill observed, "is one of the most unfailing tests of the civilization of any country."[29] Public opinion insists upon some measures of punishment and retribution; yet, at the same time, the public conscience demands reform and rehabilitation of the offender. To a degree the themes are conflicting. The trend however, as we indicated before, is to place greater emphasis on treatment and restoration of the offender rather than punishment. The major concern today is for the offender, not the offense. A. J. Cronin's book, *Beyond This Place*,[30] is a vivid record of what a lock-up can do to the character of an inmate. Unfortunately, the ugly truth is that American local jails are breeding places for crime. With respect to the local jails of California, this fact was forcefully and effectively brought to the attention of the general public and governmental officials in 1953 in a series of newspaper articles, *County Jails Exposed—Story of Cruelty, Filth*,[31] written by Pierre Salinger, who spent seven days in two local jails *incognito*, and inspected several others. His report was praised by Chief Justice (then governor) Earl Warren and Governor (then attorney general) Edmund G. Brown.

The findings of the Interim Committee on County and City Jails in its 1946 and 1947 reports, the 1950 report of the Interim Committee on Crime and Corrections and the reports of the 1949 and 1957 Special Study Commissions, all reflect the urgent need for greater efforts on the local level. Our local jails, the responsibility of local government, have not kept apace with the changing functions and needs of local correctional institutions. As our findings reflect, there are promising beginnings in many local correctional systems, but there remains much to be done.

If, as we have pointed out, our basic objective is prevention of crime, short of achievement, what measures and techniques may be adopted to reduce the high rate of crime and restore offenders? Incarceration of offenders *per se* is not the solution. What additional techniques, then, are needed? This, we submit, is the crux of the problem.

A. GENERAL RECOMMENDATIONS

There are many very effective practical techniques which may be implemented. There are of course differences between the localities which may make some programs more desirable or effective than others. These are problems of adaptability and choice. Our purpose here is merely to list some of the basic and much needed programs and practices if our local jails are to serve the functions of custody and treatment of offenders effectively.

[29] *Elkin*, "The English Penal System," 277 (1957).
[30] Published serially in *Collier's* under the title "To Live Again in 1953."
[31] The articles appeared from January 23, 1953 through February 11, 1953.

1. *Treatment Programs*

This committee has witnessed the lack of, and need for, constructive activity for inmates while held in jail Public recognition of this fact is substantiated by the numerous California laws included in the various codes to permit the development of such programs for work and treatment Although some of the notable programs and institutions were described earlier, we briefly list some of the rehabilitative service programs which could be put into immediate operation in existing jails.

(a) *Group Counseling* Organized group counseling, such as the program described by Mr S R Zalba, Jr, in San Mateo County *supra,* has been undertaken in several localities, in addition to the Department of Corrections and Department of Youth Authority Each time a staff member confers with an inmate seeking assistance relative to some personal problem such as family, job, and the like, a form of counseling takes place All we suggest here is that this type of service be organized and inmates encouraged to use it on a sytematic basis. We also suggest that local jails seek the assistance of private groups and encourage their efforts in this regard

(b) *Religious-Recreation-Library* Religious services, in co-operation with local ministerial groups and churches could be initiated. While it is true that space in many local lock-ups has a high premium, nevertheless, every effort should be made to bring this type of service into the jail

Rudimentary recreational programs should also be adopted. It is no answer to say that, because there is neither physical space, funds, or personnel to establish elaborate recreational programs, the present circumstance of no program at all should therefore be maintained This is defeatism at its worst This committee has witnessed the evils of idleness in many of the facilities we visited It has been found both in state and local minimum security installations that most unfavorable incidents, including escape, occur during idle hours and, consequently, any wholesome activities which can be instituted to help fill this void will reduce such occurrences.

Efforts should be made to get the local public library to establish branch libraries in the central jails and the honor camps Such a service would do much to provide a worthwhile activity for those held in custody.

(c) *Handicraft Activities* A handicraft program should be established where possible, with space available for working, repairing and experimenting. Such an activity would be of immense therapeutic value, as would library, religious, counseling, or recreational programs Here again, much assistance can be received from community and private rehabilitation groups

(d) *Pre-release Preparation* There is a distinct absence of any type of preparation for release of inmates in almost all local jails Inmates are incarcerated and, in a somewhat mechanical way, released at the appointed time without even the slightest preparation for return to society The group counseling technique could be employed In addition, classes of instruction conducted by qualified personnel could be used Such a service would be of great value because of the myriad

of problems many inmates face upon release and the sometimes difficult task of readjustment in the community.

(e) *Work Program.* One of the very practical methods of displacing long periods of idleness is to provide employment for all persons confined. This would be but another treatment program

Provision should be made both through the allocation of space and purchase of tools and equipment which will enable prisoners to do much of the day-to-day maintenance and housekeeping work of the central facility as well as the farm camp Adoption of this recommendation would do much to improve the physical appearance, cleanliness and habitability of old and outmoded local facilities Moreover, it would give the inmates some activity, perhaps of a brief duration, thus breaking the monotony of sitting for long, idle hours in a dingy, staid and unsanitary lockup.

There is also a need to search for additional avenues for employment of honor and farm camp inmates. Agricultural work projects, while valuable and essential, cannot provide work opportunities for all of the inmates Assignment of work groups to parks, roads, fair grounds and other public projects should be fully explored

Careful consideration should also be given to implementation of Penal Code Section 1208, "The Work Furlough Rehabilitation Law," enacted and signed into law in 1957.

Under this law counties are authorized to permit offenders to serve sentences in custody at night and on weekends, while continuing their regular employment in the daytime In two counties, Santa Clara and Marin, where it has been implemented, these programs have been reported to be working successfully [32] Very detailed "reporting in and checking out" procedures have been devised, so that the necessary controls and searches of participants can be effectively and systematically performed.

In both counties it is reported that, because of the provision in the Work Furlough Law which requires each participating inmate to reimburse the county for his costs of boarding and feeding, in addition to rendering financial support to his family if such be the case, both rehabilitative values and monetary savings have been realized

In order to initiate a work furlough program, the county board of supervisors must adopt the requisite enabling ordinance We have been advised that, in addition to the two counties listed above which have realized a degree of success, several other counties [33] are considering adoption of a work furlough program We recommend consideration of the work furlough law and the programs worked out in Marin, Santa Clara and Stanislaus Counties For implementation of a work furlough program, we believe, will not only aid in the adjustment of those offenders qualified to participate, but will benefit the taxpayers of the county by the reduction of operational costs of jails and county welfare disbursements

[32] *Adult Detention Facilities and Treatment Program,* report, County of Marin, Board of Corrections, June 1960, p 8, and correspondence with Mr A Earnont Smith, former executive officer, Board of Corrections, March 10, 1960 Stanislaus County was also reported to have adopted the work furlough plan, but as of the time of our inquiry, no progress had been realized

[33] The counties are Fresno, Humboldt, San Luis Obispo, Santa Cruz, Sonoma, Tulare and Tuolumne

(f) *Honor and Farm Camps.* With the change in correctional philosophy on the local level, a trend towards branch jails in the form of farms and camps are replacing major emphasis on the central lockup. According to the Board of Corrections, the reasons for this shift are [34]

> "Capital outlay is considerably less for minimum and medium security facilities in comparison with construction costs for maximum security jails Camp and farm facilities are more flexible and permit the development of work projects that make the inmates, to some extent, self-sustaining Interagency co-operation can be instituted for the development and completion of work and maintenance projects on publicly owned buildings and grounds which could not otherwise be accomplished because of prohibitive costs
>
> "The inmate benefits from this type of program are excellent when the rehabilitative aspects are considered They are constructively engaged and are better equipped, physically and emotionally, to assume their social obligations upon release than if they serve their sentences in idleness "

In every local jail with its heterogeneous population, there are many inmates who are not real security risks and thus do not require maximum or even medium custody holding It is therefore not only cheaper to maintain farm or honor facilities, but those incarcerated therein are more likely to be aided enough to readjust in the community upon release We therefore urge localities to explore the possibilities of erecting honor or farm camps within the county or joint farms between two or more counties as authorized by the Joint County Jail Act (Penal Code, Sec 4050 *et seq*) In addition, particularly small counties, may explore the possibilities of entering into agreement with the State relative to the custody, treatment and care of certain county prisoners (See Penal Code Sec 6302 *et seq*)

County correctional staffs should also examine the possibilities of employment of prisoners in presuppression activities under agreement with the federal and state governments In 1957, the Legislature adopted a measure authorizing such contracts between federal, state and county governments

Such arrangements allows county prisoners not only the opportunity to constructively use otherwise idle time, but also provides a means of earning money even though serving a sentence

While this innovation is a worthwhile one, for reasons discussed earlier in this report, we believe that those eligible to go out on fire-suppression work should not be limited to "any person in custody on any county industrial farm or industrial road camp," as Penal Code Sec. 4125 1 presently provides, but should be extended to those in the central lockup if circumstances so warrant

(g) *Alcoholics.* The problem of proper treatment of the alcoholic offender is, as we discussed earlier, still a very uncertain and complex one. We therefore urge, as a practical step, that localities avail themselves of the vast resources of state agencies, including the Departments of Public Health, Social Welfare, Employment, and Mental Hygiene Local community and private agencies, e g A A and NSCL, are sources for assistance.

[34] *Adult Detention Facilities and Treatment Program, op cit supra,* note 31

We also recommend that the various counties re-evaluate their practices for sentencing alcoholic offenders Long term sentences alone are useless To be effective, such sentences must be accompanied by definite treatment programs which will not just postpone the problem (as would be the case with mere custody), but will help to reduce or prevent recurrences Consequently, in no event should a long sentence be used merely as a "floater" technique.

The treatment of alcoholics is not exclusively medical Preparation for release and followup after release is an equally important consideration Probably more than any other group of inmates, alcoholics and addicts generally need post-release care and guidance Consequently there is a very urgent need for quick and effective action with respect to this problem.

2. *Sentencing and Retention Practices*

Sentencing and custodial practices are direct determinants of jail capacity As we have pointed out earlier, one of the big problems today is overcrowding in our local jails And one of the very practical methods of combating this problem is to review those procedures which, because of the manner or method of use, local detentional facilities are taxed beyond their physical capacity to adequately accommodate all who are committed.

(a) *Fines and Straight Sentences* It is clear that the use of fines rather than jail sentences would reduce jail population and overcrowding However, for some offenses, and in cases of certain offenders, fines would work to rob the law of the protection which it was designed to accord to the community Yet, there are offenses and offenders of a certain type where a fine rather than imprisonment could be a useful device To be sure, fine in lieu of incarceration is no panacea, but if used with great care and discretion, much could, in a practical way, be accomplished to keep a large percentage of arrestees out of the local jails

The problem arises with the use of fines because of the wide variance in practice by the several local courts We therefore recommend that steps be taken by local correctional representatives to meet with the judges in their district or locality to discuss the effects of present practices and the desirability of greater use of the fine device Many states and European countries now employ this practice The late Judge Bolitha Laws, Chief Judge of the U S District Court, Washington, D C, cites an example of the British experience [35]

> "Extensive use of the fine in England has demonstrated its value in a remarkable reduction of institutional commitments The British courts use fines far more than we do and they have discovered that it is no threat to the community Cicely M Craven's report on the subject shows the striking effects of this measure in a "most dramatic reduction in the prison population "

(b) *Citation and Arrest* Much could be done to alleviate the problem of overcrowding in local jails by wider use of the citation device for charged offenses rather than incarceration The high rate of arrests for drunkenness, for example, could be sharply reduced Use of the

[35] Laws, "Criminal Courts and Adult Probation," 3 Nat'l Prob and Parole Ass'n Journal, p 358 (1957) Eriksson, "Prison Reforms in Sweden," 293 *Annals*, 1954

citation device, however, requires much discretion and care in order to insure that the civil liberties of those charged by citation will not be jeopardized Too often persons cited for violation of a local ordinance will accept a summary disposition of the matter and pay a fine even though there may be serious questions about the merits of the charge

The use of either the fine as a substitute for sentence or citation in lieu of arrest depends on the nature of the offense involved, whether it is an indictable or nonindictable one, the police record of the subject and other such considerations But these devices should be explored fully as to their use by the several localities (See Penal Code Sec 853 6, provision for release on citation for offense declared by state law to be a misdemeanor)

3 *Release*

(a) *Probation* As discussed earlier in our report, there is a wide variance in practices and use of probation It can, of course, add to and reduce jail population Where a jail sentence is imposed as a condition of felony probation, the prison population is reduced, but the local jails are charged with the custody of such inmates In addition, the practice of permitting a plea of guilty to an included misdemeanor in lieu of prosecution for a felony, has the same effect While both practices are proper and recognized judicial and administrative practices, they nevertheless produce problems of overcrowding in local jails We therefore urge that local law enforcement agencies and courts review these practices in the light of the resulting problems they generate

Under our present statutory scheme, probation may be used with respect to misdemeanants Careful use of this device in such cases would do much to relieve the jail load There are instances where the offender and the offense do not suggest the need of institutional custody, care or treatment, and in such instances, probation could be effectively employed In its December 1957 report, *Probation in California*, the Special Study Commission concluded "This technique [probation] appears to be one of the most promising developments in all modern correctional practice "[36] It is therefore of great urgency that the present practices and procedures and the extent of use of probation be reviewed with a view towards more extensive use

(b) *Parole* As we observed earlier in our report, there is also a need to re-examine local parole practices and procedures This device, like probation, fine, and citation, can play an important role in the reduction of local jail population

We noted the legislative changes in the membership of local parole boards in 1957 We recommend that, with readjustment to this change, localities could re-examine parole practices Here, we add, to underscore the importance of the problem, that the effectiveness of parole depends on the measure of control and supervision of parolees As a penologist once remarked, "Parole is supervision " We realize this requires larger staffs and consequently larger expenditures But much of this function can be effectively performed by co-ordinating the

[36] At p 135

functions of the local parole board with those of private organizations and groups rendering services of this nature.

4. Custodial Personnel

The quality and calibre of the jail staff reflects itself in every phase of the correctional program Consequently, it is basic to any acceptable correctional program that the staff be fitted and qualified to man the job

Many problems arise because of the method of selection of personnel. The same is true because of job conditions · pay, security, promotional opportunity and the like But more important, the major cause of inadequately trained and unsuited personnel arises from the fact that, of those who are employed, there is no systematic method generally of affording them a rudimentary inservice training course; hence, many important and basic correctional practices about which some knowledge is essential are never used Much, we believe, can be done, in addition formulating definite hiring standards and raising pay, etc., merely by instituting a basic on-the-job training program within each local correction system With the trend towards highly specialized rehabilitative programs in the local jails, a competent staff is becoming more and more indispensable

5. Utilization of Special Services of Agencies and Groups

(a) *Advisory Committee* In 1957, the Legislature enacted a law which provides for the appointment of advisory committees for adult detention facilities (Penal Code 4300 *et seq*) Such a committee can be of invaluable assistance to the local correctional systems Such a committee could effectively keep the public's interest alive in the correctional program as well as serve as a source of information and viewpoint solely needed in local corrections

(b) *Health Officer* The services of the county health officer can also be most beneficial in the maintenance of satisfactory health and sanitary conditions in the local jails (See Health Code Section 459) Systematic inspections and reports of this nature would be invaluable in evaluating the sanitary conditions and standards of the facility We strongly recommend greater use of this service.

6. Female Inmates

Generally programs for female inmates, whether they be recreational, rehabilitative or work "are nonexistent or negligible" [37] in the several local correctional systems of the State Perhaps the thinking is that the overall small number of female inmates in the local jails do not warrant elaborate and extensive quarters and programs Consequently, female offenders are compelled to serve their sentences in complete idleness; yet, here too, the injurious effects are the same as in the case of male offenders.

The Board of Corrections has consistently recommended to counties remodeling or rebuilding their local facilities to provide some type of program for female inmates An illustrative recommendation is that made to the County of Tulare. The board recommended [38]

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[37] See *Detention Program for Adult Prisoners*, report, County of Sonoma, Board of Corrections, January 1958, p 6

[38] *Detention & Treatment Program For Adult Prisoners*, report, County of Tulare, Board of Corrections, March 1958, p 4

"Diligent study should be given to the development of a program for women Space should be provided . which will allow the women prisoners to engage in a work program such as laundering, mending clothing, toy and doll repair, etc "

The California Study Committee, in its 1960 report, *The Older Girl and the Law* forcefully presented the case of general neglect and inattention to the custody and treatment of female offenders The Study Committee recommended, *inter alia:* [39]

"1 There be recognition by state and local agencies of the role of the jail as a treatment, as well as a custodial facility, and that jails for women include provisions for honor farms, work furlough plans, and formal education-programs including use of both television and personally conducted classes

"2 The Board of Corrections be assigned responsibility for supervising all jails, provided with the staff necessary to inspect and advise regarding services and programs, and consult with citizens' groups volunteering help It is further recommended that the Board of Corrections give leadership in planning facilities in those areas where single counties have too few women prisoners to justify program development

"3 Women's organizations familiarize themselves with local jail facilities for women and be encouraged to offer volunteer services and leadership in developing plans which will provide effective rehabilitative jail programs

"4 Those agencies concerned with consultant services to law enforcement continue to encourage and emphasize the need for women officers to work with and transport female prisoners

"The contrast and difference in the manner in which the male and female offender is treated is illustrated in the findings of the Special Study Commission in its report, *Probation in California,* 1957 This report reflects that female inmates constitutes approximately 5 3 percent of total local jail population, yet only a fraction of this percentage is ever exposed to rehabilitative programs or treatment

"There is, then, a definite need for speedy and effective action with respect to formulating and implementing correctional programs for female inmates in all local correctional systems And in instances where the size of the locality is such that basic programs cannot be effectively instituted, it may well be advisable for such a locality to enter into agreement with adjoining counties, should their facilities permit, whereby the latter county or counties will board and maintain the female inmates of the small locality for an agreed upon charge Marin County currently operates under such an agreement with San Francisco County Marin County sentenced female offenders are transferred to the San Bruno facility to serve their sentences The female section in the county jail is used only for temporary holding The Board of Corrections has also recommended similar action to several other counties "

[39] At page 9 This report primarily concerns female offenders between the ages of 16 to 24 years—the younger female offender

B LEGISLATIVE RECOMMENDATIONS

From the above discussions of this subcommittee's visits, the conclusions of the Special Study Commission and the various other studies, it is apparent that corrective legislation is urgently needed After the completion of the Special Study Commission's report in 1957, the Legislature considered its recommendations and enacted many of them into law These enactments were a step forward in the improvement and progress not only of local correctional systems, but of the state correctional system as well To mention some of the more widely-known measures adopted in 1957

(1) Work Furlough Rehabilitation Law (P C Sec 1208)
(2) State subsidy for camps for juveniles (W &I Sec 962-6)
(3) Clarification of "felon" in Y A cases (P C Sec 17)
(4) Provision for precommitment diagnostic studies of minors (W &I Sec 740 6 and 1752 1)
(5) Broadening of eligibility for adult probation (P C Sec 1203)
(6) Revision of mandatory minimum prison terms so as to allow for more flexibility (P C Secs 969 (a-c) and 3024)
(7) Provision for joint county jails (P C Sec 4050 *et seq*)
(8) Minimum standards for jail treatment programs (P C Sec 6030, G C 29602)
(9) Provision for transfer of inmate to jail of another county (P C Sec 4115 5)
(10) Provision for creation of county departments of corrections (G C Sec 23013)
(11) Presentence superior court case diagnostic studies authorized (P C 1191 and 1203 3)
(12) Regional jail camps authorized (P C Sec 6300 *et seq* and W &I Sec 5404)
(13) Change in county parole board membership (P C Sec 3075)
(14) Youth Authority hearing representatives authorized (W &I Sec 1196 and 1711 5)
(15) Adult Authority and Board of Trustees hearing representatives authorized (P C Sec 3325 and 5076 1)

Although it is too early to accurately assess the effectiveness of many of these measures as enacted, we can point out some of the areas where remedial action is needed From our inspections and studies, we have concluded that consideration should be given to the following recommendations in addition to those discussed in other sections of the report

(1) *Penal Code Section 19(b) providing that the sheriff of any county may transfer prisoners committed to any jail of the county to any industrial road camp maintained by the county, should be repealed*

This section is contrary to Sections 4114 and 4117 of the Penal Code, which authorize the county classification committee to authorize and make prisoner transfers to county farms

Under Section 4114, the appointment and duties of a county classification committee are covered This measure was enacted in 1953, three years after the enactment of Section 19(b) Therefore, to clear up this statutory conflict, and to preserve the technical task of classification and transfer of offenders to the county classification committees, which are equipped by training and experience to properly weigh all of the relevant factors in prescribing the proper treatment program for sentenced inmates, we recommend the above change

(2) *The Board of Corrections' budget should be increased to provide for additional advisory staff, as needed, to discharge its functions with respect to present and proposed minimum jail standards.*

From Mr Barkdull's statement, *supra*, concerning the functions of the Department of Corrections and the Board of Corrections in relation to local correctional systems, one can readily see the invaluable services being rendered to the localities In an address to the California State Sheriffs' Annual Convention at Palm Springs in April 1960, entitled, *The State and the Jails*, Mr Richard A McGee, Director of Corrections and Chairman of the State Board of Corrections, stated, *inter alia*,

> "The role of the State Department of Corrections and the State Board of Corrections in connection with the county and city jails of California has been, and continues to be, misunderstood and misinterpreted by local detention facility administrators There are recurring accusations that the State is moving in the direction of assuming administrative control of local jails This assuredly is not the case
>
> * * * * *
>
> The Board of Corrections always has acted in an advisory capacity and it seeks to continue this relationship with the counties and cities. The board acts as a clearinghouse for information on detention planning and programming Its files contain a great body of knowledge on all aspects of county and city jails and their operation, accumulated through the experiences—favorable and unfavorable—of the 58 sheriffs and 225 chiefs of police in California who operate jails The Board of Corrections makes this information available to those responsible for the administration of California's jails as an aid in their efforts to improve their programs and buildings "

In order that these important advisory functions may be expanded and more effectively performed, increased personnel and operating funds are needed This would not be an added expense that would merely increase the cost of operation, but an investment in the improvement of local correctional systems which would yield dividends in terms of effective correctional work performed at the local level

(3) *The research and evaluation function of the correctional services should be expanded and improved Development of techniques for more precise measurement of correctional activities, should be encouraged*

A basic consideration of any treatment program is the effectiveness of the program How the program works is important, but more important is, does it do the job for which it was designed? In the many of the special studies of local correctional programs, one of the problems has been the inability to accurately assess treatment programs because of the absence of systematic record keeping

The Department of Justice, Bureau of Criminal Statistics, currently operates a very limited program But as we pointed out in our discussion and recommendation relating to the need for uniform record keeping in local detentional facilities, the Department of Justice has been limited because of the variances in record keeping practices of the several localities Nor has it always had success in getting its budget requests approved

(4) *Careful study should be given Penal Code Sections 4015, authorizing the Board of Corrections to establish minimum standards for food, bedding and clothing for jail inmates and 6029, relating to the Board of Corrections' functions of reviewing plans and making recommendations to localities planning new detentional facilities or remodeling which cost in excess of $1,500, with a view towards making these provisions mandatory rather than advisory*

As our report shows, periodical surveys of local jails have been made by special state commissions and legislative committees But these special studies have had limited value beyond determining current conditions and making recommendations which may or may not be followed The several grand juries, of course, are enjoined by law to inspect the local jails in their respective counties, (Penal Code Sections 923 and 924); and county health officers may investigate health and sanitary conditions in local detentional facilities also (Health and Safety Code Section 459) But these inspectorial services are not uniformly used, nor do they produce the desired results Localities under our present system are free, consequently, to heed or ignore minimum health standards in the operation of their jails

Since 1946 the Board of Corrections has issued basic standards for jail operation and construction This service as we have said before, has been of immeasureable value However, there are no sanctions to induce compliance with these standards, hence they are frequently ignored

It is our belief that the time has come for the Legislature to take effective steps to insure that all jails meet at least minimum standards We are aware of the strong feeling within the State Department of Corrections and the Board of Corrections that duties or powers which would impinge upon the prerogatives of local units of government, should not be delegated to the department or board We too do not wish to trench upon local governmental prerogatives, and in order to insure adequate protection, of local prerogatives, we recommend initiation of a several-stage program As we heretofore recommended, budgetary allowances should be made to the Department of Corrections in order that expanded advisory technical services can be rendered to the localities, so that proper planning and formulation of correctional programs may be more effectively performed.

Provision should also be made for periodical inspections of local jails by the Department of Corrections (or perhaps some other equipped group) to determine whether there is compliance with the minimum standards established by the Department of Corrections

And to add the needed sanction, it could be made illegal for a public official to permit use of any jail not approved for use by both the State Department of Corrections and the local grand jury Incarceration in a jail on the "unapproved list" could be treated as false imprisonment, and either the district attorney or attorney general could be authorized, or required at the request of either the Department of Corrections or grand jury, to institute injunctive proceedings against such unauthorized use

Another approach would be to add Section 4007 1 to the Penal Code, authorizing the superior court judges to approve the detention facili-

ties within the county in addition to approval by the Department of Corrections, similar to the authorization given superior court judges in Section 4007 of the Penal Code, to designate a jail in a contiguous county for confinement of prisoners "when there is no jail in the county . . or when the jail becomes *unfit* or *unsafe* for confinement . ." (Emphasis added)

In Fresno, for example, Superior Court Judge Philip Conley granted a writ of habeas corpus filed on behalf of a prisoner in the Fresno jail, upon finding that the prisoner's constitutional right to be confined in a safe place was violated As a result of this disposition, the entire jail population of 200 was removed to other facilities or released. Such occurrences need not happen, but more important, action should be taken to insure against recurrences

We realize that adoption of such a program would entail extensive adjustment on the part of all localities in order to comply with established standards Consequently a re-adjustment period would be needed in order that the several localities may make the needed changes, such as remodeling or building new facilities, enter into some kind of arrangement with neighboring counties, or with the state, for the housing of prisoners This in a sense would provide a moratorium for the localities which should be of a reasonable duration before mandatory sanctions become operative, and thus avoid drastic action that would ensue were the mandatory provisions to become effective immediately.

(5) *A state subsidy or state-aid program to make funds available to the counties for both construction and remodeling of jails, farms, camps or other jail facilities, where the funds would be granted on the basis of need and compliance with required standards, should be given careful study*

This proposal is not as earth shaking as it would appear at first glance Similar assistance is currently made available for educational purposes, and in the correctional field, the subsidy administered by the California Youth Authority with respect to county camps and other residential facilities for juveniles

In England, for example, local police departments are given a subsidy provided they meet required standards The high quality of the English police departments is generally attributed to this aid

Anna M Kross, commissioner, Department of Correction of New York City, in an address before the National Jail Assn , at the 89th Annual Congress of Correction of the American Correctional Association, in Miami, Florida, on September 1, 1959, made a similar but more extensive recommendation:

> "The federal government should extend the state the same type of privilege and financial assistance as it does to the fields of education, health, and social welfare Approved standards of operation of the local county jail would then be set up and the federal government, through and by the state, would only assist the local county governments that comply with, and meet, prescribed and improved jail standards This procedure has worked effectively in improving the operations of our schools, health services, and welfare, and no local county government would ordinarily object to

this type of assistance especially as it would curtail mounting, burdensome local taxes "

While our recommendation is less sweeping, we have included Commissioner Kross' suggestion to point up the fact of the need for some kind of assistance to local correctional systems Many California counties cannot afford elaborate facilities needed Joint or regional jails can do much, but impetus must be given to these programs through state aid When local correctional programs succeed, the state is a direct beneficiary, because many recidivists who ultimately are incarcerated in state penal institutions have their beginnings in local institutions

(6) *Legislation should be enacted to provide for the re-establishment of academic and vocational training programs in county or regional correctional facilities whose size and inmate load make such programs appropriate*

As indicated in our discussion of the local jails visited by this subcommittee, we witnessed a definite need for re-establishment of educational programs in local correctional institutions Our conclusions parallel those voiced by the Subcommittee on Institutional Education of the Assembly Interim Committee on Education, in its 1959 report.

> "Education activities in city and county jail systems are at present in a serious state of decline, if, in fact, they exist at all Prior to the termination of state support for adult education programs in 1953, several jails had maintained active classes for inmates, particularly at the camps and farms where long-term misdemeanants were quartered The cessation of state support caused the entire program to collapse abruptly
>
> Since the termination of the educational program, jail administrators have had a chance to observe the results of its termination There appears to be a consensus that the consequences are generally unfavorable A strong sentiment has arisen in favor of the restoration of educational aid "

In Los Angeles County, as we previously stated, the county presently finances the limited educational program which is not extensive enough to be provided to all eligible inmates At present no vocational program is offered at all Before the county decided to finance the program after the termination of the state program, there was a complete stoppage A similar observation can be made with respect to Santa Rita in Alameda County. The program there was totally terminated in 1953 and was revived in May 1958 on a limited basis with financial support from the county In San Francisco County no program is offered at all, except to inmates who can afford to pay for a correspondence course The observation made by the Special Study Commission on Correctional Facilities and Services in its 1957 report, aptly sums up the effect· "Inmates activities were set back severely (especially in the larger counties) in 1953 by the termination of state aid to jail educational programs "

It is unquestioned that educational training is a key element in a progressive jail program We have seen the benefits realized from such a program And while it is not our purpose here to dispute the allegedly

questionable use of some of the adult education funds which led to the 1953 legislative restrictions, we do suggest a restoration of a state financed program accompanied with appropriate safeguards against abuse or misuse

In 1957 the Special Study Commission recommended restoration of the state educational assistance program; and in 1959 the Subcommittee on Institutional Education of the Assembly Interim Committee on Education made a similar recommendation A significant parallel to be noted is that although the educational program in state prisons was discontinued in 1953 along with the local program, the Legislature, recognizing the need for and significance of, educational training, has continued to approve budget requests for prison classes The need for such training on the local level is no less urgent

(7) *Establishment, under state auspices, of a central training facility for new and presently employed local jail staffs*

Previously we discussed the direct correlation between the calibre of a jail's staff and the effectiveness of its programs and administration Today a trained staff is indispensable to the effective administrative correctional programs Although in-service job training can help, it cannot adequately replace a detailed, systematic course of instruction designed to equip the trainees with the necessary basic skills

Such a training program would also, we believe, do much to initiate career personnel in our local correctional systems

(8) *Amend Health and Safety Code Section 459, which provides that "/t/he county health officer may investigate health and sanitary conditions in any county jail or other detention facility of the county," to make this investigatory function mandatory*

Section 459 of the Health and Safety Code as it presently appears is permissive It authorizes a county health officer to make inspections of county detention facilities (and in cases of cities, with health officers, the same provision is operative) and submit reports of same to the sheriff or director (in cases of cities, the reports are submitted to "the person in charge" and the "governing body of the city") and the board of supervisors In addition, under this section, a county health officer (or city health officer) may inspect the local jails "/w/henever so requested "

From the subcommittee's study, we found this section little used County and city health officers were very seldom requested to inspect the local jails Nor do these officers inspect on their own under the discretionary authorization of Section 459 The end result is that the section does not serve the purpose for which it was enacted Health officers are reluctant to undertake investigations without prior request from the proper officer or body

To correct this problem, we therefore recommend the above change

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Volume 23 Number 1

FINAL REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON JUDICIARY—CIVIL

Pertaining to

PREPAID SERVICE CONTRACTS OF HEALTH AND DANCE STUDIOS

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JAN STEVENS, *Committee Counsel*
HELEN MYERS, *Committee Secretary*
RICHARD L. PATSEY, *Legislative Intern*

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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON JUDICIARY—CIVIL

SACRAMENTO, November 1, 1960

HONORABLE RALPH BROWN
Speaker of the Assembly
State Capitol
Sacramento, California

DEAR MR SPEAKER Pursuant to House Resolution 326 of the 1959 Regular Legislative Session, the Assembly Interim Committee on Judiciary—Civil submits herewith its final report on Prepaid Service Contracts of Health and Dance Studios

This report is the product of an extensive study carried on throughout most of 1960, during which time a statewide investigation was made by the Legislative Analyst's office and two full days of hearings were held on May 19 and 20 in Stockton, California

In addition, the committee received the benefit of an independent study of dance studio contracts conducted by third-year students in the legislation seminar of Stanford Law School We are particularly indebted to Agathon A Aerni, Steve Birdlebough and Carl Weidman, the students who presented this study to the committee, and to their instructor, John H. DeMoully

The committee also wishes to thank the 24 witnesses, representing health and dance studios, law enforcement agencies and better business bureaus throughout the State, who attended its May hearings

In the course of its study the committee has found that a small group of health and dance studios, unrepresentative of the industry as a whole, has been taking unfair advantage of the public. Working on the fringe of legality, these studios have high-pressured their customers into long-term contracts for large amounts of money. Once signed, contracts or notes are often transferred to collection agencies or finance companies and the customer left without recourse, although the services contracted for may in the meantime diminish or even disappear

The legal remedies available at present to an injured party are clearly inadequate The committee has therefore, sought to recommend restrictions which, if enacted into law, would ensure the customer a fair contract

In considering possible solutions to this problem, the committee has rejected the complications of licensing and bonding as a needless burden on the legitimate operator Instead, the committee has chosen the middle ground between suggestions made by proponents of extreme governmental control and those made by representatives of large studios, who have argued that the industry can regulate itself.

Certain limitations on the contracts made by these studios have been proposed to ensure a fair break to their customers, and in so doing, to end the unfavorable publicity given the industry as a whole by the reprehensible practices of a few.

Respectfully submitted,

WILLIAM BIDDICK, JR., *Chairman*
GEORGE A. WILLSON, *Vice Chairman*

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TOM CARRELL
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INTRODUCTION AND FINDINGS

Leisure time, and money spent for leisure time activities, occupy an increasingly important place in the economy Prosperity and shorter working hours have given millions of Californians more time than ever before to spend on their entertainment and self-improvement And few industries have grown more in response to these new sources of revenue than the health and dance studios Unfortunately, the temptation has sometimes been too great for some operators The opportunity to make a quick dollar at the expense of the lonely, credulous or impressionable customer has led to practices which form a pattern of overreaching and misrepresentation seriously close to fraud and extortion

Hearings on May 19 and 20 and many communications made to the committee before and since have revealed a philosophy and plan of operation on the part of some studios that show rapaciousness and cynical disregard for members of the public who seek their services

The committee has received testimony and letters from district attorneys, better business bureaus, lawyers and private citizens all over the State concerning the abuses which certain health and dance studios have worked on the public

1. *Unremitting pressure is applied to sell long-term prepaid dance or health studio contracts for as much as the customers' savings and credit rating will bear—often $12,000 or more*

Here are a few examples

(a) DANCE STUDIOS

Case No. 1. In Sacramento, a 62-year-old widow of a state employee with a $17,000 inheritance nest egg contracted on various occasions for dance lessons at a total cost of $9,544, or better than half of her inheritance money

She had been widowed for about a year and a half, when she got an invitation in November 1955 to go to a Sacramento dance studio for a free one-hour lesson

"Lonely and desirous of having company," she went, and was immediately signed up for 40 hours of lessons at a cost of $446 She signed for 40 more hours at $240 in March 1956 and for another 120 hours at $720 on March 19, 1956 On June 15, 1956, representatives of the studio went to her Sacramento home and took her to the studio where they compelled her to remain until she signed for another 300 hours at a cost of $2,764

On the following day, June 16, 1956, representatives of the studio induced her again to go to the studio, where she was plied with intoxicating liquor and signed for another 500 hours for $4,374 60 In addition, she signed another contract for $1,000, which did not specify the number of hours (Source Sacramento *Bee*, August 30, 1956)

* * * * * * *

Case No. 2. A Sacramento dance studio operator of a national chain promised an 81-year-old widow that "we will make you a dancer We will make you popular and rid you of your loneliness You have great potential as a dancer Money will be no problem " She signed a contract and paid $5,014 40 for dance lessons to his studio on September 25, 1957

Soon thereafter a son was appointed guardian for his mother on the grounds the aged woman was senile Her son charges that his mother is "physically completely unable to receive any of the services agreed to be given to her "

The dance studio was asked to refund the money, but the studio refused to do so In March 1959 an action was filed, asking the court for a judgment requiring the studio to refund the money (Source: Sacramento *Bee*, March 10, 1958, Oakland *Tribune*, March 11, 1959; talks with attorneys)

* * * * * * *

Case No. 3. Excerpt from the testimony of Vernon A Libby, General Manager, Better Business Bureau, San Francisco, (hearing of May 19-20, Stockton)

> STUDIO A This company in 1957 was using what is called its "Telephone Guest" plan An employee of the studio would call as follows
>
> "Good evening This is Miss X from the A Dance Studio and our publicity department is featuring a dance contest If you can answer the dance question for this evening, you will win a $25 dance studio course Are you ready?
>
> "Q Can you name a song with the word 'dance' in the title?"
>
> If the answer is correct, the person phoned is congratulated and a lesson appointment made If the answer is wrong, a consolation prize of two complimentary dance lessons is given
>
> Complaint was registered with the San Francisco Better Business Bureau using these words, for example "In good faith I went and had a 20-minute lesson and a 'sales pitch' of how this was not a course I had won but a deduction from the price of a dance course if I signed up "
>
> The bureau also received complaint in these words. "I believe this studio uses too much pressure to get people to sign contracts "

* * * * * * *

Case No. 4. " . . In the course and conduct of their aforesaid business respondents have employed various techniques or practices as a part of a scheme to sell initial or supplemental courses of dance instruction the use of relay salesmanship, the use of so-called analysis tests, studio competition and dance derbies, the use of blank or partially filled out contract forms or by refusing to answer and by evading questions concerning the amount " From Federal Trade Commission complaint, In Matter of Arthur Murray, Inc , etc

* * * * * * *

Case No. 5. "Our file indicates that Mrs _____ purchased a total of 'three life memberships' and has spent a sum of approximately $20,000 with the studio. She is now suing to recover a balance which

represents moneys paid by her for trips that she was unable to take because of ill health " Letter to committee from Los Angeles attorney, June 22, 1960

* * * * * * *

Case No. 6. "In my office I am handling a matter in the San Francisco Superior Court which is against Veloz and Yolanda Dance Studios, which involved the selling of some $20,000 worth of lessons to one _____, age 67 at the time After thorough investigation, it was necessary to declare her incompetent and file suit " Letter to committee from San Francisco attorney.

* * * * * * *

Case No. 7. "Be advised that I have been consulted by a substantial and well respected woman resident of this area, who, along with nine other women of similar standing and caliber, have contributed, each of them in excess of $9,000, for a prepaid lifetime membership to the local Arthur Murray Studio * * * My client has consumed, according to her calculation, approximately one-third of her lifetime membership of $10,000 and says that she cannot and will not proceed with any future lessons because the instructors are not available and physical facilities have been changed and now are not adequate or as represented " Letter to committee from Santa Barbara attorney.

A GRAND JURY'S FINDINGS

It appears that the product being sold by these studios is not improved dancing ability, but something far more subtle. Here is a quotation from the text of an Arthur Murray Studio Sales Manual, used in the 1960 report of the St Louis, Missouri, Grand Jury:

> "It is not yet time to begin to sell that long course, not until you have established the need for it, the urgency of it, the desirability of it in your student's life It is time to prove that life is sweeter, life is happier, life is more complete because your student can approach that mental image of himself that he cherishes in secret It is time to show that the emotional problem that brought your student to the school can be smoothly solved with the magic possession of the dancing skill that you have the power to impart That means that you must know your student's needs, his emotional reasons, his secret desires and personal problems so that you can prove that the service you have to render can iron out his difficulties."

This philosophy, the grand jury found, resulted in the following practices·

> "The Murray and Quinlan studios systematically and as a matter of policy beset upon and pressure their students to sign expensive contracts for dance lessons Almost from the very first day that a 'prospect' comes into the studio, she is badgered by a neatly contrived series of sales pitches She is unendingly complimented and flattered. Her dancing ability, regardless of how atrocious, is raved about.

"A team of expert pitchmen, using bug interview rooms and two-on-one approach, then work her over with all sorts of prearranged sales gimmicks. Badgered, befuddled and even bemused, the lady signs a lavish contract for hundreds, sometimes thousands of hours of dance lessons

"At the time she signs this 'Philadelphia-lawyer' contract she is, in a technical way, *aware* of the amount involved Hence, there is no fraud involved in so far as existing Missouri criminal statutes are concerned However, she usually does *not fully appreciate* the extent to which she had become financially obligated, so dazed and stupefied is she by the studio's ceaseless pitchmanship"

(b) HEALTH STUDIOS

Case No. 1. " The customers are invariably taken in tow by a trained salesman whose job it is to sign them up for the longest term contract that they can be sold with payments made over as short a period as possible * * * and then as soon as these contracts were sold, as soon as this outfit had been in business for six weeks to six months and they had saturated the area with advertising so the new purchasers of lifetime contracts were reduced to a trickle and what they were involved in then was * * * providing the service * * * we found them shutting their doors and moving on to another town" (Testimony of Howard Jewel, Assistant Attorney General, May 19, 1960)

* * * * * * *

Case No. 2. "Analysis of complaints to the Better Business Bureau lays emphasis on the signing of conditional sales contracts for gym memberships in instances where the facts of such a contract allegedly have been misrepresented orally to the prospective members These allegations include

"1 The prospective buyer was not made aware that he was signing a legal contract

"2 The complainant was given some statement about the nature of the offer which was not stated in like terms in the contract

"3 The gym management misrepresented the terms of the contract to a person who—because of foreign birth—was unfamiliar with the English language.

"4 The complainants were told about the services of the gym in a statement which allegedly is inaccurate and about services which the gym was unable to perform, such as the use of a nonexistent swimming pool

"In one case, it was reported that a mental defective was induced to sign a contract

"Selling practices with respect to this organization have been the subject of complaint At one time, girls would demonstrate reducing apparatus on the street level at the entrance to the gym and passers-by were addressed by these girls soliciting a visit to the gym Complainants alleged that thereafter they were 'high-pressured' into signing conditional sales contracts for membership services The extent of these so-

called 'high-pressure' tactics was brought to full recognition when a girl of foreign birth, in a signed statement made to this bureau in the presence of witnesses, stated that she had visited the gym as a guest She took some exercises, according to the report, and was later shown into the gym office where she was firmly asked to sign a contract When she refused—since she expected to return to Europe in the future—another man was called into the office and he helped try to 'persuade' her She alleged that she believed the other people (users of the gym service) had left the gym as it then was closing time and that she became frightened She stated that although her friend was just outside this office she believed that she was being prevented from joining her, and then she became frightened and tried to leave When she tried to open the office door, she thought it was locked Neither of the two men in the office made any move to open the door for her and she hastily signed the contract placed before her and then left the gym " (Testimony of Vernon A Libby, General Manager, Better Business Bureau, San Francisco, at hearings May 19-20, 1960)

* * * * * * *

Case No. 3. Customers without bank accounts were induced to write checks to the studio for special offers good for "tonight only" which the studio promised to hold for them until they had deposited funds to cover them If a change of heart occurred, sometimes studios would threaten criminal action unless they were paid (Testimony of two witnesses at hearings May 19-20, 1960)

* * * * * * *

Case No. 4. " There was no limitation on the number of memberships that could be sold by a gym, apparently, from the information I have developed It was just a matter of selling as much as you can - if the people had to wait an hour, 45 minutes or so, to use a piece of equipment, that was just considered tough luck If they didn't like it, they could quit The attitude of the organization, according to this witness that I talked to was this they felt that the majority of the people, at least 50 percent of the people, would drop out of the organization within six weeks and within three months 90 percent of the people would drop out—primarily through overselling and poor and inadequate instruction " (Testimony of Thomas L. Tanner, Jr, Associate Administrative Analyst before the committee May 20, 1960)

* * * * * * *

Case No. 5. "We have had complaints based on misrepresentation as to facilities, free massages, free use of the sun room In a couple of instances, the patrons were told that if they got their children into the act, swimming pools would be available for free It so happened that there weren't any swimming pools, not in San Francisco and when this was brought to their attention, one manager said 'Well, you are free to go to Stockton, if you like ' " (Testimony of Roger Garety, District Attorney, Marin County, before the committee May 20, 1960)

* * * * * * *

Case No. 6. "We had the unfortunate spectacle of a young woman who had been released just a year previously from Eldridge, from the Sonoma State Home, who was brought into the gym and I am sure she would have signed anything that they presented to her She signed a life membership contract That one, when brought to their attention, the home office agreed to cancel " (Testimony of Roger Garety, District Attorney, Marin County, before the committee May 20, 1960)

* * * * * * *

Case No. 7. "By far the main complaint has been the one which already has been aired before your committee, namely oral representations of one kind at variance with the written contract, particularly along these lines 'If your husband doesn't approve of this, you just tear the contract up and we'll forget all about it ' By the time the lady gets back to the gym, there has been a new manager installed, the man with whom she dealt is some place, the contract is in Santa Monica, and the next step is a sheet of paper in which they are told that if they don't want their automobile, salary and personal property attached, they had better pay " (Testimony of Roger Garety, District Attorney, Marin County, before the committee May 20, 1960)

2. *Studios, having obtained as many long-term prepaid contracts as the local traffic will bear, close their doors without making arrangements for further instruction of their students or even leaving forwarding addresses*

Case No. 1. " As soon as this outfit had been in business for six weeks or six months and they had saturated the area with the advertisings or the new purchasers of lifetime contracts were reduced to a trickle and what they were involved in then was the maintenance business of providing the service, pretty soon we found them shutting their doors and moving on to another town " (Testimony of Howard Jewel, Assistant Attorney General, before the committee May 19, 1960)

* * * * * * *

Case No. 2. A San Francisco resident entered into a contract with a Walnut Creek Veloz and Yolanda studio on September 6, 1954, for 120 lessons for $700 cash. On November 6, 1954, he entered into a second contract for 100 lessons for $500 cash In April, 1958, this studio closed its doors and shortly thereafter, filed a petition in bankruptcy The "student" still had 112 lessons due him He then turned to the parent studio in Hollywood He was informed the studio was licensed and that there was no financial responsibility since there was a hold harmless clause in the licensing agreement (Source Letter on file with Assembly Interim Committee on Judiciary—Civil)

Case No. 3. A woman paid to a Los Angeles dance studio $100 to cover 15 hours of private dance lessons A receipt for the money was given at that time About two weeks after the money was paid, the

studio was closed The operators moved to another location, leaving no address or any instructions to the people who had paid money for lessons After some investigation, this woman located the dance studio operators The woman, after communicating to the operators, was informed that in order to have the lessons it would be necessary to pay another $45, otherwise, the original $100 paid would be lost (Source· Letter on file with the Assembly Interim Committee on Judiciary—Civil)

3. Contracts are made noncancellable and refunds are denied even in cases of illness or ill health

Case No. 1. A San Diego woman signed a contract with a local health studio on the assurance that she would not in any way be bound if her doctor disapproved Her doctor, an orthopedic surgeon who had been treating her for several ailments, advised her that she could not under any circumstances take such a course of exercises When Mrs _____ called back within an hour on the same day to advise the studio of this fact, she was told that she would be held to the contract. Only after Mrs _____ had received several letters threatening suit and attachment of wages, and after her attorney had procured the opinion of a handwriting expert that a purported "acknowledgement" of contract had been forged, did the studio drop its demands (Source· Correspondence with committee from San Diego attorney.)

4. The new member may find that his contract has been assigned to a lending institution or collection agency, and any defenses which he may have had against the studio have been cut off

Case No. 1. "I signed the statement and I noticed on the back a little membership card which was torn off, was actually a note and I said to him, 'What is this? It looks like a note ' And he said, 'Oh, no. That's not a note That is just a formality ' So I said, 'If it's a formality, do I have to sign it?' And he said, 'Well, yes, go ahead and sign it ' So I signed it I didn't want to make a big issue of it so I signed it, but I knew very well it was a note and I knew very well I would pay—I would be paying to a holder in due course " (Testimony of Clarence Knight, Deputy District Attorney, San Mateo County, before the committee, May 20, 1960)

* * * * * * *

Needless to say, these practices cause tremendous damage to the health and dance studio industry as a whole Letters addressed to the committee and testimony from independent operators express grave concern over the unfavorable publicity given this industry by fringe operators

PRESENT LEGAL REMEDIES

1. *Criminal Prosecution*

Usually, those operators who work on the fringes of the law are free from criminal sanction If misrepresentations amounting to criminal fraud are made the problems of proof are unsurmountable In the words of the District Attorney of Marin County

> " . the managers, the people who sign people to contracts, take particular pains to insure that these conferences are in private with just the prospect and the person making the pitch, and as you know, in order to have a successful prosecution there must be corroboration of a false pretense and these people know that "

Similar testimony as to the ineffectiveness of the criminal law in this field was given the committee by Assistant Attorney General Howard Jewel, who concluded after canvassing law enforcement officers all over the State that a solution to this problem could be reached only through legislation

2. *Civil Remedies*

The enforceability of these long-term, prepaid contracts is dubious As the report of the Stanford Legislation Seminar points out, forfeiture of the prepayment might be considered a penalty, unenforceable at law The student could recover in a simple action for unjust enrichment on showing that his breach was innocent A contract may be voidable on grounds of fraud if undue influence or deception was used, and if the agreement was for a series of lessons, paid for by installments, the contract might be construed as severable

In practice, however, one of two things usually happens the contract is assigned, or a promissory note is taken and immediately transferred to a finance company or collection agency Contracts that are assigned almost invariably contain clauses by which the customer purports to waive any defenses he may have against the studio When a promissory note is negotiated, the institution taking it will assert the rights of a holder in due course and only real defenses—lack of capacity, forgery, material alteration and fraud in the inception—are permissible in the absence of a statute to the contrary Only one remedy may be available in such cases firms that carry such notes regularly might be charged with notice of defects in the contracts

Usually, these legal issues are never raised Testimony before the committee indicates that many customers of these studios are unwilling to assume the risk of possible publicity, family strife and job problems by bringing suit or complaining to a district attorney's office

> " most of these people either were unable or unwilling to seek legal counsel I'd say most of them don't have the means to They are wives of servicemen, for example, men who are told their commanding officer will be contacted or they will be people in salaried positions whose employers would take a very dim view of an attachment or garnishment " (Testimony of Roger Garety, District Attorney of Marin County, concerning health studio abuses)

And, of course, where prepayment is involved, recovery of the amount taken can be difficult, even where the studio has not closed its doors and vanished

Many studios employ practices which are reprehensible but do not amount to either criminal or civil fraud The complaint filed by the Federal Trade Commission against Arthur Murray, Inc , etc , on March 25, 1960, lists a few

1 Free or special introductory offers of dancing lessons have been largely devoted to selling additional lessons or courses

2 The use of "relay salesmanship," involving successive efforts of a number of different Arthur Murray representatives who, by force of numbers and unrelenting sales talks, and aided by hidden listening devices monitoring conversation with the prospect or pupil, attempt to persuade and do persuade a lone prospect or pupil to sign a contract

3 The use of so-called "analyses," or "tests," "studio competitions," "dance derbies" and similar artifices purportedly designed to evaluate dancing ability, progress or proficiency by an objective and impartial means, whereas in fact the purpose of such articles is to lead the "winner" or "successful candidate" to believe that he should purchase future dancing instruction

In February and March of 1960, the St Louis, Missouri, Grand Jury studied the practices of local studios It found that the student signing a lavish contract is technically aware of the amount involved, hence no fraud "However, she usually does not fully appreciate the extent to which she had become financially obligated, so dazed and stupefied is she by the studio's ceaseless pitchmanship "

POSSIBLE SOLUTIONS

The committee's study has indicated that, broadly speaking, two points of view exist with regard to these problems.

1. Encourage industry self-regulation

Representatives of local Arthur Murray Studios, Eileen Feather Salons, the American Gym Association and the Vic Tanny Gyms favor increased self-policing by the industries themselves They claim high standards in their own organizations show that overreaching and abusive practices are unnecessary to a successful operation

At present, many small, independent studios in California avoid the temptation that gives rise to the abuses described in this report by foregoing the use of prepaid contracts for large amounts and extensive periods In fact, the average small dance studio uses only verbal contracts, the president of a local chapter of Dance Masters of California has informed the committee

As for health studios, the secretary of a national association of smaller studios with seven California affiliates has this to say:

> "There is no earthly reason why a membership should extend for more than one year and, until the advent of the American Health Studios and the Vic Tanny chain no one in our industry ever heard of memberships which would run longer than one year. It is dishonest per se and just a method of extracting large sums of money from the unwary public "

On the other hand, a representative of the Vic Tanny Gyms, with some 44 California branches, strongly supports the up-to-seven-year contracts now used by these gyms primarily on the ground that costs are much higher during the first few months of a membership

The American Gym Association, with 30 members in California, is making a commendable effort to establish standards and to police the operations of its members An AGA representative has testified to the committee that members of that organization oppose contracts for terms beyond one year.

Of the major dance studio chains in California, only one—Arthur Murray—has apparently established rules of conduct designed to avoid the abuses described above

Spokesman for Arthur Murray testified before the committee that·

1. Refunds are being made in cases where performance is impossible through no fault of the student
2. Negotiable notes are not being used to cut off a customer's defenses against the studio.

3 Students may cancel without cause within 60 days from entering into a contract, subject to a service charge of 25 percent of the balance due Later cancellations may be made under a formula

4 No misrepresentations as to courses or terms of contract are made.

The Dance Masters of California, an organization composed largely of teachers in smaller dance studios, has adopted a code of ethics requiring truthfulness in advertising and has provided standards for qualifying dance teachers

Such a code of ethics, industry wide or used only by one chain, represents a sincere effort to remedy the situation. It is, however, subject to two defects·

1 It will not act as a compulsory curb on all studios throughout the industry.

2 It may be circumvented even by studios that purport to follow it

Such a code was in effect with Arthur Murray Studios in St Louis Nevertheless, the St. Louis Grand Jury found in its April 1960 report that·

> " . . . these and other studio rules have been violated at will whenever it becomes necessary to make a sale. Not only have the employees of the studio been guilty of such violations, but in many cases it is done at the insistence of the executives or with their knowledge, and without reprimand "

More specifically, the grand jury made these findings:

(a) There is a 30-day cancellation in the Arthur Murray Lifetime Contract whereby the student can cancel at any time within that period, and without reason or cause

After signing this contract at a local studio, the student is told that it must be "approved" by the home office This approval, which is for all practical purposes automatic, is in many instances not made known to the student until after the expiration date of the 30-day cancellation period

This permits an instructor or other employees of the studio to play down a student's desire to cancel within the 30-day period by informing the student that she had not been approved by the home office for the lifetime membership, therefore, it would not be necessary to cancel at this time.

In many cases, by the time approval is actually made known, the student has lost the benefits of the cancellation clause

(b) The Arthur Murray Studio takes some pride in the fact that it will no longer "oversell" anyone by selling more than one lifetime membership This is true in name, but not in fact, for now a lifetimer is sold a Gold Medal Program, an Executive Life Program, or anything else for that matter, under a different name.

2. *Enact regulatory legislation*

Representatives of law enforcement agencies, the Consumer Counsel, the Stanford Law School Legislation Seminar (which made an independent study of the dance studio problems), and many of the smaller dance and health studios agree that regulatory legislation is needed to curb abuses in these fields.

Spokesmen for the Attorney General and many district attorneys have reported receiving many complaints with regard to the operations of health or dance studios. All have indicated to the committee that present criminal and civil remedies are inadequate to protect the public against the almost-fraudulent borderline tactics of offending studios.

RECOMMENDATIONS

The draft legislation presented in this report represents the committee's conclusion that greater regulatory legislation is needed to protect the public against the vicious practices conducted by a small but dangerous segment of the health and dance studio industry At the same time, the committee has rejected the more extreme solutions which have been proposed such as imposition of permit and licensing requirements or additional criminal sanctions

Basically, the following safeguards should be enacted

1. Prohibit the "lifetime" contract

The "life," or extremely long-term contract has given rise to many dishonest dealings by unscrupulous studios Some of the larger studios have testified that use of these contracts has been discontinued, and most of the smaller studios have never used them Their abolition is specifically approved by the Attorney General, the District Attorneys of Kern, Santa Barbara and Riverside Counties, by representatives of the American Gym Association, the Dance Masters of America, the Associated Health Institutes of America and by one local Arthur Murray Studio operator

The lifetime contract, the price of which usually bears no relation to the purchaser's age, apparently provides some studios with an irresistible temptation to misrepresent and to overreach

2. Limit the term of prepaid contracts

The Attorney General has recommended that these contracts be put completely on a "pay as you go" basis In a letter from Assistant Attorney General Howard Jewel, it is pointed out that all service industries but the two mentioned operate on a pay as you go basis He argues that long-term prepaid contracts encourage the nomadic studio and the high-pressure salesman, and do little to motivate a high standard of service once the customer is signed up.

> If there is no prepaid contract the prosperity of the business will depend upon its ability to attract customers who will continue to avail themselves of its services This can only be done by maintaining a high standard of customer satisfaction This, I submit, is a worthwhile goal of legislation If, on the other hand, the customer is motivated to come back because he is hooked by a long-term contract then the industry is not motivated to maintain a high standard of service but rather an intense level of high-pressure salesmanship

This proposal has since been endorsed by Consumer Counsel Helen Nelson, by the District Attorneys of Kern, Santa Barbara and San Diego Counties, and by the operator of one independent dance studio.

At the same time, testimony made to the committee has shown that the first few weeks or months that a customer spends with a studio

unquestionably cost the studio more in terms of paperwork and bookkeeping In response to this, the Attorney General recommends that the studios charge more for the first hours, and impose an enrollment fee to take care of bookkeeping and other costs

The American Gym Association, which recommends a one-year limit, considers contracts for three months to one year terms to be on a pay as you go basis

Similarly, a spokesman for the Dance Masters of California has written to the committee to the effect that most member studios using written contracts limit them to terms ranging from four to 52 weeks. A two-year limit was recommended by that organization

Representatives of the Arthur Murray Studio strongly oppose any such limitation.

In this connection, a letter from the District Attorney of Kern County to Chairman Biddick reads as follows

> "If these industries are indicating that they are offering a little happiness to people purchasing long-term contracts from them, no such happy persons have appeared before this office To the contrary, we have heard and seen only anguish and embarrassment"

It is the committee's conclusion that the long-term contracts now being offered by some health and dance studios do far more harm than good They offer an irresistible temptation to the fraudulent operator to use high-pressure salesmanship, sign up all the customers he can for the largest amounts and longest terms that can be extracted, then close the studio or curtail services enough to discourage his newly acquired clientele.

On the other hand, the interest of the legitimate studio operator in planning ahead and in offering certain economies to his clients should be recognized Accordingly, the committee recommends that all health and dance studio contracts be limited to a maximum term of one year

3. Restrict the amount of payment that a studio can take in advance

Testimony offered by the Attorney General and many district attorneys indicates that the possibility of receiving large sums of money in advance tends to encourage the promotion of nomadic gyms, which sign up all the customers the local traffic will bear at widely varying prices, then close their doors entirely or offer poor service deliberately designed to make their customers stop coming

In the dance studio field, the Stanford study revealed several ex-students who had been signed for long-term contracts by attractive and vivacious instructors, then given increasingly homely and unpleasant ones when efforts to sell additional contracts for longer terms and larger amounts failed.

Limitations on prepayment are favored in principle by most of the law enforcement officers who expressed themselves to the committee.

The chief opposition to such a restriction comes from representatives of Arthur Murray and other dance studios, who argue that the costs

involved in training instructors and in providing facilities for lessons are so great that larger prepayments are necessary

A formula limiting prepayments, developed in New York, was rejected as imposing unnecessary complication Instead, the committee has determined that an absolute dollar limit should be imposed on the prepayment that a studio can receive, whether in the form of cash, contract, or promissory note The committee is not unanimous on the dollar figure that should be imposed. Possible limits discussed ranged from the "pay as you go" proposal of the Attorney General to a maximum of $500 prepayment Accordingly, the limit to be imposed has been left open, to await the committee's final decision during the 1961 Regular Legislative Session

4. Protect the customer's rights against assignment

Many offending studios have habitually assigned their contracts to finance companies immediately after execution These contracts usually purport to preclude the buyer from setting up against the assignee any defenses which he may have against the studio A customer may find that his local studio has closed, whether by poor management or design, and he is being dunned for payment for services he cannot receive

While civil remedies may exist in such a situation, they are inadequate as a practical matter If prepayment is made, recovery of a sum sent long ago to another state may require the talents of a Mata Hari And many customers, fearing unfavorable publicity, friction with their spouses, or the disapproval of their employers, will not seek legal remedies

It is in response to these problems that the committee recommends that the customer's defenses be specifically preserved in case of assignment.

5. Make contracts terminable on death or disability

The committee's studies have shown that at present virtually all the contracts used by the larger dance and health studios are specifically made non-cancellable

Large prepayments to unscrupulous operators are generally not recoverable as a practical matter when death or disability occurs, and the services paid for cannot be received

Reputable studio operators have testified that repayment is made in such cases, legislation is recommended to ensure that all operators comply with this practice.

6. Make illegal and void all contracts in violation of the regulatory provisions set forth herein

The contract providing for excessive prepayment, or for a term longer than the maximum set by statute should have no legal effect Similarly, a contract induced by false representations, or one purporting to cut off the buyer's defenses against an assignee, should be void.

ADDITIONAL PROPOSALS

Two additional proposals were considered by the committee and met with considerable support, but do not necessarily represent the views of a majority of its members

7. Prohibit the use of promissory notes in connection with health or dance studio contracts

The use of negotiable paper can cut off all but the most extreme defenses against a holder in due course Its use has already been prohibited in the case of retail installment accounts under the Unruh Act (Civ Code, Sec. 1810 9), and restricted in the case of the usual conditional sales contract (Civ Code, Sec 1803 2)

The committee has found that negotiable notes used in conjunction with health or dance studio contracts are dangerously susceptible to abuse Rather than tamper with the law of negotiable instruments, it is the feeling of a number of committee members that use of these notes should be prohibited altogether in this field

8. Prohibit the use of material misrepresentations, willfully made, in selling contracts

This proposal represents the only new sanction that would be available to the studio customer who has been the victim of fradulent advertising or the misleading high-pressure salesmanship that apparently goes on very often in some studio offices

Testimony before the committee has indicated that in such cases the customer usually cannot prove the elements of fraud needed to establish a criminal action Though the remedy of recission is available, he is often reluctant to seek legal help or go to court, particularly when a studio or collection agency may be threatening attachment of wages It was the feeling of a number of committee members that greater sanctions are needed. Accordingly, legislation was developed providing that such misrepresentations are prohibited An injured customer is allowed to recover three times the consideration he has paid the studio The prohibited misrepresentations must be material, and must be wilfully made, before this severe remedy can be invoked

APPENDIX A

OFFICE OF ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
SAN FRANCISCO 2, May 31, 1960

HONORABLE WILLIAM BIDDICK, JR., *Chairman*
Assembly Judiciary Committee—Civil
State Capitol
Sacramento, California

DEAR ASSEMBLYMAN BIDDICK: Pursuant to permission granted at the committee hearing I am augmenting my testimony to include my opinion concerning legislation to correct the abuses demonstrated in the health and dance studio industries.

Although I was originally in favor of a permit or license system which permit or license would be conditioned upon a limited term, cancellable contract and a performance bond, I am now persuaded that the legislation should simply put the health and dance studios on a pay-as-you-go basis.

I submit that this legislation is at once the simplest and the most effective.

No other service industry with which I am aware operates on a long-term contract basis. Doctors and dentists (excluding insurance, which is itself a highly regulated industry) operate on a pay-as-you-go basis. So do beauty salons, barbershops, auto mechanics, optometrists—in fact *every* service industry except the two under discussion. The theory behind this principle is sound and is basic to the American free enterprise philosophy. It is competition. If the service provided is worthwhile; if it is provided in a manner satisfactory to the customer and at a price which the customer cannot better, then the customer will return.

Spokesmen for the industry testified that the service provided is worthwhile; that it is needed and wanted by the customers and the price is fair. Good! This being so surely the customers will return voluntarily without the necessity of being hog-tied by a contract extending into the future. And surely, therefore, the industry itself would have no valid objection to legislation which puts them on a pay-as-you-go basis.

If there is no prepaid contract the prosperity of the business will depend upon its ability to attract customers who will continue to avail themselves of its services. This can only be done by maintaining a high standard of customer satisfaction. This, I submit, is a worthwhile goal of legislation. If, on the other hand, the customer is motivated to come back because he is hooked by a long-term contract then the industry is not motivated to maintain a high standard of service but rather an intense level of high pressure salesmanship. This, I submit, is a result to be avoided.

Pay-as-you-go legislation avoids the cumbersome and costly governmental machinery necessary to a permit or license system It avoids the necessity for a bond. All of us recognize the danger in a license requirement that we may be simply perpetuating the evil practices we are trying to end And once a license is required, remedial legislation is that much more difficult This too is avoided by pay-as-you-go legislation

If the industry objects that the first hours of instruction are more costly let them charge more for the first hours If the industry claims that there is an initial cost of enrolling a student because of bookkeeping and other costs let them charge an enrollment fee

Lastly, pay-as-you-go legislation would, since it makes prosperity of the business depend upon continued high standards of service, completely terminate the evil caused by the nomadic studios which open their doors, induce long-term contracts, and then close their doors only to steal away into the next town

All of these are valid reasons for prohibiting contracts of any duration in these industries On the other hand, I can think of no valid purpose to be served by allowing them

I therefore hope the committee will recommend legislation to the Assembly which will put the health and dance studio industries on a pay-as-you-go basis

Very truly yours,

(Signed)

HOWARD H JEWEL
Assistant Attorney General
Consumer Frauds Section

APPENDIX B

LIST OF WITNESSES

Hearing of May 19-20, 1960, Stockton, California

Agathon A Aerni, Legislative Workshop Seminar, Stanford University
Charles Baker, Past President, Dance Masters of California, Southern Branch
Robert Betzendefer, Deputy District Attorney, Contra Costa County
Steve Budlebough, Legislative Workshop Seminar, Stanford University
George A Bruce, Executive Director, American Gym Association
Robert C Burnstein, Attorney at Law, 414 13th Street, Oakland, California
Robert E Carey, Deputy District Attorney, San Mateo County
Phyllis R Clark, Secretary-Manager, Better Business Bureau, Stockton
John M Dean, Assistant District Attorney, San Francisco, California
Leonard Dreden, Attorney at Law, Financial Center Building, Oakland
Mr and Mrs Feather, Eileen Feather Salons, Inc, Berkeley, California
Lee Gallamore, Detective Sgt, Sheriffs Office, Martinez, California
Judy Gannlin, Office of Consumer Counsel Sacramento, California
Roger Garety, District Attorney, Marin County, San Rafael, California
Willis B Gustaveson, Assistant District Attorney, Riverside County
Howard Jewel, Assistant Attorney General, Sacramento, California
Gordon Keith, President, Dance Masters of America, San Francisco, California
Clarence Knight, Deputy District Attorney, San Mateo County
Vernon A Libby, General Manager, Better Business Bureau, San Francisco
Raymond J Lloyd, Office of Federal Trade Commission, San Francisco
Melvina Meeks, Contra Costa County
Alvin Norris, Assistant District Attorney, Stockton, California
George G Spanos, Attorney at Law, Stockton, California
John Sobieski, Commissioner of Corporations, San Francisco, California
Thomas L Tanner, Jr, Legislative Analyst's Office, Sacramento, California
Carl Weidman, Legislative Workshop Seminar, Stanford University

APPENDIX C

ENDORSEMENTS BY INTERESTED GROUPS

	Consumer Counsel	San Diego Co D A	Attorney General	San Francisco D A.	San Mateo Co D A.	San Bernardino D A	San Joaquin D A.	Riverside Co D A	Marin Co D A.	Kern Co. D A	Commissioner of Corp	Stanford Law School Leg. Seminar	American Gym Association	Dance Masters Association	American Health Institute
PROPOSALS															
1. Put contracts on pay-as-you-go basis	X	X	X	--	--	X	--	--	--	X	--	--	--	--	--
2. Place time limitation on contracts	X	X	--	--	--	--	--	X	--	--	--	--	--	X	X
3 Limit prepayment on contracts	--	X	--	--	--	--	--	X	--	--	--	--	--	--	X
4 Require permit from Div. of Corporations	--	--	--	X	--	--	X	--	--	--	X	X	--	--	X
5 Eliminate "lifetime" instruction contracts	--	--	X	--	--	X	--	X	--	X	--	--	X	X	X
6 Preserve defenses against studio when contract is assigned	--	--	--	--	X	--	--	--	--	--	--	--	--	--	X
7 Preserve defenses against studio when note is negotiated to holder in due course	--	--	--	--	X	--	--	--	--	--	--	--	--	--	--
8 License studios	--	--	--	--	--	--	--	--	X	--	--	--	--	--	--
9 License instructors	--	--	--	--	--	--	X	--	--	--	--	--	--	X	--
10 Legislate formula for refunds on cancellation of contract	--	--	--	--	--	--	--	--	--	--	--	X	--	--	--
11 Additional controls on advertising	--	--	--	--	--	--	--	--	--	--	--	--	--	--	X
12. Industry self-regulation	--	--	--	--	--	--	--	--	--	--	--	--	X	--	--
13. Provide for "cooling-off" period before contract becomes effective	--	--	--	--	--	--	X	--	--	--	--	--	--	--	--
14 Bond to insure financial responsibility	--	--	--	--	--	--	--	--	--	--	--	X	--	--	--

APPENDIX D

DRAFT LEGISLATION

An act to add Title 2 5 (commencing with Section 1812 81) to Part 4, Division 3, of the Civil Code, relating to restrictions on contracts for health and dance studio services and facilities.

The people of the State of California do enact as follows:

SECTION 1 Title 2 5 is added to Part 4, Division 3, of the Civil Code, to read.

TITLE 2 5 CONTRACTS FOR HEALTH OR DANCE STUDIO SERVICES

1812 81. As used in this title, "contract for health or dance studio services" means a contract for instruction, training or assistance in physical culture, bodybuilding, exercising, reducing, figure development, dancing, or any other such physical skill, or for the use by an individual patron of the facilities of a dance studio, ballroom, health studio, gymnasium or other facility used for any of the above purposes, or for membership in any group, club, association or organization formed for any of the above purposes, but does not include contracts for professional services rendered or furnished by a person licensed under the provisions of Division 2 of the Business and Professions Code or contracts for instruction at schools operating pursuant to the provisions of the Education Code

1812 82. Every contract for health or dance studio services shall be in writing and shall be subject to the provisions of this title

1812 83. All contracts for health or dance studio services, which may be in effect between the same seller and the same buyer and for which services are to be rendered at any time within the same year period, shall be considered as one contract for the purposes of this title.

1812 84. No contract for health or dance studio services shall be for a term in excess of one year nor shall it be measured by the life of the person receiving the services or use of the facilities.

1812 85. Every contract for health or dance studio services shall provide that performance of the agreed upon services will begin within six months from the date the contract is entered into

1812.86. No contract for health or dance studio services shall require payment in advance by the person receiving the services or the use of the facilities of a total amount in excess of $_____ nor shall it require him to pay a total consideration, including interest or any other time payment charges, in excess of $_____.

1812 87. No contract for health or dance studio services shall require or entail the execution of any note or series of notes by the buyer which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller.

1812 88 The assignee of a contract for health or dance studio services shall take the contract subject to any defense which would be available to the buyer against the seller, including a defense which is predicated upon the seller's subsequent nonperformance of the agreed services.

1812.89. (a) Every contract for health or dance studio services shall contain a clause providing that if, by reason of death or disability, the person agreeing to receive services is unable to receive all services for which he has contracted, he and his estate shall be relieved from the obligation of making payment for services other than those received prior to death or the onset of disability, and that if he has prepaid any sum for services, so much of such sum is as allocable to services he has not taken shall be promptly refunded to him or his representative

(b) In every case in which a person has prepaid a sum for services under a contract for health or dance studio services, and, by reason of death or disability, is unable to receive all such services, the party agreeing to furnish such services shall, on request, immediately refund to such person or his personal representative such amount of the sum prepaid as is proportionate to the amount of services not received.

1812 90 The provisions of this title are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with all other applicable provisions of law

1812 91. Any contract for health or dance studio services which does not comply with the applicable provisions of this title shall be void and unenforceable as contrary to public policy

1812 92. Any contract for health or dance studio services entered into in reliance upon any willful and false, fraudulent, or misleading information, representation, notice or advertisement of the seller shall be void and unenforceable

1812 93 Any waiver of the buyer of the provisions of this title shall be deemed contrary to public policy and shall be void and unenforceable.

1812 94. Any buyer injured by a violation of this title may bring an action for the recovery of damages Judgment shall be entered for three times the amount at which the actual damages are assessed plus reasonable attorney fees

1812 95 If any provision of this title or the application thereof to any person or circumstances is held unconstitutional, the remainder of the title and the application of such provision to other persons and circumstances shall not be affected thereby

SEC. 2 This act shall become operative_____. This act shall not affect the validity of any agreement made prior to the operative date of the act.

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FINAL REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON JUDICIARY—CIVIL

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LETTER OF TRANSMITTAL

November 25, 1960

HONORABLE RALPH M BROWN, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chambers, State Capitol
Sacramento, California

GENTLEMEN Pursuant to House Resolution No 326 of the 1959 Regular Legislative Session, the Assembly Interim Committee on Judiciary—Civil submits herewith its final report on the Uniform Securities Act as proposed for adoption in California

This report is the product of more than a year of study by the full committee. Four days of hearings in San Francisco and Los Angeles have been devoted to the Uniform Act, and some 38 witnesses have testified on the act and its probable effect on securities regulation in California

The committee wishes to thank all of the many businessmen, attorneys, state officials and legal scholars who have contributed their time and effort to studying this act We are particularly indebted to the members of an advisory group which has spent long hours studying the many technical amendments that have been proposed, and has made valuable recommendations to the committee Headed by Graham Sterling, past president of the State Bar and an acknowledged authority on California corporation law, the advisory committee includes Robert Edwards of the Los Angeles bar, vice chairman and reporter; Commissioner of Corporations John Sobieski, Eric Sutcliffe and John Austin of the San Francisco bar, James M Irvine and Van Cott Niven of the Los Angeles bar, William S Hughes of the Investment Bankers Association, Professor Harold Marsh of the School of Law, University of California at Los Angeles, Professor Richard Jennings of the School of Law, University of California at Berkeley, Assistant Attorney General Herbert Wenig, Bauer Kramer of the Oakland bar, and Joseph M. Henderson of the San Jose bar These gentlemen all gave generously of their time and attention, and the committee is indebted to them for the work they have done in studying this act

It is the considered conclusion of the committee that the final product of this study, the Uniform Securities Act as proposed for adoption in California, will facilitate the efforts of business to raise capital in California without sacrificing any degree of the investor protection that has made our State justly famous It clarifies the law for both business and business counsel, simplifies incorporation for the small business, provides a valuable degree of procedural uniformity for interstate offerings, and brings within the scope of California regulation a field, hitherto exempt, representing 75 percent of the dollar value of all offerings in California

Few acts have received the intensive study which has been given this one by this committee, by its top-level advisory group, by the bar asso-

ciations of our largest cities, and by the State Bar. We respectfully recommend that it receive your favorable consideration.

Respectfully submitted,

WILLIAM BIDDICK, JR., *Chairman*
GEORGE A. WILLSON, *Vice Chairman*

CLARK L BRADLEY
JOHN A. BUSTERUD
TOM CARRELL
RICHARD T. HANNA
THOMAS J. MACBRIDE
MILTON MARKS
BRUCE V REGAN [1]
BRUCE SUMNER
HOWARD J THELIN
JEROME R WALDIE
EDWIN L. Z'BERG [2]

[1] Representative, Assembly Interim Committee on Finance and Insurance
[2] (Accepting in part, but dissenting from those recommendations that would withdraw from the commissioner the power to apply the "fair, just and equitable" standard to a proposed issuance of securities)

FINDINGS AND RECOMMENDATIONS

Ever since the Assembly Interim Committee on Judiciary—Civil began its study of the Uniform Securities Act as proposed for adoption in California, certain specific problems in the present law have continually been raised. They have led the committee to conclude that certain serious flaws exist in California's present Corporate Securities Law, to the detriment of legitimate business and the confusion of business counsel After a course of hearings and study extending over a year, the committee has arrived at the following findings and recommendations

1. California's present Corporate Securities Law fails to provide adequate standards for the guidance of legitimate businesses seeking to raise capital.

Authorities in this field are virtually unanimous in calling the present law one of the most extreme delegations of discretion made to an administrator While some discretion is necessary to meet the ingenious schemes that arise in this field, it is the duty of the Legislature to establish guide posts for administrative action The present standards set out are so general as to invite the substitution of administrative for business judgment. Although this discretion has in general been exercised wisely, uncertainty remains for business and for business counsel And should the present high standards in the office of the Commissioner of Corporations ever decline, an intolerable burden on legitimate business could result. The phrase "government of laws, not men" still has meaning, and should be applicable in the field of securities law as elsewhere.

2. Procedural uniformity has been sadly lacking in the securities laws of the 50 states.

The securities laws of the 50 states presently represent a crazy quilt of archaic nomenclature and procedure, imposing a needless burden on companies offering their securities nationally Uniformity in procedure can be achieved without sacrificing substantive protection, and every effort should be made to do so.

3. California's present Corporate Securities Law provides inadequate protection in the field of secondary offerings.

Because no permit is required except of a company selling a security "of its own issue," 75 percent in dollar value of all offerings in California are made largely without the benefit of the commissioner's otherwise rigorous supervision This enormous loophole in securities regulation must be closed

4. The present law is unclear as to when a permit is required and the extent, measure and duration of civil liabilities.

Due to gaps and ambiguities in the present Corporate Securities Law, it is often impossible to advise as to the measure of liability, the

period of limitations involved, or indeed, whether liability exists or whether securities issued in violation of minor technical requirements are valid In many transactions, no one can say whether or not a permit is required Specific rules and standards in these areas must be established.

5. Present conflict of laws rules are inadequate to provide any fair degree of predictability.

As interstate transactions grow in volume it is essential that clear, uniform rules be established for determining what law applies There are no such rules in the present law

6. There is a needless and wasteful lack of uniformity between registration procedures under the present California law and those under the Federal Securities Act.

Nationally distributed issues are registered with the Securities and Exchange Commission and, in addition, must obtain local clearance under the blue sky laws of every state in which they are offered Our state law generally does not take sufficient cognizance of the fact of federal registration in setting forth its own procedural requirements

Procedural co-ordination with the federal law should be provided, without sacrificing the substantive safeguards of California law.

7. Insufficient recognition is made under present law of the organizational problems of small business.

Under present California law, any business which seeks to gain the advantages of incorporation is subject to the same basic procedural requirements, whether it be a corner grocery store or a multi-million dollar concern The expense and complication involved in the present permit system may result in either discouraging incorporation altogether or in prompting small groups to engage in do it yourself incorporation, with the resultant danger of making serious errors in organization or issuance of securities.

While some regulatory statutes ameliorate these problems by exempting limited offerings from control, this solution is too drastic a one for California As Commissioner Sobieski has pointed out, small numbers of investors can be swindled just as unconscionably as large groups

Rather than provide an outright exemption, thus leaving this potentially dangerous area open for possible fraud, the committee has accepted the recommendation of its advisory group that a limited exemption be provided, subject to the filing of certain basic information with the commissioner and strict regulation of subsequent transfers

Such an exemption would provide a simple, straightforward and inexpensive method of incorporation for the small business while retaining the investor protection afforded by the commissioner's watchful eye

* * * * * * *

It is the committee's conclusion that the Uniform Securities Act in the form in which it is proposed for adoption in California represents the most desirable solution to the above problems It provides rational standards for the guidance of business without sacrificing California's traditionally strong philosophy of investor protection

INTRODUCTION

PIE IN THE SKY

Nowhere are the opportunities greater for fleecing the unduly naive, optimistic or merely uninformed investor than in the corporate enterprise The flexibility and versatility of the corporate structure, which has contributed so much to the growth and success of our economy, at the same time lends itself to possibilities for fraud and overreaching unheard of in simpler times

The blue sky laws—legislation regulating the issuance of securities—were enacted by most of the states in the early days of the century in response to a legitimate need for protection against the ingenious schemes of dishonest promoters and corporate insiders

Today, active markets and increasing numbers of inexperienced investors have made effective regulation more necessary than ever. New frauds, more complicated and difficult to prosecute, have taken their places beside the time-honored old ones The rise of the boiler rooms, for instance, where high-pressure salesmen sell speculative issues over long-distance telephone, has steadily reduced the importance of state boundaries in regulation

All too often, legislative remedies have not kept up with the economic and legal changes of the past 40 years Insufficient note has been taken of new tax laws, new accounting procedures, the increasing importance, dollar-wise, of nationwide issues, and the emergence of federal securities regulation A former chairman of the Securities and Exchange Commission saw it this way

> The "blue sky" laws had come to have a special meaning—a meaning full of complexities, surprises, unsuspected liabilities for transactions normal and usual—in short, a crazy-quilt of state regulations no longer significant or meaningful in purpose, and usually stultifying in effect or just plain useless [1]

One of the chief purposes of the Committee on Judiciary—Civil in this study has been to determine whether these words apply to California's 40-year-old Corporate Securities Act

The committee has had to cope with a basic philosophical question: What should be the role of the State in securities regulation? In this area, where traditional remedies have long been found wanting, regulation is clearly needed, not only for the protection of investors, but for the protection of legitimate business enterprises whose stability rests on investor confidence At the same time, the committee has recognized the importance of a free flow of capital to our economic system Businesses have a right to expect certainty and predictability in the laws which govern their efforts to raise capital

The committee has acted on the premise that a proper scheme or regulation is one that protects the investor against fraud and exploitation without discouraging the expansion of our State's economy, one which recognizes that the State cannot substitute its business judgment, valuations, or predictions for those of either management or shareholder

[1] Armstrong, The Blue Sky Laws, 44 Virginia Law Rev 713 (1958)

WHY A BLUE SKY LAW?

For a proper understanding of the securities laws, it is necessary to understand the abuses at which they are directed. An extensive discussion of the ingenious and multifarious devices by which the investor and his money have been wrongly parted is impossible here. Some of the most common frauds and abuses, as enumerated in Ballantine and Sterling's book, California Corporation Law, are the following.[1]

1. The fraudulent promotion of unsound enterprises having no reasonable chance of success, such as patented devices mechanically imperfect or impracticable, or the development of mining prospects not worth developing;

2. The unsound quality of the securities offered, as by the issue of large blocks of watered stock to promoters for services or intangible assets, thus diluting the shares later sold to the public;

3 The charging of exorbitant commissions by the organizers or underwriters for the sale of shares and securities to the public sometimes amounting to 30, 40 or 50 percent of the selling price;

4 The dangerously dishonest practices of many security distributors and salesmen,

5. The failure of judge-made remedies to control the prevalent frauds of promoters, which were ruinous to public investors.

[1] Ballantine and Sterling, California Corporation Law 858-859 (1949)

LEGAL AND HISTORICAL BACKGROUND

The securities business has been the subject of special legislation ever since its susceptibility to "robbery as well as jobbery" became clear [1] Brokers in the City of London were licensed as early as 1285. In the early eighteenth century, during the famous "Bubble Mania" when the Mississippi and the South Sea Companies undertook respectively to pay off the French and English national debts, it was reported that a thousand persons responded in one day to an opportunity to pay two guineas each as a first installment for shares in a company "for carrying on an undertaking of great importance, but nobody to know what it is " When the bubbles burst, ruining thousands, the British Parliament enacted the so-called "Bubble Act of 1720", severely restricting such enterprises by prohibiting the use of false or irregular charters and the taking of subscriptions for such enterprises [2]

SECURITIES ACTS IN THE UNITED STATES

The "blue sky law," with its rigorous substantive controls over securities and those in the securities business, is peculiar to the United States and Canada

The term "blue sky law" apparently came first into usage in Kansas, where farmers were bilked by promoters who, it was said, would sell building lots in the blue sky in fee simple It was there, in 1911, that the first comprehensive licensing system for securities and persons engaged in the business was enacted. An aggressive commissioner investigated securities, warned Kansans about known frauds, and purported to give general investment advice This has been described as the beginning of the paternalistic approach to securities regulation.[3]

Philosophically, American securities legislation falls generally into two categories that of disclosure, and that of strict qualitative regulation

The disclosure philosophy is based on the premise that once the prospective investor is fully and truthfully informed of the material facts concerning an offering, the state's function is over, and he must make his own decision "You can lead an investor to a prospectus but you can't make him think," as one official of the Securities and Exchange Commission has put it

This philosophy, basic in the English Companies Act, is prevalent throughout Western Europe and other parts of the world Its foremost expression in this country is in the federal Securities Act of 1933 The federal securities laws, administered by the Securities and Exchange Commission, apply generally to interstate issues of securities Their primary requirement is "to provide public disclosure of all financial and other data bearing upon the worth of securities so that they might be realistically evaluated by investors " [4]

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[1] See Loss, Securities Regulation 3-16 (1951)
[2] *Ibid* 4-5
[3] Loss and Cowett, Blue Sky Law 3-10 (1958)
[4] Securities and Exchange Commission, Twenty-Fifth Annual Report xix (1959)

Disclosure, and the prevention of fraud, is accomplished by requiring that a registration statement be filed with the Commission, and by submitting to purchasers and prospective investors a written prospectus with all the pertinent facts on which the company's operations may be appraised and its securities evaluated

The SEC makes no judgments on the soundness of ventures Rather, it serves the function of an "educated lie detector caught between the investing public and the issuer."[5]

[5] The SEC Caveat Emptor, *Fortune* 140, 141 (Nov 1958)

REGULATION IN CALIFORNIA

The more comprehensive approach to securities regulation found its chief expression in the blue sky laws of the west and midwest, perhaps most of all in California's Corporate Securities Law

Writing in 1946, one California authority described the California law as, "in basic theory, probably the most extremely paternalistic among all existing federal and state securities acts possibly a natural reaction to the mining fever and the wild speculation that characterized California from the gold rush days until well after the period of the Comstock Lode "[1]

California's Department of Corporations was set up in 1915 under the Hiram Johnson administration, and at once took a lively interest in the many fraudulent schemes then being offered investors Here is an excerpt from the first commissioner's report:[2]

> Sisson's divi bell, designed to lure treasures from the vasty deep and money from the pockets of the unwary, presented to us by the Blue Sky Commissioner of Oregon, has floated eastward from Los Angeles Berry's airship has flown to other climes where folks are still separated from their money in purely atmospherical ventures Railless and earless monorail projects hastily concocted in fertile brains and based upon the intensive study of a two-inch paragraph in a scientific magazine, wave motors that solved the problems of power conservation—on paper only, gold machines that swallowed gold instead of yielding it—the countless gold-brick promotions of febrile imagination, especially indigenous to the southern part of the state, have moved on, unwept and unsung, save for the melancholy chorus of their victims

From its inception, the California law was a rigorous piece of legislation, representing probably the limit of the Legislature's ability to delegate discretionary administrative power to the executive.[3]

Under a scheme of regulation largely unchanged since 1917, a company is forbidden to sell any security of its own issue without securing a permit from the commissioner,[4] and any security sold without a permit or in violation of its terms is "void,"[5] a term the definition of which apparently depends at least in part on the circumstances of the case

The commissioner must grant a permit for the issue of securities *in such amounts*, and *for such considerations*, and *upon such terms and conditions as he may provide*, if he finds that the following conditions have been met [6]

1. Applicant's proposed plan of business and the proposed issuance of securities are "fair, just and equitable";

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[1] Dahlquist, Regulation and Civil Liability Under the California Corporate Securities Act 34 Calif L Rev 695, 735 (1946)
[2] First biennial report of the State Corporation Department 6 (1919)
[3] Cont Ed of the Bar, Advising Business Enterprises 497 (1958)
[4] Cal Corp Code (Sec 25500)
[5] Cal Corp Code (Sec 26100)
[6] Cal Corp Code (Sec 25507)

2 Applicant intends to transact its business fairly and honestly;

3 The securities applicant proposes to issue and the method to be used by it in issuing or disposing of them are not such as, in his opinion, will work a fraud upon the purchaser

If these conditions are all met, the commissioner has additional broad powers to impose terms on a proposed issue He may require securities to be deposited in escrow and may require that the proceeds be impounded He may limit the expenses of sale, and may require that dividends be waived by the holders of promotional securities And he has the general power to impose "such other conditions as he deems reasonable and necessary or advisable for the protection of the public and the purchasers of the securities "[7]

The discretion conferred on the Commissioner of Corporations by this law is probably as broad as that granted by any regulatory statute "I am sometimes overawed at the power I have," Commissioner Sobieski has testified

California attorneys and investment bankers have testified that in general, this power is exercised wisely[8]

Why, then, is it time for a change?

The overwhelming weight of testimony before the committee has indicated that the present law, conceived before California became a great industrial state and before the enactment of the federal securities laws, imposes a heavy burden of uncertainty on legitimate business

The difficulty of predicting ahead of time whether a proposed business move will meet the approval of the commissioner's office, or even require such approval, came up again and again in testimony before the committee The apparent difficulties stem from several factors

First, the initial scope of the Corporate Securities Law is tremendous A permit is required not only for any issue, but for *any change in the rights, preferences, privileges or restrictions* of any outstanding securities, favorable or unfavorable Conceivably a permit may be required for a change of par value common stock to no par or vice versa or where a corporation borrows money from a bank and agrees to certain restrictions on dividends A foreign corporation with one or more California shareholders may need a permit to split its stock or pay a stock dividend

Under the present law, the most technical violation involving such an issue or change in rights, preferences or restrictions made without a permit makes a security "void," and there is no satisfactory method of correction

Second, although the coverage of the act is great, objective standards are virtually nonexistent Under the present law, the commissioner must exercise his judgment as to the issuance of a permit and the imposition of conditions on whether the action is "fair, just and equitable "

[7] Cal Corp Code (Sec 25508)

[8] Cf Dahlquist, Regulation and Civil Liabilities Under the California Corporate Securities Act, 34 Calif L Rev 739 (1946) The act itself is scarcely a model of master draftsmanship Its terminology is in many respects archaic, slovenly and inept as an extreme grant of executive justice it will remain tolerable only so long as it is administered wisely Long experience has indicated that in the hands of sound administrators its theoretic radicalism is largely innocuous If, however, its administration should fall into the hands of reforming visionaries, or crusaders with a mission, it could become a serious and intolerable burden on legitimate business

In fact, this judgment is exercised almost entirely by deputies, since the commissioner rules himself on only some 10 to 20 applications a month, while the division processes close to 20,000 yearly

Judicial review is useless as a practical matter, because of the time considerations usually involved

With regard to the difficulties of ambiguity and lack of uniformity that had been pointed out in the California law, J M Friedlander, then Commissioner of Corporations, made a prophetic statement in 1927

> Whether it will be federal control of corporations or a uniform Corporate Securities Act, it is obvious that a great many difficulties that are contended with at present will some time be obviated and averted

In its ambiguities, and in the extreme administrative discretion it confers, the present law represents a potential threat to legitimate business

How great a threat can be illustrated by the experience of Lynn Bollinger former Professor at the Harvard Graduate School of Business Administration Dr Bollinger helped develop a course called "Managing New Enterprises" at the Harvard Business School In his own new enterprise—a corporation organized to develop a unique executive airplane—he ran into what *Fortune* magazine called a "monumental snarl" [9] in attempting to comply with state blue sky laws

In a letter to the Committee on Judiciary—Civil, Dr Bollinger has written as follows

> I still give a lecture to the classes in the New Enterprise course each year at Harvard dealing primarily with the regulatory impediments to new enterprise. Many of the State "Blue Sky" regulatory practices—and those of California in particular—I often use as examples of misguided good intentions which work loss and hardship upon smaller corporations and thus upon the investors therein

Speaking from his own experience, Dr Bollinger finds that "far too much latitude is left to the subjective opinions of the commissioner and personnel to whom he delegates responsibilities"

At its two hearings, the committee heard a parade of horrible examples illustrating the pitfalls and ambiguities confronting every small corporation that wants to issue stock in California [10] The present law has been criticized in specific terms by some of the foremost figures in California's corporate bar and investment industry Their collective criticism seems to boil down generally to these points·

1. The Corporate Securities Law is totally unclear on the subject of civil liabilities.

It does not prescribe remedies, nor does it define any measure of damages No provision specifies persons who are civilly liable, or the persons who may enforce liability We have only a provision making it unlawful to issue securities without a permit or in violation of the

[9] Murphy, Blue-Sky Red Tape, *Fortune* 122, July 1957

[10] See, e g, Edwards, California Measures the Uniform Securities Act Against Its Corporate Securities Law, 15 *The Business Lawyer* 514 (1960)

terms and conditions of the permit, and declaring securities so issued to be "void" In effect, this means that any violation of the conditions of a permit, no matter how technical, makes the security purchased voidable at the buyer's option

One Los Angeles attorney has testified that it might be preferable to advise one's client to buy a security sold or issued without a permit, because if the conditions of one are violated, the buyer is in a position to speculate at the issuer's expense

2. The present law imposes an unnecessary burden on national issues.

According to testimony from investment bankers and representatives from the State Chamber of Commerce, California has lost substantial business because of archaic and unnecessary requirements imposed in interstate issues

At present, a company seeking to issue stock nationally must meet the individual requirements of the federal law and the 50 states Several years ago a large investment banker ascertained that the registration of a nonexempt issue under the Securities Act of 1933 and the securities laws of only 12 states would require the furnishing of a total of 733 items of information, including schedules and exhibits Of this total, 184 separate items of information were required by federal law and the remainder of 549 items were required in the combined application forms of the 12 states Of the 549 items required on the forms of the 12 states, 314 items duplicated or were similar to the 184 items on the federal form

William Hughes a past governor of the Investment Bankers Association and president of Wagenseller & Durst, Inc, put it this way at the committee's Los Angeles hearing:

> Due to the time pressures (20 days) on national deals, the eastern underwriters have just bypassed California dealers We estimate that for every issue turned down another two or three didn't attempt to clear if questions or trouble developed The syndicate managers have cut out California dealers quickly and given other area dealers the positions in order to have a deal jelled and sold on time

3. The present law gives inadequate protection in the field of secondary offerings.

While the eastern issuer may be unduly hampered when he seeks to offer stock in California directly, the scope of regulation fades greatly when the offering is made through an eastern underwriter No permit is required unless a company is selling a security "of its own issue" Through this loophole in our generally rigorous law slips 75 percent of the dollar value of all new offerings made in California

At present, the only control the commissioner has over such offerings comes through the requirement that all advertising be filed—ineffective when securities are sold by word of mouth—and a little-used section which forbids a broker to sell or offer any security after notice from the commissioner that such sale would be "unfair, unjust, or inequitable to the purchaser"

Because these sellers are not subject to the permit requirements of the present law, they are not subject to the law's civil and criminal sanctions either

4. The present conflict of laws rules are unclear.

Our present Corporate Securities Law probably does not apply, for instance, where a New York broker sends a prospectus to a California resident who reads it, decides to buy the stock, and sends a check to the New York office

5. Procedural requirements imposed by the present law bear little or no relation to the requirements of other states.

One of the California Commissioners on Uniform State Laws has testified to the committee that "the statute law, such as it was on the subject of blue sky legislation, has been in complete chaos on the state level for many, many years "

This interstate confusion has led to serious problems in raising capital Since practically all large issues of securities are now sold on a nationwide basis, meeting different filing requirements from state to state can raise tremendous obstacles, particularly because of the importance of timing in most underwritings.

6. The present law confers virtually unlimited discretion on the Commissioner of Corporations

A permit may be refused if the commissioner finds that the applicant's proposed plan of business and the proposed issuance of securities are not "fair, just and equitable " Under this standard, administrative judgments are imposed on the price of securities, conditions of sale, and matters which may belong entirely in the realm of business judgment Commissioner Sobieski has testified on this standard as follows

> " sometimes I am appalled at the discretion which the Commissioner of Corporations has . . . I could, at any time, start deciding business risks if I felt that that was the philosophy the commissioner ought to apply "

This very general standard of "fair, just and equitable" has also been criticized for the *lack* of discretion used in its administration Harold Marsh, Professor of Law at UCLA, told the committee that ". . the major defect in the way it (the fair, just and equitable standard) is presently administered is that the discretion given is not exercised by the employees of the commissioner They have specific little rules, and if your plan doesn't fit one of these specific little rules, you don't get a permit."

The commissioner has testified that in fact, this standard is generally administered by deputies The number of cases he handles each month is necessarily limited to from 10 to 20 But assuming that top-level administrative review is available, the administrator is, after all, the one who makes the decision Professor Marsh put the basic question to the committee " . what is one appointive official doing deciding on this basic policy for the State of California? . . in a certain sense the Legislature may be abdicating its own responsibilities "

Although the commissioner's decisions may be appealed to the courts, an appeal is to all practical effects useless because of the time it takes During the waiting period of several months usually involved, changes in the market can render a favorable decision useless to the appellant

Graham L Sterling, past president of the State Bar and a recognized authority on California corporation law, put the problem this way

> If you are charged with affirmatively finding that all of the details in connection with a proposed issue are fair, just and equitable, and you are conscientious, as these men are, this almost inevitably results in imposing your own ideas of what is proper on people who are honest and who are trying to do a perfectly legitimate piece of financing

James Cantlen, of the Los Angeles Chamber of Commerce, expressed fears as to the long-term effect of this vague standard on California's economy

> This is not regulation It unduly subjects the securities business in California to discretionary administrative decisions not based on reasonably definite standards and constitutes a real burden on the legitimate financing of corporations
>
> If the regulation of the sale of securities here goes beyond reasonable bounds for the proper protection of investors, it is my belief that such regulation could and would have deterrent effects upon the continuance of our growth

This concern, expressed by so many attorneys and academicians in California, has been felt elsewhere as well Here is an excerpt from a recent note in the Columbia Law Review [11]

> The possibility that the commissioner's interpretation of fairness is or may become overly narrow should be met by statutory or judicial enunciation of standards clearly indicating that the fairness concept embraces a wide range of managerial decisions within which reasonable men may differ

A Harvard Law Review editor has pointed out what is perhaps the greatest handicap of the protectionist attitude today · [12]

> A state cannot prevent its investor from going into the stock exchange or over the counter markets in New York or some other financial center and buying stocks that are just as speculative, and just as objectionable to the state official as those which cannot be sold to him at home

It should be noted, on the other hand, that several witnesses, including Professor Richard Jennings of the School of Law of the University of California at Berkeley and Assistant Commissioner Donald Pearce, have argued for retention of the "fair, just and equitable" standard on the ground that the administrative flexibility it embodies is essential to adequate protection of the public.

[11] Note 58 Colum L Rev 72-73 (1958)
[12] Note 72 Harvard L Rev 1180 (1959)

7. The special needs of small business are largely neglected in the present regulatory scheme.

One Los Angeles attorney has testified to the committee that "* * * the permit system imposes such expensive requirements that in my experience at least, it often inhibits these people from employing the corporate form at all * * * the basic problem of small business is the cost in time and overhead of trying to comply with the complicated tax forms and reporting wage and hour and labor forms, and reporting the licensing requirements that are really designed for larger enterprises"

Again, Professor Marsh gave as his opinion that "This bill does not remedy the major defect in the present California Corporate Securities Act, that major defect being the lack of any private offering exemption"

Both filing fees and red tape are excessive, it would appear, in the many instances when families, partners, or small groups of businessmen incorporate their businesses

8. People in the securities business are not subject to adequate regulation.

Commissioner Sobieski has testified that many violations of the law by brokers and agents today appear to have been based on ignorance of good business practices, ignorance of the law, and ignorance of their duties to their customers and employers.

Yet licensing requirements in the present law pertain generally only to past record, business reputation, good intentions and financial responsibility.

The commissioner has strongly recommended provisions requiring knowledge of the field, proven by passing tests administered by the Division of Corporations, before entering the business, and requiring that employees be adequately supervised once business is carried on

WHY THE UNIFORM ACT?

Those who have opposed the Uniform Act have generally conceded the desirability of remedying many of the defects which have been indicated, and have recommended ameliorative amendments to the Corporate Securities Law. This approach has been rejected primarily for two reasons:

1. So many amendments would have to be made that substantially the Uniform Securities Act would result;

2. The present law is such a complicated patchwork of statute and regulation that the degree of amendment necessary probably could not be achieved as a matter of practical legal draftsmanship.

These were the conclusions reached by the Committee on Corporations of the Los Angeles Bar Association, the Corporations Committee of the State Bar, and the Commissioner of Corporations.

GENERAL APPROACH OF THE UNIFORM ACT

No one is better equipped to explain the general approach of the Uniform Securities Act, as originally drafted, than its author. Accordingly, the following is taken from Loss and Cowett, BLUE SKY LAW at 236-238 (1958)

"Particularly in the light of the Conference's experience of 1949-53, the Act follows a new approach It is in four parts, having to do with (I) fraudulent and other prohibited practices, (II) registration of broker-dealers, agents and investment advisers, (III) registration of securities, and (IV) those general provisions (definitions, exemptions, judicial review, investigatory, injunctive and criminal provisions, etc) which are essential in varying degree under any of the three basic philosophies. The first three parts are designed to stand alone or in any combination It is the theory of this approach that it is impractical to expect complete uniformity among states with basically different regulatory philosophies, but that there is some likelihood of achieving a substantial degree of uniformity among those states which follow a particular philosophy Thus a state like New Jersey which wanted to continue solely on a "fraud" basis might adopt only Part I and the few applicable provisions of Part IV of the uniform act, a state like Maryland which wanted to combine antifraud provisions with a system of broker-dealer registration might adopt Parts I and II and a somewhat larger portion of Part IV, and most of the states, whose laws reflect all three philosophies, might consider the adoption of the entire statute This also has the additional merit of providing a uniform arrangement, so that a lawyer working with a great number of acts when he prepares an issue for nationwide distribution will be able to find a given provision in the same place though it may vary somewhat from state to state

"Within this basic three-way approach the draftsmen had to decide a number of other questions of general policy.

"1 Some sort of line had to be drawn between the ideal and the practical On the one hand, with blue sky acts on the books for forty years or more, one would not be justified in writing on a clean slate Whenever feasible, the draftsmen accordingly used phrases that have acquired fixed meanings and have been construed by courts and administrators At the same time, since it is not very often that an opportunity arises to have a comprehensive look at the whole field, the draftsmen did not limit themselves to discovering the cowpaths and following them When it seemed desirable to take a fresh approach, this was done

"2 The draft had to be coordinated with the federal legislation, but not at the price of relegating the state statutes to a subordinate position Congress went out of its way to preserve the state statutes even with respect to interstate transactions, and most of

the existing state laws go beyond the disclosure philosophy of the federal act Probably the federal rule should be so limited, except for special cases like the Holding Company and Investment Company Acts. On the other hand, if individual states want to go further than disclosure, it is part of the genius of our federal scheme that they should be permitted to do so As Justice Brandeis reminded us in one of his great dissents 'It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country' At any rate, our dual system of federal-state regulation in the securities field is too firmly fixed to make federal preemption even remotely practicable The only hope for simplification lies in uniformity and federal-state coordination It does seem reasonable to expect general agreement on the proposition that the price of the experimentation of which Brandeis spoke should not be too high An intelligent and workable system of federalism requires that the states cooperate in reducing to a minimum the burden of their separate legislation on interstate commerce Whatever additional protection they afford should not be achieved at an unnecessary cost to legitimate business This the states owe not merely to the Union but to themselves if 'states' rights' are not to be eroded in the securities field Moreover, state administration will benefit from an act which is reasonably coordinated with the federal legislation, as well as uniform from state to state, in that it will not only help legitimate interstate business but also facilitate an interchangeability of precedent and practice

"3 Still another line had to be drawn in the sense that any blue sky law must have enough teeth in it to take care of the shoddier aspects of the world of finance without at the same time interfering needlessly with legitimate business

"4 In any administrative act in a complex field—especially in a uniform act—a certain amount of administrative flexibility to adopt appropriate rules, forms and orders is essential But this power has been kept to the minimum practicable; standards as precise as feasible have been specified for the administrator's guidance; and certain protective safeguards have been included In so far as the statute is not self-operative, it will have to be implemented by uniform rules and forms This should logically be done under the aegis of the National Association of Securities Administrators"

THE UNIFORM ACT FOR CALIFORNIA

The Uniform Securities Act in the amended and polished form in which it is proposed for adoption in California, represents the latest and best-prepared effort to present an orderly and coherent scheme of securities regulation

Child of the joint effort of the American Bar Association and the National Conference of Commissioners on Uniform State Laws, the Uniform Securities Act was drafted by Professor Louis Loss of the Harvard Law School, formerly the Associate General Counsel of the Securities and Exchange Commission with the advice and collaboration of a committee containing representatives of both those organizations as well as the SEC, the Investment Bankers Association of America, and the National Association of Securities Dealers, Inc

It has been approved in principle by the North American Securities Administrators and endorsed by the Securities and Exchange Commission

In California, it received a three-year study by the Committee on Corporations of the Los Angeles Bar Association It was approved by the Board of Trustees of the Los Angeles Bar Association with amendments which tightened the act in accordance with California's traditionally strong regulatory philosophy

For some six months the act underwent the scrutiny of the Committee on Corporations of the State Bar of California. It received the endorsement of the Governors of the State Bar in 1959

Commissioner of Corporations John Sobieski gave the act his support after numerous amendments were made to increase its protection of investors and shareholders

In its final form, the Uniform Act was introduced as Assembly Bill 2531 late in the 1959 Session of the Legislature There it appeared that adequate hearing could not be given to the members of the bar, the investment industry, and the general public who had not previously studied the act It also appeared that some confusion existed as to whether A B 2531 was in fact the original Uniform Act or the much-tightened version which had been amended and approved by the Commissioner of Corporations and the committees of the Los Angeles and State bar associations In order that the bill might receive a full hearing, its author, Chairman of the Judiciary-Civil Committee William Biddick, Jr, asked that it be referred to that committee for interim study

Since then, the committee has held hearings on A B 2531 in San Francisco and Los Angeles which extended over a total of four days It has heard testimony from some 38 witnesses, including leading attorneys, investment brokers and counselors, businessmen, law professors and representatives from the state regulatory agencies

Sitting with the committee and participating actively were Assemblyman Bruce Reagan, representing the Assembly Interim Committee on Finance and Insurance, and Senator Fred Farr, representing the Senate Judiciary Committee

In addition, the committee has carried on extensive correspondence with Professor Louis Loss, author of the original Uniform Act, and with legislative counsel of other states where studies of the act were carried on

For assistance in evaluating the many detailed amendments proposed at these hearings, an advisory committee was set up, headed by Graham L Sterling, 1958-59 President of the State Bar and coauthor of one of the leading works on California corporation law Its members include Professors of Law Harold Marsh (U C.L A) and Richard Jennings, (U C at Berkeley), Assistant Attorney General Herbert Wenig, Corporations Commissioner John Sobieski, investment banker William Hughes, and attorneys Eric Sutcliffe (San Francisco), James Irvine (Los Angeles), Van Cott Niven (Los Angeles), Robert Edwards (Los Angeles), Joseph Henderson (San Jose), John Austin (San Francisco), and Bauer Kramer (Oakland)

Mr Edwards, who was Chairman of the Los Angeles Bar Association's Committee on Corporations when it studied the Uniform Act, served as vice-chairman and reporter for the committee

This advisory group, which includes some of the foremost authorities on securities regulation in California, included in its membership critics of the Uniform Act as well as its chief exponents After long and intensive sessions extending from March through November of 1960, it was able to agree on amendments remedying the major criticisms made of the act during Judiciary-Civil Committee hearings, and its members ended their work in substantial agreement as to the desirability of the proposed amendments

In the form proposed for adoption in California, the Uniform Securities Act would remedy most of the defects criticized in the present law and others as well.

1. The new act, by covering securities underwritten outside California, would plug an enormous hole in the present law and increase the dollar volume of transactions cleared by the commissioner's office at least threefold

2. The rights and liabilities of the parties are clearly stated. The Uniform Securities Act specifies how much a purchaser can recover and who is liable, provides a time limit within which the purchaser must act, and permits the issuer or seller to correct technical violations by tendering the buyer his money back with interest, thus preventing speculation at the issuer's or seller's expense

3. Interstate issues registered with the Securities and Exchange Commission may be registered in California by a special co-ordination procedure, streamlining the paper work involved in national offerings without reducing substantive safeguards

4. Regulation of persons in the securities business is increased. Applicants for a broker's license must be qualified on such factors as training, experience, and knowledge of the securities business.

Licensees must reasonably supervise their agents or employees

The commissioner is authorized to require issuers employing agents to post a bond At present, the issuer with a quality offering sells his securities through a broker, who is bonded under present law If an

issuer cannot find a broker, perhaps because his offering is of lower quality, he is inexperienced, or his financial resources are small, he must offer the securities to the public through salesmen At present, no bond is required in such a case

The commissioner is expressly authorized to require that persons entering the business take an examination

5. Specific regulatory standards are set forth in the statute. Rather than have a permit denied on the vague grounds that its issuance, or issuer's plan of operation, would not be "fair, just and equitable," the grounds for denial of registration are spelled out in the statute, with the common requirement that denial be in the public interest as well.

Broadest of the grounds for denial is the test of whether the offering would work a fraud on purchasers According to Professor Louis Loss, draftsman of the original Uniform Act the "fraud" test is designed to give the commissioner a substantial amount of leeway somewhat short of the "fair, just and equitable" formula The section is intended to, and does in fact, codify the federal and state judicial holdings to the effect that fraud as used in securities legislation is not limited to common-law deceit

The term as used in this context thus refers to the body of definitional law now growing up under the federal and state securities statutes and, most particularly, those states which have adopted the Uniform Act

Commissioner of Corporations John Sobieski has offered as his judgment that any offering that could be properly denied under the "fair, just and equitable" test could also be denied under the Uniform Act

In order to illustrate the operation of this test in a situation where the present law was applied to protect investors, Van Cott Niven, of the Los Angeles Bar, reviewed the issue of Tucker automobile stock It was his conclusion that the sale in California could just as easily have been stopped under the terms of the proposed Uniform Act as it was under present law, since a specific finding of fraud was in fact made in the Tucker case

6. Special provision is made for limited offerings. At present approximately half the states exempt small offerings from the scope of their securities statutes[1] California has long rejected this policy because possibilities for fraud are just as great when the number of investors is small as in a large offering, and because initially limited offerings of a dubious nature are often resold to the general public by unscrupulous promoters under such an exemption

Nevertheless, the desirability of providing a relatively simple procedure for incorporation of the small business has been generally acknowledged Regulations which make sense when securities are being offered to many persons may raise meaningless impediments when a family group or a few partners running a corner grocery store or gas station want to incorporate

In this field, the advisory committee has arrived at a compromise which meets both the tests of simplicity and investor protection An exemption is provided for transactions pursuant to an offer or sale of securities by an issuer provided (1) no more than 10 persons will own

[1] Loss and Cowett, Blue Sky Law 369 (1958)

all the securities after the sale, (2) the issuer first files with the commissioner a notice with specified basic information, and the commissioner does not disallow the exemption within five business days, and (3) the certificates indicate that subsequent transfers are illegal unless the commissioner's consent has first been obtained

7. Regulatory control over corporate reorganizations and recapitalizations has been clarified. By carefully spelling out both the corporations and the changes which are subject to the commissioner's jurisdiction, the act clarifies an area which has long been of considerable concern to a great many lawyers and corporations

HOW THE ACT WILL WORK[1]

INTRODUCTION

There are three basic types of state securities regulations: (1) prohibition against fraud in the sale of securities; (2) regulation of the securities business by regulating the people engaged in the business, that is, registration and discipline of dealers, brokers and salesmen; and (3) registration or qualification of the securities themselves. The Uniform Act covers all three types of regulation, and adds provisions for civil liability (with specific remedies and a definite period for limitation of actions) and provisions for determining applicability of the law in interstate transactions.

FRAUDULENT AND OTHER PROHIBITED PRACTICES

Part One prohibits fraudulent practices in the *sale or purchase* of a security and in the rendering of investment advice. There are no exemptions. The sanctions are found in other parts of the act and include (1) criminal prosecution in the event of a wilful violation, (2) injunctions, and (3) administrative proceedings to deny, suspend or revoke registration when the violator is a broker-dealer, an agent of a broker-dealer or of an issuer, or an investment adviser.

REGISTRATION OF BROKER-DEALERS AND INVESTMENT ADVISERS

Part Two requires annual registration of all broker-dealers, agents and investment advisers. The commissioner by rule may require minimum capital. Ten grounds are specified on which the registration of a broker-dealer, agent or investment adviser may be denied, suspended or revoked.

REGISTRATION OF SECURITIES

Part Three requires the registration of any security before it is offered or sold in the state unless the security or transaction is exempted. Thus, registration is required not only for primary offerings by the issuer but also for secondary distribution of outstanding securities or other transactions not involving the issuer, unless exempted. This goes further than many existing state statutes. Provision is made for three types of registration: (1) notification, (2) co-ordination, and (3) qualification.

Registration by notification is reserved for companies which have been in existence for five years with no default on any senior security during the past three years and with a three-year average net earnings record of 5 percent on their common stock. Notification is primarily for those intrastate issues of high quality which are not registered under the federal statute. Registration by notification becomes effective automatically *five days after filing* unless the commissioner has issued an order denying or suspending effectiveness. The registration state-

[1] Adapted from the Report of the Committee on Corporations of the Los Angeles Bar Association, 33 *L. A. Bar Bulletin* 67, 68-77 (1958).

ment must contain certain information designed to enable the commissioner to determine whether to issue a stop order

Registration by co-ordination is limited to issues for which a registration statement has been filed under the federal securities act A registration statement under the Uniform Act must contain a copy of the federal prospectus and amendments to the federal registration statement The commissioner may by rule require additional basic information relating to the security but not more information than is filed with the SEC Under this procedure registration becomes effective at *the moment the federal registration statement becomes effective* if the registration statement under the state statute has been on file with the commissioner for 10 days and a statement of the maximum and minimum proposed offering prices and maximum underwriting discounts and commissions have been on file with the commissioner for two days, and there are no pending proceedings for denial, suspension or revocation of registration Registration by this procedure is an attempt to accomplish some co-ordination between the state and federal statutes without sacrificing the traditional regulatory philosophy of the states to the disclosure philosophy of the federal statute If this proposed act were uniform state law, a national issuer of securities could register them in all states by practically the same registration statement According to Professor Loss, this "co-ordination procedure" merely codifies the better existing administrative practice in the states.[2]

Registration by qualification requires the issuer to file with the commissioner specified information and documents Under this procedure the commissioner may require (i) that additional information be filed; (ii) that information and documents specified in the statute be dispensed with; (iii) that a prospectus be delivered to each person to whom an offer is made Registration under this procedure does not become effective until the commissioner so orders A special "short form" procedure is provided for smaller issues

POWERS OF COMMISSIONER

The powers of the commissioner are specific but have teeth In the words of the draftsmen "any blue sky law must have enough teeth in it to take care of the shoddier aspect of the world of finance without at the same time interfering needlessly with legitimate business" Whereas the philosophy of the federal statute is that full disclosure of all essential facts relating to a security is sufficient, many of the existing state laws go beyond the requirement of disclosure and require the commissioner to deny registration if the plan of business is unfair, inequitable, dishonest or fraudulent or the enterprise is "against public

[2](1) Eleven states (Alabama, Arkansas, Colorado, Hawaii, Kansas, Kentucky, New Mexico, Oklahoma, Texas, Virginia and Washington) have already adopted, either verbatim or substantially so, the registration by *co-ordination technique* of the Uniform Securities Act

(2) At least 14 states (Arizona, Georgia, Hawaii, Indiana, Louisiana, Massachusetts, Minnesota, Montana, New Mexico, North Dakota, Ohio, Tennessee, Texas and Vermont) have accepted the SEC registration statement or prospectus, or in some states the offering circular used under SEC Regulation A for issues up to $300,000, in lieu of some or all of the information otherwise required

(3) Michigan has a special *registration form* for SEC cases

(4) Illinois Michigan North Carolina, South Carolina and Tennessee have specific *notification* procedures for securities registered with SEC

(5) Pennsylvania exempts outright any securities registered under the federal act

policy" or the business is not conducted upon sound business principles The Uniform Act, as we will point out, attempts to avoid extremes in providing for the powers of the commissioner

Procedurally, the commissioner may by rule or order require as a condition of registration by qualification or co-ordination that any security issued to a promoter be deposited in escrow, that the proceeds of sale be impounded until the issuer receives a specified amount, that the security be sold only on a specified form of subscription, and that reports be filed regularly

Substantively, the commissioner is granted power to issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any of the three types of registration statement if he finds that such an order would be in the public interest and that; (1) any registration statement is incomplete in any material respect or is false or misleading with respect to any material fact, (2) any provision of the act or any rule or order has been wilfully violated, (3) the security registered has been enjoined by any federal or state court or is the subject of a stop order issued under any other state act (if based on facts which would constitute a ground for a stop order under his state's act), (4) "the offering has worked or tended to work a fraud upon purchasers or would so operate", or (5) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, or commissions or promoters' profits or unreasonable amounts or kinds of options Grounds for a stop order in addition to those above, of the Uniform Act as drafted, have been inserted at the request of Commissioner Sobieski The most significant are as follows: (6) The security is preferred stock and not entitled to cumulative dividends and to reasonable voting rights in the event of default in payment of preferred dividends; (7) the security is redeemable preferred of a corporation in the promotional stage and is not convertible into common stock on a reasonable basis; (8) the security is a debt security or preferred stock and the issuer's present prospects do not show that it can meet its obligations as they mature or pay dividends on the preferred; (9) the security is common stock, and voting rights are limited or nonexistent, (10) the terms and conditions of specified issues, exchanges or changes are not fair and equitable to all security holders affected, (11) the issuer's promoters, officers, directors or managers are not of good business reputation.

Here the Uniform Act represents a compromise between the two extremes found in existing statutes—one extreme being that authority to sell can be denied only if the administrator finds that the sale would work or tend to work a fraud on purchasers (Georgia) and the other extreme being that the administrator must deny authorization to sell unless he finds that "the proposed plan of business of the applicant and the proposed issuance of securities are fair, just and equitable and that the applicant intends to transact its business fairly and honestly" (California). No permanent stop order may be entered without prior notice to the applicant and an opportunity for a hearing followed by findings and conclusions of law

GENERAL PROVISIONS

Part Four contains definitions, exemptions, requirements for filing sales literature, provisions for investigations and injunctions, criminal penalties, civil liabilities, judicial review, and an attempt to solve some of the conflict of laws problems which arise in interstate transactions

EXEMPTION OF CERTAIN SECURITIES AND SECURITY TRANSACTIONS

Exemptions from registration apply to both securities and security transactions The act exempts from registration described governmental obligations, commercial paper, and securities issued by banks, saving institutions, building and loan associations, insurance companies, railroads and utilities Security *transactions* which are exempt from registration include (i) transactions such as Jones' sale of his X Company stock to Smith, and (ii) transactions (not involving the issuer) effected through a registered broker-dealer pursuant to an unsolicited order or offer to buy, (iii) any transaction in a bond secured by real property if all the bonds are sold as a unit, (iv) any transaction by an executor, etc , (v) any transaction by a bona fide pledgee, (vi) sales to an institutional buyer such as a bank or insurance company or to a broker-dealer, (vii) offerings by an issuer to its existing security holders if no remuneration is paid for soliciting any security holder or the issuer first files notice of the terms of the offer and the commissioner does not disallow the exemption within five days, (viii) transactions between the issuer and an underwriter, or among underwriters, and (ix) any offer (but not a sale) of a security for which registration statements have been filed under both the Uniform Act and the Securities Act of 1933 if no stop order is in effect and no public proceeding is pending

In addition to these exemptions of general applicability, the Uniform Act expresses in specific terms three exemptions as to which the present blue-sky statutes are irreconcilably split The first exempts any distribution (not involving an issuer) of an outstanding security if, (i) a "recognized securities manual" contains the names of the issuer's officers and directors and certain financial information, or (ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during a certain period, or (iii) the security is listed or approved for listing on the New York Stock Exchange, the Pacific Coast Stock Exchange, or some other national exchange approved by the commissioner The second exempts any offer or sale of a preorganization subscription if (i) no remuneration is paid for soliciting any prospective subscriber, (ii) the number of offerees in this State does not exceed 25, and (iii) no payment is made by any subscriber The third exempts any transaction pursuant to an offer or sale of securities by an issuer if (i) after the sale or proposed sale there will not be more than 10 persons owning, of record or beneficially, all classes of securities (other than exempted securities) of the issuer, (ii) all certificates or other evidences representing the securities bear a legend indicating that subsequent transfers are illegal without the commissioner's consent, and (iii) the issuer has first filed with the

commissioner a notice containing specified information, and the commissioner has not disallowed the exemption within five business days.

Sales literature must be filed if the commissioner by rule or order so requires, unless the security or transaction is exempted

CIVIL LIABILITIES

Civil liability is an important part of any blue sky law, and the Uniform Act attempts to provide precise standards of liability

Thus, the first clause of the pertinent section imposes civil liability on any person who offers or sells a security in violation of the provisions requiring registration of broker-dealers, agents and investment advisers, and registration of securities, or in violation of rules or orders requiring approval of sales literature, or in violation of any rules or orders requiring the use of a prospectus, the escrow of securities and impounding of proceeds, or the use of a specified contract form in making sales

The second clause is a fraud statute which is almost identical with Section 12(2) of the Securities Act of 1933 It imposes liability on a person who offers or sells a security by means of any untrue or misleading statement of a material fact unless he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruthful or misleading statement Liability is also imposed on every person who "controls" a seller and on every partner, officer or director of such a seller and every broker-dealer or agent who materially aids in the sale unless they sustain the burden of proof that they did not know and in the exercise of reasonable care could not have known of the facts by reason of which liability is alleged to exist The buyer may recover the consideration paid for the security with interest at 6 percent, costs, and reasonable attorneys' fees (upon tender of the security) or for damages if he no longer owns the security *The seller is liable only to the person buying the security from him* The buyer must bring suit within two years after the sale But the buyer may not sue if (i) he has received a written offer, before suit and at a time when he owned the security, stating the respect in which liability under this section may have arisen, and offering to repurchase the security for a price equal to the consideration paid together with interest (less income received by him) and he failed to accept the offer within 30 days after receipt of such offer, or (ii) if he received such an offer before suit and at a time when he did not own the security unless he rejected the offer in writing within 30 days of its receipt Further, the act provides that no person who has engaged in the performance of any contract in violation of any provision of the act or any rule or order may base any suit on the contract

RULE-MAKING POWER

Rule-making power is granted to the commissioner He may make such rules, forms and orders as are necessary to carry out the provisions of the act No provision imposing liability applies to any act done or omitted in good faith in conformity with any rule, form or order notwithstanding that such rule, form or order may later be amended, rescinded or be determined by judicial authority to be invalid

SCOPE OF STATUTE

Here the Uniform Act enters a new field by attempting to set up rules for determining what law applies in interstate transactions when one element of the transaction occurs in State S and another element occurs in State B In other words, it attempts to substitute a predictable means of determining the validity of the transaction instead of the utter confusion of the decided case law (i e, validity is determined according to the law of the place where the "offer" is made, or the law of the place of "acceptance," or the law of the place of "performance").

The act requires every applicant for registration to appoint the commissioner for service of process It goes on to provide that when any person engages in conduct prohibited or made actionable by the act and he has not filed a consent to service of process his conduct shall be deemed equivalent to his appointment of the commissioner to receive service with the same force as if served on him personally (a copy of the process being sent by registered mail by the commissioner to such person at his last known address)

CONCLUSION

The Uniform Securities Act has been a long time coming For many years the blue sky laws have been growing into a crazy quilt of regulation—all too often meaningless and stultifying

Only recently, the bar was reminded of the imminent alternative to a uniform and orderly network of state regulation Harry Dunn, Los Angeles attorney who served on the ABA advisory committee on the Uniform Securities Act, testified that " it was brought out forcibly, and particularly by the chairman of the SEC, who was a member of the advisory committee, that unless some such solution could be found it would be quite likely and perhaps desirable that the regulation of such security transactions should be taken over by the federal government "

The Committee on Judiciary—Civil strongly rejects such an alternative

In its stead, the Uniform Securities Act as amended represents a workable and rational scheme of regulation It will facilitate the efforts of legitimate business enterprises to raise capital, both in national and local issues, without sacrificing California's traditionally strong philosophy of investor protection

APPENDIX

APPENDIX A

UNIFORMITY AND THE STATES

A Brief Outline

1929 Uniform Sales of Securities Act approved by National Conference of Commissioners on Uniform State Laws and by the American Bar Association
Adopted by Louisiana, Hawaii, and in part by Alabama, Florida, Michigan, Oregon, South Carolina
1933 Federal Securities Act of 1933 makes Uniform Act obsolete
1944 Uniform Act struck from approved list of conference
1947 House of Delegates, American Bar Association, requests National Conference of Commissioners on Uniform State Laws to consider a new uniform or model securities act in co-operation with the A B A
Joint conference—A B A committee set up
1954 Harvard study begins Professor Loss engaged to draft Uniform Act with aid of advisory committee of the conference, the A B A the Investment Bankers Association of America, the National Association of Securities Dealers, and the North American Securities Administrators
1956 Uniform Act approved in final draft by National Conference of Commissioners on Uniform State Laws American Bar Association
Used as basis for new act in Virginia
1957 Basis for new securities act in Hawaii and Kansas
1959 Basis for new securities act in Alabama, Alaska, Arkansas, Kentucky, Oklahoma, Washington, Territory of Guam
1960 Substantially adopted by New Jersey (Parts I and II)

NOTE According to a letter from Louis Loss dated November 9 1960, "fairly sizable" portions of the act have also been adopted in Colorado, Missouri and New Mexico

APPENDIX B

THE UNIFORM SECURITIES ACT IN CALIFORNIA

1956–58 Studied by corporations committee, Los Angeles Bar Association
1959 Approved by Los Angeles Bar Association
Approved by State Bar of California
Endorsed by the Commissioner of Corporations
1959–60 Studied by Assembly Interim Committee on Judiciary—Civil
Under study by San Francisco Bar Association
Under study by Alameda County Bar Association
Under study by Santa Clara County Bar Association

APPENDIX C

UNIFORMITY AND THE STATE SECURITIES LAWS

The following material was prepared by Gordon L. Calvert, assistant general counsel of the Investment Bankers Association of America, and presented at the January 21-22 hearings of the Committee on Judiciary —Civil

Development of Uniformity in State Securities Laws

(1) In 1929 the *old* Uniform State Securities Act was approved by the Conference of Commissioners on Uniform State Laws and by the American Bar Association. That act was widely used as a basis for state securities acts, and its pattern is clearly reflected in the present securities acts of the following 17 states, although there are variations in the laws of these states

Florida	Louisiana	Ohio	Texas (1957)
Illinois (1953)	Minnesota	Oregon	Utah
Indiana	Missouri	South Carolina	Vermont
Iowa	Nebraska	South Dakota	West Virginia
	North Carolina		

The old Uniform Act was prepared prior to adoption of the federal Securities Act of 1933 and the federal Securities Exchange Act of 1934. After adoption of those federal acts it became apparent that it would be desirable to co-ordinate the provisions of state laws with those of the federal acts, at least insofar as the procedures involved in filing material to effect the registration of securities under those acts. Several of the states listed above adopted amendments of administrative procedures to provide such co-ordination with the federal acts

(2) By 1948 it became apparent that there was need for a modernized model law, and the Investment Bankers Association prepared model blue sky laws, based on the pattern of the old Uniform Act but with necessary provisions to co-ordinate procedures thereunder with the federal acts and to clarify certain requirements. Those model laws were designed so that a state could adopt one or more of the three types of regulation. Those model laws were used as a basis for securities acts adopted from 1950 through 1955 in the following five states

Arizona (1951)	North Dakota (1951)
Georgia (1953)	Tennessee (1955)
New Mexico (1955)	

(3) In 1956 the new Uniform State Securities Act was approved by the Conference of Commissioners on Uniform State Laws and the American Bar Association. This act is also designed so that a state may adopt one or more of the three types of regulation. It has been used as a basis for new acts in the following 10 states

Virginia (1957)	Arkansas (1959)
Hawaii (1957)	Oklahoma (1959)
Kansas (1957)	Washington (1959)
Alabama (1960)	Kentucky (1961)

Alaska (1959)—no requirement for registration of securities
New Jersey (1961)—no requirement for registration of securities

Thus, the 32 states referred to above have securities acts based on either the old Uniform Act, the I B A model laws or the new Uniform

State Securities Act While there are many variations between the acts in the states, there is a substantial pattern of uniformity among them in definitions, exemptions and registration procedures

(4) Of the remaining 18 states

2 (Delaware and Nevada) have no securities laws

2 (Connecticut and Maryland) include antifraud provisions and requirements for registration of dealers but do not require registration of securities (except Connecticut requires registration of mining and oil securities)

6 (Pennsylvania, Maine, Massachusetts, New Hampshire, New York and Rhode Island) include antifraud provisions (except Maine and New Hampshire) and requirements for the registration of dealers, but permit the registration of all nonexempt securities by a simple notification procedure

8 states require registration of securities by a procedure other than notification and are not based on any particular pattern of uniformity (*except that amendments in Colorado in 1957 inserted provisions from the Uniform Act authorizing registration by "co-ordination" for securities also registered under the federal act)

California	Mississippi
Colorado*	Montana
Idaho	Wyoming
Michigan	Wisconsin

(c) *Importance of Uniformity in State Securities Regulation*

There is considerable belief that uniformity in state laws is desirable simply for the sake of uniformity, because it minimizes the variations in requirements in complying with the laws of many states and it provides an abundance of administrative and judicial precedents in various states with respect to identical or substantially identical provisions of law

Uniformity is particularly desirable and important in the regulation of the sale of securities for two basic reasons

First, practically all large issues of securities are distributed on a *nationwide* basis Most large nonexempt issues of securities which are sold to the public must be registered under the Federal Securities Act of 1933 and under the state acts in states where they are sold If each state required the filing of different information (or substantially identical information in different forms), the mechanical problems of registering a single issue of securities in many states would be tremendous Therefore, it is important that the state filing requirements and procedures be substantially uniform and that they also be co-ordinated with the filing requirements and procedures under the federal act

In this connection, it might be noted that the report of the Special Committee on Securities Laws and Regulations of the American Bar Association in 1947, in recommending the drafting of a new Uniform State Sale of Securities Act, referred to the vast amount of "duplication, expense and economic waste" involved in registering securities where there was a lack of uniformity and of co-ordination between the registration procedures under the federal act and the state acts

Secondly, problems of registration of securities are important to investors in a particular state because, as a very practical matter, where the effective date of registration in a particular state is delayed beyond the effective date under the federal act and other state laws, or where peculiar conditions would be imposed under the laws of a particular state, many securities which are the most attractive investments are

simply sold in other states where a simple and expeditious registration procedure is provided and where they can be sold promptly In such situations investors in the state are deprived of the opportunity to invest in the best quality issues and dealers in the state also lose the opportunity to participate in selling such issues

Finally, it is important to observe that adoption of a uniform state securities law does not lessen the authority of each state to apply whatever qualitative standard it chooses in registering securities for sale in that state

APPENDIX D

WITNESSES TESTIFYING ON A. B. 2531

San Francisco hearings of Judiciary—Civil Committee, October 15-16, 1959

John G Sobieski, Commissioner of Corporations
Martin J Dinkelspiel, Chairman, California Commission on Uniform State Laws
Eric Sutcliffe, Attorney Orrick, Dahlquist, Herrington & Sutcliffe, San Francisco
Edward Landels, Attorney, California State Chamber of Commerce
Gordon L Calvert, Asst General Counsel Investment Bankers Association of America
Dennis H McCarthy, First Boston Corporation
Graham L Sterling, Past President, State Bar of California
Robert H Edwards, Past Chairman, Committee on Corporations of Los Angeles Bar Association
Roger Kent, Attorney, Crummins, Kent, Bradley & Burns, San Francisco
Howard C Ellis, Attorney, San Francisco
Roy Bronson, Attorney, Bronson, Bronson & McKinnon, San Francisco
Professor Richard W Jennings, School of Law, University of California, Berkeley
Joseph W Henderson, Attorney, Steindorf and Henderson, San Jose
Lee B Stanton, Deputy Attorney General
George A Blackstone, Counsel, Pacific Coast Stock Exchange, San Francisco
Foster B Rhodes, Investment Counsel Association of America
John Connell, Loomis, Sayles & Co, Inc, San Francisco
Henry H Clifford, Investment Counselors' Association of Southern California
William Murray Hawkins, Investment Counselors' Association of Southern California
Richard T Langan, Moody's Investors Service, Los Angeles
Professor Harold Marsh, Jr, School of Law, University of California at Los Angeles

Los Angeles hearings of Judiciary—Civil Committee, January 21-22, 1960

John G Sobieski, Commissioner of Corporations
George G Richter, Jr, Commission on Uniform State Laws, President, National Conference of Commissioners on Uniform State Laws
Robert H Edwards, Past Chairman, Committee on Corporations of Los Angeles Bar Association
Graham L Sterling, Past President, State Bar of California
James M Irvine, Chairman, Committee on Corporations, Los Angeles Bar Association
James S Cantlen, President, Los Angeles Chamber of Commerce
Irving Hill, Attorney, Hill, Greenberg & Glusker, Los Angeles
Murray Ward, Chairman, Executive Committee of the Investment Bankers Association of America
William S Hughes, Acting Chairman, Special Committee on the Corporate Securities Law, Investment Bankers Association, Inc, California Group
Gordon L Calvert, Asst General Counsel, Investment Bankers Association of America
Professor Harold Marsh, Jr, School of Law, University of California, Los Angeles
Harry L Dunn, Attorney, O'Melveny & Myers, Los Angeles
Herbert F Sturdy, Attorney, Gibson, Dunn & Crutcher, Los Angeles
Van Cott Niven, Attorney, Gibson, Dunn & Crutcher Los Angeles
Austin Peck Attorney, Watkins, Lund & Peck, Los Angeles
Glendon Tremain, Attorney, Los Angeles
William Jones, Chairman of the Board of Governors, Pacific Coast Stock Exchange
George A Blackstone, Counsel, Pacific Coast Stock Exchange, San Francisco
Earl Adams, Counsel, Pacific Coast Stock Exchange, Los Angeles
Richard Rogan, Chief Deputy Attorney General
Howard C Ellis, Attorney, San Francisco
Donald A Pearce, Assistant Commissioner of Corporations

APPENDIX E

REPORT OF THE ADVISORY COMMITTEE ON A.B. 2531 (UNIFORM SECURITIES LAW)

To the Assembly Committee on Judiciary—Civil

The Advisory Committee which your Chairman appointed to consider proposed amendments to A.B. 2531 herewith submits its recommendations in the form of a memorandum setting forth the amendments which the committee believes should be adopted. The memorandum makes no reference to the proposed amendments which the committee concluded should not be recommended for adoption. However, careful consideration was given to all of the proposed amendments which were referred to the committee at the time of its appointment as well as those additional amendments which were submitted to the committee during the course of its deliberations.

Meetings of the committee were held in Los Angeles on March 28 and in San Francisco on August 22, September 16 and November 1. At these meetings, each of which occupied a full day, the proposed amendments were considered and discussed by the full committee and special questions were referred to particular members of the committee for consideration during the intervals between meetings. This report would be unduly extended if the reasons for each of the recommendations of the committee were set forth. Consequently only those recommendations which are of particular importance will be discussed.

A number of the amendments recommended by the committee relate to the jurisdiction and powers of the Commissioner of Corporations with respect to certain transactions involving the exchange of securities (including exchanges resulting from a merger or consolidation) or involving a change in the rights, preferences, privileges or restrictions on outstanding securities. Section 25401 (k) (1) defines certain transactions of these kinds as involving a "sale", thereby making the transactions subject to the registration requirements of the statute unless they are otherwise exempted. The committee gave extensive consideration to the provisions of Section 25401 (k) (1) and concluded that the provisions as they presently appear in A.B. 2531 are at the same time both too narrow and too broad: they are too narrow in that, so far as changes in rights of outstanding securities are concerned, they are limited to changes in the rights of stock and do not cover changes in the rights of other classes of securities, and they are too broad in that they would require registration in California in any case in which a single security holder whose vote is required for the transaction or whose security would be affected thereby is a resident of California. In the case of a corporation whose securities are widely held a tremendous burden would be imposed if, in order to consummate a merger or consolidation or make a change in the rights of outstanding securities, the corporation were required to comply with the securities laws of every state in which any security holder resides. It was the conclusion of the committee that the statute should be applicable only where the corporation has its principal business office in California or where 25 percent or more of the affected securities are held by persons whose addresses of record are in California. The recommended amendment of Section 25401 (k) (1) would therefore enlarge the provisions

of A B 2531 to include important changes in the rights of debt securities as well as changes in the fundamental rights of stock, but would limit the application of the statute, on the basis indicated above, to cases where California has a legitimate and substantial interest in the transaction The argument that the statute should be applicable in the case of any corporation organized in California was considered by the committee but was rejected on the ground that the mere fact of incorporation in this state has no substantial significance if the principal business office is located elsewhere and if less than 25 percent of the securities to be affected by the transaction are held by residents of California

Section 25306 (a) (2) (k) authorizes the Commissioner to deny, suspend or revoke the effectiveness of a registration statement if, in certain enumerated classes of cases, he finds that the transaction is not fair to the affected security holders The cases covered by the present provision of A B 2531 are those involving exchanges or changes which are included within the term "sale" as defined in Section 25401 (k) (1), provided the corporation in question is a California corporation or a foreign corporation whose principal place of business is in California Since the latter limitation, in revised form, is now to be incorporated in the definition of the term "sale" under the recommended amendment of Section 25401 (k) (1), it should be removed from Section 25306 (a) (2) (K) The recommended amendment of the section last mentioned would also make the "fair and equitable" concept applicable in the case of a proposed issue of prior preferred stock in exchange for outstanding preferred stock on which dividends are accrued and unpaid The committee felt that although such a transaction involves an exchange which is voluntary in the sense that each stockholder may decide for himself whether or not to accept the exchange offer, there is present an element of compulsion which warrants giving the commissioner the same right to pass upon the fairness of the transaction which he is to have in the case of transactions where the minority security holder is bound by the action of the majority

In order to pass upon the fairness of such transactions as those discussed above, the commissioner must have full information and ample time to consider the matter Since the simplified procedure for registration by notification does not appear appropriate for use in such cases, the committee recommends that the introductory paragraph of Section 25302 (a) be amended to provide that registration by notification may not be used in such cases Further, the committee recommends that there be added to Section 25304 (dealing with registration by qualification) a new subsection (d) prescribing the information to be included in a registration statement relating to any exchange or change transaction and a new subsection (g) authorizing the commissioner, in the case of any such transaction, to require the use of a proxy statement containing any designated part of the information contained in the registration statement

In the course of the hearings held by the Assembly Committee on Judiciary—Civil, numerous suggestions were made that the statute should provide some exemption which would cover the issue and sale of securities of a closely held corporation The committee's recommendation in this regard is that there be added to Section 25402 (b)

a new subdivision (12) exempting the issuance of securities by a corporation all of whose securities to be outstanding after the proposed issue (other than exempt securities) will be held by not more than ten persons, provided that transfer of the securities (other than transfers by operation of law) is prohibited unless consented to by the commissioner, and provided also that prior notice of the transaction is filed with the commissioner It should be noted that this exemption, like all other exemptions under Section 25402 (b), may be denied or revoked by the commissioner in any case if in his opinion such action is required in the public interest

A B 2531 in its present form contains no provision authorizing transactions such as are presently authorized by a "negotiating permit" Under the present provisions of the Corporations Code a negotiating permit authorizes the execution of an agreement for the sale of securities if performance of the agreement is conditioned upon the granting of a permit by the commissioner and if no part of the consideration is paid until after the permit is obtained Substantially similar authority would be conferred under proposed subsection (13) which the committee recommends be added to Section 25402 (b)

Representatives of the oil and gas industry submitted to the committee a proposed amendment which would exempt the sale of an interest in an oil, gas or mining title or lease if all parties to the transaction are sufficiently experienced as not to require the protection which the statute is designed to afford to the purchasers of securities The committee recommends the adoption of such an amendment by the addition to Section 25402 (b) of a new subsection (14)

One of the most important sections of the statute is Section 25410, prescribing the civil remedies of buyers of securities which have been sold in violation of certain provisions of the statute Subsection (e) of Section 25410 provides a means whereby a seller who is subject to a potential liability under the section may, by making a proper offer to the buyer, require the buyer, in effect, to elect whether to rescind or affirm the transaction This is an important provision, since otherwise a seller who had violated the statute would be put in the position where the buyer of the securities could, throughout the two-year period allowed for the assertion of a claim under Section 25410, speculate in the securities entirely at the risk of the seller However, the committee recommends that subsection (e) be amended in order to make sure that the offer will be in such form as to make clear to the buyer the nature of his rights against the seller and the action which he is required to take in order to protect his rights

In conclusion, the advisory committee has appreciated the confidence which the Assembly Committee on Judiciary—Civil has shown in appointing the advisory committee and in seeking its advice on this legislation so important to California investors and to the economic life of the state The recommendations in the attached memorandum do not in all cases represent the unanimous opinion of the advisory committee, but in those instances in which the majority opinion has prevailed, it can be said that the minority has been willing to accept the majority view, and that the bill as amended in accordance with the attached memorandum has the unanimous support of

the advisory committee as desirable legislation in the field of securities regulation and a substantial improvement over the present Corporate Securities Law

November 15, 1960

Respectfully submitted,

JOHN P AUSTIN
ROBERT H EDWARDS, Vice Chairman
JOSEPH W HENDERSON
WILLIAM S HUGHES
JAMES M IRVINE, JR
RICHARD W JENNINGS
BAUER E KRAMER
GRAHAM L STERLING, Chairman
HAROLD MARSH, JR
VAN COTT NIVEN
JOHN G SOBIESKI, Commissioner of Corporations
ERIC SUTCLIFFE
HERBERT WENIG

APPENDIX F

An act to add Division 1 (commencing at Section 25101) to Title 4 of, to amend Sections 4113, 4119, 10250, 10703, 14205, 27000, 27001, 27002 and 28006 of, and to repeal Sections 25000 to 26104, inclusive, of the Corporations Code; to amend Sections 11250, 18050, 18600, 18601, 18603, 18606, 18607, 18801, 18806 and 18813 of the Financial Code; to amend Sections 33915 and 33916 of the Health and Safety Code, and to amend Section 1220 of the Agricultural Code, relating to the Uniform Securities Act

The people of the State of California do enact as follows:

SECTION 1 DIVISION 1 (commencing at Section 25101) is added to Title 4 of the Corporations Code, to read

DIVISION 1 UNIFORM SECURITIES ACT

CHAPTER 1 FRAUDULENT AND OTHER PROHIBITED PRACTICES

25101 It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly,

(1) To employ any device, scheme, or artifice to defraud,

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person

25102 (a) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise

(1) To employ any device, scheme, or artifice to defraud the other person, or

(2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person

(b) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client,

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract, and

(3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date "Assignment," as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business

(e) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if

(1) The commissioner by rule prohibits custody; or

(2) In the absence of rule, the investment adviser fails to notify the commissioner that he has or may have custody

CHAPTER 2 REGISTRATION OF BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS

25201 (a) It is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under this act

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this act or a particular issuer When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.

(c) It is unlawful for any person to transact business in this State as an investment adviser unless (1) he is so registered under this act, (2) he is registered as a broker-dealer without the imposition of a condition under Section 25204-(b)(5), or (3) his only clients in this State are investment companies as defined in the Investment Company Act of 1940 or insurance companies

(d) Every registration expires on the thirtieth day of June next after its effective date unless renewed

25202. (a) A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application together with a consent to service of process pursuant to Section 25414(g) The application shall contain whatever information the commissioner by rule requires concerning such matters as (1) the applicant's form and place of organization; (2) the applicant's proposed method of doing business, (3) the qualifications and business history of the applicant, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, and, in the case of an investment adviser, the qualifications and business history of any employee who represents or will represent such investment adviser in doing any of the acts which make him an investment adviser, (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony, and (5) the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this State If no denial order is in effect and no proceeding is pending under Section 25204, registration becomes effective at noon of the thirtieth day after an application is filed The commissioner may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions

(b) Every applicant for initial or renewal registration shall pay a filing fee of one hundred dollars ($100) in the case of a broker-dealer for the first office or location, and fifty dollars ($50) for each additional office or location, twenty-five dollars ($25) in the case of an agent and fifty dollars ($50) in the case of an investment adviser For any special investigation or audit of a broker-dealer, agent or investment adviser made at the request of the applicant, the applicant so investigated or audited shall pay a reasonable charge based on the time expended, such payment to be made within 30 days after the invoice is rendered

(c) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year There shall be no filing fee

(d) The commissioner may by rule require a minimum capital for registered broker-dealers and investment advisers, or a minimum ratio between net capital and aggregate indebtedness.

(e) The commissioner may by rule require registered broker-dealers and investment advisers and all issuers who employ agents to post and maintain surety bonds in amounts up to twenty-five thousand dollars ($25,000); provided, that he may not require an issuer who employs agents and does not issue or propose to issue more than three hundred thousand dollars ($300,000) of securities in any one year to post a bond in an amount in excess of five thousand dollars ($5,000). Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. Every bond shall provide for suit thereon by any person who has a cause of action under Section 25410 and by any person who has a cause of action involving a security transaction even though not arising under this act. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

25203. (a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records pertaining to the securities business as the commissioner by rule prescribes. All records so required shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records.

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the commissioner by rule prescribes.

(c) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under Section 25201(b).

(d) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or without this State, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may co-operate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

25204. (a) The commissioner may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact,

(B) Has willfully violated or willfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act,

(C) Has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business, or any felony,

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business,

(E) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser, or the substantial equivalent thereof under a predecessor act,

(F) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer, agent, or investment adviser, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order, but (i) the commissioner may not institute a revocation or suspension proceeding under clause (F) more than one year from the date of the order relied on, and (ii) he may not enter an order under clause (F) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section,

(G) Has engaged in dishonest or unethical practices in the securities business or in any fraudulent transaction,

(H) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser, or

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b)

The commissioner may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant

(J) Has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an investment adviser; or

(K) Has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected

The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next 30 days

(b) The following provisions govern the application of Section 25204(a)(I).

(1) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual or (B) an agent of the broker-dealer.

(2) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser himself if he is an individual or (B) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser.

(3) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer

(5) The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this State as an investment adviser

(6) The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser, provided that no examination, other than a special examination relating to California security problems if the commissioner shall by rule or order determine it advisable, shall be required of the following persons broker-dealers, agents, and investment advisers who are licensed on the effective date of this act, applicants who shall have passed an examination given to such applicants by the New York Stock Exchange or the National Association of Securities Dealers or given by any other state or any other institution or organization whose examination is by rule or order declared satisfactory by the commissioner, partners,

officers, directors and agents who are not engaged in the securities business in this State even though they are associated with broker-dealers and investment advisers registered in this State

(c) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing If no hearing is requested and none is ordered by the commissioner the order will remain in effect until it is modified or vacated by the commissioner If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination

(d) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application

(e) Withdrawal from registration as a broker-dealer, agent, or investment adviser becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under Section 25204(a)(2)(B) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective

(f) Orders denying, suspending or revoking any registration under any part of this section shall only be entered after prior notice, opportunity for hearing and written findings of fact, in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted thereunder

CHAPTER 3 REGISTRATION OF SECURITIES

25301 It is unlawful for any person to offer or sell any security in this State unless (1) it is registered under this act or (2) the security or transaction is exempted under Section 25402

25302 (a) The following securities may be registered by notification (whether or not they are also eligible for registration by co-ordination under Section 25303), provided that there shall not be eligible for registration by notification the securities to be issued in any exchange which is included within the term "sale" as defined in Section 25401(k)(1) or the securities which are to result from any change in the rights, preferences, privileges or restrictions on outstanding securities which is included within the term "sale" as so defined

(1) Any security of a corporate issuer (which for the purposes of this subsection shall include any corporate predecessor by merger, consolidation or acquisition of assets) which has been in continuous operation for the last five years, if (A) there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest or dividends on any security of the issuer with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer, during the past three fiscal years, has had average annual net earnings on common stock (determined, as hereinafter provided) in an amount at least equal to 5 percent of the value of the common stock to be outstanding upon completion of the proposed offering, as measured by the maximum proposed cash offering price or the market price on a day selected by the registrant which is within 30 days before the date of filing of the registration statement, whichever is higher, provided, that if there is neither a cash offering price nor a readily determinable market price the value of the common stock shall be measured by the book value on a day selected by the registrant which is within 90 days before the date of filing of the registration statement For the purposes of this subsection the average annual net earnings on common stock shall be determined in accordance with generally accepted accounting principles and shall be determined after deducting (i) the average annual interest charge on all interest-bearing securities outstanding during such three-year period, or the annual interest charge on all interest-bearing securities to be outstanding upon completion of the proposed offering (not including interest-bearing securities to be retired out of the proceeds of sale), whichever is the greater, and (ii) the average annual dividend requirement of all preferred stock outstanding during such three-year period, or the annual dividend requirement of all preferred stock to be outstanding upon completion of the proposed offering (not including preferred stock to be retired out of the proceeds of sale), whichever is the greater

(2) Any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 25305(c) and the consent to service of process required by Section 25414(g).

(1) A statement demonstrating eligibility for registration by notification,

(2) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business,

(3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address, the amount of securities of the issuer held by him as of the date of the filing of the registration statement,

(4) A description of the security being registered,

(5) The information and documents specified in clauses (8), (10), and (12) of Section 25304(b) and such supplementary information as the commissioner may by rule or order require,

(6) In the case of any registration under Section 25302(a)(2) which does not also satisfy the conditions of Section 25302(a)(1), a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under Section 25206, a registration statement under this section automatically becomes effective at 12 o'clock noon Pacific standard time of the fifth full business day after the filing of the registration statement or the last amendment other than a price amendment or at such earlier time as the commissioner determines.

(d) The commissioner may by order issued on or before the third day after the filing of the registration statement require as a condition of registration under this section that a prospectus containing all of, or less than but no more than, the information specified in subsection (b) be sent or given to each person to whom an offer is made before or concurrently with

(1) The first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution,

(2) The confirmation of any sale made by or for the account of any such person,

(3) Payment pursuant to any such sale, or

(4) Delivery of the security pursuant to any such sale, whichever first occurs

25303 (a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by co-ordination

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 25305(c) and the consent to service of process required by Section 25414(g):

(1) Three copies of the latest form of prospectus filed under the Securities Act of 1933,

(2) If the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933, and

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order is in effect and no proceeding is pending under Section 25306; (2) the registration statement has been on file with the commissioner for at least 10 days, and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price Upon failure to receive the required notification and posteffective amendment with respect

to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order is void as of the time of its entry The commissioner may by rule or otherwise waive either or both of the conditions specified in clauses (2) and (3) If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under Section 25306, but this advice by the commissioner does not preclude the institution of such a proceeding at any time

25304 (a) Any security may be registered by qualification

(b) Except as provided in subsections (c) and (d) hereof, a registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 25305(c) and the consent to service of process required by Section 25414(g)

(1) With respect to the issuer and any significant subsidiary· its name, address, and form of organization, the state or foreign jurisdiction and date of its organization; the general character and location of its business, a description of its physical properties and equipment, and a statement of the general competitive conditions in the industry or business in which it is or will be engaged,

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions his name, address, and principal occupation for the past five years, the amount of securities of the issuer held by him as of a specified date within 90 days of the filing of the registration statement, the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected,

(3) With respect to persons covered by clause (2); the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by

the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(4) With respect to any person owning of record, or beneficially if known, 10 percent or more of the outstanding shares of any class of outstanding equity security of the issuer the information specified in clause (2) other than his occupation,

(5) With respect to every promoter if the issuer was organized within the past three years the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment,

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution, his name and address, the amount of securities of the issuer held by him as of the date of the filing of the registration statement, a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected,

(7) The capitalization and long-term debt (on both a current and a *pro forma* basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities,

(8) The kind and amount of securities to be offered, the proposed offering price or the method by which it is to be computed, any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class, the basis upon which the offering is to be made if otherwise than for cash, the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable the basis of determining them and then maximum and minimum amounts, the estimated amounts of other selling expenses, including legal, engineering, and accounting charges, the name and address of every underwriter and every recipient of a finder's fee, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter,

(9) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer; the amount to be used for each pur-

pose, the order or priority in which the proceeds will be used for the purposes stated, the amounts of any funds to be raised from other sources to achieve the purposes stated, the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received or are to receive commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition),

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in clause (2), (4), (5), (6), or (8) and by any person who holds or will hold 10 percent or more in the aggregate of any such options,

(11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities),

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering,

(13) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect, and a copy of any indenture or other instrument covering the security to be registered,

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer,

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement,

(16) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the

three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant, and

(17) Such additional information as the commissioner requires by rule or order

(c) Any security offered in any transaction (i) where the aggregate amount at which the securities are to be offered to the public does not exceed three hundred thousand dollars ($300,000) during any period of 12 consecutive months, or (ii) where the offer is directed by the offeror to not more than 25 persons in this State (other than those designated in Section 25402(b)(8)) during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, may be registered under this section and the registration statement shall contain the following information and be accompanied by the following documents

(1) The name, address and state of incorporation of the issuer, if the issuer is a corporation;

(2) The names and addresses of the proposed offerees,

(3) The names and addresses of its officers, if the issuer is a corporation, if not, the names and addresses of the persons who will manage the issuer's business,

(4) An itemized account of its financial condition,

(5) The amount and character of its assets and liabilities,

(6) The number, kind and amount of securities it proposes to sell,

(7) The price at which it proposes to sell its securities, and if the consideration is to be other than cash, a detailed description of the nature of the consideration,

(8) The amount of commissions or other remunerations to be paid, if any, and the name and address of the person who has received or is to receive the same,

(9) A detailed statement of its plan of business,

(10) The proposed application or use of funds from the sale of its securities,

(11) Such supplementary information as the commissioner may require by rule or order.

(d) The registration statement with respect to a proposed exchange of securities or a proposed change in the rights, preferences, privileges or restrictions on outstanding securities which is included within the term "sale" as defined in Section 25401(k) (1) shall contain such of the following information and be accompanied by such of the following documents as the commissioner may by rule or order require, in addition to the information specified in Section 25305(c) and the consent to service of process required by Section 25414(g)

(1) If the transaction involves a merger, consolidation or sale of corporate assets in consideration of the issuance of securities of another corporation

(A) A description of the material features of the plan, the reasons therefor, the general effect thereof upon the rights of existing security holders, and the vote needed for its approval,

(B) A copy of the plan if it is set forth in a written document,

(C) A description of the business of the issuer and each other corporation involved in the transaction, with respect to such matters as the nature of the products or services, methods of production, markets, methods of distribution and the sources and supply of raw materials,

(D) A description of the location and general character, from an economic and business standpoint, of the plants and other important physical properties of the issuer and each other corporation involved in the transaction,

(E) Information concerning any dividends in arrears or defaults in principal or interest in respect of any securities of the issuer and any other corporation involved in the transaction, and concerning the effect of the plan thereon;

(F) As to each class of securities of the issuer and of each other corporation involved in the transaction which is admitted to trading on a securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the plan, a statement of the high and low sale prices (or, in the absence of such information, the range of the bid and asked prices) for each quarterly period within two years,

(G) As to each person who, with respect to the issuer or any other corporation involved in the transaction, has a status or relationship described in subdivision (2), (4) or (5) of subsection (b) of this Section 25304, a statement of any material interest which he has in the transaction; and

(H) The financial statements required by subdivision (16) of subsection (b) of this Section 25304 with respect to the issuer and with respect to each other corporation involved in the transaction, or

(2) If the transaction involves a change in the rights, preferences, privileges or restrictions on outstanding securities:

(A) A statement of the title and amount of outstanding securities to be modified,

(B) A description of any material differences between the outstanding securities and the modified or new securities,

(C) A statement of the reasons for the proposed modification, the general effect thereof upon the rights of existing security holders, and the vote needed for approval;

(D) A statement as to arrears in dividends or as to defaults in principal or interest with respect to outstanding securities which are to be modified, and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action;

(E) With respect to each person specified in subdivisions (2), (4) and (5) of subsection (b) of this Section 25304, a statement of any material interest which he has in the transaction, and

(F) The financial statements required by subdivision (16) of subsection (b) of this Section 25304

(e) A registration statement under this section becomes effective when the commissioner so orders

(f) The commissioner may by rule or order require as a condition of registration under subsection (b) of this section that a prospectus containing any designated part of the information specified in subsection (b), and as a condition of registration under subsection (c) of this section that a prospectus containing any designated part of the information specified in subsection (c), be sent or given to each person to whom an offer is made before or concurrently with

(1) The first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution,

(2) The confirmation of any sale made by or for the account of any such person,

(3) Payment pursuant to any such sale, or

(4) Delivery of the security pursuant to any such sale,

whichever first occurs

(g) The commissioner may by rule or order require as a condition of registration under subsection (d) of this section that a proxy statement containing any designated part of the information specified in subsection (d) be sent or given to any designated security holders entitled to vote upon the proposed exchange or change prior to the vote of such security holders thereon, that each such security holder be given the opportunity to indicate his approval or disapproval of the proposed exchange or change upon the form of proxy furnished to him, and that such proxies be voted in accordance with such indication

25305 (a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer

(b) (1) Except as hereafter provided, every person filing a registration statement shall pay a filing fee of fifty dollars ($50) plus the sum of the following

(A) Twenty one-hundredths of 1 percent of the amount of any excess of the aggregate value of the securities sought to be registered over one thousand dollars ($1,000) and not exceeding fifty thousand dollars ($50,000),

(B) Ten one-hundredths of 1 percent of such amount in excess of fifty thousand dollars ($50,000) and not exceeding one hundred thousand dollars ($100,000),

(C) Five one-hundredths of 1 percent of such amount in excess of one hundred thousand dollars ($100,000) and not exceeding five hundred thousand dollars ($500,000),

(D) Two one-hundredths of 1 percent of such amount in excess of five hundred thousand dollars ($500,000) and not exceeding five million dollars ($5,000,000),

(E) One one-hundredth of 1 percent of such amount in excess of five million dollars ($5,000,000) and not exceeding ten million dollars ($10,000,000),

(F) One five-hundredths of 1 percent of such amount in excess of ten million dollars ($10,000,000)

(G) In the case of issuers of securities who are incorporated outside of California in which there has been a firm underwriting of the securities and passage of title, outside of California, to the underwriters of the securities to be sold, the fee for such securities thereof as are to be resold in California shall be two one-hundredths of 1 percent of any excess of the aggregate value of the securities sought to be registered over one thousand dollars ($1,000) and not exceeding one million dollars ($1,000,000), and one five-hundredths of 1 percent of such amount in excess of one million dollars ($1,000,000)

(2) For the purpose of determining the fees fixed in clause (1) hereof

(A) The value of the securities shall be their par or face value unless the consideration for the securities, as alleged in the registration statement or as determined by the commissioner, is in excess of their par or face value, or the securities when issued will have a value, as determined by the commissioner, in excess of their par or face value, in which case the value of the securities shall be the value of the consideration so received or the value as determined by the commissioner, whichever is greater,

(B) Where the securities have no nominal or par value, the value of the securities shall be the price at which the registrant proposes to sell or issue the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor, or of the securities when issued, whichever is greater However, until a new value has been established, each share of no par value stock shall have a value equal to the value which has been established by previous sales for money or other property of other shares of the same class,

(C) Interim or voting trust certificates shall have a value equal to the aggregate value of the securities to be represented by the interim or voting trust certificates,

(D) Rights, warrants, or other certificates evidencing the right to purchase additional securities shall have a value equal to the difference between the selling price of the securities represented by the rights, warrants, or other certificates and any higher market value of the securities so represented at the date of filing of the registration statement;

provided, the minimum filing fee for such a registration statement is fifty dollars ($50),

(E) Where a registration statement is filed to issue securities containing a provision entitling the holders thereof to convert or exchange them for a different class of securities, the value of the securities to be so issued shall be an amount equal to twice the amount of the consideration to be received for the securities containing the conversion or exchange provision,

(F) The filing fee for registration statements filed by a registered broker-dealer covering only a portion of the securities intended for distribution in this State shall be based upon the total amount of securities to be offered in this State by all participating broker-dealers

(3) The filing fee covering the registration of certificates of deposit is fifty dollars ($50) plus a sum as estimated by the commissioner to cover the actual expense of noticing and holding any hearing held in connection therewith

(4) The filing fee covering the registration of any guarantee of any security is fifty dollars ($50).

(5) The filing fee covering the registration of securities evidencing a change in the rights, preferences, privileges or restrictions on outstanding securities is fifty dollars ($50).

(c) Every registration statement shall specify (1) the amount of securities to be offered in this State; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed, and (3) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission

(d) Any document filed under this act or a predecessor act may be incorporated by reference in the registration statement to the extent that the document is currently accurate

(e) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement

(f) In the case of a nonissuer distribution, information may not be required under Section 25304 or 25305(j) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense

(g) The commissioner may by rule or order require as a condition of registration by qualification or co-ordination (1) that any security issued within the past three years or to be issued (A) to a promoter for a consideration substantially different from the public offering price, or (B) to any person for a consideration other than cash, be deposited in escrow, and (2) that the proceeds from the sale of the registered security in this State be impounded until the issuer has received a specified amount from the sale of the securities (including securities not registered in this State) offered or proposed to

be offered by the issuer Upon the written request of the person filing the registration statement the commissioner may as a condition of registration by qualification or co-ordination require that any security of the issuer be deposited in escrow The commissioner may by rule or order determine the conditions of any escrow and the limitations, if any, to be imposed on said securities during the time they are in escrow, or impounding required hereunder and the conditions for release therefrom but he may not reject a depository solely because of location in another state As to any security registered pursuant to Section 25304(c) the commissioner may require, if he deems it necessary or advisable and in the public interest, that such security be deposited in escrow.

(h) The commissioner may by rule or order require as a condition of registration that any security registered by qualification be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order

(i) Every registration statement is effective for 18 months from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under Section 25306 All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the 30th day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under Section 25306 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and 18 months from the effective date of the registration statement A registration statement may not be withdrawn for 18 months from its effective date if any securities of the same class are outstanding A registration statement may be withdrawn otherwise only in the discretion of the commissioner The commissioner may by rule or order extend the effective period of any registration statement

(j) So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration statement to file reports not more often than semiannually for the purpose of keeping reasonably current information contained in the registration statement and disclosing the progress of the offering, provided that the commissioner may not require the filing of any such report after completion of the offering if a nonissuer transaction in the security effected by or through a registered broker-dealer would be entitled to exemption under Section 25402(b)(2)

(k) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered Such an amendment becomes effective when the commissioner so orders Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection (b), with respect to the additional securities proposed to be offered

25306 (a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds (1) that the order is in the public interest and (2) that

(A) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under Section 25305(k) as of its effective date, or any report under Section 25305(j) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Any provision of this act or any rule, order, or condition lawfully imposed under this act has been willfully violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter,

(C) The security registered or sought to be registered is the subject of a stop order of the Securities and Exchange Commission or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the commissioner may not institute a proceeding against an effective registration statement under clause (C) more than one year from the date of the order or injunction relied on, and (ii) he may not enter an order under clause (C) on the basis of an injunction entered under any other state act unless that injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) The issuer's enterprise or method of business includes or would include activities which are illegal where performed,

(E) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(F) The offering has been or would be made with unreasonable amounts of discounts, commissions or other com-

1 pensation to underwriters, sellers or others, or unreasonable
2 expenses, or unreasonable promoters' profits or participa-
3 tion, or unreasonable amounts or kinds of options;
4 (G) When the security registered or sought to be regis-
5 tered is preferred stock, it is not entitled to cumulative
6 dividends and to reasonable voting rights in the event of
7 default in payment of preferred dividends,
8 (H) When the security registered or sought to be registered
9 is redeemable preferred stock of a corporation which is in the
10 promotional stage, it is not convertible into common stock on
11 a reasonable basis,
12 (I) When the security registered or sought to be registered
13 is a debt security or preferred stock, the present conditions
14 and prospects of the issuer do not show that the issuer will
15 be able to meet its obligations for payment of principal and
16 interest as they mature or to pay dividends on the preferred
17 stock,
18 (J) When the security registered or sought to be registered
19 is common stock, it is not voting stock or is not entitled to
20 equal voting rights with all other outstanding shares of com-
21 mon stock,
22 (K) When the security registered or sought to be registered
23 is (i) a security to be issued in an exchange which is included
24 within the term "sale" as defined in Section 25401(k)(1) or
25 a security resulting from any change in the rights, prefer-
26 ences, privileges or restrictions on outstanding securities which
27 is included within the term "sale" as so defined, or (ii) a
28 prior preferred stock to be offered, with or without other
29 securities, in exchange for outstanding preferred stock upon
30 which there are dividends accrued and unpaid, the terms and
31 conditions of such issuance, exchange or change are not fair
32 and equitable to all security holders affected,
33 (L) When a security is sought to be registered by notifi-
34 cation, it is not eligible for such registration,
35 (M) When a security is sought to be registered by co-ordi-
36 nation, there has been a failure to comply with the under-
37 taking required by Section 25303(b)(4);
38 (N) The applicant or registrant has failed to pay the
39 proper filing fee, but the commissioner may enter only a
40 denial order under this clause and he shall vacate any such
41 order when the deficiency has been corrected, or
42 (O) The issuer's promoters, officers, directors or managers
43 are not of good business reputation.
44 In applying clauses (G), (H), (I), and (J), the determina-
45 tion as to whether the security is common stock, preferred
46 stock, or debt, shall be based on the rights incident to the
47 security regardless of its title
48 (b) The commissioner may by order summarily postpone
49 or suspend the effectiveness of the registration statement pend-
50 ing final determination of any proceeding under this section.
51 Upon the entry of the order, the commissioner shall promptly
52 notify each person specified in subsection (c) that it has been

entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person specified in subsection (c), may modify or vacate the order or extend it until final determination

(c) No stop order may be entered under any part of this section except the first sentence of subsection (b) without appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted thereunder

(d) The commissioner may vacate or modify a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so

CHAPTER 4. GENERAL PROVISIONS

25401 When used in this act, unless the context otherwise requires·

(a) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or who for a compensation represents an issuer in effecting or attempting to effect purchases or sales of securities "Agent" does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by clause (1), (2), (3), (9), or (10) of Section 25402(a), and does not include an individual who has no place of business in this State if he effects transactions in this State exclusively with or through (i) broker-dealers or (ii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition

(b) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, (4) any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business, (5) a person who has no place of business in this State if he effects transactions in this State exclusively with or

through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees

(c) "Commissioner," means the Commissioner of Corporations

(d) "Fraud," "deceit," and "defraud" are not limited to common-law deceit

(e) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends

(f) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities "Investment adviser" does not include (1) a bank, savings institution, or trust company, (2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession, (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them, (4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation, but this provision shall not be deemed to exclude any such publisher who engages in any other activity which would constitute him an investment adviser within the meaning of this subsection (f), (5) a person whose advice, analysis, or reports relate only to securities exempted by Section 25402(a)(1); (6) a person who has no place of business in this State if (A) his only clients in this State are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions, or institutional buyers, whether acting for themselves or as trustees, or (B) he is an investment adviser registered under the Investment Advisers Act of 1940 and during any period of 12 consecutive months he does not direct business communications into this State in any manner to more than five clients other than those specified in clause (A), whether or not he or any of the persons to whom the communications are directed is then present in this State, or (7) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate

(g) "Issuer" means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certifi-

cates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of productions under such titles or leases, there is not considered to be any "issuer."

(h) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(i) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(j) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. Any exchange of securities incident to a vote by shareholders, pursuant to the articles or certificate of incorporation or the applicable corporation statute, on a merger, consolidation or sale of corporate assets in consideration of the issuance of securities of another corporation is deemed to constitute a sale if, but only if, (i) any corporation, the holders of any class of shares of which are to receive securities of the surviving, consolidated or purchasing corporation, is a corporation having its principal business office in this State, or (ii) at least 25 percent of any class of shares, the holders of which are to receive securities of the surviving, consolidated or purchasing corporation, are held by persons who have addresses in this State according to the share records of the corporation of which they are shareholders.

Any of the following changes in the rights, preferences, privileges or restrictions on outstanding shares is deemed to constitute a sale if, but only if, (i) the issuer has its principal business office in this State, or (ii) the holders of at least 25 percent of any class of shares which will be directly or indirectly affected substantially and adversely by such change have addresses in this State according to the records of the corporation.

(A) To authorize the corporation to levy assessments thereon,

(B) To change the rights to dividends thereon;

(C) To change the redemption price,

(D) To make them redeemable,

(E) To change the amount payable on liquidation,

(F) To change the conversion rights;

(G) To change the voting rights;

(H) To change pre-emptive rights,

(I) To change sinking fund provisions, or

(J) To rearrange the relative priorities thereof

Any of the following changes in rights of outstanding debt securities is deemed to constitute a sale if, but only if, (i) the issuer has its principal business office in this State, or (ii) the holders of at least 25 percent in principal amount of the debt securities which will be so changed have addresses in this State according to the records of the corporation or the indenture trustee.

(A) To change the rights to interest thereon,

(B) To change their redemption price,

(C) To make them redeemable,

(D) To extend the maturity thereof or the amount payable thereon at maturity,

(E) To change their voting rights, if any,

(F) To change their conversion rights,

(G) To change the sinking fund requirements, or

(H) To make them subordinate to other indebtedness

The solicitation of the approval or consent of security holders to any such exchange or change shall be deemed to constitute an offer to sell the securities involved in such exchange or change

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value

(4) A purported gift of assessable stock is considered to involve an offer and sale

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security

(b) The terms defined in this subsection do not include (A) any bona fide pledge or loan, (B) any stock split or reverse stock split, (C) any stock dividend, whether or not the corporation distributing the dividend is the issuer of the stock, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock, (D) any act incident to a vote by security holders, pursuant to the articles of incorporation, indenture or other instrument under which the securities were issued, or the applicable corporation statute, involving a change in the rights, preferences, privileges or restrictions on outstanding securities, except as otherwise specifically provided in clause (1) of this subsection, or (E) any act incident to a judicially approved reorganization in

which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash

(k) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this act

(l) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period

(m) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico

(n) "Rule" means every regulation or standard of general application, while "Order" means a regulation or requirement applicable only to a specific case

25402 (a) The following securities are exempted from Section 25301 and 25403

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing,

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor,

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association or-

ganized under the laws of any state and authorized to do business in this State;

(5) Any security, the issuance of which is subject to regulation by the Insurance Commissioner;

(6) Any security issued or guaranteed by any federal credit union or any credit union organized and supervised under the laws of this State;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act, or (C) regulated in respect of its rates and charges and in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada, or of any Canadian province and the security, or any security of the same class, has been registered with or authorized to be issued by such authority,

(8) Any security (except notes, bonds, debentures, or other evidences of indebtedness whether interest bearing or not) issued by a company organized under the laws of this State exclusively for educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, no part of the earnings of which inures to the benefit of any private shareholder or individual,

(9) Promissory notes, whether secured or unsecured, and any guarantee thereof, where the notes are not offered to the public, or any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal,

(10) (A) Any investment contract or profit-sharing agreement or other security issued in connection with an employees' stock purchase, savings, pension, profit-sharing or similar benefit plan qualified under Section 401 of the Federal Internal Revenue Code, or any statutes amendatory thereof or supplementary thereto; and (B) any investment contract or profit-sharing agreement issued in connection with such a plan not so qualified, such exemption in the case of this clause (B) to be effective 30 days after a copy of such plan is filed with the commissioner;

(11) Any security issued by any corporation organized or existing under or by virtue of the terms and provisions of Chapter 4 of Division 6 of the Agricultural Code,

(12) Any certificate of deposit for any security which has been approved by the California Districts Securities Commission for certification as a legal investment for savings banks and trust companies under the laws of this State;

(13) Any security issued under or pursuant to a plan of reorganization which, pursuant to any of the provisions of the act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved June 1, 1898, and acts amendatory thereof and supplementary thereto, has been confirmed by the decree or order of a court of competent jurisdiction;

(14) Any partnership interest in a general partnership, or in a limited partnership where certificates are executed, filed, and recorded as provided by Sections 15502 and 15525 of the Corporations Code of the State of California, except partnership interests when offered to the public;

(15) Any bona fide joint adventure interest, except such interests when offered to the public.

(b) The following transactions are exempted from Section 25301 and 25403:

(1) Any nonissuer transaction not involving any public offering, whether effected through a broker-dealer or not;

(2) Any nonissuer transaction by or through a registered broker-dealer in an outstanding security, if (A) Moody's Manual, Standard & Poor's Manual, Fitch's Manual, Walker's Manual, or any recognized securities manual (including supplements thereto) approved by the commissioner contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) the security has been outstanding for not less than three full fiscal years, has a fixed interest or dividend provision, and there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest or dividends on the security; or (C) the security is listed or approved for listing upon notice of issuance on the New York Stock Exchange or the Pacific Coast Stock Exchange, or on any other national securities exchange which may be designated from time to time by the commissioner; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; provided that for the purpose of this subdivision (3) neither an offer to sell made on the floor of a national securities exchange, nor an inquiry regarding a written bid for a security or a written solicitation of an offer to sell a security made by another registered broker-dealer within the previous 60 days, shall be considered the solicitation of an order or offer to buy,

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit,

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this act,

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer or sale of a preincorporation subscription directed by the offeror to not more than 25 persons in this State if (A) no commission nor other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and (B) no payment is made by any subscriber,

(10) Any transaction pursuant to an offer to sell additional securities (but not in exchange for outstanding securities or obligations) made to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if the issuer first files a notice specifying the full terms of the offer, including (A) a statement of the maximum and the minimum proposed offering prices, the maximum underwriting and selling discounts or commissions, the maximum and minimum conversion rates, call prices, and other matters dependent upon the offering price, and (B) the current financial condition of the issuer, and the commissioner does not by order disallow the exemption within five full business days,

(11) Any offer (but not a sale) of a security for which registration statements have been filed under both this act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(12) Any transaction pursuant to an offer or sale of securities by an issuer, if (A) after the sale or proposed sale there will not be more than ten persons owning, of record or beneficially, all classes of securities (other than exempted securities) of the issuer, and (B) all certificates or other evidences representing such securities, whether on original issue or on transfer thereof, bear on their face a legend printed or stamped in red ink, in letters not smaller than ten-point type, a legend in substantially the following form. "Sale or transfer, except

1 by operation of law, to one other than the issuer or an existing
2 security holder without the prior consent of the Commissioner
3 of Corporations of California is unlawful", and (C) the issuer
4 first files a notice containing at least the following information
5 wherever applicable
6 (i) The name, address and state of incorporation of the
7 issuer if the issuer is a corporation,
8 (ii) The names and addresses of the proposed security
9 holders,
10 (iii) The names and addresses of its officers, if the issuer is
11 a corporation, if not, the names and addresses of the persons
12 who will manage the issuer's business,
13 (iv) A copy of its articles of incorporation, or like organic
14 document in the case of non-corporate issuers,
15 (v) A statement of any by-law or other restriction on the
16 transfer or disposition of any security proposed to be issued,
17 (vi) The number, kind and amount of securities it proposes
18 to sell,
19 (vii) The price at which it proposes to sell its securities
20 and, if the consideration is to be other than cash, a description
21 of the nature of the consideration,
22 (viii) A statement of its plan of business,
23 (ix) The proposed application or use of funds from the sale
24 of its securities,
25 (x) A copy or specimen of the security proposed to be
26 issued,
27 and the commisioner does not by order disallow the exemption
28 within five full business days Any securities held by a husband
29 and wife shall be considered as owned by one person for the
30 purpose of this subdivision (12) Any sale or transfer, except
31 by operation of law, of any such security to one other than the
32 issuer or an existing security holder without the prior consent
33 of the commissioner shall be unlawful;
34 (13) The execution and delivery of any agreement for the
35 sale of securities if (A) the issuer first files a notice of inten-
36 tion to execute and deliver such agreement and the commis-
37 sioner does not by order disallow the exemption within five
38 full business days, (B) the agreement expressly provides that
39 the sale of such securities is conditioned upon registration of
40 the securities under this act, and (C) no part of the considera-
41 tion for the securities is paid prior to the effectiveness of
42 registration of the securities under this act,
43 (14) Any offer or sale of a certificate of interest or partici-
44 pation in one or more oil, gas, or mining titles or leases, or in
45 payments out of production thereunder, if each person who
46 is a party to such transaction:
47 (A) owns land or an interest in land or in an oil, gas, or
48 mining title or lease which is the subject of the transaction; or
49 (B) is engaged primarily in the business of drilling for,
50 producing, refining, marketing, or transporting oil or gas or
51 both, or of mining or producing other minerals; or

(C) is licensed as a mineral, oil and gas broker under the applicable provisions of the Business and Professions Code of the State of California or is licensed by the commissioner, under appropriate rules.

(c) The commissioner may by order deny or revoke any exemption specified in clause (8) or (10) of subsection (a) or in subsection (b) with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination No order under this subsection may operate retroactively No person may be considered to have violated Section 25301 or Section 25403 by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(d) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it

25403 The commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempted by Section 25402

25404 It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect

25405 (a) Neither (1) the fact that an application for registration under Chapter 2 or a registration statement under Chapter 3 has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under this act is true, complete, and not misleading Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in

any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a).

25406 (a) There is in the state government, a Division of Corporations, which shall administer the provisions of this division The chief officer of the Division of Corporations is the Commissioner of Corporations The Commissioner of Corporations shall be appointed by the Governor and shall hold office at the pleasure of the Governor He shall receive an annual salary as fixed in the Government Code Within 15 days from the time of notice of his appointment the commissioner shall take and subscribe to the constitutional oath of office and file it in the office of the Secretary of State, and shall execute an official bond in the penal sum of ten thousand dollars ($10,000).

(b) The commissioner shall have his principal office in the City of Sacramento, and may establish branch offices in the City and County of San Francisco, in the City of Los Angeles, and in the City of San Diego The commissioner shall from time to time obtain the necessary furniture, stationery, fuel, light, and other proper conveniences for the transaction of the business of the Division of Corporations

(c) In accordance with the laws governing the state civil service, the commissioner shall employ, and with the approval of the Department of Finance, fix the compensation of such assistants, deputies and clerks as he needs to discharge properly the duties imposed upon him by law, including stenographic reporters to take and transcribe the testimony in any formal hearing or investigation before the commissioner or before a person authorized by him. The assistants, deputies and clerks shall perform such duties as the commissioner assigns to them Each assistant and deputy shall, within 15 days after his appointment, take and subscribe to the constitutional oath of office and file it in the Office of the Secretary of State.

(d) The commissioner shall adopt a seal bearing the inscription "Commissioner of Corporations, State of California" The seal shall be affixed to all writs, orders, and certificates issued by him, and to such other instruments as he directs All courts shall take judicial notice of this seal

(e) The administration of the Division of Corporations shall be supported from the General Fund of the State

(f) All registration statements, applications for registration as a broker-dealer, agent or investment adviser, reports and other papers and documents filed with the commissioner under this act shall be open to public inspection, except that the commissioner may, in his discretion, withhold from public inspection any information the disclosure of which is, in the judgment of the commissioner, not necessary in the public interest The commissioner may make public any information filed with him or obtained by him if, in the judgment of the

commissioner, such action is in the public interest. It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this act authorizes the commissioner or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this act No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his officers or employees.

(g) The Attorney General shall render to the commissioner opinions upon all questions of law, relating to the construction or interpretation of any law under his jurisdiction or arising in the administration thereof, that may be submitted to him by the commissioner, and shall act as the attorney for the commissioner in all actions and proceedings brought by or against him under or pursuant to any provision of any law under his jurisdiction

(h) Neither the commissioner nor any of his assistants, clerks, or deputies shall be interested as a director, officer, shareholder, member, agent, or employee in any company which, during the period of his association with the Division of Corporations, (a) was registered or applied for registration as a broker-dealer, agent, or investment adviser under Chapter 2 (commencing with Section 25201) of this Division, or (b) applied for or secured the registration of securities under Chapter 3 (commencing with Section 25301) of this Division

(i) No commissioner and no person who acts as a deputy commissioner in supervising the organization, reorganization, merger, or rehabilitation of any corporation under any law of this State shall, for a period of two years from and after the effective date of such organization, reorganization, merger, or rehabilitation, become an officer or director of, or serve as an officer or director of, or serve in any position of gain or profit in, any corporation formed in whole or in part of the assets or funds, or any part of the assets or funds, of such corporation

Every person violating this subdivision is guilty of a public offense punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a state prison not exceeding five years or in a county jail not exceeding one year, or by both such fine and imprisonment

(j) In addition to fees otherwise provided for in this act, the commissioner shall charge and collect the following fees:

(1) For copies of papers and records not required to be certified or otherwise authenticated by the commissioner thirty cents ($0 30) per page, or fraction thereof,

(2) For certified copies of official documents, orders and other papers filed in the office of the commissioner, or for making and mailing copies of process served upon him under Sec-

1 tion 25414(g) of this act, or for transcript on appeal thirty
2 cents ($0 30) per page, or fraction thereof, and two dollars
3 ($2) for each certificate under seal affixed thereto;
4 (3) For the commissioner's services rendered as escrow
5 holder for securities fifty dollars ($50),
6 (4) For the deposit with the commissioner of each new cer-
7 tificate or other document resulting from a transfer in escrow
8 two dollars and fifty cents ($2 50),
9 (5) For filing an application for an order consenting to the
10 transfer of securities ten dollars ($10) for each transferor,
11 (6) For filing sales literature required to be filed under
12 Section 25403 one dollar ($1) per document; and
13 (7) For filing any notice or application for a license under
14 or pursuant to Section 25402 fifty dollars ($50)
15 25407 (a) The commissioner in his discretion (1) may
16 make such public or private investigations within or outside
17 of this State as he deems necessary to determine whether any
18 person has violated or is about to violate any provision of
19 this act or any rule or order hereunder, or to aid in the en-
20 forcement of this act or in the prescribing of rules and forms
21 hereunder, and (2) may publish information concerning any
22 violation of this act or any rule or order hereunder
23 (b) For the purpose of any investigation or proceeding
24 under this act, the commissioner or any officer designated by
25 him may administer oaths and affirmations, subpoena wit-
26 nesses, compel their attendance, take evidence, and require
27 the production of any books, papers, correspondence, memo-
28 randa, agreements, or other documents or records which the
29 commissioner deems relevant or material to the inquiry
30 (c) In case of contumacy by, or refusal to obey a subpoena
31 issued to, any person, the superior court of the State of
32 California, upon application by the commissioner, may issue
33 to the person an order requiring him to appear before the
34 commissioner, or the officer designated by him, there to pro-
35 duce documentary evidence if so ordered or to give evidence
36 touching the matter under investigation or in question Fail-
37 ure to obey the order of the court may be punished by the
38 court as a contempt of court
39 (d) No person is excused from attending and testifying
40 or from producing any document or record before the com-
41 missioner, or in obedience to the subpoena of the commissioner
42 or any officer designated by him, or in any proceeding insti-
43 tuted by the commissioner, on the ground that the testimony
44 or evidence (documentary or otherwise) required of him may
45 tend to incriminate him or subject him to a penalty or for-
46 feiture, but no individual may be prosecuted or subjected to
47 any penalty or forfeiture for or on account of any transac-
48 tion, matter, or thing concerning which he is compelled, after
49 claiming his privilege against self-incrimination, to testify
50 or produce evidence (documentary or otherwise), except that
51 the individual testifying is not exempt from prosecution and
52 punishment for perjury or contempt committed in testifying.

25408 Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion bring an action in the superior court of the State of California to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets The court may not require the commissioner to post a bond

25409 (a) Any person who willfully violates any provision of this act, or who willfully violates any rule or order under this act, shall upon conviction be fined not more than five thousand dollars ($5,000) or imprisoned not more than three years, or both, but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order

(b) The commissioner may refer such evidence as is available concerning violations of this act or of any rule or order hereunder to the district attorney of the county in which the violation occurred, who may, with or without such a reference, institute the appropriate criminal proceedings under this act

(c) Nothing in this act limits the power of the State to punish any person for any conduct which constitutes a crime by statute

25410 (a) Any person who

(1) Sells a security in violation of Sections 25201(a), 25301, 25402(b)(12), or 25405(b), or of any rule or order under Section 25403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under Sections 25304(e), 25305(g), or 25305(h), or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission,

is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 6 percent per year from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at 6 percent per year from the date of disposition

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, principal executive officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. A corporation which is liable under this section shall have a right of indemnification against any of its principal executive officers, directors and controlling persons whose willful violation of any provision of this act shall have given rise to such liability All persons liable under this section shall have a right of contribution against all other persons similarly liable, based upon each's proportionate share of the total liability, except that no person whose willful violation of any provision of this act has given rise to any liability under this section shall have any right of contribution against any other person guilty merely of a negligent violation thereof, and except that no principal executive officer, director or controlling person shall have any right of contribution against the corporation to which he sustains that relationship

(c) Any tender specified in this section may be made at any time before entry of judgment

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant

(e) No person may sue under this section more than two years after the contract of sale No buyer may sue under this section if, before suit is commenced, such buyer shall have received a written offer (A) stating the respect in which liability under this section may have arisen, (B) offering to repurchase the security for a price equal to the consideration paid, together with interest at the rate of 6 percent per year from the date of payment, less the amount of any income received on the security, or, if the buyer no longer owns the security, offering to pay to the buyer an amount equal to the damages computed in accordance with subsection (a) of this Section 25410, (C) providing that such offer may be accepted by the buyer at any time within a period of not less than 30 days after the date of receipt thereof, and (D) setting forth the provisions of this subsection (e), and such buyer shall have failed to accept such offer in writing within 30 days after the date of receipt thereof

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by

reason of which its making or performance was in violation, may base any suit on the contract

(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void.

(h) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist at law or in equity, but this act does not create any cause of action unless it is specified in this section or in Section 25202(e), or unless it arises as a result of a willful violation of Section 25101 in connection with any purchase of securities

25411 Every order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with law

25412 (a) The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this act, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the provisions of this act For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes

(b) No rule, form, or order may be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act In prescribing rules and forms the commissioner may co-operate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable

(c) The commissioner may by rule or order prescribe (1) the form and content of financial statements required under this act, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) All forms of the commissioner shall be published All rules shall be made, amended or rescinded in accordance with the provisions of the Administrative Procedure Act, Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code

(e) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded

or be determined by judicial or other authority to be invalid for any reason

(f) An issuer proposing to issue securities in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, may file an application for approval of the terms and conditions of such issuance and exchange, whether or not such securities are required to be registered under this act, and the commissioner is authorized to approve the terms and conditions of such issuance and exchange, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange have the right to appear

25413 (a) A document is filed when it is received by the commissioner

(b) The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which have been entered under this act The register shall be open for public inspection

(c) The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes

(d) Upon request and at such reasonable charges as he prescribes unless otherwise specified in this act, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified

(e) The commissioner in his discretion may honor requests from interested persons for interpretative opinions

(f) The commissioner may, after four years from the date of filing and with the approval of the Department of Finance, destroy all applications, orders, and certificates, together with the files and folders, as useless or obsolete

(g) If in the opinion of the commissioner any security is subject to registration under this act which is being or has been offered for sale without first being registered, the commissioner may order the issuer or offeror of such security to desist and refrain from the further sale or offer for sale of such security unless and until it has been registered under this act If, after such an order has been made, a request for a hearing is filed in writing and a hearing is not commenced within 60 days thereafter, such order is rescinded

25414 (a) Sections 25101, 25201(a), 25301, 25405, and 25410 apply to persons who sell or offer to sell when (1) an offer to sell is made in this State, or (2) an offer to buy is made and accepted in this State

(b) Sections 25101, 25201(a), and 25405 apply to persons who buy or offer to buy when (1) an offer to buy is made in

this State, or (2) an offer to sell is made and accepted in this State

(c) For the purpose of this section, an offer to sell or to buy is made in this State, whether or not either party is then present in this State, when the offer (1) originates from this State or (2) is directed by the offeror to this State and received at the place to which it is directed (or at any post office in this State in the case of a mailed offer)

(d) For the purpose of this section, an offer to buy or to sell is accepted in this State when acceptance (1) is communicated to the offeror in this State and (2) has not previously been communicated to the offeror, orally or in writing, outside this State, and acceptance is communicated to the offeror in this State, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed (or at any post office in this State in the case of a mailed acceptance)

(e) An offer to sell or to buy is not made in this State when (1) the publisher circulates or there is circulated on his behalf in this State any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this State, or which is published in this State but has had more than two-thirds of its circulation outside this State during the past 12 months, or (2) a radio or television program originating outside this State is received in this State

(f) Sections 25102 and 25201(c), as well as Section 25405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this State, whether or not either party is then present in this State.

(g) Every applicant for registration under this act and every issuer which proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he by rule prescribes, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows

(h) When any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and he has not filed a consent to service of process under subsection (g) and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows

(i) When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend

25415 This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to co-ordinate the interpretation and administration of this act with the related federal regulation

25416. This act may be cited as the Uniform Securities Act

25417 If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable

25418. (a) The Corporate Securities Law comprising Sections 25000 to 26104 inclusive of the Corporations Code is repealed except as saved in this section.

(b) Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the operative date of this act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after the operative date of this act

(c) All effective permits, certificates, and registrations under prior law, all administrative orders relating to the same, and all conditions imposed upon the same remain in effect so long

as they would have remained in effect if this act had not been passed They are considered to have been filed, entered, or imposed under this act, but are governed by prior law.

(d) Prior law applies in respect of any offer or sale made within one year after the operative date on the basis of an exemption available under prior law

(e) Judicial review of all administrative orders as to which review proceedings have not been instituted by the operative date of this act are governed by Section 25411, except that no review proceedings may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within 60 days after the effective date of this act

SEC 2 Section 4113 of said code is amended to read

4113. The executed agreement, or an executed counterpart thereof, to which shall be attached a certificate executed by the Commissioner of Corporations to the effect that a ~~permit has been issued~~ *registration statement is effective* or that in his opinion a ~~permit~~ *registration* is not required under the provisions of the ~~Corporate Securities Law~~ *Uniform Securities Act*, and the respective certificate of each constituent corporation and of the surviving corporation shall be separately filed with the Secretary of State, and shall thereupon become effective, and the several parties thereto shall be one corporation Neither the agreement nor any certificate shall be filed however until there has been filed with the Secretary of State by or on behalf of each corporation taxed under the Bank and Corporation Franchise Tax Act, the existence of which is terminated by the merger or consolidation, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by said act have been paid or secured

SEC 3 Section 4119 of said code is amended to read

4119 If the consolidated or surviving corporation be a domestic corporation, the agreement and certificate of such corporation as well as the certificate of each constituent domestic corporation shall be filed in the Office of the Secretary of State and thereupon the consolidation or merger shall be effective as to any such domestic corporation There shall be attached to the agreement a certificate executed by the Commissioner of Corporations to the effect that a ~~permit has been issued~~ *registration statement is effective* or that in his opinion no ~~permit~~ *registration* is required under the provisions of the ~~Corporate Securities Law~~ *Uniform Securities Act* Each constituent foreign corporation which is qualified for the transaction of intrastate business in this State shall file in the Office of the Secretary of State a copy of the agreement, certificate or other instrument filed in the state or place of its incorporation for the purpose of effecting the consolidation or merger and each such document shall be certified by the public officer having official custody of the original Copies of the agreement shall be filed as provided in Section 4114.

If the consolidated or surviving corporation be a foreign corporation, each constituent, consolidated or surviving foreign corporation which is qualified for the transaction of intrastate business in this State shall file in the Office of the Secretary of State a copy of the agreement, certificate or other document filed in the state of its incorporation for the purpose of effecting the consolidation or merger and each such document shall be certified by the public officer having official custody of the original A certificate executed by the Commissioner of Corporations to the effect that a ~~permit has been issued~~ *registration statement is effective* or that in his opinion no ~~permit~~ *registration* is required under the provisions of the ~~Corporate Securities Law~~ *Uniform Securities Act* shall be attached to the copy of the agreement, certificate or other document presented to the Office of the Secretary of State for filing Each constituent domestic corporation shall file in the Office of the Secretary of State a copy of the agreement, certificate or other document filed by the consolidated or surviving foreign corporation in the state of its incorporation for the purpose of effecting the consolidation or merger which copy shall be certified by the public officer having official custody of the original, or, in lieu thereof, an executed counterpart of the agreement or certificate executed by such domestic corporation for the purpose of effecting the consolidation or merger, and thereupon the consolidation or merger shall be effective as to such domestic corporation Copies of such agreement, certificate or other document shall be filed by each qualified foreign corporation and by each constituent domestic corporation as provided in Section 4114

SEC 4 Section 10250 of said code is amended to read

10250 (a) Any corporation organized under the provisions of or for the purposes set forth in Part 2 or Part 3 of this division may, if authorized so to do by its articles of incorporation, establish one or more common trust funds for the purpose of furnishing investments to such corporation or to any church parish congregation, society, chapel, mission, religious, beneficial, charitable or educational institution affiliated with it, or to any organization, society or corporation holding funds or property for the benefit of any of the foregoing, or holding funds for the purpose of supporting a bishop, priest, religious pastor, or teacher or any building or buildings used by or owned by any of the foregoing, whether holding such funds or property as fiduciary or otherwise Notwithstanding the provisions of any general or special law in any way limiting the right of any of the foregoing or the officers or directors thereof, as fiduciary or otherwise, to invest funds held by them, it shall be lawful for any of the foregoing to invest any or all of their funds or property in shares or interests of such common trust fund or trust funds, provided, that, in the case of funds or property held as fiduciary, such investment is not prohibited by the wording of the will, deed or other instrument creating such fiduciary relationship

(b) The directors or trustees of any such common trust fund, or trust funds, so organized, may employ such officers or agents as they think best, define their duties, and fix their compensation They may also appoint a trust company or bank as custodian of the trust estate and may employ an investment adviser or advisers, define their duties, and fix their compensation

(c) The directors or trustees of any such common trust fund, or trust funds, shall pay ratably among the holders of shares or beneficial certificates then outstanding, semiannual dividends which shall approximately equal, in each fiscal year, the net income of the trust, or trusts

(d) The provisions of the ~~Corporate Securities Act~~ *Uniform Securities Act* shall not apply to the creation, administration, or termination of common trust funds created hereunder, nor to participation therein

SEC 5 Section 10703 of said code is amended to read

10703 If, when, and during such times as public agencies or individuals duly authorized to represent them and act in their behalf constitute a majority of the incorporators or of the directors and are entitled to exercise a majority of the voting power of a nonprofit corporation pursuant to this part.

(a) The ~~Corporate Securities Law~~ *Uniform Securities Act* shall not apply to the memberships nor to membership certificates issued by the corporation, and

(b) The corporation shall be exempt from payment of any taxes under the Bank and Corporation Tax Law (Part 11 of Division 2 of the Revenue and Taxation Code), except as provided in Article 2 of Chapter 4 thereof.

SEC 6 Section 13205 of said code is amended to read:

13205 No association is subject in any manner to the terms of the ~~Corporate Securities Law~~ *Uniform Securities Act* and all associations may issue their membership certificates or stock or other securities as provided in this division without the necessity of ~~any permit from the Commissioner of Corporations~~ *registering the same under the Uniform Securities Act*.

SEC 7. Section 27000 of said code is amended to read:

27000. Unless the provision or the context otherwise indicates, and except as expressly otherwise provided in this chapter, words used in this division have the meanings prescribed in Chapter ~~1 of the Corporate Securities Law (Sections 25000 to 25011, inclusive)~~ *4 of the Uniform Securities Act, Section 25401*

SEC 8 Section 27001 of said code is amended to read:

27001 As used in this division "security" includes all of the things enumerated in Section ~~25008~~ *25401(l)* and also includes shares, stock, and investment certificates as defined in the Building and Loan Association Act.

SEC 9 Section 27002 of said code is amended to read

27002 As used in this division, "individual" includes every natural person, domestic or foreign private corporation, nonprofit corporation, unincorporated association, company,

partnership of whatever kind, syndicate, joint stock company, trustee, protective committee, depositors' league, and other similar organization however described, but "individual" does not include any of the following persons:

(a) Any licensed practicing attorney rendering or performing services in connection with the practice of law

(b) Any ~~person holding a broker's or investment counsel's certificate then in effect issued by the commissioner,~~ *registered broker-dealer or investment adviser* rendering or performing services as such

(c) Any ~~holder of a permit then in effect, granted by the commissioner under the Corporate Securities Law, permitting the issue~~ *person filing a registration statement ordered effective under the Uniform Securities Act covering the issuance* of certificates of deposit

SEC 10 Section 28006 of said code is amended to read.

28006 A beneficial interest issued by a retirement system shall be exempt from the provisions of the ~~Corporate Securities Law~~ *Uniform Securities Act*

SEC 11 Section 14250 of the Financial Code is amended to read.

14250 The ~~Corporate Securities Law~~ *Uniform Securities Act* of the State relating to the necessity of ~~obtaining a permit authorizing the sale and issue of~~ *registering* securities does not apply to the sale and issue of membership shares, certificates for funds, and other securities, by credit unions organized under this division

SEC 12 Section 18050 of said code is amended to read:

18050 Corporations subject to this division are subject to the provisions and regulations of the ~~Corporate Securities Law~~ *Uniform Securities Act*, Division 1, Title 4, of the Corporations Code

SEC 13 Section 18600 of said code is amended to read

18600 An industrial loan company's ~~application for a permit to issue securities~~ *registration statement* shall set forth, in addition to the information required by the ~~Corporate Securities Law~~ *Uniform Securities Act*:

(a) The addresses of all offices at which business is proposed to be transacted

(b) The names, residence addresses and business addresses of all officers and directors

(c) The names and addresses of subscribers to its capital stock, the amount of capital stock subscribed, the amount paid thereon, the balance due, and copies of the subscription agreements

(d) Statements as to the experience, character, general fitness, and financial responsibility of the officers, directors and managers

SEC 14 Section 18601 of said code is amended to read:

18601 At the time of filing ~~an application for a permit to issue securities~~ *a registration statement*, the applicant shall file with the commissioner a bond in the sum of one thousand

dollars ($1,000), to be approved by the commissioner in which the applicant is the obligor, with one or more sureties approved by the commissioner, whose liability as sureties need not exceed that amount in the aggregate

SEC. 15 Section 18603 of said code is amended to read

18603 The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this division and of the ~~Corporate Securities Law~~ *Uniform Securities Act*, and of all rules and regulations made by the commissioner under either this division or the ~~Corporate Securities Law~~ *Uniform Securities Act* The bond shall be conditioned that the obligor shall pay to the State and to any person all money that becomes due or owing to the State or to such person from the obligor under the provisions of this division or of the ~~Corporate Securities Law~~ *Uniform Securities Act*

SEC 16 Section 18606 of said code is amended to read

18606 In addition to the duty of the commissioner to examine the ~~application~~ *registration statement* pursuant to the provisions of the ~~Corporate Securities Law~~ *Uniform Securities Act*, he shall investigate the matters and facts required by this article to be set forth in the ~~application for a permit to issue securities~~ *registration statement* and conduct such further investigation as he deems necessary

SEC 17 Section 18607 of said code is amended to read

18607 If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the officers and directors thereof, are not such as to command the confidence of the community and to warrant the belief that the business will be operated honestly, fairly, and efficiently within the purposes of this division, he shall ~~deny the application and refuse the permit~~ *issue a stop order denying effectiveness to the registration statement*

SEC 18 Section 18801 of said code is amended to read

18801 Nothing in this division shall be construed as affecting in any manner the power or discretion of the commissioner under the ~~Corporate Securities Law~~ *Uniform Securities Act* or any other law of this State to do any of the following

(a) ~~Issue a permit~~ *Order a registration statement effective* authorizing any company to issue and dispose of choses in action, including certificates of investment to be used in connection with loan transactions, in such amount and upon such terms and conditions as he may provide in such ~~permit~~ *registration statement or orders issued in connection therewith*

(b) Impose such conditions as he deems necessary to the issuance of such securities

(c) Establish such rules and regulations as are reasonable or necessary to insure the disposition of the proceeds of securities in the manner and for the purpose provided in such ~~permit~~ *registration statement*.

(d) Amend, alter, or revoke for cause any ~~permit issued by him~~ *registration statement ordered effective by him*.

(e) Refuse to ~~issue any permit~~ *order a registration statement effective* or otherwise authorize the issuance of securities.

SEC 19 Section 18806 of said code is amended to read·

18806 The commissioner may order any industrial loan company to desist from any conduct which he finds in violation of this division, or of the ~~Corporate Securities Law~~ *Uniform Securities Act*, or the rules of the commissioner made pursuant to this division or the ~~Corporate Securities Law~~ *Uniform Securities Act*

SEC 20 Section 18813 of said code is amended to read.

18813 The commissioner may amend, alter, revoke, or suspend any ~~permit~~ *registration statement* to issue securities if he finds any fact or condition which, if it had existed at the time of filing the ~~application for the permit~~ *registration statement*, would have warranted the commissioner in refusing to ~~issue the permit~~ *order the registration statement effective*

SEC 21 Section 33915 of the Health and Safety Code is amended to read

33915 No agency shall sell, offer for sale, negotiate for the sale of, or take subscriptions for any bonds of its own issue, to, with, or from the public, until it has first ~~applied for and secured from the Commissioner of Corporations a permit authorizing it to do so~~ *filed a registration statement with the Commissioner of Corporations and secured an order declaring the registration statement effective*

SEC 22 Section 33916 of said code is amended to read·

33916. The ~~application~~ *registration statement* shall be ~~made~~ *filed* and ~~the permit issued~~ *declared effective* pursuant to reasonable regulations therefor which the commissioner may adopt and amend from time to time The commissioner shall ~~issue the permit~~ *order the registration statement effective* if he finds that the project is financially sound and that the sale of the bonds would not be unfair, unjust, or inequitable to the purchasers The provisions of the ~~Corporate Securities Law~~ *Uniform Securities Act*, not inconsistent with this part, are incorporated herein, insofar as they relate to ~~applications for permits and the issuance of permits~~ *registration of securities* required by this section

SEC 23 Section 1220 of the Agricultural Code is amended to read·

1220 No corporation organized or existing under or by virtue of the terms and provisions of this chapter shall be subject in any manner to the terms of the ~~corporate securities act of the State as approved May 18, 1917, or as amended,~~ *Uniform Securities Act*, and any and all corporations organized under and by virtue of the terms of this chapter may and shall issue their membership certificates or stock or other securities as provided herein without the necessity of ~~any permit from the commissioner of corporations~~ *registration under the Uniform Securities Act*.

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1959-1961
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FINAL REPORT OF THE SUBCOMMITTEE ON REAL ESTATE CONTRACTS AND TRUST DEEDS

A Subcommittee of the

ASSEMBLY INTERIM COMMITTEE ON JUDICIARY—CIVIL

WILLIAM BIDDICK, JR, *Chairman*

House Resolution No. 85

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December 1960

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Speaker

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Majority Floor Leader

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Chief Clerk

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LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
SACRAMENTO, December 31, 1960

Honorable Speaker of the Assembly
Honorable Members of the Assembly
Assembly Chambers, State Capitol
Sacramento, California

Pursuant to House Resolution No 85, 1960 Second Extraordinary Session of the California Legislature, your Subcommittee on Real Estate Contracts and Trust Deeds submits its report covering its hearings and studies during the 1960 interim.

Because of the nature of the subject matter covered, membership of the committee, otherwise composed of members of the Assembly Committee on Judiciary-Civil, was supplemented by four members of the Assembly Committee on Finance and Insurance These included Assemblymen Cameron, DeLotto, Reagan and Committee Chairman Rees

In the Appendix to this report there are included statements which address themselves to the problems which exist in secondary financing These have been submitted to the committee by various organizations and the fact of their being appended does not necessarily imply approval or agreement on the part of the committee with respect to all particulars.

Respectfully submitted,

RICHARD T HANNA, *Chairman*
BRUCE V REAGEN, *Vice Chairman*

WILLIAM BIDDICK, JR
JOHN A BUSTERUD
RONALD BROOKS CAMERON
BERT DELOTTO
MILTON MARKS
THOMAS M. REES
BRUCE SUMNER
GEORGE A. WILLSON

PART I

FINDINGS AND CONCLUSIONS

In the field of secondary financing California stands at a crossroads. We can either continue on the same road we have traveled and thereby arrive at financial catastrophe, or we can take a bold step onto an avenue that promises stable growth. To a great extent the choice is one to be made by the Legislature. Although three emergency laws were enacted during the 1960 Special Session, the fact that since then several ten percenter organizations have either collapsed or gone into receivership—*with a resultant loss of at least $1,580,000 to investors*—dramatically illustrates the need for further legislative attention.

This committee was conceived in the midst of a crisis that was (and is) symptomatic of the lamentable condition of secondary financing in this State At the very onset of our investigation we encountered a situation exacerbated by predatory brokers, speculative and inefficient contractors and irresponsible lenders

It is to the great credit of responsible associations of realtors, contractors and lenders that they have reacted earnestly and speedily to assist in the search for that combination of factors which will most likely bring about a healthy atmosphere in California's home building industry.

This committee is by no means making a blanket indictment of secondary financing as such It has never been our intention to cast a shadow of suspicion upon this entire segment of the mortgage lending field. We have had testimony at our hearings that secondary financing is needed and that there are in existence good and legitimate second deeds of trust

There seems to be a consensus of opinion among state regulatory agencies and traditional lenders that the so-called "hard money" trust deed operations are free of onus.

Conversely, there is agreement that the grief has come through the "purchase money" activities of certain ten percenters and their confederates In the immediate sense the public has been harmed in two ways

First, a significant portion of the *investing public* has been lured into surrendering funds to ten percenters Certain operators have cleverly and sedulously imitated the solicitation techniques of traditional lenders and have thereby cultivated the illusion that, for example, funds are deposited with them in the same manner that any any saver would entrust a savings and loan association with his money. These operators would like nothing better than to have the naive investor believe that the type of "savings plan" they offer is no different than that offered by a traditional lender—except for the handsome 10 percent interest they pay. What they unfailingly neglect to make explicit to the prospective investor is that "secured savings" is not synonymous with "insured savings"

[1] For elaboration of a number of the points covered herein, the reader is referred to the balance of the report Part III, in particular consists of a systematic analysis in depth of the nature of the second trust deed business

The *consuming public*—that portion of our citizens in the market for homes—has suffered from the machinations of ten percenters Hundreds of home buyers have discovered, after they had willingly put money, time and effort into their properties, that their prospects of securing title were beclouded through maze-like financial arrangements which had the effect of placing them on a treadmill to continuous debt This has frequently set off a chain reaction wherein home buyers would surrender their houses in exasperation, leaving behind them properties which steadily deteriorated in value for want of new buyers and thereby creating blight in otherwise promising neighborhoods

In the larger sense, the *entire public* has suffered So great is the importance of the home building industry in a state with exploding population that it is manifest that anything which threatens this industry threatens the entire economy. Order must be introduced

We are convinced that a solution cannot be found, in any enduring sense, until the monies currently being invested in second deeds of trust are made secure through the respective first trust deeds The difficulties encountered in secondary financing ought not and cannot be isolated from the structure for primary financing

Policies of federal agencies such as the Federal Housing Administration, the Veterans Administration and the Federal National Mortgage Association do not make the solution of our problem any easier, yet the attempt must be made.

The Home Builders' Council of California has spearheaded an effort to attack the roots of this problem This organization, in concert with others, has worked long and hard over proposals which will be offered to the Legislature at the 1961 Session While this committee makes no blanket endorsement of any plan, it recommends that legislators give careful attention to these proposals.

The Subcommittee on Real Estate Contracts and Trust Deeds is not submitting specific legislation in conjunction with this report. This does not mean, however, that we have not been impressed with the need for and the opportunity to enact laws which will invigorate and contribute to the stability of the home building sector of our economy.

It is obvious that one of the contributing factors to the problems of mortgage lending has been the short supply of money Following the inexorable law of supply and demand, this has had the effect of forcing up the costs of borrowing all along the line, chiefly at the expense of the homebuyer.

Pension Funds

There are two great, largely untapped sources of funds for mortgage investment. One of these is the complex of retirement funds of public and private employees here in California.

It has been conservatively estimated that in one of these funds alone there will be one billion dollars accumulated by 1970 [2] The committee understands that, in accordance with the Prudent Man Rule, the trustees of this and other similar funds have refrained from authorizing investments of any kind in California real estate.

We understand that the enactment of permissive legislation is prerequisite to unfettering fund trustees in order that they may sanction

[2] This estimate relates to the fund of the California State Employees' Retirement System and is mentioned in *Policy and Investment Recommendations* prepared for S E R S. by Moody's Investors Service on September 15, 1960

mortgage investments. Accordingly, this committee endorses the principle of such legislation.

"Doing Business Law"

There is today a great deal of investment in California by eastern lenders The committee, however, has heard testimony from knowledgeable sources that this volume of lending could be increased if the so-called "Doing Business Law" were modified. Out-of-state savings and loan associations and other lending institutions desirous of purchasing California real estate loans do not have the tax benefits accorded out-of-state banks. In 1959 the Legislature was presented with a bill (A.B. 1222, Hawkins) which would have cleared up ambiguities in Section 1757 of the Financial Code and, into the bargain, opened up new channels for eastern mortgage funds. The bill was subsequently withdrawn because of the adoption of emasculating amendments.

This committee recommends that the 1961 Legislature consider revision of the "Doing Business Law."

The Sobieski Plan

The committee does *not* feel that the plan for pools of trust deed investment certificates put forth by the Commissioner of Corporations succeeds either in tapping new sources of funds or in appreciably stabilizing the field of secondary financing With all due respect for the earnest efforts of Commissioner Sobieski, we fear that this plan only has the effect of lending an aura of stability and respectability to a still highly risky type of investment

Mortgage Insurance

Proposals for the formation of mortgage insurance companies have emanated from the industry and, in their broad outline, they offer some promise of more secure first trust deed coverage Since such a development would obviate the need for a certain amount of secondary financing, it is deserving of serious consideration. However, in light of the fact that no specific legislation has yet been brought to the attention of this committee, we do not choose to make any endorsement or recommendation at this time.

Misleading Advertising

As we have previously intimated, this committee is deeply concerned over promotional techniques that have been used by certain ten percenters Such advertising has sought to create the illusion of security coupled with windfall return on investment It is crucial that such deception be halted and we recommend the enactment of legislation that will require honest presentations to the public along with full disclosure of method of operation and degree of risk

Law Enforcement

Again and again the committee has been impressed with the fact that where laws have clearly been violated, those charged with protecting the public interest have either been too timid or apathetic to act or else they have lacked the staff necessary to simply get the job done.

After toying with the Aero Properties case for several months the District Attorney of Orange County tossed the matter into the hands of the Los Angeles District Attorney where it has languished ever since Now, nearly a year since the scandal came to light, there is indecision even as to issuing indictments against the offenders!

If the long-range plans for the establishment of sound secondary financing come to fruition it is to be hoped that the unsavory elements that have fattened on present conditions will no longer have a place in real estate financing In the short run, however, law enforcement problems will persist. It is not apparent to the committee that the Division of Real Estate has been as vigorous as it might have been in coming to grips with the problem.

While we must concede that this inadequacy is attributable in part to the fact that the ten percenter operation has been a new and somewhat incomprehensible activity, there is some question as to whether the Division of Real Estate is disposed to take action without first obtaining the consent of the industry. *Such an attitude is not and has never been fitting for a public regulatory agency*

The committee was dismayed to learn at its San Francisco hearing that the division's counsel does not participate in the development of regulations by the Real Estate Commission We strongly urge the correction of this situation

It was also apparent at that hearing that the division is not adequately staffed to cope with the problems in secondary financing. We recommend that the Commissioner of Real Estate indicate to the Legislature how many additional attorneys, auditors and investigators are needed in order to curb abuses

As this State continues to grow, its financial structure is certain to become more complex. The disgraceful developments dealt with in this report are only indicative of happenings which are likely to occur in the future Consequently, we recommend strengthening of the Business Law Division of the Justice Department

Financial manipulators who wantonly disregard the public interest have no place in California The means must be found to protect the public. Our laws, it is often said, are only as good as those who enforce them Let it be the clear and unquestioned intent of the California Legislature that capricious free-wheeling in a vital sector of our economy must come to an end.

PART II

PUBLIC HEARINGS

INTRODUCTION

The committee conducted four public hearings in the course of its inquiry Chronologically, these took place in Buena Park, Los Angeles, San Francisco and, again, in Los Angeles

The Buena Park hearing was held during the Legislature's 1960 Extraordinary Session and the testimony heard at that time served to underscore the need for enactment of A B No. 80 (amendments to the real estate brokers' licensing law), A B No 84 (concerning real property loan brokers), A B No 85 (relating to procedures used in the sale of residential property). Each of these bills had acquired the status of law by May 15, 1960

The second hearing was devoted, for the most part, to consideration of proposed remedies in the business of selling discounted second deeds of trust Commanding chief interest at this time was the plan for trust deed investment certificates advanced by the Commissioner of Corporations.

The two-day hearing in San Francisco was likewise concerned with Commissioner Sobieski's plan, but careful attention was given to, among other things, the findings of the Real Estate Division as a result of its investigation of "Ten Percenter" operations

The October hearing in Los Angeles found the committee once again turning its attention to the problems which inspired the original meeting at Buena Park At this time, however, the committee was in a better position to examine, at each step along the way, the problems which arose in the creation, exchange and sale of second deeds of trust on residential property Moreover, in point of sequence of events, this hearing really provided the committee with its first opportunity to inquire into the circumstances surrounding the receivership ordered by a federal court of the largest "Ten Percenter" operation in the State of California

SUMMARY OF PUBLIC HEARING HELD IN BUENA PARK

March 11, 1960

COMMITTEE MEMBERS:

Milton Marks, Thomas M Rees, Bruce Sumner, George Willson, and Richard T Hanna, Chairman

Witnesses:

E C Williamson, Home Owners Protective Association
W T Foster, home buyer
Mrs Harry McDonald, home buyer
Ralph Hill, Title Insurance & Trust Co
John A Wylie, home buyer
James Walker, attorney
Mrs Barbara Menefee, home buyer
W. Mosley Jones, Pacific Savings & Loan Association
Mrs R E O'Donnell, home buyer
Jack Byerly, real estate investor
Mrs Cosette M Palmer, home buyer
John G Wood, home buyer
Mrs Patricia C Baron, home buyer
Don T McMullen, Walker & Lee, Inc
Ray K. Cherry, Home Builders Association
Gerald E Harrington, Division of Real Estate
Herbert A Smith, Division of Corporations
Denny Dennison, Independent Mortgage Bankers Association

The hearing was held in the chambers of the City Council of Buena Park and commenced at 10 25 a.m with Chairman Hanna stressing the scope of the inquiry as being a basis for formulating new legislation or correcting faulty statutes currently in force "We are here because there has been brought to our attention a very critical situation that exists within certain housing units in the County of Orange," Chairman Hanna announced "[It appears that a number of people have purchased homes under contracts of sale] in such manner that [they] are * * * in a quandary as to what their particular status is with respect to their rights"

The first witness, **Mr. E. C. Williamson,** described the arrangements made for the financing of his home, which is one of the houses in Tract 2413, City of Orange He stated that the tract is approximately two years old and that when he moved in he reached an agreement with Alpert Realty on a price of $14,200 "We were to pay $295 down, and a contract was to be presented" Several days later, according to Mr Williamson, he was given a contract which stated that, after 42 monthly payments of $111, the buyer would have paid enough money to constitute a true down payment "At that time the contract would be submitted to escrow and we would be granted a trust deed" Mr. Williamson pointed out that he, and others, have subsequently discovered that their contracts bear only the signature of the buyer and, as such, are not satisfactory agreements

He explained that he and other home buyers were alarmed when Pacific Savings and Loan Association served foreclosure notices on residents of Tract 2317, City of Anaheim "* * * Two or three days later, * * * a man from the first mortgage holder on our property * * * came to our

tract and asked questions and indicated very strongly that we [were also] in the same situation in that the payments on the first mortgage * * * were delinquent and we were subject to foreclosure proceedings * * * under a blanket deed of trust for the some forty homes involved * * * ," Mr Williamson related He added that, with few exceptions, all home buyers were current in their payments and that the payments had been made, *in toto*, to Aero Properties, Inc

In response to questioning by Chairman Hanna, Mr Williamson said that he had occupied his home on September 2, 1958, and that, since that time he had made considerable improvements on the property.

> CHAIRMAN HANNA What are those improvements?
>
> MR. WILLIAMSON We have installed a lawn, both front and rear; a considerable amount of landscaping in flowers and shrubbery, a redwood fence, some cement work; and we have started on a 16′ by 24′ patio
>
> CHAIRMAN HANNA Besides the blisters and perspiration of the weekends that you have put into these projects, can you estimate about [what you have expended, financially, on the property]?
>
> MR WILIAMSON * * * Between $650 and $700
>
> CHAIRMAN HANNA Have I assumed correctly that you and your wife have done most of the work in connection with these improvements yourself?
>
> MR WILLIAMSON That is correct With the exception of the fence, all of our work has been done ourselves

With respect to encumbrances on the property, Mr Williamson stated that Wilshire First Federal Savings & Loan Association held the first mortgage and that a second mortgage of approximately $2,700 existed He could not name the holder of this second deed of trust, but he guessed that it was either Aero Properties "or one of their corporate identities" At this point Assemblyman Sumner wanted to know whether the sales contract recited the encumbrances and Mr. Williamson responded that only the holder of the first trust deed was named While he has never had his property appraised, he noted that offers of $16,000 and $16,500 had been made on neighboring houses

Mr. R. T. Foster (of Tract 1646) told the committee he had little to add to the testimony of Mr Williamson "* * * excepting that, in my estimation, Walker and Lee, who are the brokers in this particular tract, didn't [draw up the contracts] properly" He added that buyers who had tried to have the contracts recorded for purposes of veterans' tax exemption had encountered difficulties Mr Foster described one paradoxical situation that had developed because of the character of the financial arrangements "* * * One party in particular has been in this house for one year [and] hasn't paid anybody anything because the company can't collect—because it is going through F H A— and F H A won't approve it * * * because they can't clear title to the house"

Mr. Foster said that $80,000 was still owed the parties who sold the land for his particular tract "Besides that," he continued, "I know that there is a mechanic's lien on the tract * * * and the City of Anaheim has the builder under bond to complete certain public improvements * * *"

Chairman Hanna then asked him whether it was true that the persons selling him his house had assured him that the transaction would meet the approval of the Federal Housing Administration and that, further, he would be in a "better" position if he bought under contract for a

year and then applied through the F H A Mr. Foster affirmed that this was so

CHAIRMAN HANNA Were * * * these representations made to you by anyone other than representatives of Walker and Lee?

MR. FOSTER · No, sir, they were not That was strictly from a salesman from Walker and Lee.

CHAIRMAN HANNA · Do you know who the contractor was that built the house you are in?

MR FOSTER: Hintz Construction Company.

The witness stated he negotiated to pay approximately $14,000 for his home; that he was initially offered payments of $94 a month but that, at his insistence, the payments were increased so as to adequately cover taxes Mr. Foster was then asked about the encumbrances on his property and he recited that there was, in addition to the first trust deed, a second trust deed held by the original owner of the land,[1] the mechanic's lien previously mentioned, and still another trust deed

CHAIRMAN HANNA: Who is the holder of this second mortgage * * *?

MR. FOSTER · * * * It is Criterion Company which, I believe they stated, is a subsidiary of this [Aero Properties].

CHAIRMAN HANNA. To whom do you make your payments? * * * In other words, the $104 that you say you are paying a month—that is paid directly to the Criterion Company?

MR FOSTER. That's right.

* * * * * * *

CHAIRMAN HANNA * * * Have you always made your payments to Criterion?

MR FOSTER No When the thing first started we made them to Yenom Homes,[2] and after we made two payments we were notified that this Criterion Corporation had bought out their interest in the property and that we were to make our future payments to the Criterion Company

CHAIRMAN HANNA Have you made your payments every month as [they] have come due?

MR FOSTER Yes I have this bookkeeping record of it The last payment recorded in here is February 1st My March payment is not [due for three days yet]

* * * * * * *

CHAIRMAN HANNA And still your property has received this notice of default?

MR FOSTER · That's right

Assemblyman Sumner inquired of Mr Foster what assumptions he made at the time he negotiated for purchase of the house The latter stated he made no inquiries as to title, easements or rights to the property He did insist that he felt it incumbent on real estate salesmen that they inform the buyer fully, whether or not the buyer makes inquiries At this point Mr Foster respond affirmatively when asked by the chairman whether he was furnished a copy of a form bearing the heading of the Division of Real Estate and setting forth the basic condition under which the house was sold

[1] The Notice of Default and Election to Sell under Deed of Trust was exercised by this holder

[2] Yenom Homes, Inc, was a corporate subsidiary of the John T Hintz Construction Co

Assemblyman Rees then undertook a line of questioning to establish the aggregate liens against Mr Foster's property (priced at $13,458 in the sales contract) It developed that the total encumbrances, of one sort or another, exceeded the valuation of the property by between $1,200 and $1,500

In response to questioning by Assemblyman Marks, Mr. Foster admitted that he had read the sales contract "roughly" and, while the salesman had not undertaken to explain its provisions to him, he had asked no questions prior to signing

The committee then heard from **Mrs. Harry McDonald** who stated that she and her husband purchased their home from Tietz Construction Co and that they had not read the sales documents thoroughly because they were so anxious to have a home "* * * We paid $270 down and we understood that there would be a second on the property," Mrs McDonald said "So he had us sign a note for the rest of the down payment, which was $2,000 And they told us at the time that the property was $14,750 but that they would sell it to us for $14,600 because it had been lived in before " In addition to the second trust deed just mentioned, there was a first trust deed of $11,350 and another trust deed for $1,480, held by Manhattan Terrace, Inc Mrs McDonald said it was their understanding that the last note would be due in five years "and that it was just a note for us to buy the house —there would be no interest or anything on it " She and her husband were subsequently informed that the note had been sold to Aero Properties, Inc, and that they would, indeed, have to pay interest (6 percent per annum) and that, furthermore, half of it would be due in October 1961, and the other half payable two years after that The $2,000 note taken by the Tietz company was also found to have been sold to Los Angeles Trust Deed & Mortgage Exchange

Assemblyman Rees asked to see a copy of the note Mrs McDonald had signed with Tietz Construction Co but she replied that the only paper which she had a copy of was the receipt for the original $270 "down payment " She explained that she had requested copies of the documents of the person doing the negotiations for Tietz Construction Co. and that this person had declined, saying, "You will move into the property now and it will go through escrow and at that time you will receive a copy of your grant deed, plus all of the copies of the papers that you have signed " (Mrs McDonald occupied the property in November 1957) She stated that she had been furnished a grant deed to the property

The chairman then called **Mr. Ralph Hill** of the Title Insurance and Trust Co Mr Hill stated that Tract 2317 was sold as acreage by Chelsea Holding Co to three corporations—Alfine, Norseman and Viking [3] They executed a blanket deed of trust in the amount of "around $58,000," containing provisions that would subordinate it to a construction loan The interest of these three corporations was sold to Aero Properties, Inc The latter then originated individual deeds of trust (ranging from $1,600 to $3,500 per home) which were, of

[3] Alfine Estates, Inc, Viking Homes Inc, and Norseman Builders, Inc, are subsidiary corporations of the John T Hintz Construction Co

course, junior to the blanket trust deed and the construction loans from Pacific Savings & Loan Association [4]

ASSEMBLYMAN REES Do you know if there is any connection between the person * * * who owned Alfine, Norseman and Viking [on the one hand], and Aero Properties?

MR HILL I have no knowledge as to that I have nothing to indicate that there would be any connection.

ASSEMBLYMAN REES * * * What would be the purpose of having three separate corporations with the same management * * * signing the deeds on one piece of land which is primarily one project?

MR HILL I think it is a common situation for developers to do that and, as I understand, it is for tax purposes * * *

ASSEMBLYMAN SUMNER Did you discover whether or not a substantial number of the tenants had recorded contracts of sale for this property * * *?

MR HILL I do not recall seeing that there were any contracts recorded in that particular tract

ASSEMBLYMAN SUMNER None at all?

MR HILL None at all

Chairman Hanna called **Mr. John A. Wylie** who indicated that he was a resident of Tract 2317 Mr Wylie showed the committee a receipt of deposit indicating that the total purchase price on his house was $14,795, with stipulations for $100 payment upon execution with lump sum remittance of $385 to follow, plus monthly payments of $85 thereafter. Assemblyman Marks asked the witness if he recalled whether the statement required by the Division of Real Estate cited all encumbrances on the property Mr Wylie replied that he could not remember

Mr Wylie stated that there were several people in Tract 2317 who had made considerable improvements on homes originally priced in the neighborhood of $14,000 and who had subsequently discovered that the encumbrances upon their property amounted to "anywhere from $16,000 to $17,500 "

The next person to testify was attorney **James E. Walker** who, as attorney for the estate of Otilge Heim, had signed the notices of default on the homes in Tract 1646 Mr Walker corrected the testimony of Mr. Foster in regard to the amount of the blanket trust deed, according to the former it was "something more than $20,000," and not $80,000 as had been previously stated In return for sale of the land, he elaborated, a subordinated first trust deed was taken. In response to a direct question as to whether any payments had been made on this trust deed, Mr Walker replied in the negative He affirmed that the full amount of the note was due in June 1960 and that foreclosure action had been instigated on the basis of three consecutive defaults in interest payments

In response to a question from Assemblyman Rees, it was clarified that responsibility for the aforementioned payments rested with Aero Properties, Inc, which was receiving monthly payments from the home buyers in the tract.

The question was asked of Mr Walker, "When your clients agreed to a subordination clause in their security did they limit the contractor to a specific amount of construction loan or was that left open to the

[4] The reader is cautioned not to confuse the arrangements for this tract with those concluded for Tract 2413

contractor for any amount that he might wish? "My recollection," Mr. Walker responded, "is that we depended on the contractor * * *."

Mrs. Barbara Menefee, a resident of Tract 2317, told the committee that, after she and her husband had reduced the outstanding debt on their property to $13,800 (the initial balance was $14.295), they discovered that encumbrances on the property totaled $15,100. The Menefees contracted for their home in September 1959 with a down payment of $485 In response to a question from Chairman Hanna, Mrs Menefee said she did not know the due dates on any of the trust deeds junior to the original $10,700 note held by Pacific Savings & Loan Association

Mr. W. Mosley Jones, president of Pacific Savings, told the committee that his association made first trust deed construction loans on 44 houses in Tract 2317 in March 1958 The "firsts" were for $10,700 each and Mr Jones noted that the title report indicated that a trust deed amounting to $51.475 was given to the Chelsea Holding Co for the balance due on the purchase of the land "Our contact with [Chelsea] indicates that the balance on that now is approximately $46,000," Mr. Jones reported. "This [second trust deed] was on the whole tract; it was not apportioned among the various houses "

Mr Jones testified that in May 1959 payments on the first deeds of trust began coming from Aero Properties, Inc, in lump sum. "We sent [Aero Properties] a customary form to fill out where there is a new owner They never did fill it out or send it back to us." Aero Properties, according to Mr Jones, made regular payments until November 1, 1959 when the payment due on October 1 was remitted. "From then until approximately February 11 [1960], when they paid up all of the existing defaults and cured the foreclosure we had pending," no payments were forwarded to Pacific Savings The witness stated that his institution had great difficulty, during the hiatus, making contact with responsible officers of Aero Properties.[5]

Early this year Mr Jones ordered a title search which showed, in addition to the construction loan and the second held by Chelsea, a third trust deed in the amount of $3,500 executed in favor of Litel Co. with Inland Title Co as insurer. On July 22, 1959 this third trust deed was assigned to Mason Mortgage and Investment Corporation "It is my understanding that this third trust deed is * * * against each of the lots." Mr Jones said[6]

Asked for suggestions as to remedial legislation, Mr Jones replied, "I think that we should have a law—which should probably be in the Penal Code—which simply says it shall be unlawful to encumber properties sold on contract beyond the amount of the contract price, or which matures prior to the maturity of the contract, or which, *in toto* of all encumbrances, creates monthly installments in excess of the contract installment " Responding to a question by Assemblyman Sumner, the witness saw "no objection" to a requirement that, when a trust deed holder forecloses, notice be given to the occupant of the property

[5] Mr Jones testified that his sole contact with a representative of Aero Properties occurred on February 11, 1960, when he accepted a check from Arthur Gordon Eldred to satisfy the amount delinquent ($21,310 49)

[6] Mr Jones subsequently pointed out that he could not affirm that *all* the third trust deeds were assigned to Mason Mortgage

in question as well as the defaulter In another regard, Mr. Jones observed that he thought it "* * * really rather extraordinary that, during the whole history of California * *, somebody hasn't done someing to protect these contract purchasers against loans subsequently created which they have no power to protect themselves against"

Mrs. Cosette M. Palmer complained that she and her husband had paid in excess of $6,000 to Rainier Realty Co on a home in Tract 2316, Garden Grove, with the expectation of arranging financing through the Cal-Vet program She subsequently discovered that involuntary bankruptcy proceedings had been filed against the company She expressed fear for the loss of her investment in the property Pending escrow approval, she and her husband were to pay rent on the house In response to a question from Assemblyman Marks, Mrs Palmer indicated she was not given credit as payment on the home for the rent moneys already remitted

Mr. John G. Wood told the committee of his difficulties with Aero Properties in getting Mr John Sternberg of that firm to record the deed to his property. Mr Wood stated he made a down payment of $2,451 to Fullerton Mortgage Co and that he desired to arrange financing through the FHA "So the only thing that is holding it up is the false promises of Mr Sternberg to send the money in, to transfer the deed from Emerald [Investment Properties] to Aero Properties, then they just seem to sit back and not make any effort whatsoever to make these transactions," Mr Wood stated

Chairman Hanna asked **Mr. Don T. McMullen,** representing the Walker & Lee company, if he desired to make a statement Mr McMullen noted that certain witnesses had complained of not seeing the statement required by the Division of Real Estate He pointed to a phrase in Walker & Lee's deposit receipt which reads, "Notice I have received and read a copy of the Real Estate Commissioner's Public Report" He observed that under this statement is a line for the signature of the buyer Chairman Hanna pointed out that, on the other hand, the receipt does not provide for a listing of encumbrances on the property in question "* * * We are provided with very little information ourselves as to the first and second trust deeds," Mr McMullen replied "It is a straight land contract program—100 percent down payments specifically are outlined in the contract provided by Walker & Lee" He later elaborated that his firm sells according to stipulations set forth by the subdivider and price lists are provided by the builder, and, in response to a question, he quoted the usual commission on the houses involved at the hearing as being approximately $200 It was also brought out that Walker & Lee does not conclude sales contracts with home buyers

Mr. Ray K. Cherry, speaking on behalf of the Home Builders Association of Los Angeles, Orange and Ventura Counties, pledged his organization's assistance "in helping to clear up and eliminate any and all practices and procedures which tend to adversely affect our industry and the security and well-being of our customers, the home buyer."

Assemblyman Rees asked about the incidence of use of home sales contracts Mr Cherry replied that their usage fluctuates according to the money market and he agreed with Chairman Hanna's sentiment

that the current federal "tight money" policy is inspiring their usage at this time.

ASSEMBLYMAN REES As a rule, most of the home builders usually get rid of [their] contracts as fast as they can, don't they * * *?

MR CHERRY Not the usual run, no, sir

ASSEMBLYMAN REES They do not?

MR CHERRY No, sir

ASSEMBLYMAN REES You just kind of hold those all the time?

MR CHERRY Yes, sir

ASSEMBLYMAN REES You don't "shoot them out"?

MR CHERRY I haven't sold one in 10 years

Posing a hypothetical situation, Mr Cherry said that if he had a $10,000 house for sale and could arrange a $7,500 first trust deed for the buyer, he would finance the balance himself and retain the second trust deed In response to a comment by Chairman Hanna, he conceded that it frequently happens that a contractor in just such a situation would discount the second immediately

Assemblyman Marks wondered whether the rental agreements mentioned in the previous testimony were widespread Mr. Cherry said it was a common practice to put a buyer under contract or sign him up on a rental agreement pending approval through escrow In either case, the monthly amounts paid by the home buyer do not reduce the principal on the price of the house

Mr Cherry responded affirmatively when asked by Assemblyman Willson if the "typical" contract reserves the right to further encumber property being sold He stated a number of builders go back to the original lender when, with the passage of time, the property has appreciated in value "* * * But in so doing, we have to certify to the title company * * * that * * * the total amount of encumbrance does not exceed the amount of the contract," Mr Cherry explained "Now, that is controlled where you work through your same lender, but the trouble is here, as explained today, [when] you go out and peddle them in the market, you might get in trouble"

Assistant Real Estate Commissioner **Gerald Harrington** told the committee that the law requires a subdivider to impound any deposits he takes, depending upon the type of encumbrances "If there is a blanket encumbrance on the property, he must impound the money in escrow or furnish a bond [or a comparable alternative] " When there is no blanket encumbrance, "the money normally must be placed in escrow or a trust account until such time as the purchaser has received his deed or other equitable interests, which would be a contract "[7] Only when the sole encumbrances are against individual lots is it permissible for the money to be released upon delivery of the contract to the buyer.

MR. HARRINGTON. I might clarify [that] Under the first section, where there is a blanket encumbrance, not only must the initial deposit be impounded, but all monies that are paid must be impounded until such time as there is a release from that blanket encumbrance

CHAIRMAN HANNA: [Then, in the instances testified to by Mr. Walker], all of that money should have been impounded—or bonded—right up to the present time, since he just testified to us that it has not been paid?

[7] Mr Harrington cited Sections 11013 2 and 11013.4, Business and Professions Code

MR. HARRINGTON: Yes, sir.

CHAIRMAN HANNA Alright. Has your office taken any action in that matter?

MR. HARRINGTON Yes, sir We have made our investigation, we have turned the entire matter over to the district attorney who, according to the Business and Professions Code, is the one to prosecute when there is a violation of law. That pertains to Tract 2317.

Mr Harrington also observed that the Division of Real Estate (1) must be informed any time there is a sale of five or more lots in a subdivision; (2) must be reported to when a purchaser of five or more lots offers them to the public, (3) must be apprised by a subdivider as to the type of document that he intends to use to convey title or equitable interests; (4) must approve the form of contract to be used. Mr. Harrington pointed out that, in the case at hand, each of these requirements was violated

Chairman Hanna asked him if it would be desirable to require full disclosure of encumbrances on property to the prospective buyer. "I think it would be a good thing," Mr Harrington replied, "but I am not so certain that it would mean too much to [most] purchasers They still don't understand what they are getting into " He suggested, as an alternative, that further attention be given to bond requirements.

Mr. Herbert Smith, Assistant Commissioner of Corporations, was the next individual to testify He told the committee that his division had received information that Aero Properties had created a series of promissory notes which were sold to Los Angeles Trust Deed & Mortgage Exchange for ultimate sale to the public "On December 10, 1959, we issued a Desist and Refrain Order to a number of corporations—among which was included Aero Properties—ordering them not to sell or offer for sale to the public promissory notes secured by deeds of trust for the reason that they did not have a permit from the Commissioner of Corporations and, further, that the named companies did not have a license as a security broker," Mr. Smith related [8]

Mr. Smith also reported that Mr. Alfred Littman, identifying himself as the controlling person in Aero Properties, had created some 288 promissory notes secured by trust deeds. "Those notes were then acquired by Los Angeles Trust Deed & Mortgage Exchange which, according to the testimony, actually put up the money and [they] were sold by that company to their investors " Mr Smith then modified this statement to the extent that the notes might have been executed by Globe Service Company "or one of those other properties " [9]

Mr. Smith stated his opinion that "these notes do constitute a series, all executed by the same maker, each being offered to the public" and that, therefore, the act comes within the scope of the Corporate Securities Law. The penalty for violating the law is a felony, he noted, and to issue and sell securities without a permit from the corporations commissioner is a felony.

[8] Among the corporations referred to by Mr Smith was L A T D which first objected to the order and demanded a hearing, then withdrew the demand Consequently, the order stands

[9] The "other properties" were identified as Quality Properties, Loyalty Properties, Challenge Properties and Dependable Properties—all of which, according to Mr Smith, were controlled by Alfred Littman.

In response to a question by Assemblyman Rees, Mr. Smith stated that the Division of Corporations has information that a principal of L.A T D. is a 50 percent holder of a corporation held by either Globe Service or Aero Properties, "or one of those other companies" [10]

Mr. Denny Dennison, speaking as president of the Independent Mortgage Bankers Association, expressed concern over the revelations made at the hearing and warned that, "if not corrected now it might very well happen again—especially when a slide in our economy occurs" He showed the committee clippings from newspapers in San Diego, one of which reported, in August, 1959, an instance where there was $78,000 worth of financing on a $35,000 home He then itemized certain general reforms which he considered ought to be enacted by the Legislature and promised to elaborate on them at a subsequent date

"* * * I would like to make very clear that the type of trust deeds that have been discussed here today are discounted trust deeds. They are not "hard money" trust deeds * * * It would be an unfortunate situation to have the thousands of ethical brokers [in 'hard money' trust deeds suffer from unwarranted publicity here]."

Upon conclusion of Mr Dennison's remarks, Chairman Hanna declared the hearing adjourned.

[10] On May 20, 1960, in his Findings of Fact and Conclusions of Law *(Securities & Exchange Commission* v. *Los Angeles Trust Deed & Mortgage Exchange, et al.)*, U S District Judge Thurmond Clarke stated, "The evidence suggests, but does not fully establish, that David Farrell had a 50 percent stock interest in [Aero Properties, Inc]"

SUMMARY OF PUBLIC HEARING HELD IN LOS ANGELES

May 31, 1960

COMMITTEE MEMBERS:

John A Busterud, Bruce V Reagan, Thomas M Rees, Bruce Sumner, and Richard T Hanna, Chairman

WITNESSES:

Herbert A Smith, Division of Corporations
Donald McClure, Division of Real Estate
Arthur W Cozad, Safety Escrow Corp, Safety Trust Deed Purchase Sales Co and Arthur W Cozad Realty Co
Richard Wright, California Real Estate Association
B J Zimmerman, Mortgage Refinance Co
Denny Dennison, Independent Mortgage Bankers Association

The hearing was conducted in Room 916 of the Mirror Building in Los Angeles and was called to order at 10 a m by Chairman Hanna The latter opened the hearing by stating that there are three basic areas of mortgage financing with which the committee is concerned These consist of · (1) the cost of a home to the buyer, (2) the flow of money into primary and secondary financing for home construction, (3) investor interests—especially of persons investing in secondary financing

On the day of the hearing, the plan of Corporations Commissioner John G Sobieski for the formation of trust deed certificate companies was promulgated, subject to modifications[1] In this context, then, much of the testimony given by **Mr. Herbert A. Smith,** Assistant Commissioner of Corporations, related to that proposal

In his opening remarks, Mr Smith stated that the Corporation Commissioner's primary interest lay in the security aspects of the trust deed business and he proceeded to describe, in general terms, the problem areas confronted by the Division of Corporations in developing regulation

Mr Smith then outlined the plan as providing that (1) minimum capitalization of the companies in the "pool" would be $100,000; (2) trust deeds going into the pool would be appraised by "qualified appraisers"; (3) fractional interests in the pool would be sold in the form of certificates, (4) the certificates would not be worth less than $1,000 par, (5) certificates would be sold in a 10-to-1 ratio—i e, $100,000 capitalization could support $1,000,000 worth of certificates; (6) the certificate-to-capital ratio could decrease at intervals, depending on the amount of capitalization, (7) documents evidencing the trust deeds going into the pool would be placed in a bank or escrow, (8) aggregate par value of trust deeds would not exceed 100 percent of the appraised value of the respective property, (9) properties securing the trust deeds in the pool would be diversified as to location, (10) officers of participating companies would be bonded, (11) the companies would be required to report periodically to the Commissioner and to certificate holders as to the status of the fund, (12)

[1] The plan has since become popularly known as the "Sobieski Plan" and, as such, is referred to herein

advertising would be subject to supervision and examination by the Division of Corporations

ASSEMBLYMAN REAGAN * * * What markup are you planning on allowing for placing these second trust deeds into the [pool]?

MR SMITH The markup would be about 15 percent In the typical example, the representations would be before the commissioner. The cost of acquisition and the servicing, processing, advertising [and so forth] Now, if trust deeds were purchased * * * at 70 cents on the dollar and you permitted up to 16 percent to be added to that—making it 86 percent—the remaining 14 percent would be held as a reserve

ASSEMBLYMAN REAGAN Suppose the whole package of trust deeds were bought at 50 percent discount, we'll say. Then you would allow 16 percent of what? * * *

MR SMITH There have been two [thoughts on this] . .

ASSEMBLYMAN REAGAN: It would be 32 percent

MR SMITH It's merely * * * the addition of 16 percent to the 50 percent, or 66 percent.

ASSEMBLYMAN REAGAN. It actually would be a 32 percent markup, then

MR SMITH That's right

Assemblyman Reagan took occasion to condemn the Sobieski Plan as "lending dignity to a very risky business and giving an implication of investment quality to something that just doesn't have investment quality inherently "

Mr Smith's rejoinder was to the effect that he had always had a conservative point of view and believed second mortgage investments to be highly speculative. He stressed that only the knowledgable investor should deal in them "But I have listened to the mortgage loan brokers present their case * * * on six different occasions now and they have some very strong points in their favor " These he cited as being the low rate of foreclosures and the unavailability of money for secondary financing through traditional lending sources

Assemblyman Busterud wanted to know how an investor could exercise his rights if his certificate (or certificates) went bad. Mr Smith replied that if the company issuing the certificates defaulted, all certificate holders would proceed against the entire fund and assets of the company.

It then appeared to Assemblyman Busterud that, under the pool arrangement, many sound second trust deeds would be mixed with inferior types At this point Chairman Hanna pointed out that the Sobieski Plan "isn't going to do away with the situation where brokers who sell trust deeds individually are all put out of business " He noted that a discount broker is not obliged to join in the pool arrangement and Mr Smith concurred

Chairman Hanna was curious as to whether the Corporations Division had considered the various problems arising from the types of "purchase money" trust deeds.[2] The witness stated that his office

[2] These he characterized as (1) a note with regular payments applying to both principal and interest and amortized by a specific date, (2) a note with payments applying to interest only so that, at the end of a specific period, the entire balance comes due (i e, "balloon payment"), (3) a note calling for fixed regular payments but without a "due" date, with the effect that little is paid on the principal, and the life of the note may extend beyond even that of the first trust deed

hadn't considered prohibiting balloon payments. "I do think that if there is an amortization, either of the first or the second, on a reasonable basis, it creates equity in the second which * * * is the security behind the note that the investor is buying—either directly or indirectly," Mr. Smith said.

Taking a hypothetical situation where a $100 note is bought by a discount broker for $60 and resold to an investor for, say, $98, Assemblyman Rees wondered whether that wouldn't constitute "a certain amount of watering?" Mr. Rees asked how the investor would be protected from this under the proposed regulations. Mr. Smith answered that it would depend upon whether the obligor pays off. "If he pays it off, well, then, the buyer is obviously protected" He took occasion to point out that currently everything is represented to the investor by inference. "They don't execute any written guarantee that, in the event this promissory note goes into default and there is a foreclosure, [the note] will be replaced" Turning to the main point of Assemblyman Rees' inquiry, Mr. Smith stressed the diversification aspects of the Sobieski Plan (i e, the only real way to afford the investor protection is to minimize the likelihood that trust deeds with a default potential will get into the pool in the first place).

Assemblyman Reagan expressed grave concern as to how diversification could be assured. He alluded to an example offered by Mr. Smith according to which only a certain percentage of trust deeds in a particular company's offering could come from a certain county. "* * * You might have a subdivision of 5,000 acres that was on the border between Los Angeles and Orange Counties, for instance, and have the whole financing in one package where it would be one borrower, one series of trust deeds, and one piece of property and no diversification at all, but it would be in two different counties" Mr. Smith conceded the matter of diversification to be a difficult one and stated that the idea was more of a *direction* than a *requirement*.

Assemblyman Sumner was curious as to the likelihood that trust deed operators participating in the plan would attempt to represent that they were functioning under the control of the State of California.

> MR. SMITH: That would be something that would have to be watched very carefully, and it might follow, Mr Sumner.
>
> ASSEMBLYMAN SUMNER: And you couldn't prevent them from doing this * * *
>
> MR SMITH: Well, we don't permit our licensees to advertise "licensed by the State of California," or "supervised by the Commissioner of Corporations" * * *
>
> ASSEMBLYMAN SUMNER: But they could [say it] when somebody walks in the door
>
> MR. SMITH That's right [and] I couldn't say that word would not get around. I think it probably would

Pursuing the same point, Assemblyman Busterud asked if there would be anything to prevent plan participants from reproducing the permit issued by the Division of Corporations and handing copies out to prospective investors Mr. Smith conceded this could be done and added that, while the permit says on its face that the division does not recommend or endorse the security, it is possible that the effect could be the same.

Chairman Hanna wanted to know whether the division could make a determination on trust deed certificates as to whether they were "fair, just and equitable" with the same degree of expertness as is the case presently with respect to stock issuance Mr Smith replied affirmatively

After excusing Mr Smith, Chairman Hanna read into the record a letter from Mr Edward D. Landels, spokesman for the California Bankers Association.[3]

Mr. Donald A. McClure, Assistant Commissioner of Real Estate, next appeared before the committee Mr McClure reported on actions taken by his division as a consequence of laws enacted by the 1960 Extraordinary Session of the Legislature In regard to A B 80, he stated that, with the advice of the Attorney General, changes had been made in the bond forms required of real property loan brokers. As to the regulations called for by A B 84, these had been formulated and, in accordance with legal requirements, hearings on them had been scheduled Mr McClure then made available to committee members the new bond forms and the proposed regulations

Chairman Hanna then inquired as to the status of revised regulations relative to the contract form used in the sale of real property (i.e, action required by A B. 85). Mr McClure replied that his staff had not yet reached that point

Following the noon recess, the next witness called was **Mr. Arthur W. Cozad,** president of Safety Escrow Corporation as well as two other firms in the real estate business Mr Cozad told the committee that he had been in the business for 46 years and that his experience was varied The subject at hand being the handling of trust deeds, Mr. Cozad addressed himself entirely to that operation. In his view, a "good" trust deed is one which has passed the tests of appraisal of the securing property, credit check of the home buyer, satisfaction that the trustor is occupying the property

Mr Cozad said that his Safety Trust Deed Purchase Sales Company makes large loans to builders for land acquisition When the land is subdivided, the loans are broken down into individual lot loans (which are subordinated to contruction loans) The terms of the loans are one year at 7 percent, with a six month extension option at 10 percent The builder pays off the loans out of proceeds from second trust deeds placed on the homes he has built when the homes are sold. To protect the builder and lender against a loss from a trust deed, according to Mr Cozad, Safety Escrow Corporation holds 10 percent of the par value of the note in escrow until it has "payed out." If the builder does not satisfy the terms of the loans, the properties securing same are deeded over to the lenders

Chairman Hanna then recalled, as an illustration, a situation that occurred in Fullerton where something "went sour" in the financing "In this particular case we assume the builder bought land from his own funds and obtained construction loans from a savings and loan association As construction progressed, he ran into problems with the required drainage and other things on which he had not planned. To get additional capital, he borrowed from your [Mr Cozad's] clients

[3] Inasmuch as Mr Landels covered the same points contained in this letter upon his appearance before the committee in San Francisco, the reader is referred to the summary of that hearing

This was done by placing interim trust deeds on some thirty lots. Their par value ranged from $2,500 to $3,000 and the notes were not discounted After completing his homes, the builder found that he could not pay off the interim seconds that were due. Moreover, he could not make payments on the construction loans Now, * * * what did you do to [forestall foreclosure and thereby protect your clients]?"

Mr Cozad replied that he and his associates obtained new loans on the property and had the homes deeded to his firm. "I think we have about $40,000 [invested in these homes at present] " Mr. Cozad explained that "if we didn't protect our clients, * * * this condition would hurt [the reputation of] our organization " On the other hand, Mr Cozad's clients agreed to wait until the homes are sold before taking "pay off " The homes were listed at $27,500 Under the plan that is being followed, if buyers make a sufficient down payment (i e., enough to pay off the interim seconds and escrow costs), the construction loans automatically become purchase loans Otherwise, a purchase loan is negotiated and a new second trust deed is sold to pay off the interim second

> CHAIRMAN HANNA * * * You went in and acquired title from the builder, with all the burdens on the property Now, the burdens at this time were, as I take it, the liens that were against the property by the subcontractors
>
> MR. COZAD · And taxes
>
> CHAIRMAN HANNA The taxes and the payments that were due under the first trust deed [as well as] the interest that was due on the second trust deed
>
> MR COZAD And all of the upkeep of the property
>
> CHAIRMAN HANNA * * * Now, what do you feel this involved * * * in terms of additional investment on your part?
>
> MR COZAD I would say [that] * * * the only way we can get it back, of course, is through the sale of the property * * * We are not [beaten] until we sell the property and lose * * *

At a later point in his testimony Mr Cozad told the committee, "We didn't have to do this * * * We could have let them foreclose * * *, but still our organization would have been 'out' about * * * twenty investors or so, so it wasn't good business and, besides, we told them that we would stand back of the deal."

Chairman Hanna wanted to know if the practice of arranging payments outside of escrow is used "to take care of the problems of building a proper foundation for loans on homes " Mr Cozad declined to assess the extent of the practice, but conceded it would not suprise him to find it being done The Chairman then expressed the belief that "escrows are reciting typically that money is to be paid out of escrow which * * * is never paid" and he wondered whether this wasn't one way to mislead trust deed investors into thinking that there is equity in a note when in fact, such is not the case Mr. Cozad said this sort of thing was possible and admitted that he knew of instances where it had occurred.

The committee next heard from **Richard Wright** who announced that the California Real Estate Association had initiated its own studies on the problems of the mortgage market " * * * We shall invite representatives of all interested groups, including builders, title companies, banks, savings and loan associations, and mortgage bankers to join us

in an industry-wide conference to pool our views and ideas and to draft a mortgage bill we can all support."

Mr. Wright then set forth four "guide lines" for the committee's consideration

1 "We should never succumb to the frequent cry, 'There ought to be a law!'." He alluded to the Aero Properties situation scrutinized at the Buena Park hearing and observed that there were violations there of laws already in force "What is really needed in cases of this type is more expeditious and effective enforcement of existing law and protection for the dishonest dealer's innocent victims."

2. Any new legislation ought to be in the "simplest and most uncomplicated form that will do the job." Mr Wright expressed the apprehension that unscrupulous persons might be able to turn to their advantage more complicated statutes, while reputable businessmen would become enmeshed in "strangling" regulations. He also maintained that a "handful of dealers" in the mortgage business have occasioned all the grief.

3 Legislation ought to assure ethical dealings "Planned trust deed investment plans of the type now being offered by the * * * 'Ten Percenters' have a built-in incentive to be deceitful."

4 "It is always unwise to ram a bill through before careful study can be given all [its] ramifications" Mr Wright complained that, at the 1959 Regular Session of the Legislature, "important changes in the Real Property Loan Brokage Law were enacted with critical amendments being tacked on at the last minute," He asserted that two defects were incorporated in that law with the result that one had to be removed during the 1960 Extraordinary Session.

Mr. B. J. Zimmerman appeared before the committee and identified himself as president of Mortgage Refinance Company. In the witness' opinion, the problem of secondary financing has been "over-magnified" beyond its true importance. He exonerated from suspicion of malpractice those types of trust deed sales not characterized as a 10 percent plan As to the latter, "The identifying mark in this type of operation is that the investor is not presented with the details of a deed of trust at the time the investor parts with his money." Mr Zimmerman added that, "The well-informed trust deed buyer would laugh at [the idea of] investing blindly in an unknown trust deed."

Mr Zimmerman noted the contention of "Ten Percenters" spokesmen that their operations have played a vital role in making available money for the financing of an important segment of residential construction in California "Not only is this untrue, but an examination of the type of building operation that has used the facilities of the 'money in advance' operators will disclose that it is the *marginal builder*, building in a *marginal area* and, very frequently, in an *over-built area* that is involved with the 'money in advance' operators [4] The creation of second deeds of trust upon vacant land, subsequently subordinated to a construction loan, is a dangerous type of security because not only is the house not yet built and not yet sold, * * * there is no

[4] Emphasis added

home owner being presently benefited by such financing." Mr. Zimmerman also argued that the short maturity of many second deeds of trust disregards the home owner's welfare because it compels the trustor to either suddenly come up with a large sum of money or refinance at a higher interest rate

The next witness, **Mr. Denny Dennison** of the Independent Mortgage Bankers Association, alluded to Mr Zimmerman's comments on 'money in advance operations' in pointing out that the law now requires that money accepted from trust deed investors must be held in escrow until full disclosure regarding the investment is given to the customer

Mr Dennison commended Corporations Commissioner John Sobieski for his regulations and noted that they were laboriously developed and had undergone scrutiny in six hearings

Chairman Hanna asked Mr Dennison what he thought the effect would be if a law were enacted which required disclosure to the home buyer of· construction loan cost, including the loan fee; charges; interest rate on the construction loan; the interest rate on the second trust deed for interim financing, the second trust deed at the purchase time, along with its discount and rate of interest; and the cost of the ultimate purchase money trust deed—if there had to be a transfer from the interim financing to the total financing "* * * In respect to the type of homes that we are talking about * * * today," Mr Dennison replied, "I think, when [the buyer] got through reading he'd say, 'What's the monthly payment?', and that is what * * * would determine whether he would buy or not"

Upon the conclusion of Mr Dennison's testimony, Chairman Hanna explained that the committee was pressed for time and therefore he declared the hearing to be adjourned

SUMMARY OF PUBLIC HEARING HELD IN SAN FRANCISCO

June 20 and 21, 1960

COMMITTEE MEMBERS:

William Biddick, Jr, John A Busterud, Ronald Brooks Cameron, Bruce V. Reagan, Thomas M Rees, Bruce Sumner, and Richard T Hanna, Chairman

WITNESSES:

James Alger, Marble Mortgage Co
Silas O Payne and Edward D Landels, California Mortgage Bankers Association
Martin J. Jaska, Home Builders Council
Ray K Cherry, Hadley-Cherry, Inc.
Denny Dennison, Independent Mortgage Bankers Association
Commissioner John G Sobieski, Division of Corporations
John Baldwin
Mrs Eileen Wienke
Howard C Ellis and Jack Dennis, Pioneer Certificate Fund
Leonard I Taub, Key Mortgage Co
John I Hennessy, Associated Home Builders of Greater East Bay, Inc
Robert Azevedo, C P A , of Azevedo, Rodrigues & Co.
David B Sweeney, John Tipton and Lyle C Ellis, Guardian Trust Deed Co
Howard James
Richard F Backman, Northern California Mortgage Brokers Association
Gaylord K Nye, Donald McClure and Marshall S Mayer, Division of Real Estate
Richard Wright, California Real Estate Association

The hearing was held in Room 39, Division of Highways Building, at 150 Oak Street, San Francisco Chairman Hanna opened the meeting at 10 a m by emphasizing that the committee was not concerned exclusively with problems in the second trust deed business but, rather, had an interest in the broader problem of the total flow of money into the construction industry "Our main concern is still the flow of money into the construction industry, and we are not particularly interested in seeing that juggled around," he said "We just want to see it increased * * * in a way that the cost of housing will be kept to a minimum commensurate with the true financial picture * * *".

In the course of his remarks, **Mr. James Alger** expressed opposition to the Sobieski Plan, saying "If we start supplementing our funds with big pool money or increased second mortgage lenders I don't see how we can regulate it * * * to the extent that it should be Our credit philosophy of selling houses for nothing down might provide a lot of good housing and stimulate the economy, but we can go too far," Mr. Alger added In response to a question from Assemblyman Reagan, he asserted that people ought not to deal in second mortgages unless they understand all the pitfalls and unless they had a chance to properly underwrite the credit Mr Alger stated that he had no specific recommendations to make in the way of regulation

Mr. Silas O. Payne assailed "the constant reliance on inflation to take care of the differences" in the par values on second deeds of trust and the true appraised value of the property involved, but he defended the principal of the second trust deed As to the Sobieski Plan, he commented, "Let's just say that the regulations don't go far enough; they are satisfactory but they don't go far enough " Mr Payne urged that appraisals of trust deeds placed into the proposed "pool" be made by

appraisers certified by the American Institute of Real Estate Appraisers

Mr. Martin Jaska told the committee, "I have been a chairman of the Mortgage Financing Committee and the F H A Financing Committee of the Building Contractors Association for many years and I have been a director of the National Building Contractors Association back in Washington I have had a great deal to do with attempts to stem the tide of encroachment by government on free enterprise in the construction industry and without result I have watched, in recent years, a creeping paralysis set into the [Federal Housing Administration] and [Veterans Administration] programs to the point where now they are relatively impotent It has been my feeling that F.H A. and V A. have done a tremendous job, and they have been guardians, more or less, of lending policies both within and without government-sponsored housing [But], F H A and V A have lost their importance in the mortgage financing field and what we are seeing today is * * * a symptom of a basic, underlying defect that must be corrected by legislation or other means at our disposal "

Mr Jaska expressed his disinclination to use land contracts on the following bases.

1. "In order to give veterans their benefits, we have to have the contracts notarized and recorded If the contracts are recorded, we are put in a tenuous position legally "

2 "In the event of default, unlike a second trust deed which has a termination date when the property can be repossessed, we are subject to court calendars * * * I fear for what might happen to property [if the occupant were to simply discontinue making payments and yet remain on the premises for, say, 11 months when the matter could finally get on a court calendar]"

Mr. Ray K. Cherry addressed himself principally to the proposition, envisaged in the Sobieski Plan, of selling certificates backed by a pool of second trust deeds "To me and many others this has the earmarks and the tendencies of the late 1920's * * * To proceed on the proposed basis woud only add fuel to that same fire in the way of inducing inflation with the hopes of making a fast buck " Mr Cherry also contended that to legitimitize the sale of trust deed certificates would "increase the tight money situation " He contended that the abolition of the certificates would have the effect of forcing money back into the savings accounts of primary lenders ("In effect, this is where we want the money—in the hands of the primary lenders ") As a concomitant, Mr. Cherry urged that existing loan-to-value ratios permitted primary lenders be raised

ASSEMBLYMAN CAMERON * * * On this insuring of primary financing [presumably in competition with F H A], what is your recommendation as to how the insurance is to be handled?

MR CHERRY The savings and loan associations nationally now have a proposal whereby they and the builders subscribe to a fund to insure the top 20 percent of conventional loans There is already such an operation [getting under way] in the Middle West

Chairman Hanna then proposed the following circumstances under which second trust deeds might be created:

(1) Where the trust deed is created as part of the purchase of raw land and is subordinated to a construction loan This is created prior to any improvement whatsoever

(2) A contractor discovers he has obligations to construct things which would entail financing above and beyond what he began with He then generates a trust deed

(3) A builder creates a second trust deed subsequent to construction but prior to selling the house.

(4) A builder creates a second trust deed in his own name at the time of sale and the home buyer, under contract, assumes obligation for it

(5) A buyer, in his own right, contracts to purchase solely under primary financing but, for reasons of necessity, obligates himself on a second trust deed.

With the exception of the second situation, which he considered to be "awfully difficult because of the construction in progress," Mr. Cherry agreed that these would be the situations in which trust deeds could be created.

> CHAIRMAN HANNA: * * * Let us consider the kinds of notes that could be behind those trust deeds * * * First, there is the conventional type of note which is amortized over, let's say, five years—pays interest and principal for a specific period [Then we have the "balloon" note which calls for specific payments per month and an inflated payment at its conclusion] I understand, too, that there is another type of note which has no 'due date' at all, merely so much a month until paid * * * Then we might have a note in which there was interest due only for a certain time and then all of the principal due This is sort of a super balloon note * * * Are there any types that I haven't covered that you can think of?

> MR CHERRY. No, there could [however, be many variations of the classifications you mentioned, both as to period and as to amounts].

> CHAIRMAN HANNA [Depending on the different types of notes and the time periods involved, are there different risks?]

> MR CHERRY Yes, every one is different, entirely based on the property, value, location, type of second trust deed

In response to a question from Assemblyman Cameron, Mr Cherry said he did not necessarily think the elimination of second trust deeds would have the effect of increased lending costs to both the builder and the home buyer. He based this on the proposed insuring program alluded to previously

> ASSEMBLYMAN CAMERON How long are we going to have to wait for this thing [to come into existence]?

> MR CHERRY Well, if they gave the approval of making the increased loans, I think the insuring action would follow immediately This is only one proposal that is being proposed There are many others that could follow

> ASSEMBLYMAN CAMERON You are not recommending in any sense that the government become involved in the insuring of this paper, are you?

> MR CHERRY No, sir I think that the industry could well take care of it

In response to a parallel drawn by Assemblyman Reagan to the "wild financing" in home building that took place in the 1920's with disastrous results, Mr Jaska interjected that a study made by Professor

James Gillies[1] indicated that, for the period 1925 to 1933, $25,000,000 would have been sufficient to insure the entire mortgage portfolio of California

In explanation of the proposed insuring facility, Mr Jaska told the committee that the insurance reserve would be set up from funds that would come either from the builder in a blanket premium at the initiation of the loan, or it would come from a purchaser "who would be willing to face this blanket premium to avoid this other most costly type of financing," or a combination of both

Mr. Denny Dennison, speaking as president of the Independent Mortgage Bankers Association, opened his testimony by condemning "an association of real estate brokers" for previously blocking an investigation of the trust deed business He also expressed his amazement "that the Commissioner of Real Estate has done nothing * * * about promulgating protective regulations" He went on to express his view that 30,000 homes were built and sold in 1959 by means of secondary financing "It is our further opinion that if private capital had not been made available through mortgage brokers * * * the construction industry would have suffered tremendously," Mr Dennison told the committee He cited a survey he had conducted among builders as basis for claiming "It is false to say that large, financially sound contractors do not use secondary financing"

Returning to the subject of the Division of Real Estate regulations, Mr. Dennison asserted his study of newspaper clippings describing investor losses led him to the conclusion that there was not one instance of loss that could not be precluded by joint action on the part of the Real Estate and Corporations Commissioners

> ASSEMBLYMAN REAGAN With respect to the many various types of trust deeds that are in existence, don't you think that the cost of supervision, inspection, and so on that would be necessary to police this sort of thing would be prohibitive?
>
> MR DENNISON [Judging from the work that they have already done on this subject, I would say that the Division of Corporations has a very competent staff] Bearing in mind, then, [that probably 95 percent of the discounted seconds are behind savings and loan associations' firsts, and those firsts are predicated by the associations' appraisal, an experienced man checking through these transactions will not fail to see a connection].

Responding to a doubt expressed by Assemblyman Reagan regarding required reserves for companies issuing certificates, Mr. Dennison said "What more can you do than say to such a firm, 'You are not going to make any money unless your investors do'?"

In answer to a question of Assemblyman Sumner who wondered if the Sobieski Plan would prevent the operation of trust deed businesses as is currently the case, Mr Dennison maintained that a "fringe operator" who wasn't seeking to operate a "solid business" would obtain a permit from the Division of Real Estate "In fact," he added, "the man who went under the Corporations Commissioner would be at a disadvantage because he would be competing with the man who [would be buying a different kind of paper, making misrepresentations, offering no prospectus, and so forth]."

[1] Prof Gillies is on the faculty of the Graduate School of Business Administration and Economics, University of California at Los Angeles.

ASSEMBLYMAN SUMNER [If similarly stringent regulations are not promulgated both by Corporations and Real Estate], all you are going to do is leave one area entirely open where a different type of investment company could operate

MR DENNISON [No, even assuming I was licensed by the Division of Real Estate, I still could not pool my money with that participating in Corporation's fund] I could still not get into a continuous reinvestment program with other services and not have an investment contract If I did, the Corporations Commissioner would say, "You would need a permit * * *

Mr Dennison agreed with Chairman Hanna's view that a restriction on the percentage of loan to value, with the second and first trust deeds combined ("Whether it be 92 percent, 94 percent or 95 percent"), would hinge upon a trustworthy appraisal.

Mr. Edward Landels opened his testimony by expressing doubt as to the authority of the Corporations Commissioner to regulate the trust deed business by virtue of his present administrative powers He also maintained that the commissioner, in effect, would be issuing "open end" permits under his plan. And, beyond that, "* * * These regulations purport to make these almost demand institutions providing that every certificate shall provide that it may be redeemed at any time at the option of the holder, [with the reservation] that they may postpone the day of payment six months. Now, even savings and loan associations can't do that " Mr Landels asserted that "It will take a new law setting up a new kind of institution with continuing authority to sell certificates to the public as a savings and loan association sells them to investors."

Commissioner John G. Sobieski told the committee that he was convinced that the reason for the "outrageously high discounts" in some trust deed operations lay in the shortage of money (i e, the federal government's "tight money" policy) "That's a condition that we are facing and as long as that shortage of money exists there will be two alternatives," Mr Sobieski commented "The little man will either not get the home or he will pay through the nose [many] are doing at the present time And, for a lot of people, they are willing to pay through the nose and get the home and that is good for the country. It is good for the economy to have the home and a lot of things * * * are more important than financing."

Rebutting Mr. Landels' assertion that he lacked authority, the commissioner cited Section 25508 of the Corporations Code commenting, "Any applicant for a permit is going to conduct his business according to the rules I have formulated because, of course, I can revoke his permit at any time." Mr. Sobieski alluded also to Sections 26101, 26103 and 26104 of the same code

As to Mr. Landels' claim that "open end" permits would be issued, Mr. Sobieski said "* * * When a company comes before me for the purpose of applying for a permit, [it has to state how many securities it proposes to issue] and unless it states that, I don't know what fee to collect " He assured the committee that any company applying for a further issuance would find its record of appraisals being checked closely by a qualified appraiser

The commissioner conceded Mr. Landels' point regarding the creation of a new type of investment activity, but claimed that "a fairer

type of competition" would obtain than is now the case between savings and loan associations and banks

Chairman Hanna posed a hypothetical situation where a contractor builds a $10,000 house with the idea of making $500 profit The builder obtains $8,500 financing and creates a second trust deed that sells for $2,000, although it is "pegged" at $3,200

> CHAIRMAN HANNA Now, my question to you is that after you have taken the cost factor out * * *, does the trust deed operator at this point get a portion of his profit out of the transaction * * *?
>
> MR SOBIESKI * * * No profit is taken and all receipts over what is paid to the certificate holders have to go into the reserve until losses have been paid and the loaning charge has been earned back * * It we assume that * * the property is in the hands of a homeowner and the homeowner meets the requirements of the credit and also the property meets the requirements as to value, why then we hope no one will be holding the bag
>
> CHAIRMAN HANNA [In this situation, the appraised value of the house] ought to be somewhere near $10,500 since that is the real value of the house If that is true, then a contractor cannot "bail out" of a situation right at the beginning * * *
>
> MR SOBIESKI That is correct. * * * We will check these appraisals * * * If they don't have an appraisal on file, they violate the rule right there * * *
>
> CHAIRMAN HANNA I think this is a very important point * * * because the [types] of second trust deeds that we see now address themselves to the problem of a discount market and they have to balloon the price of the house to anticipate what the discount is going to be It is in this process that we get the water in the second trust deed

Chairman Hanna wanted to know if, under the certificate pool devised by Division of Corporations, the speculative builder could operate

> MR SOBIESKI. * * * It might be well to err on the side of making the regulations a little tough than not But as to the 8% [holdout for the contractor that you mentioned before], I have talked with * * * people in the trust deed business and they feel that they can operate under this and [still get a volume in trust deeds] * * * Where a person has no equity whatever of his own in the property, he is liable not to be as good a risk. * * *

With respect to Edward Landels' charge that demand deposit-type of savings institution was being created without the reserve requirements of such institutions already in existence, Mr Sobieski stated that a trust deed firm's prospectus and selling information ought to make it "abundantly clear" that trust deed investments do not have the safeguards that, say, savings and loan associations have.

The first witness on June 21, **Mr. John Baldwin,** told the committee that he had had 35 years' experience in real estate and, as a result of it, he was convinced that there is a need for secondary financing in some form. Mr Baldwin commented favorably upon the plan advanced by Commissioner Sobieski and warned that something be done soon to avert a debacle.

Attorney **Howard C. Ellis,** representing Pioneer Certificate Fund, told the committee that he had served as Acting Corporations Commissioner during "Boom and Bust Days" of the twenties He countered Mr. Landels' objections to Commissioner Sobieski's "legislation." "The commissioner has that power, he has been legislating * * * for 35 years and no one seems to have worried unnecessarily about it But it is under the rule they can follow which is given to all administrative bodies—

the Legislature gave [them] that." Mr Ellis asserted He saw a virtue in the ability of the commissioner to alter his rules whenever he deems it necessary, whereas legislation tends to "crystallize" things Mr Ellis pleaded on behalf of Mr Sobieski that the latter be allowed to try out his plan ("If he fails to do what he has attempted and intends to do, it is time enough for legislation ")

Mr. Jack Dennis, president of Pioneer Certificate Fund, seconded the testimony of Mr Ellis In questioning of Mr Dennis, Chairman Hanna elicited the following information Pioneer Certificate Fund is a corporation in name only It has applied for stock amounting to $100,000 Mr Dennis worked in the sale of real property between 1946 and 1956 when he joined the San Francisco office of Trust Deed and Mortgage Exchange as an "account advisor " He left the firm at the time the S E C filed suit against it in 1958 From that time until April, 1959, he worked for Guardian Trust Deed Corporation, leaving that firm to accept the position of vice president and general manager of Pickman Trust Deed Corporation Mr. Dennis defended the record of the latter as to the selling of trust deeds, ascribing its difficulties to purchasing [2]

Mr Leonard Taub said his firm has dealt primarily with "sophisticated investors" and has not run a "Ten Percenter" operation He strongly urged that operators of certificate plans ought to be dually licensed as security brokers with the Division of Corporations and as real estate brokers under Division of Real Estate He told the committee he had found "gross ignorance" among trust deed salesmen he had talked to with regard to the real estate business "They were mostly salesmen just shoveling money in from the public and when [questions of a pertinent nature were asked them, all they could respond was], 'We don't know too much about this, but a lot of people are buying this so it must be good' "

Mr Taub described his business as being primarily the handling of trust deeds wherein a home owner arranges to sell his house to another party and the second party requires a second deed of trust in order to close the deal The original home owner is likely to "carry back" the second for a few months and then eventually tends to sell it through a broker such as Mr Taub [3]

> MR TAUB And I predict that there is an equal, if not greater, volume of those seconds available than [in the case of] new construction Nothing has been said about those
>
> CHAIRMAN HANNA I think the reason for that * * * is, by and large, they haven't created the problems, * * In the major instances where the old home is sold, the second trust deed represents the true difference between the assumption of a first trust deed the payment of the down payment, if any, and the full sale value of the house
>
> MR TAUB In [70 or 80 per cent] of the cases that is so
>
> CHAIRMAN HANNA * * In that instance the person who takes the brunt of the discount is the seller of the old home Under new construction the discount is anticipated [and passed on to the purchaser of the home]
>
> MR TAUB * * * In 70 per cent of the cases—yes * * *

Mr. John I. Hennessy, speaking as much as co-chairman of the Carpenters Pension Trust Fund for Northern California as executive

[2] See testimony of Marshall S Mayer, below
[3] This is an example of the so-called "hard money" operation

vice president of the Associated Home Builders of the Greater East Bay, maintained that the "real core of the problem" was the lack of prime money in California ["I am of the firm opinion that it is possible to solve this problem through] the investment program that is going on now with the California State Teachers' Retirement System and with the California State Employees' Retirement System."

Mr Hennessy described how the Carpenters' Pension Trust Fund two years ago set up a program whereby 25 per cent of the money derived from employer contributions would be invested in F H A and V.A mortgages originating in Northern California At this time more than $2,000,000 is invested and "it is going in at the rate of $400,000 a month " After all service charges and fees are paid, according to Mr Hennessy, the money is yielding 5 695 per cent on F H A mortgages and 5 715 per cent on V A 's—assuming 12-year amortization in each case

He reported that the last fiscal report of the California State Teachers' Retirement System showed a yield of approximately 3 per cent on a fund of approximately $401,000,000

The yield on investments of the State Employees' Retirement System, said Mr Hennessy, was 3 per cent or, at the most, 3 4 per cent This was on a fund totaling more than one billion dollars

"It is legal for the State Teachers' Retirement System to make investments in mortgages However, I am informed that all of the money now goes to New York for investment By virtue of the fact that the maximum yield, consistent with the safety of the funds and the cash requirement of the funds, is not being obtained, the employees working for the State and the teachers * * * [are being deprived, in my opinion], of benefits to which they are otherwise entitled * * *," Mr Hennessy asserted

He went on to point out that more than $60,000,000 of the New York State Teachers' Retirement System funds is presently invested in F H A mortgages, "the vast majority of which originated in California "

Mr Hennessy maintained that, if money from the Teachers' and the State Employees' Funds were to go into mortgages to the extent of between 25 per cent and 40 per cent, this would mean something in the neighborhood of $500,000,000 would be available At this juncture, in response to a question from Assemblyman Reagan, Mr Hennessy said, "I am of the firm opinion that if a sufficient supply of money becomes available for first mortgages that this problem before you about regulating '10 percenters' * * * would be moot—it would no longer exist "

CHAIRMAN HANNA * * * How [far] has your Carpenters' Fund moved into this field?

MR HENNESSY: * * * We are purchasing at the rate of $400,000 per month Ultimately it will amount to approximately 25 million dollars when the fund levels off * * *

CHAIRMAN HANNA. * * * Isn't it true that in New York and several other eastern seaboard states the party or institution investing in out-of-state [mortgages has to pay one-half of 1 per cent tax]?

MR HENNESSY I am not sure about New York [In the case of Massachusetts, I am sure there is a one-half of 1 per cent tax] on money being shipped out * * *

ASSEMBLYMAN REAGAN: Many of them also pay one-half of 1 per cent service charge to a California institution for servicing the mortgages out here.

The committee then called **Mr. David Sweeney** who identified himself as president of Guardian Trust Deed Corporation and a member of the board of directors of Systematic Savings and Loan Association Mr Sweeney, along with accountant **Robert Azevedo,** had been subpoenaed for the hearing Mr Sweeney told the committee that his firm buys existing first and second deeds of trust as a principal and resells these at a discount to purchasers so as to net each purchaser a yield of 10 per cent per annum

The committee was assured by Guardian's president that his firm obtains a title report, credit report on the trustor, appraisal of the property, and verification of amount, terms and balance of the existing first and second trust deeds prior to purchasing a trust deed. "When our purchase has been completed," said Mr Sweeney, "we offer to sell the deed of trust to one of our customers. All pertinent information concerning the deed * * * is given to this customer."

Mr. Sweeney went on record as endorsing the Sobieski Plan and he commended Real Estate Commissioner W. A Savage "for his insistence that all purchasers be required to receive essential and complete information concerning the proposed purchase "

In questioning of Mr Sweeney, Chairman Hanna elicited the following facts Mr. Sweeney does not have a real estate broker's license, although all his salesmen hold real estate licenses He previously was president of Systematic Savings & Loan for a period of two years and has been selling second trust deeds for about one year now During the past year the Divisions of Corporations and Real Estate each have audited Guardian once. Guardian has taken in approximately $6,000,000 in investors' funds.

Chairman Hanna asked Robert Azevedo about a figure, described as "Retained earnings," on the firm's balance sheet. Mr Azevedo assented when the chairman asked if this represented a deficit balance

CHAIRMAN HANNA In other words, you are not making much money?

* * * * * * * * *

MR DEGOFF.[4] * * * The reason why we show expenditures in excess of income is because we have set aside reserves for servicing contracts and reserves for losses which is something very unusual to find a corporation doing * * * without being required to do it and without being regulated to do it.

CHAIRMAN HANNA: You mean regularly they just wouldn't operate on sound business practices?

* * * * * * * * *

MR DEGOFF: * * * I don't know what the industry in general has done I do know that Guardian Trust Deed Corporation has organized and has conducted its business in this sound business method which you just referred to.

CHAIRMAN HANNA: * * * I just thought it interesting when you commented that this was unusual.

MR DEGOFF Well, I don't know what others have done I know that Guardian has made this reserve and that is the reason for the apparent excess of expenditures over income.

In a question directed to Mr Azevedo, Assemblyman Cameron wondered about a difference between the "Cash—trust funds" account on the "Assets" side, and "Customers' deposits" entry on the "Liabilities" side of the balance sheet. The entry on the "Liabilities" side showed an amount greater by $12,581 27.

[4] Mr. DeGoff indicated he was an attorney representing Guardian Trust Deed Co.

MR AZEVEDO: The reason [for] the difference is a transfer check from the trust account to the general fund, which [Guardian normally makes every two days or so], was overlooked in recording the disbursements and reconciling the items between the two accounts during the month and this was uncovered immediately after the month and then was, of course, taken care of.

ASSEMBLYMAN CAMERON But you didn't make any adjusting entry as of the end of the month so that the statement would reflect what it properly should be.

MR AZEVEDO. No, sir This is exactly how it stands with the cash in the bank We do not set up a "receivable."

As a result of further questioning by Assemblyman Cameron, Mr Azevedo stated he had never made an audit examination of Guardian Trust Deed, that he was called upon only to prepare monthly statements on the basis of the books and records and would not be in a position to make a statement as to their accuracy

Chairman Hanna asked Mr Sweeney whether any notes currently backing his trust deeds were in default

MR SWEENEY I believe—I don't have the actual figures—but I believe probably somewhere, dollar-wise, I would say somewhere in the neighborhood of $50,000 or $60,000 Is that right, Bob?

MR AZEVEDO I don't have the amounts either

* * * * * * * * *

ASSEMBLYMAN CAMERON. Well [you] have advanced more money in default payments than that, according to the balance sheet, so you must not have advanced the total amount of the [portion that is owed] These "Advances on notes in default" would be payments on the first notes that are in default in order to protect the second, wouldn't they?

MR AZEVEDO Yes, sir

ASSEMBLYMAN CAMERON: Certainly the advances to protect your seconds would not be the total amount of the second note

MR AZEVEDO That's correct

ASSEMBLYMAN CAMERON So there is no indication on the balance sheet as to what is in default in aggregate amount?

MR. AZEVEDO: That's right.

Mr. John Tipton, vice president of Guardian, stated, in answer to a question, that trust deeds are recorded in Guardian's name at the point of acquisition He said that the investor is then given information on the existing lien, the trustor, the property, and its location so the prospective purchaser may see the property. "When they approve that in writing we then record the trust deed [in the buyer's name]."

CHAIRMAN HANNA * * * You have a depositor who is depositing money [with you] and when he gets enough money that he can buy a trust deed, you submit [one of these "sale orders" to him]?

MR TIPTON Well, not exactly We have a minimum amount that we accept from the depositor [That is $2,000]

CHAIRMAN HANNA And until a man gets a trust deed, where is that money held?

MR TIPTON It is held in the Trust Account

CHAIRMAN HANNA Is the trust account itself bonded? Or is it just the officers that are bonded?

MR TIPTON We have a $100,000 fidelity bond that covers everyone connected with the organization

Chairman Hanna asked Mr Sweeney what procedures were used to notify the holder of a second trust when either it or the first becomes in default. The latter stated that Guardian "immediately" uses its

own servicing facilities to proceed with collection, but did not fully answer the question

CHAIRMAN HANNA Do you in all cases notify the person that the situation [of default] exists * * ? Or do you just do it over a period of time [in which you try to collect]? * * *

MR TIPTON I think that would depend on each individual case * * *

* * * * * * * * *

CHAIRMAN HANNA In any case do you provide the customer with another trust deed and then take yours into the inventory—sort of a trade arrangement?

MR TIPTON Not as a trade arrangement We have bought them back from the customer and resold him another

CHAIRMAN HANNA Oh, I see You buy them back and make them whole and then in both instances he reinvests in another second Is that the pattern?

MR TIPTON Yes

Assemblyman Cameron then wanted to know of Mr. Azevedo how these arrangements are handled in the accounting He asked if this was thought of in terms of advancing money on behalf of the holder of the second in order to keep up payments on the first. Mr Azevedo replied that they consider that as "advances receivable" from the trustor

ASSEMBLYMAN CAMERON And you just treat this again as an open "account receivable"? How long do you go on advancing money like this?

MR AZEVEDO I think that has been explained by Mr Tipton

ASSEMBLYMAN CAMERON [He said] that each case is different You are advancing this in theory, then, out of the $10,000 capital, plus your advances by the stockholders?[5]

* * * * * * * * *

ASSEMBLYMAN CAMERON In theory, sir, wouldn't the trust fund account be the identical balance of your customers' deposits, except for the fact that you have a technical error because of the transfer at the end of the month?

MR AZEVEDO That's correct.

ASSEMBLYMAN CAMERON. I think it would be extremely helpful to the committee if we [could see] at least a summary income statement on this * * *

CHAIRMAN HANNA Could we have that, Mr Azevedo?

MR AZEVEDO Yes, I will prepare that

In response to questions by Assemblyman Reagan, Mr Sweeney stated that interest payments are made to holders of trust deeds even when they have gone into default and that these payments are reflected, in the balance sheet, in "advances to customers"

From the literature made available to prospective investors, Assemblyman Reagan quoted the following, "Upon receipt of your funds, Guardian places them in a Trust Account at a Federally Insured Savings Institution" Mr Sweeney explained that that policy is not being followed ("I don't believe that particular piece of literature is current.") He stated that Guardian had *considered* putting the funds in such an institution, but that they decided they should be earning more interest on them The funds, according to Mr Azevedo, are in three different trust accounts at three different banks

[5] The stockholders of Guardian Trust Deed consist of Mr Sweeney and his wife

ASSEMBLYMAN CAMERON [I notice your accounting treatment of this servicing provision shows this as a stockholders' equity] Isn't it in fact a long-term liability rather than an equity item? [On that basis you have no real contractual liability with your investors to provide this service Correct?]

MR AZEVEDO That is correct, yes

ASSEMBLYMAN CAMERON. * * * It seems to me [that you have incurred at least a moral liability to continue to service these loans for your customers at no further cost to them The way the arrangement works, shouldn t this be a liability rather than an equity item in the balance sheet]?

MR AZEVEDO That is possible I think there are various opinions as to [that]

ASSEMBLYMAN CAMERON· Well, if you were taking this statement into a bank and wanted to borrow some money, do you think the banker would consider this a true equity item or would he consider it as a liability?

MR AZEVEDO I think that would [be according] to the desires of the individual banker

ASSEMBLYMAN CAMERON That's a nice answer

Chairman Hanna wanted to know if all of Guardian's notes are amortized or, on the other hand, did they entail "balloon" payments?

MR SWEENEY Many of them are not I would say that the average is not amortized in the secondary field today

CHAIRMAN HANNA: * * * What [kinds] of notes are you actually handling, then? * * *

MR SWEENEY The average note today is approximately [for $3,000 at 8%] * * * It would have a due date, ordinarily, of five years.

* * * * * * * * *

ASSEMBLYMAN CAMERON So you have a 60% maximum that would be paid and that * * * would be interest So you would end up with a $2,000 balloon payment at the end, [correct]?

MR TIPTON No, the first has also depreciated down and very often the first lender then * * *

ASSEMBLYMAN CAMERON Refinances?

MR TIPTON Advances, yes

After further questioning by the committee of Mr Sweeney and his associates, Chairman Hanna excused them with the observation that the balance sheet gave rise to some concern Mr. DeGoff responded, "We brought what was requested by the subpoena and your request for additional information will be complied with and will be mailed to you."[6]

The next witness was **Mr. Richard Backman,** an attorney, who stated he represented 15 mortgage brokers in San Francisco, San Jose and Sacramento Mr Backman's principal recommendation was that there be some arrangement whereby a broker would assure an investor of indemnification covering a set period of time

The committee next heard from **Mr. Gaylord K. Nye,** Assistant Real Estate Commissioner for Northern California Mr Nye proceeded to relate the various trouble areas which his office has encountered in the field of secondary financing

[6] On August 23, 1960, the committee categorically requested the following information from Guardian Trust Deed (1) Analysis of earned surplus since inception through June, 1960, (2) Aggregate amount of second trust deeds sold to customers that were in default as of June 30, 1960, (3) Summary monthly income statement since inception through June, 1960, (4) Summary of retained earnings since inception through June, 1960, (5) Balance sheets for March and May, 1960, (6) Most recent statement of audit Material had not been received as of preparation of this report

Mr. Nye told the committee that the division had found cases of notes which were not represented as second trust deeds (but, in fact were because of subordination to construction loans) were offered to the public as "secured" by lots in subdivisions located on steep hillsides where development would be extremely costly He cited one instance where lots were appraised by a member of the Appraisal Institute at roughly $500 each, yet the seconds involved were subordinated to construction loans issued in the amount of $3,500. Mr Nye identified the company selling the notes in question as the Pickman Trust Deed Corporation.

He told of another transaction involving 200 acres of "raw land" in the San Joaquin Valley which were purchased by a promoter for $1,000 an acre The land was to be eventually subdivided and, in order to finance the deal, the promoter had these 200 acres "quartered" "He got 800 units out of these 200 acres and had a second, or subordinated, deed of trust put on at a price, I believe, of roughly $800 each * * *," Mr. Nye related "* * * The notes approximated $640,000 and it was a simultaneous transaction in escrow in which the only money that was raised was [by means of] sale through a discount house of these notes. There was no map or record and the people who would buy in a situation like this without knowing it were joint * * * gamblers, in a sense * * *," Mr Nye asserted He alluded, then, to the possibility of mechanics' liens, bankruptcy and the risk taken on the ability of the subdivider to produce a house at the right market value.

Asked about the Division of Real Estate's staff, Mr Nye stated that he had, in his San Francisco office, one auditor and seven deputies. The auditor and one of the deputies are currently assigned full time to the "Ten Percenter" investigation In regard to progress made in acting against unethical "Ten Percenters," Mr Nye likened his staff to a fire department with limited personnel. ("You have to fight the big fires and let the little ones burn along * * *")

Assistant Commissioner Donald A. McClure reported that Commissioner Savage initiated an injunction action against Los Angeles Trust Deed & Mortgage Exchange subsequent to the enactment of legislation at the Extraordinary Session of 1960.[7]

> CHAIRMAN HANNA. * * * Do you think that with the present staff that you have you can adequately enforce the laws presently in force?
>
> MR McCLURE No, sir, we cannot There is no argument about that
>
> * * * * * * * * *
>
> CHAIRMAN HANNA Do you see any improvement for 1961?
>
> * * * * * * * * *
>
> MR McCLURE I certainly do I think this is a very fine movement in the right direction to give the agency head more rein to raise the standards to what he thinks [they] should be.

With respect to the fears expressed by Mr Dennison that the "fringe operator" would elect to operate under Division of Real Estate regulations, Mr McClure stated that representatives of his division conferred with those of Division of Corporations following the enactment of A B 80 He related that Commissioner Sobieski suggested it might be better to define the boundaries of jurisdiction after his regulations were

[7] A preliminary injunction was granted by Superior Court Judge Ellsworth Meyer on June 21, 1960 Basis of action was on grounds Los Angeles Trust Deed was acting without license of the Real Estate Commissioner.

formulated Since the Sobieski Plan has now been presented, the Division of Real Estate was now in a position to move forward Mr McClure stated emphatically that there was no likelihood practices forbidden by the Division of Corporations would be permitted by the Division of Real Estate

Mr. Marshall Mayer, counsel to the Division of Real Estate, discussed the Pickman case He stated that the division filed its accusation against the firm on March 26, 1960, and while the hearing was pending, attorneys for Pickman announced that the accusation would not be contested Division of Real Estate went through with its action and Pickman's license was revoked on June 3, 1960.

As to the causes that led to the collapse of Pickman Trust Deed Corp, Mr. Mayer pointed out that it was capitalized with $5,000 and the proprietors attempted to operate a $5,000,000 business on that basis "Also, [they] did make investments which we have learned from competent appraisers were ridiculous." Mr Mayer commented. He cited the hillside development at Montclair that Mr Nye earlier alluded to Investigation reveals that notes created on the land in question (which were sold at tax sale) are still circulating by means of discount operations.

Following a comment of Chairman Hanna's on the inflationary aspects of "Ten Percenter"-inspired construction, Mr Mayer said that Pickman's financing rate was so high that there was presently one tract in Santa Clara County "which is priced beyond the reach of the buyer for that market of homes." "First of all," he continued, "you have a 7.2 percent first [trust deed] on that for $14,800; then you have a $3,200 second, either at 8 percent or 10 percent; then * * *, in order to get the builder out, they are asking for about a $3,200 to $4,000 down payment—and these are the same homes that have to compete with '$99 Down and $99 a Month' in that area which are offering approximately the same value "

Mr Mayer said the Pickman proprietors had a million dollars in their bank account drawing no interest whatever, "they couldn't get the money out fast enough, * * * so what they were beginning to do was develop their own subdivisions to get the money out and this has been a common practice."

CHAIRMAN HANNA· And you have found that, in fact, there are some interlocking directorships * * * between these tract developers and the lending institutions actually lending money?

MR MAYER Yes, sir

CHAIRMAN HANNA Could you document one or two such specific instances for the committee?

MR. MAYER· Well, the first one would be the Pickman deal involving Shamrock Gardens where the Pickman firm went in with Mr G Edward Mitchell on that tract as a joint venture [with] Pickman putting up the entire capital contribution for the development of that property. The builder did not put up one cent.

CHAIRMAN HANNA And was Mr Pickering, separate and apart from Pickman Trust Deed, to participate in the profits of the Shamrock Gardens?

MR MAYER: Yes, he was to participate through the Pickman Development Company.

The Real Estate Division's counsel also stated that investigation discloses other instances of this sort, but he declined to name any names at this time.

To questions regarding the ability of the division to enforce the laws governing "Ten Percenter" operations, Mr Mayer stated "We are completely incapable " He described the field as being, from an enforcement standpoint, "rather fertile," and suggested that if the Legislature wanted to treble the results, it might treble the personnel assigned to enforcement.

At this juncture attorney **Lyle C. Ellis** spoke on behalf of Guardian Trust Deed He requested the committee to note that the present management of Guardian once engaged in a court battle to obtain control, although the ownership was the same "These problems which were inherited were inherited by Mr Sweeney [as recently as] July of last year and they are being rectified * * *"

Mr. Richard Wright, speaking on behalf of the California Real Estate Association, noted that it was implied on the previous day that C R E A was opposed to action "urgently needed to clean up a catastrophic situation." Mr Wright stated that C R E A has "consistently opposed precipitous, ill-considered action until we know exactly what we are doing * * *" He went on to say that "those companies which are now operating legally cannot be made illegal by adoption of regulations. Only you in the Legislature have that power by changing the underlying law." He asserted that the trust deed firms which have caused the trouble have all been in violation of present law and suggested that a new law could force many honest companies out of business while opening new loopholes for the dishonest Mr. Wright concluded by maintaining that "mass marketing of trust deeds is not only unnecessary, but, as shown today, is damaging to the public "

Mr. Dennison returned to state his dissatisfaction with the position taken by the Division of Real Estate "[We are told that, even with a good, capable staff it takes time to put a disreputable firm out of business] What has to be done is to stop it from getting started * * *" Mr. Dennison told the committee that between ten and fifteen new offices have been opened with the ten percent plan in the previous five months. "A new one blew up last week in Los Angeles * * *, so the time to stop it is before it gets started "

There being no further witnesses desirous of being heard, Chairman Hanna commented briefly on the two days' testimony and declared the hearing to be at an end.

SUMMARY OF PUBLIC HEARING HELD IN LOS ANGELES

October 28, 1960

COMMITTEE MEMBERS

Bert DeLotto, Thomas M Rees, George A Willson, and Richard T. Hanna, Chairman

WITNESSES

Charles E Smith, Trust Deed Holders Mutual Protective Assn
John T Hintz, Hintz Construction Co
Alfred Littman, principal in Aero Properties, Inc
Spencer Cowley, Home Owners Protective Echelon, Inc
John A Wylie, home buyer
David Farrell, president of Los Angeles Trust Deed and Mortgage Exchange
William E Gummerman, Security Title Insurance Co
Pat A McCormick, receiver for Los Angeles Trust Deed and Mortgage Exchange
Arthur Gordon Eldred, principal in Aero Properties, Inc
Mrs Lelah T Pierson, Pierson Mortgage Co
David A Kirsch, Mason Mortgage Co.
Logan Moore, attorney
A P Marriott, Stewart Title Guarantee Co
Edward B Henne, investor
Gerald Harrington, Division of Real Estate
Robert T Older, building contractor
Herbert Brilliant, investor
Mrs Barbara Nafziger, home buyer
E C Williamson, home buyer
Richard Wright, California Real Estate Assn

Chairman Hanna called the hearing to order at 10 a m. The meeting was held in Room 115 of the State Building, Los Angeles Civic Center

The first witness to be called was **Mr. Charles E. Smith** who identified himself as being president of the Trust Deed Holders' Mutual Protective Association Mr Smith having been subpoenaed by the committee, the chairman administered the oath as to the veracity of the former's statements [1]

Mr Smith described his association as a group of investors in Los Angeles Trust Deed and Mortgage Exchange "We wanted to know how we could get our money back * * * We found that, apparently we were victims of a gigantic scandal The average trust deed we had was worth less than half of what had been paid for it. In many cases the trust deeds were worthless, or nearly so"

The witness alleged that, while L A T D 's management had represented to investors that the trust deeds it was passing along to them were protected by the security of the American home, "In many cases we found these trust deeds had been created especially for the purpose of selling them to unknowing investors * * * [and they were based on] raw, unimproved land worth only a small fraction of what we had paid for the trust deeds"

In the L A T D operation Mr Smith saw "one of the greatest swindles of all time" and he compared it to the Equitable Plan swindle and the machinations of other confidence games on a grand scale

[1] Inasmuch as all persons appearing under subpoena were sworn in, the reader should bear this fact in mind as no further notations to this effect will appear in this summary

As to those who had entrusted their money with L A T D., Mr. Smith said, "[One] investor is a retired widow in her sixties Just a few days before the receiver took over [L A T D],[2] she invested her life savings of $5,000 in [it] She doesn't even have a trust deed to show for it They have sent her only two little slips of paper She was planning to use the income from the $5,000 to supplement her small pension and Social Security [benefits] Now she has nothing." After describing other instances of hardship, Mr Smith observed that the number of investors in L A T D might be visualized by imagining the entire population of the City of Fullerton as being the investors in Los Angeles Trust Deed and Mortgage Exchange

"As an example of the type of trust deeds that they were selling," Mr Smith told the committee, "I went out to a vacant lot in the desert on which I had purchased a $2,600 trust deed. * * * There was nothing around the vacant lot but cactus, sagebrush and jackrabbits The dirt road I had taken to get there had boulders so big they nearly took the bottom out of my automobile They were subdividing the desert in order to get trust deeds to sell * * *" At this point Mr Smith provided the committee enlarged photographs of the property in question

The witness disclosed that he and other investors were instituting suit against L A T D "and the others responsible" in federal court on the grounds of fraud, breach of contract and violation of the Federal Securities Act The plaintiffs are asking for 20 million dollars from the defendants

In conclusion, Mr Smith observed, "* * * We think the laws of this State should be changed so as to make it impossible for fast-talking trust deed salesmen to sell nearly worthless trust deeds at inflated prices to investors and rob them of everything they own"

In response to questions from committee members apropos the property shown in his photographs, Mr. Smith stated that the lot is 100′ x 110′ in area, the nearest habitation is between 15 and 20 miles distant; there is a mechanic's lien against the property [presumably for grading of a dirt road], in order to clear title to the land it "appears" he will have to pay a proportionate share of the lien, the trust deed he holds is a subordinated first (i e, a second), the subdividing was done by the All American Investment Company.

Chairman Hanna showed the witness a copy of the brochure[3] given prospective investors in L A T.D The chairman turned to page 10 of the report and took note of the following:

[2] On May 20, 1960, an injunction forbidding L A T D from violating the antitrust provisions of the Securities Exchange Act and appointing a receiver for the firm was issued by U S District Judge Thurmond Clarke On the following June 8 the receiver assumed control of the firm

[3] The brochure mentioned here is the same as the one cited repeatedly in the "Findings of Fact and Conclusions of Law" of Judge Clarke in the case *Securities & Exchange Commission* v *Los Angeles Trust Deed & Mortgage Exchange, et al*

You receive:

Copies of the following documents are then forwarded to you:

1. Original trust deed.
2. Original trust deed note.
3. Recorded assignment.
4. Title insurance policy.
5. Fire insurance policy (or memorandum).
6. Certificate of registration.
7. Transmittal letter, evidencing that all interested parties have received proper notification concerning the assignment and ownership of the trust deed

As to the first point, Mr Smith stated he did not, at any time, receive an original trust deed while the former management was controlling L A T D He made the same observation with respect to the second point and, as to the third, he told the committee that he received a recorded assignment on only one out of three trust deeds that he bought from L A T D. In that one instance he did receive a title insurance policy and a fire insurance policy There were no omissions with respect to the other items recited in the brochure.

Mr. John T. Hintz, a contractor of Anaheim, was then called upon to appear on the basis of a subpoena Mr. Hintz was accompanied by his attorney, **Mr. Paul A. McCracken.** In response to *subpoena duces tecum*, Mr Hintz brought with him his files pertaining to financial transaction involving tract 2413, City of Orange

In response to questioning by the chairman, Mr Hintz indicated that he was president of the Hintz Construction Company; that he and Sylvan Allen were the sole stockholders; that his firm built the homes in tract 2511, City of Santa Ana; that the "raw land" for this tract was purchased from Vanderham and Struckman; that a purchase money trust deed in the amount of approximately $200,000 was created; that a construction loan of approximately $2,000,000 was obtained from Hollywood First Federal Savings & Loan Association; that the first trust deeds on the houses in tract 2511 were "in the neighborhood" of $10,500 to $11,500 each, that additional trust deeds[4] of approximately $1,000 were created for each house

Mr Hintz informed the committee that these $1,000 trust deeds were sold to Alfred Littman but the latter, insofar as the witness knew, did not act on behalf of Aero Properties. Mr. Hintz was not sure how the

[4] These were described by the witness as being third deeds of trust

trust deeds were then disposed of, but he believed they were resold to Los Angeles Trust Deed & Mortgage Exchange

CHAIRMAN HANNA How much did you actually receive * * * for those trust deeds?

MR HINTZ I believe it was around $600 apiece

CHAIRMAN HANNA Have these houses been sold and are there occupants in some of these houses?

MR HINTZ There are occupants in some of them

CHAIRMAN HANNA Did you have all of the mechanics' liens * * * paid up at the time the homes were completed?

MR HINTZ No

CHAIRMAN HANNA: Are there mechanics' liens against these homes at the present time?

MR. HINTZ Yes

CHAIRMAN HANNA Would it be fair to say that those mechanics' liens are in excess of $200,000 for the total tract?
[At this point Mr McCracken interjected his estimate that the amount would be "less than $50,000"]

* * * * * * * * *

CHAIRMAN HANNA Would it be correct to say that these so-called third trust deeds were created on these properties before the improvements were completed?

MR McCRACKEN After the money had been committed for the improvements but prior to the actual improvements

CHAIRMAN HANNA Prior to the improvements?

ASSEMBLYMAN DeLOTTO: Does that mean the liens are fourth [in order]?

* * * * * * * * *

MR. McCRACKEN. Yes

Mr McCracken then concurred when the chairman asked whether the holder of one of the third trust deeds provided by L A T D. would have to make payments on the first and second deeds of trust in order to forestall foreclosure

In regard to tract 2413, Mr Hintz stated that the land was procured by means of a purchase money encumbrance containing a subordination clause, that this amounted to about $1,550 per lot (there being 75 lots), that a construction loan of approximately $10,000 was obtained for each lot; that the houses were sold for "from $13,795 to $14,295"; that after sale additional trust deeds were generated in varying amounts—the highest being $1,100, that these trust deeds were sold to Arthur Gordon Eldred and Alfred Littman, acting on behalf of Pierson Mortgage Company, that he received in cash, as one example, $764 for a $1,040 trust deed

Subsequently, this tract, as well as several hundred other Hintz-built homes, was sold to Aero Properties When asked by Assemblyman Rees what he realized for each house in tract 2511, all told, Mr. Hintz indicated approximately $700

Having been subpoenaed by the committee, **Mr. Alfred Littman** was called The witness was accompanied by his attorney, Jerome L Ehrlich When asked by Chairman Hanna whether he had followed the testimony just given, Mr Littman declined to answer on the grounds that his reply might tend to incriminate him On the same basis Mr Littman refused to answer when he was asked whether he

had been connected with Aero Properties, Inc, or was acquainted with Arthur Gordon Eldred Mr Ehrlich stated that his client would be "happy" to testify if the committee would grant him immunity from prosecution, but the chairman stated that this was not the committee's wish and the witness was excused

The next person to testify was **Mr. Spencer Cowley,** president of Home Owners' Protective Echelon, Inc Appearing with him was **Mr. John A. Wylie.** Mr Cowley explained that his associate was a home buyer in tract 2317, Anaheim, and was among the first to receive notice of foreclosure in February 1960 The witnesses then recounted the events which led to the formation of their organization, Mr Wylie, in particular, having been jeopardized by the delinquency of Aero Properties.[5]

"Altogether, I would say that our organization has a membership that embraces at least a dozen different tracts," Mr Cowley told the committee. "In these ' * * tracts the pattern runs just about the same, the principals involved in the financing structure may change from one to the other. However, it is generally conceded that better than 17 different corporations have been participating in the secondary type of financing involved * * * Of these, it is fair to state that Mr. Hintz or Mr Tietz or their respective companies did a large bulk of the construction The people, in general, have contracts which are somewhat improved by the [legislation enacted at the 1960 Special Session] in that they now realize some protection from the fact that the State has [required that sales contracts include statements as to the payments that are to be made on the respective first, second and any other deeds of trust]."

Mr Cowley told of a group of home buyers whose plight had become known to H O P E within the preceding week[6] Some 68 persons had signed sales contracts late in 1959 in the expectation, according to Mr Cowley, that property values would appreciate to the extent where they could arrange F H A financing Although five buyers have gained tentative title, the remainder are in jeopardy. "I do know that when these people get their escrow instructions, * * * they are told that the present impounds ' * * built up over the year are to be dissolved rather than to be passed on to their benefit or [credited] to their account This is highly irregular This is only a single instance of many which imply that, morally, our people have not received the proper treatment at the hands of the [businessmen they have dealt with]." Mr. Cowley observed

As to that majority of H O P E members who have now skirted the immediate problem of foreclosure but are still seeking a type of refinancing where systematic amortization of all encumbrances might be arranged, Mr Cowley stated that many are attempting to negotiate F H A financing and the remainder are considering proposals from conventional lending sources "At this time, there is an outstanding offer from Mason Mortgage [Company] whereby these people can [increase] their 6 6 percent first to 7 percent They can also [increase]

[5] For a more detailed treatment of this matter, the reader is referred to the summary of the Buena Park hearing

[6] The tract involved is No 2639, City of Westminster The contractor was Mr P I Wilsey of Long Beach and purchasers made their payments to the H & W Land Corporation in Paramount

the interest rate of 7 percent on their seconds to an 8 percent arrangement and then, five years from now, be just about where they are now"[7] In the opinion of H O P E 's board of directors, those who accepted such an offer would face the recurrent prospect of refinancing at each five-year interval, Mr Cowley told the committee.

Chairman Hanna asked the witness whether, under F H.A. financing, most of the home buyers would have to produce a substantial cash payment Mr Cowley replied affirmatively

Responding to a question from the chairman, Mr Wylie said he is now making his payments to Mason Mortgage Co "It is my belief," he added, "that Mason Mortgage has stepped into the picture and is conserving the assets of Aero Properties in addition to conserving [its] own assets" Answering a further question, Mr Wylie stated that this applies to the majority of people in Tract 2317

Mr. David Farrell, president of Los Angeles Trust Deed & Mortgage Exchange, was the next person to appear before the committee.[8] Mr Farrell was accompanied by attorney Morgan Cuthbertson

The chairman alluded to the testimony given by Mr Smith and Mr Farrell remarked, apropos the desert property, "* * * This area is located at the intersection of the main road * * * that goes into Palm Springs and the area is very valuable * * * The properties have all been sold to buyers who have paid [between $1,500 to $2,000] cash down, and while I don't know where Mr. Smith's individual trust deed [is situated] * * * I believe it is current I have no reason to think Mr Smith will lose any money However, it is only natural that, when something starts dying, that the vultures and the jackals start coming to see how much they can eat out" The witness went on to accuse Mr Smith of being an opportunist and of attempting to "seize control" of L A T D

Returning to the specific matter of Mr Smith's trust deed, Mr. Farrell claimed the former had misstated the facts "There are no mechanics' liens which would come ahead of the trust deed There is a policy of title insurance in every instance to protect the owner of the trust deed so that if he foreclosed, he would have clean title to the property and the property appraises for far more than its trust deed"[9] Chairman Hanna pursued the matter of appraisals and, while the witness maintained that an independent appraiser was retained by L A T D in any transaction with "any large investment company," he would not state categorically that such procedure was followed in the deal with the All American Investment Company

> CHAIRMAN HANNA I wonder if you could give us an explanation of the finding * * * in the S E C case that goes as follows "The evidence establishes that in this and nearly all similar situations, L A T D has made no independent appraisals or that the defendant could not or would not produce them in response to a *subpoena duces tecum*"[9] * * *[10]

[7] Upon his appearance before the committee, the counsel for Mason Mortgage Co was questioned about this point Mr Kresch confirmed the figures quoted by Mr Cowley While he shed no light on the reason for raising the 6 6 percent charge to 7 percent he explained the increase in the interest rate on the second trust deed as being designed "to minimize the necessity of putting in any cash"

[8] Mr Farrell was under subpoena for this hearing

[9] This testimony was contradicted by the representative of the title insurance company involved (See remarks of William Gummerman below)

[10] The quotation is from page 15 of the "Findings of Fact and Conclusions of Law of Judge Clarke

MR FARRELL: It depends on what your definition of "independent" is If you construe "independent" to mean that we employed an outside appraiser, not part of our operation, then most of the properties would not have been independently appraised * * * This particular dispute with the S E C, you might say, culminated two years of our co-operation with them and marked the point at which we diverted from co-operation * * * For two years we let them roam through our establishment and look at everything we had and gave them the fullest of co-operation * * *

Chairman Hanna, alluding to Judge Clarke's finding that "It was not until the trial was begun that the S E C, through *subpoenas duces tecum,* was enabled to dredge the necessary evidence from the defendants' records, evidence which the defendants, if acting in good faith and in compliance with the discovery order under Rule 34, would have made available long before,"[11] wanted to know if it was Mr Farrell's contention that such was not the case "Yes sir," the witness replied, "that would be my testimony, that the S E C has grossly misrepresented the facts in the case"

The chairman then referred to the Cimarron Meadows transaction which was dealt with at length in S E C case. This deal involved the transfer of a considerable sum of money from L A T.D. to the Goheen Construction Co and, although the transaction was not consummated, according to Mr Farrell, Judge Clarke cited it as an illustration of "* * * the use of funds entrusted to L A T D * * * under the Secured 10 percent Earnings Program in financing similar speculative joint ventures and partnerships for the benefit of David Farrell"[12] Chairman Hanna asked the witness if the cash payment—along with the retention money—that was made to George Goheen came from money entrusted to L A T D by investors "We took the funds given us by a customer under an open contract to buy a trust deed from us, just exactly in the manner as Paine, Webber, Jackson & Curtis or Dean Witter would take funds from a client who is buying stock," Mr Farrell replied[13]

CHAIRMAN HANNA In this transaction with the Goheen Construction Company, is it correct, as held [by Judge Clarke], that you * * * personally, or your company, were presumably to go in partnership with Mr. Goheen in some limited way?

MR FARRELL * * * that is true It is a common practice for savings and loan associations and [their] officers to participate with builders in the transactions that they are financing.

CHAIRMAN HANNA It is?

MR FARRELL It is very common to the mortgage industry * * *

CHAIRMAN HANNA I thought the State of California provided that a savings and loan institution was limited to any ownership or even—in land—to 5 percent of its total value?

MR. FARRELL I'm not here to discuss the laws of California with reference to it. * * *

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[11] Page 46, *op cit*

[12] Page 43, *op cit*

[13] Robert Van Deventer of Dean Witter & Co stated to the committee investigator on Nov 21, 1960, that the moneys of individual clients are not commingled (i e, they are kept in separate accounts) and he further observed that the acceptance of an investor's funds without stipulations as to the use they will be put is a singular rarity in the stock brokerage business As to the use of such money without carte blanche permission, a recent incident speaks for itself On September 28, 1960, the New York Stock Exchange expelled from its membership Anton E Homsey of the Du Pont-Homsey firm on the grounds that he had pledged customers' securities on loans without their knowledge

Returning to the matter of L A T D 's general account, Chairman Hanna asked if this one account paid all the firm's expenses Mr. Farrell replied that, for accounting purposes, there were three accounts (one for payment of operations, another for purchase of trust deeds, and still another for payroll), but he conceded that "actually" there was one general account

In regard to purchase of trust deeds, the chairman surmised that L A T D. bought trust deeds on raw land and third trust deeds generated prior to construction Mr Farrell interrupted to declare "That is false *The company never purchased any third trust deeds*" [14] By way of clarification, the witness maintained that L A.T D. "* * * dealt only in valid first liens and valid second liens on property." [15]

In a discussion of Tract 2511 in Santa Ana, the witness confirmed Mr Hintz' guess that the trust deeds the latter sold to Alfred Littman ultimately found their way to L A T D He disagreed with the contractor on the amount of the notes, however, asserting that the "face" of the trust deeds was less than $1,000 "* * * or $975, as I recall " Mr Farrell maintained that his company handed to Alfred Littman a letter, with check enclosed, for delivery to Security Title Insurance Co "We have learned subsequent to that that these policies of title insurance were not issued by Security Title Insurance Company. They handled our money but claimed never to have received our letter " [16]

The witness was asked if L A T D had acquired a substantial number of trust deeds from Aero Properties and if he dealt with Messrs. Littman and Eldred in these transactions Mr Farrell confirmed this Chairman Hanna then wanted to know if Mr Farrell himself—or L A T D —owned any interest in Aero Properties at any time The latter replied in the negative [17]

In response to a question, Mr Farrell stated that an investor "generally" was notified on the 45th day following the due date of payment whenever the payor was delinquent This was the responsibility of the collection department, the witness explained, adding, "I understand that they have slipped up in a few instances * * *."

Mr. Farrell indicated that interest payments to investors were maintained even when their trust deeds went into default This prompted the chairman to question Mr Farrell on his conceptualization of the relationship between L A T D and its investors

> CHAIRMAN HANNA * * * Do you feel that [, by means of the language you use in your brochure,] you are making it clear to the person who is depositing money that the money immediately becomes yours for the general uses of your company rather than the representations that this person's money is to be held for use on a particular trust deed to be purchased for him?
>
> MR FARRELL Certainly It's true of every business in the world Why should the buying and selling of trust deeds be any different than the buying and selling of diamonds or Cadillacs or stocks or anything? * * *
>
> CHAIRMAN HANNA · Is it your feeling that most of the people dealing with you appreciate the fact that [their] money * * * was going into the general account of the business and was not allocated for the purchase of a particular trust deed for them?

[14] Emphasis added
[15] This statement is in conflict with that made by Mr Hintz on this matter
[16] See testimony of William Gummerman
[17] The views of Judge Clarke on this matter are cited in the summary of the Buena Park hearing

MR. FARRELL That is why we specifically stated so on the contract, so they would be aware of it We didn't want anyone to be misled by anything.

CHAIRMAN HANNA Do you think that this general language that says here, ["It is merely your order for trust deeds and your instructions to us to what you intend to do It authorizes us to sell you trust deeds You may change or alter your instructions at any time by giving us written notice"]—do you feel that summarizes the situation set forth in the [purchase authorization]?[18]

MR FARRELL Yes, sir, very clearly There is a disclaimer in the front of that book as well that we do not make any guarantees, that we only carry out things the best way we can

The chairman took note of the disclaimer cited by the witness, but he also pointed out that the recurring legend, "Secured 10% Earnings," was given far more prominence in the brochure

Mr. William E. Gummerman, assistant counsel for the Security Title Insurance Company, was the next person to testify[19] Mr Gummerman said that his company was involved in both the Tract 2511 situation and the All American Investment Co transaction.

Regarding the first of these two matters, the witness said, "What happened there was that the properties, in fact, [were] encumbered by three trust deeds" When Security's policies on these trust deeds left their office, they indicated that the deeds were third "*However, we are presented today * * * with documents which have been altered*[20] to show the [third] trust deed as a second trust deed—in fact, much of the information concerning the prior liens has also been changed so that what you have is a kind of rough composite of the first two liens being shown as just one lien and the amount would be roughly that of the construction loan," the committee learned

CHAIRMAN HANNA Is it your testimony that this was so flagrantly done that anyone who was familiar with this type of document should have been able to perceive that [it] had been altered?

MR GUMMERMAN If anyone who was familiar with this type of document were to read through [it] they would have at least sensed, if not actually observed, the change in this particular policy of title insurance and, in this case, * * * there were several hundred of them

CHAIRMAN HANNA Then [what you are saying] is that some person, or persons, * * * actually fraudulently and illegally changed a document originally emanating from your company?

MR GUMMERMAN· That's right And this particular problem has been turned over, I believe, [to either the Los Angeles or Orange County District Attorney]

Relevant the trust deeds sold to L A T D by the All American Investment Company, the witness said they were created when the developer discovered he would need more funds than he had anticipated. A "mixed situation" exists with respect to mechanics' liens, the committee learned Mr Gummerman said that some trust deed holders, in conjunction with the developer, have contacted L A T D receiver Pat A McCormick in an effort to work out new financing. "The alternative [open to each trust deed holder] is to take a chance that his individual trust deed is prior to the mechanics' liens which are causing the problem"

[18] The reference here is to the language appearing on the back cover of L A T.D 's brochure

[19] Mr Gummerman's appearance was on the basis of a supoena.

[20] Emphasis added

The witness disclosed that the developer (Mr Sam Sparks) received only 27 percent of the face value of the trust deeds L.A T.D. withheld "not only the discount which would normally come out, but they also withheld six months' interest prepaid," according to Mr. Gummerman He added that, in addition, Farrell and his associates retained "an appropriate sum for the cost of completing off-site improvements"[21] and a sum representing the promotional costs of selling the trust deeds This money evidently went into L A T D 's general account and became, therefore, inaccessible with the advent of the receivership

> CHAIRMAN HANNA Would it be your position [that], had the contract been otherwise and these funds been held sparately, they would have been available?
>
> MR GUMMERMAN * * * Assuming the basic honesty of the transactions, had the funds been held in trust—which would be the normal procedure in this type of relationship—they would have been available even though the receivership had been established
>
> CHAIRMAN HANNA. * * * Did you mean to say that the procedures as followed in the contract between L A Trust Deed and All American Investment Company were not what you call regular proceedings?
>
> MR GUMMERMAN They wouldn't be ordinary in the sense that [L A T D] was not a bank There were no safeguards regarding the level of solvency or equity as you have with a bank or savings and loan Any businessman who has any appreciative experience in money matters would appreciate, therefore, that he is dealing with an organization whose credit is not supervised by appropriate governmental bodies * * *

In summing up the situation, the chairman asked Mr Gummerman if is was correct that the amount necessary to cover the cost of off-site improvements had been twice advanced "* * * and that part of the problem of paying off the amount of the face value of the original trust deed is that somebody has to absorb this loss * * *?" The witness assented

The chairman then called upon **Mr. Pat A. McCormick,** who was accompanied by **Mr. Richard Cole**[22] The former introduced the latter as being the chief administrator of the receivership established for Los Angeles Trust Deed and Mortgage Exchange

After Mr McCormick noted that his court-appointed status made it impossible for him to align himself with any side in the disputes aired at the hearing, Chairman Hanna asked if there were any utterances which he felt needed correcting The witness then emphatically pointed out that neither he nor his lawyers had been paid one cent of compensation for their duties and, further, that they would not be paid until the court determines reasonable fees

Questioned as to his duties as a receiver, Mr. McCormick said "* * * The order appointing me is quite clear. It appoints me for the purpose of conserving, maintaining and preserving the assets of [L A T D] and one of its affiliates I am not a liquidator * * *" Although he conceives his role as being that of a conservator, Mr McCormick pointed out that the present management has discontinued the purchase and sale of trust deeds and notes

Mr Cole said that the audit report prepared by LeRoy H Cole, C P A ,[23] showed, as of June 8, "* * * approximately $2,500,000 owing

[21] On this point, see comments of Richard Cole, below
[22] Mr McCormick was under subpoena, Mr Cole was not
[23] A partner in the firm of Arthur Young & Co and, incidentally, no relation to the witness

to the sellers of the trust deeds in 202 accounts "[24] After Mr McCormick had interjected to say that the figure quoted represents claims of contractors, Mr Cole explained that the auditor's report showed that the company's records indicated that amount as owing

Regarding the transaction with the All American Investment Co, Mr Cole observed that there are credits on payments withheld that will ultimately inure to the benefit of the developer (i e, while Mr Sparks' company has so far realized only twenty-seven cents on the dollar, it will eventually benefit by something in the neighborhood of fifty cents against a face value of one dollar)

Using the West Palm Springs tract (i e, the land being developed by All American) as an illustration, the receiver discussed the investor accounting method used by L A T D 's former management Mr McCormick replied in the affirmative when Chairman Hanna asked whether a customer's account would show a debit balance if he had remitted, say, $100 to L A T D on a payment plan of $2,300 In response to a further question, Mr McCormick said that any such remittances received since the inception of the receivership have been deposited in a trust account

Mr Cole was asked to give an estimate of the number of defaulted trust deeds held at the time the receiver assumed control of L A T D. The witness responded that these amounted to more than 25 percent of the inventory.[25]

As to matter of the West Palm Springs tract, Mr Cole undertook to clarify the question of the money withheld from All American Investment Co for off-site improvements "There never were any funds involved [They were] withheld from the purchase price, but there never was any money and, therefore, it couldn't be put in a general account or a trust account or anywhere else "

The chairman asked whether the receiver had encountered any cases of a significant number wherein it would be inadvisable for him to institute foreclosure proceedings because the face value of the paper exceeded the true value of the property involved

> MR McCORMICK Yes, sir, * * * we have, in certain instances, determined that that was the case
>
> CHAIRMAN HANNA [Was this, in all cases,] paper that was held in the inventory of the company, or was [some of this paper] actually owned by customers * * *?
>
> MR McCORMICK I think, in practically every instance, the company held at least a few [such] notes in inventory, but the bulk may have been held by customers [although the company still held an interest in them]
>
> CHAIRMAN HANNA In other words, some of these which they were [still making payments on actually were not worth their face value in the event of foreclosure Consequently, it you had the choice,] you would * * * not have moved in to act on behalf of that paper?
>
> MR McCORMICK That has actually been the case and, in other cases, other complications entered into [the picture] * * *.

[24] On July 8, 1960, LeRoy Cole was quoted in the *San Francisco News-Call Bulletin* as saying in the report that, "Without continued receipt of investors' cash, it appears [L A T D] cannot meet its liabilities as they mature or pay current operating expenses for more than a very limited time "

[25] At this point Mr Farrell interjected to say that the witness was referring only to trust deeds held by L A T D itself—some $1,700,000 worth Mr Cole explained that he would have no way of knowing how many trust deeds *held by investors* were in default

As to those cases where an investor's trust deed is imperiled because of default on the blanket first, Mr McCormick indicated that the investor would not be obliged to make payments on the entire first trust deed if the home buyer went to the contractor and had his particular lot removed from the package of first trust deeds comprising the "blanket" This, the receiver admitted, presupposed that he was able to pay off his proportionate share

The chairman then called upon **Mr. Arthur Gordon Eldred** who acknowledged that he had been subpoenaed by the committee Mr Eldred was accompanied by his attorney, Arnold G Hewett. The latter indicated that, in the absence of a grant of immunity from prosecution, he would advise his client to decline to answer questions asked him Under these circumstances Chairman Hanna excused Mr Eldred

Mrs. Lelah T. Pierson then appeared before the committee of her own volition The witness stated that, as vice president of Pierson Mortgage Company, she had hired Mr Eldred to work for her firm. Asked whether she had knowledge of Mr Eldred's record,[20] she said the information did not give her "the entire background," adding, "I thought Mr Eldred had perhaps been through bankruptcy but I did not know why"

The witness then related how Eldred established contact with Edward Mason of Washington, D C, who desired a correspondent in California for mortgage investments Subsequently, Mr and Mrs Pierson, along with Eldred, discussed with Mason the type of investments they were to arrange on his behalf "* * * It was to be, in my estimation, a rather small operation * * * because he wanted only second trust deeds which were not to exceed[$5,000 at the most] and * * * they were over a reasonable first and he was to have all of the * * * records on the property," Mrs Pierson told the committee She added that she was surprised to find a stipulation in the contract of $100,000 worth of trust deeds to be furnished each month, although Mason allegedly said that, in effect, the quota was an objective rather than an immediate requirement

Shortly thereafter, Mrs Pierson stated, she was absent for several weeks and discovered, upon her return, that an upheaval had occurred in her office "My real estate business was practically moved out because there was no space for it and they were bringing in * * * hundreds and hundreds of trust deeds and there was Aero Properties and * * * dozens of [names of other corporate bodies and individuals] * * *" Mrs Pierson said she heard of Eldred's relationship to Littman only by hearsay

On the occasion of a visit here by Mason, Mrs Pierson expressed her worries about the turn of events and said she felt the business was proceeding too fast According to the witness, Mason characterized Eldred as a genius ("He is the greatest genius I ever met in finance I have had this correspondence all over the State We are doing more business than we ever felt we could do here He has a terrific plan," Mrs Pierson quoted Mason as saying)

[20] Eldred was convicted of grand theft and forgery and sentenced to five years in prison, commencing January 17, 1955 After serving 27 months at Chino, he was released on parole The parole expired on January 17, 1960—just a few weeks before the foreclosure furor developed in Orange County

As she recalled it, difficulties first arose over Tract 2511 in Santa Ana She was contacted by the lender on the first trust deeds and told to "pay off" or foreclosure proceedings would begin "This came as a complete bolt out of the blue—I knew nothing about it—and then I looked back to see on certain checks that Mr Eldred had asked Mr Pierson to sign in which it said that certain tracts were paid off in full out of [the funds of] Mason Mortgage and paid to First Federal of Hollywood * * * and I didn't like the looks of it because I couldn't understand [how] you could pay off a full tract for some $10,000 * * * " Mrs Pierson told the committee she then contacted Mason in Washington. After coming to California and checking on the matter, Mason purportedly demanded $70,000 from the Piersons[27] This request was complied with, but Mrs Pierson says she recommended that the district attorney be apprised of the situation Mr Mason dissuaded her from doing this, she related, on the grounds that it would do more harm than good to "rock the boat" In conclusion, the witness disclosed that her company, along with the various corporations created by Eldred and Littman, is being sued by Mason

The next person to appear was the counsel for Mason Mortgage Co, **Mr. David A. Kirsch.**[28] He stated that the procedure had been for Pierson Mortgage to send Mason a submission of trust deeds available for purchase, along with information that would enable the latter to select from the list "Subsequently, Mason Mortgage would send to Pierson Mortgage Company a check or series of checks made payable to the order of Pierson Mortgage Company, together with an individual letter of instruction covering each trust deed to be purchased, setting forth a description of the trust deed, description of the property and with instructions that the funds [were] to be used only when [Pierson Mortgage held] for the account of Mason the note, the trust deed * * *, title insurance policy [and so forth] " As to the transaction involving Tract 2511, the witness stated there was not a full submission made to Mason but that his client had nevertheless sent a check for $100,000 to Pierson Mortgage which, Mr Kirsch claimed, was conditional upon the performance of certain things and that, further, the money was not to be expended until Pierson Mortgage obtained the usual documents for Mason Mr Kirsch then told the committee that he did not know what happened except that, " * * * One, we didn't get anything and that, two, the 100 thousand was somehow used up through the Pierson Mortgage Company "

The witness, in the course of questioning by the chairman, related that a number of promissory notes were forwarded to Mason without any supporting documents following "*The ones who substituted the notes had never obtained title to the properties at that time and haven't obtained title to this time and, as far as I know, can't obtain title and therefore it would be impossible for a trust deed to be created or executed by those that were the makers of the promissory notes,*" Mr Kirsch declared

Mr Kirsch also told the committee that Mason Mortgage received, in otherwise perfect order, documents covering some 250 properties[29]

[27] The witness explained that this money was in a reserve account consisting, in part, of funds payable to Pierson Mortgage Co for commissions
[28] Mr Kirsch appeared under subpoena
[29] Which included Tract 2413, City of Orange

except that the title policies issued by Inland Title Company showed the existence of approximately $300,000 in prior liens (i e, in effect making Mason's trust deeds thirds) although the policies themselves indicated that the deeds were secondary He added his impression that, if anything was amiss, it would not be the fault of Inland Title

As to home buyers in Orange County who make their payments to Mason Mortgage, Mr Kirsch asserted that "at least" 50 percent were delinquent He noted that failure to maintain payments only compounds the difficulties of refinancing Apropos the situation of his client, Mr Kirsch said, "There isn't anyone I know of * * * [who] is so wealthy that [he] can continue to pay out on 400 first trust deeds a month just as a result of the householder[s] not making payments "

Chairman Hanna next called for contractor **William Tietz** who had been served with a subpoena Attorney Logan Moore appeared in his behalf and showed the chairman a telegram which he had received the previous evening The wire indicated that Mr Tietz was ill in Tacoma, Washington, and could not be moved After accepting from Mr Moore documents which had been brought in response to *subpoena duces tecum*, the chairman excused Mr Moore

The committee next heard from **Mr. A. P. Marriott**, vice president of Stewart Title Guarantee Company, who appeared on the basis of a subpoena Accompanying the witness was Stewart Title's counsel, **Robert P. Foster.**

There being some confusion as to the relationship between Stewart Title and Inland Title, Mr Marriott explained that his company merely acted as reinsurer for the latter and that it did not operate Inland's office.

Referring to the testimony of Mr Kirsch, Mr Marriott stated that Stewart Title Co had to purchase the subordinated seconds that were not mentioned in the policies sent to Edward Mason " * * * We are not positive on this," he told the committee, "but it would appear that there was cash indemnity posted by Aero Properties or Pierson Mortgage or someone and the attempt was to have delayed reconveyance [on] the subordinated seconds The payoff would come from Mason Mortgage loans "

> CHAIRMAN HANNA. And, somehow or other, this didn't materialize and the indemnity was not made?
>
> MR MARRIOTT: The indemnity was lacking in proper funds to carry it out When foreclosures started taking place, there were no funds available
>
> CHAIRMAN HANNA. To your knowledge, is this the only way in which your company is involved in these transactions?
>
> MR MARRIOTT Yes, sir. * * *

Mr Foster thought that the burden of the Orange County difficulties stemmed from the fact of the properties having been sold on contract and that the contracts were not recorded He observed that this opened the door for the addition of further encumbrances by the seller and he urged that the buyer be given the right to demand that his contract be recorded As to the method of payments on contract sales, "if those proceeds could be collected and held in trust—and there are a number of [institutions] that could be used for this purpose * * * which are very, very heavily bonded under today's law—[then these collection agencies could, under proper instructions], make payments and allocations to the various [lenders]."

The committee next had an unscheduled witness in the person of **Mr. Edward B. Henne,** an investor in L A T D Mr Henne told the committee that he had listened with interest to David Farrel's assertion that L A T D bought no third trust deeds "I learned yesterday, by going over and contacting the first trust deed holder, * * * that my document is the fourth trust deed " The witness explained that he had only lately received all the documents pertaining to his trust deed from the receiver These he showed to the committee

Mr Henne's trust deed is secured by lot 11, tract 2642, City of Orange The documents establish that the house was built by John T Hintz, that the first lien holder is First Federal Savings & Loan Association of Long Beach; that the original trustor was Challenge Properties; that the Litel Corporation [30] sold the note to L A T D ; and that Inland Title Company wrote the title insurance Nowhere is mention made of any encumbrances other than those recited here and Mr. Henne's trust deed is twice referred to categorically as a "second "

The witness said that his trust deed has a face value of $1,990 He said he had discovered that no payments had been made on it after March 15, 1960 "Now [L A T D was] in business and had these documents and I had been informed in no way [by anyone that foreclosure proceedings had commenced] I haven't received any notice at all * * * and it was very informative when I went over and saw the property that they had * * * The present balance [on the first trust deed] is $9,353 and there is $819 besides that [which] would be the foreclosure cost * * * and the second trust deed is $53,000 on the lots. Then there is a third trust deed and I happen to be the [holder] of the fourth trust deed for $2,000," Mr Henne told the committee

He described the condition of the property as being "absolutely pathetic" and characterized the neighborhood as "very underprivileged " "I also am sure from the evidence that there has been nobody living in this place for over a year and a half because I noticed mud and water had seeped in the doors, causing mud puddles * * * ." Several houses in the vicinity were vacant, Mr Henne continued, and a number of windows had been smashed Summing up, he observed, " * * * doors were unlocked and [left] hanging open and all in all it looked like an abandoned Tobacco Road * * * "

Asked how it happened that he invested in L A T D in the first place, Mr Henne said that he had been repeatedly assured by one of their representatives that only second trust deeds were purchased, that he would receive 10 percent on his money as long as he left it with them; and that he could demand it at any time He said he specifically asked what the company would do in the event a trustor defaulted and was told by a Mr McGraw " * * those are guaranteed by ourselves— * * * we always [exchange for a poor trust deed] another one that is in good repute "

Assemblyman DeLotto asked the witness if he had ever received a copy of the title insurance and Mr Henne replied that a representative of the first lien holder had shown him such a copy only as recently as the day preceding the hearing

[30] As the reader probably knows by now, both Challenge Properties and Litel Corp were products of the restless minds of Eldred and Littman In the papers at hand Littman signed on behalf of Challenge and John Sternberg—an associate of Eldred even before he retired to Chino—acted for Litel

ASSEMBLYMAN DeLOTTO * * * In other words, you were operating in good faith that you had paper * * * and it did not occur to you, because you were getting the [interest payments], to look at the property or to find out through the legal description where the property was * * * ?

MR HENNE No I understood that [L A T D] had experienced appraisers * * * —that was represented to me * * *

CHAIRMAN HANNA: Then, for the amount of money you had invested, what did you have in your hands prior to the time that you received the documents? * * *

MR HENNE: Well, I had nothing but just a [receipt book] [31]

Chairman Hanna next called upon Assistant Real Estate Commissioner **Gerald E. Harrington** and asked him if there were companies other than L A T D whose solvency was questioned Mr Harrington replied that on the preceding day the Division of Real Estate had filed a complaint for an injunction against the Pacific Trust Deed Corporation on the basis of an audit which showed that firm was "short of accountability" to the extent of $141,000 He added that there were other companies as well—Best Trust Deed Company being among them

ASSEMBLYMAN DeLOTTO * * * If it had not been for the [legislation enacted at the 1960 Special Session], would you have been able to move on these actions?

MR HARRINGTON No, I don't think we could have excepting for the 1960 legislation which spelled out [our powers], at least We may have tried However, I think that certainly "firmed up" our position

In further questioning of the witness the following points were made: (1) the Commissioner of Real Estate feels the Legislature should grant him the power to step in and conserve the assets of a trust deed company when it becomes insolvent, (2) at least a semi-annual audit ought to be required of such companies, (3) there are presently more than 18,000 persons registered as real property loan brokers—approximately two-thirds of whom have indicated that they have done no business in the discount field in the past year, (4) in the opinion of the division, every discount operation must be licensed either by it or the Division of Corporations.

The committee then received testimony from **Mr. Robert T. Older,** a contractor, who complained that a recent law requiring that both seller and buyer on contract must have their signatures acknowledged before a contract can be recorded "If we have a purchaser who has moved into a house and paid a relatively low down payment and we don't have enough credit history on him * * * to know whether or not he is going to make the grade, we hesitate to have * * * the contract recorded because of the large expense [involved in a quiet title action] should we have to recapture the property" While not suggesting any remedies, Mr Older urged that the recording statutes be carefully studied

At the request of the committee, **Mrs. Barbara Nafziger** of Tract 2630 in Buena Park related her difficulties in buying a home on contract She testified that she originally bought from the Tietz Construction Company and now makes monthly payments to Mason Mortgage. Mrs Nafziger stated that she does not now hold title to the property, that she is supposed to receive title upon amorization of the second

[31] At this point the witness showed the committee his receipt book which showed that he had deposited $5,700 with L A T D.

trust deed; that out of a $142 monthly payment "about $47" is applied toward principal and interest on the second.

CHAIRMAN HANNA And you are one of the people who paid $100 to have the Co-Directors[32] obtain F H A financing?

MRS NAFZIGER Yes we did

CHAIRMAN HANNA. How long ago was that?

MRS NAFZIGER We signed up May 28, 1960

CHAIRMAN HANNA To this time have they been able to do anything toward getting you F H A financing?

MRS NAFZIGER We haven't even heard from them

CHAIRMAN HANNA Is there any chance that so long as you make your payments of $142 a month that you * * * will lose your home?

MRS NAFZIGER Well I hope not * * *

Mr. E. C. Williamson of Orange, one of the witnesses at the Buena Park hearing, briefly touched upon his experiences since that time He then noted that, while many trust deed investors had suffered through the activities of certain "Ten Percenters" and were deserving of sympathy, home purchasers are also investors "They invest a great deal more in headaches and money and people become home owners with no knowledge of real estate and run into a situation which I feel is steadily deteriorating because of the so-called panic," Mr Williamson asserted

The last witness on the agenda was **Mr. Richard Wright** of the California Real Estate Association Mr Wright described the position of his organization and announced that C R E A would propose a revised Real Property Loan Brokerage Law to the Legislature at the 1961 Regular Session[33]

Assemblyman DeLotto asked whether C R E A would recommend any revisions in the schedule of loan brokerage commissions and was told that only "one slight change" would be proposed

Chairman Hanna then declared the hearing adjourned.

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[32] Co-Directors, Inc, was organized this year in unseemly coincidence following the foreclosure panic in Orange County Mr S S Cahn is listed as "president and director" and the firm's offices are in Los Angeles

[33] Mr Wright's remarks are not summarized here because they have been inserted virtually *in toto* in the appendix to this report

PART III

ECONOMIC BACKGROUND AND LEGAL ANALYSIS

A. ECONOMIC PROBLEMS IN CALIFORNIA HOME FINANCING

In the early 1930's the American housing industry was moribund; only 100,000 housing units were being constructed annually; foreclosures were commonplace, real estate lending institutions were faced with a major liquidity problem Today, although the industry is operating at a high level of productivity, a new crisis in housing is confronting the nation as a whole and California in particular Although the economic background today is vastly different from that three decades before, there are some striking similarities between the problems that gave rise to the FHA then and those facing the housing business now.

SECOND TRUST DEEDS

A notable similarity between housing finance conditions in the early thirties and those prevailing today in California is the prevalence of second mortgage or second trust deed financing Prior to 1933, practically all states had laws limiting the percentage of loan to total value to no more than two-thirds of the appraised value. The requirement that a prospective home owner must have 33 to 50 percent of the purchase price in cash restricted the market so severely that second mortgages were resorted to Even in the 1920's homes came to be sold for as low as a 10 percent down payment—the difference between this sum and the first mortgage being taken up by a second mortgage Often the contractor assumed the second mortgage which was later discounted. In the late 1920's, when prospects were harder to find, down payments were reduced to as low as 5 percent, and the resulting second mortgages were discounted by as much as 50 percent This led to the practice of padding the price of building to take into account the anticipated discount

The resemblance of these practices to those carried on today in California is obvious A survey of current practices in the conventional loan sector of the mortgage market published in January, 1960, indicates that in California perhaps as high as 70 to 80 percent of all sales involve either a second mortgage or some other device designed to lower the initial equity Discount rates average around 35 percent; but go to 50 percent or even more, and they are believed to be increasing Although the percentage loaned on first mortgages to appraised value is greater than that permitted in the 1920's, the plain fact is that we are no more able to market housing on a mass basis under single mortgage financing at the present loan-to-value limits than we were in the 1920's at the loan-to-value limits then existing

HIGH CHARGES

Mortgage financing before FHA was a very expensive procedure The first mortgage was granted by a financial institution on the basis of being renewed every three to five years The second mortgage was obtained on payment of the maximum rate of interest and a substantial commission was often necessary to obtain such money Studies have found that in some cases, including original commissions, fees, and interest charges, as much as 20 percent was paid The effective interest rate on all mortgages held by building and loan associations in 1931 for the whole country was 8 percent, but in several states this figure was over 10 percent The necessity of renewing the short-term mortgages was also expensive The effect of the advent of the FHA was to reduce the interest rates paid and to do away with the need for second mortgages with their high charges

Today the cost of borrowing on real estate is again high Interest rates on first mortgage conventional loans in California are 6 6 percent or 7 2 percent A recent federal survey of members of the National Association of Home Builders indicates that discounts in this State on F H A. loans run from 2 percent to 10 percent and higher on V A loans Discounts on conventional loans run from 1 percent to 8 percent One Los Angeles area man reported "Discount rates are tending to become higher than warranted and if carried too far can become troublesome " A San Franciscan reported some softening in interest rates due to resistance to fringe charges and consciousness of high interest rates However, from the Covina area came this comment "The interest rate is still secondary It term of the loan can be lengthened so monthly payments are reasonable, and if downpayments are kept low, we do not believe the interest rate will greatly reduce our sales "

The cost of borrowing on second mortgages is, of course, even higher. Until recent years, second trust deeds were often drawn at the same rate of interest as the first mortgage, and the contract was written on a fully amortized basis Now a format is being developed by mortgage brokers to make second trust deeds more readily marketable The recommended format includes a 10 percent interest rate, a due date of 5-7 years with a 1 percent per month payoff, and a 7-10 percent prepayment provision This type of second trust deed would necessarily create a balloon payment at the due date and, in this respect, is somewhat reminiscent of the term mortgages of pre-FHA days. The mortgage broker charges a substantial commission for marketing the mortgage.

NEED TO ENCOURAGE CAPITAL INVESTMENT IN HOME MORTGAGES

Little needs to be said about the great need to encourage investment in home mortgages in the early 1930's Investor confidence was demoralized, the lender bore an uninsured risk, there was no steady national market for discounting mortgages; and there was a lack of institutions which could assist leading firms in meeting withdrawals of investors' funds in recession periods The FHA underwriting plan was intended to make mortgages more attractive investments and to make them more negotiable. FNMA was conceived to establish a nation-wide secondary market in FHA-insured (and, later, VA-guaranteed) mortgages.

Today, at the opposite end of the enconomical cycle, the nation faces a decade wherein it is estimated that 13 5 million new housing starts will be necessary to fulfill the need for housing; an average of 1 35 million starts each year for the next 10 Residential construction expenditures are expected to rise from $19 1 billion in 1960 to $29 9 in 1970, and residential mortgage debt to go from $11 9 billion in 1960 to $18 5 billion in 1970 It is obvious that this long-term growth cannot be achieved unless the need for more capital is met by increased savings and free movement of these funds into areas of the credit shortage

California, looking forward to another decade of dynamic growth, finds itself strapped for home finance capital The most recent estimate of California's position states that "For every 7 5 dollars invested in mortgages by local institutions it has been necessary to attract 4 5 additional dollars from outside the State " Credit importing states like California are in an unenviable position Eastern lending institutions charge a premium (usually one-half percent) for exporting money to California, and charges by local firms to service these loans generally run another one-half percent Moreover, during periods of "tight money," eastern sources of credit tend to dry up as the money is used to supply local needs

At the threshold of a period predicted to be one of great real estate credit expansion, FHA activities have slowed down significantly It is irony, indeed, that this agency that contributed so greatly to the housing recovery of the 1930's finds itself increasingly ignored by builders in the 1960's The reasons for the decline of FHA are well known (a) low, rigid interest rates, (b) red tape and delay in processing loans, (c) complex and demanding building standards.

Unquestionably, conventional mortgage lending is being relied on to finance the housing of the 1960's The difference in the quality of security behind conventional loans makes it impossible for such loans to be treated as homogeneous and therefore susceptible to purchase and sale in a natural market The difference in effective mortgage rates among different areas of the country is thought by economists to be much greater than is justified by origination and service costs, given equal risks The desired free flow of funds will not take place until there is a truly national market for mortgages. But the present impotence of FHA has diminished the extent of negotiability of mortgages, for FHA-insured and VA-guaranteed loans could readily be bought and sold, while the conventionals replacing FHA's cannot Managers of that significant new repository of wealth, the pension trusts, have not thus far invested in real estate mortgages to any significant degree, nor are they likely to do so if the only means open to them for such investment is the purchase of uninsured conventional mortgages

In summary, California faces a crisis in home financing. On the eve of an anticipated expansion in need for housing credit, California finds itself importing money and doing so at a premium The FHA underwriting program which tended to bring about the greater negotiability of mortgages is declining when it is most needed Second trust deeds are ubiquitous, and they bring with them high interest rates and loan changes as well as prices padded due to the inability of mortgages to dispose of seconds without heavy discounts.

B. BACKGROUND OF NATIONAL MORTGAGE FINANCING

A complete understanding of the problems facing the California home financing business cannot be fully grasped without some familiarity with the national mortgage finance situation A survey of the national sources of credit, the federal underwriting programs and the secondary mortgage market follows This survey is based on a report prepared by Dr James Gillies for the Commission on Money and Credit

SOURCES OF CREDIT

1. *Savings and Loan Associations*

Traditionally the largest residential lender has been the savings and loan association These associations are organized for virtually the sole purpose of loaning on security of real estate Advances made by the savings and loan associations in the field of residential financing have been spectacular, between 1950 and 1959 the dollar volume of their advances increased 100 percent—$5,060 million to $10,516 million During this same period the total dollar volume of funds advanced by life insurance companies declined and advances by commercial banks and mutual savings banks increased about 60 percent The total amount of mortgage loans held by savings and loan associations shot up from $11 2 billion in 1950 to $42 9 billion in 1958, while during this time the holdings of commercial banks went from $11 1 billion to $18 3 billion In 1958 savings and loan associations held 38 4 percent, based on dollar volume, of the nonfarm mortgage recordings of $20,000 or less.

Loans by savings and loan associations are predominantly of the conventional type In 1958 77 percent of all recordings in the nation were conventional loans, 17 percent FHA-insured and 6 percent VA-guaranteed However, at this same time 90 9 percent of all savings and loan association loans were conventional, and 4 9 percent were FHA-insured and 4 2 percent were VA-guaranteed Although the dollar volume of FHA-insured loans held by savings and loan associations has tripled in the last decade, the percentage of FHA-insured loans held by savings and loan associations has declined from 6 6 percent of dollar volume in 1950 to 5 percent in 1958.

Assets of savings and loan associations have increased remarkably in the post-war years In 1947 only 8 7 percent of the savings of individuals in various savings institutions were to be found in savings and loan associations However, by 1959 that figure had increased to 26 8 percent Share capital in savings and loan associations increased from about $11 billion in 1948 to $48 billion in 1958, and approximately 32 percent of all the savings growth in lending institutions that lend on the security of residential real property occurred in savings and loan associations In some areas growth has been dramatic · for example, in California assets of savings and loan associations increased by 300 percent between 1948 and 1958 The insurance of shareholders' accounts and investment certificates by the FSLIC has unquestionably been a major factor in attracting funds to savings and loan associations. The somewhat higher rate of earnings offered by savings and loan

associations in comparison to those obtainable in other savings institutions has also been of importance in the growth of savings and loan assets.

2. *Commercial Banks*

The emergence of commercial banks as major participants in the home finance arena has come about only in the last three decades. In 1930 state and national commercial banks held only 11 1 percent of the total mortgage debt on residential nonfarm homes Until very recent times, national banks have been severely limited by law regarding real estate loans Not until 1916 were they permitted to make urban mortgage loans. and not until 1927 were they allowed to loan up to 50 percent of the value of property on five-year first mortgages State banking laws have been more liberal, and, in consequence, state banks have done a larger volume of mortgage lending than have national banks At present, national banks may loan up to 66⅔ percent of appraised value and the maturity of the loan may extend to 20 years

The banker's concept of the role of the commercial bank has also been a limiting factor in the participation of banks in mortgage lending. Commercial bank managers have traditionally viewed their function as financing commerce, primarily through short-term loans. Due to the nature of their deposit liabilities, bank officers believed it inappropriate to make long-term highly illiquid mortgage loans on the security of residential real property

The creation of the FHA by the National Housing Act of 1934 was the principal factor in increasing bank activity in residential financing. The principal impact of the FHA insurance program was to reduce the risk of lending on residential property and to increase the liquidity of first-mortgage loans Then too, the federal restrictions on the terms and conditions of mortgages originated by national banks were removed so long as such loans were insured. The effect of this was to allow banks to enter the market on a competitive market with other lenders

By 1946 the proportion of all nonfarm residential debt held by commercial banks had increased to 18 5 percent, since that time it rose to over 20 percent in 1947 and 1948, but by 1959 had declined to 13 8 percent The decline in the proportion of mortgage debt held by banks is a result not of smaller participation by the banks in the mortgage market but a more rapid increase on the part of other lenders.

In 1958, commercial banks held $5,204 million in nonfarm mortgage loans of $20,000 or less This was 19 percent of the dollar volume of such loans In 1959 FHA-VA loans made up 45 6 percent of commercial banks residential mortgage loan portfolios Although the dollar volume of such loans held increased from $2 3 billion in 1946 to $9 3 billion in 1959, the percentage of all FHA-VA mortgage debt held by commercial banks decreased from 36 5 percent in 1936 to 15 7 percent in 1959. The volume of commercial bank residential loans is notoriously sensitive to national credit contractions In times of tight money banks restrict investments whether they are FHA insured, conventional mortgages or commercial loans.

3. *Life Insurance Companies*

Life insurance companies are well designed to take full advantage of the long-term mortgage market, for they are free from the hazard confronting banks and savings and loans associations of having substantial portions of their assets withdrawn within a short period of time. Liabilities of an insurance company are actuarially calculable and are relatively small at any one time with regard to total assets Another difference between other institutional lenders and life insurance companies is that the latter derive their funds from premium payments coming from all parts of the nation while other institutional lenders ordinarily accumulate savings only from a single region In 1958 5 3 percent of dollar volume of nonfarm mortgage loans of $20,000 or less was held by insurance companies This amounted to $1,460 million

In 1958 67.7 percent of the loans made by life insurance companies were of the conventional type, 24.6 percent FHA-insured and 2.4 percent VA-guaranteed. But of the FHA-insured loans in existence in 1958 life insurance companies held 31 percent The FHA-insured and VA-guaranteed programs have been attractive to life insurance companies for the reason that it has enabled these companies to buy and sell mortgages more easily, thus giving insurance companies more flexibility in managing their portfolios. In addition, the insured and guaranteed loan program of the federal government has enabled life insurance companies to send their funds into areas where credit was in short supply without having to inspect the properties on which these loans were made

4. *Mutual Savings Banks*

In 1958 mutual savings banks held 6 percent of the dollar volume of nonfarm mortgage loans of $20,000 or less This amounted to $1,640 million The distribution of loans of mutual savings banks in recent years has been about 50 percent conventional, 30 percent FHA-insured and 18 percent VA-guaranteed The relative position of mutual savings banks in the home loan market has diminished in the last 50 years

Mutual savings banks have been greatly assisted by the FHA-VA insurance programs These banks which operate only in the eastern states have been able to buy western mortgages without worrying about the quality of these loans because of the government insurance programs. Thus, these banks have been instrumental in channeling eastern funds into the money-tight western states, particularly California.

5. *Mortgage Companies*

The principal function of mortgage companies is the origination of mortgage loans for sale to other institutional investors and the servicing of such loans These companies also arrange construction financing and make some permanent mortgage loans Mortgage bankers have been particularly important in selling mortgage loans to eastern mutual savings banks and to insurance companies These institutional lenders are willing to buy FHA-insured and VA-guaranteed loans on properties they have never seen due to the insurance provisions The presence of local mortgage bankers obviates the necessity of mutual savings banks or insurance companies having a local staff to appraise property and service loans.

FEDERAL UNDERWRITING PROGRAMS

To encourage investors to loan money on the security of real estate, Congress in 1934 passed the Federal Housing Act which among other things authorized the commissioner of the FHA to insure any mortgage offered to him within one year from date of its execution which is eligible for insurance Upon default in an FHA-insured loan, the commissioner issues to the mortgagee debentures of the Mutual Mortgage Insurance Fund These debentures are fully guaranteed as to principal and interest by the United States government In its first 20 years of operation, the Federal Housing Administration insured over $18 billion dollars of mortgages with losses of only $30,000,000 against receipts of more than $400 million in fees and premiums The VA program was conceived of to allow servicemen to buy the kind of housing that they would presumably have had if they had not entered the service, although in recent years the effect of the VA program has been to provide servicemen with mortgage credit and terms more favorable than those available to the general public FHA and VA insured loans have constituted a large part of the mortgage market over the past two decades. At the end of 1959, government-insured residential mortgage debt amounted to $54 billion and in no year in the 1950's was government-insured mortgage debt less than 40 percent of the total residential mortgage debt outstanding.

The pattern has been that institutional lenders have availed themselves of FHA and VA insured loans, depending on the returns to be earned on such loans in relation to other returns in the investment market Thus in times of tight money when interest rates were high, insurance companies and mutual savings banks have lessened their acquisitions of VA and FHA-insured loans because these loans have a low fixed interest rate These fluctuations are not as evident in the holdings of savings and loan institutions which have traditionally done the great bulk of their lending through conventional loans In the late 1950's dissatisfaction of the construction industry with the low fixed rates offered under FHA and VA-insured loans, delay in processing these loans, and complex building standards have tended to decrease the portion of the total mortgage market underwritten by government insurance In 1958 savings and loan associations made 90 9 percent of the dollar volume of their nonfarm mortgage loans of $20,000 or less by conventional mortgages, commercial banks made 72 2 percent of their loans as conventional mortgages, while insurance companies made 67 7 percent of their loans in this way Mutual savings banks and savings companies made about half of their loans in the form of conventional mortgages Thus in 1958 over three-quarters of all the money loaned on nonfarm mortgages under $20,000 was in the form of the conventional mortgage, 16 6 percent was FHA-insured and 6 8 percent was VA-guaranteed.

SECONDARY MORTGAGE MARKET

1. *Federal Home Loan Bank System*

The FHLB System—consisting of the board, 11 district banks, and the member institutions—was created by Congress in 1932. The president appoints the three-member board, the outstanding stock of the banks is owned by the member institutions The principal function of FHLB is to supply a secondary credit accommodation for savings and loan associations Their need for such a service is manifest their assets are highly illiquid long-term mortgages, while their liabilities are deposits considered by the depositors to be withdrawable on demand Some facility to enable savings and loan associations to raise money by pledging or selling their mortgages was necessary Prior to FHLB, savings and loan associations had to turn to commercial banks for advances, but the times when the associations most needed liquidity often coincided with periods when banks least wanted to make loans

In 1960 member institutions could obtain advances from FHLB up to 12 5 percent of members' savings accounts plus 2 5 percent for emergencies, and 5 percent of separate advances with a maturity of not less than five years Whenever savings and loan association commitments are not met by the influx of savings deposits, the associations may borrow from FHLB on a short-term basis These loans are unsecured except for the capital stock of the district bank owned by the member institution To increase the volume of money available for loans, the associations may obtain long-term loans from FHLB by pledging their mortgages or other collateral Funds loaned by FHLB are raised by the sale of debentures to the public By providing savings and loan associations with a dependable source of liquidity, FHLB has contributed greatly to the remarkable growth of these enterprises over the last decade and a half

2. *Federal National Mortgage Association*

FNMA was formed by Congress in 1938 to provide a secondary market for FHA-insured loans In 1948 it was given the authority to purchase VA-guaranteed loans In 1958, a third of its holdings were FHA mortgages and the remaining two-thirds were VA's At no point during the 1950's did FNMA hold more than 3 7 percent of all residential mortgage debt, but since FNMA both buys and sells mortgages its flow of funds into residential mortgages is great—in 1949, 1957, and 1959 it accounted for about one-tenth of the net flow of funds into home financing FNMA obtains funds from the sale of securities to the public.

FNMA can hardly be said to have fulfilled its mission as a national secondary finance market In 1954-59, FNMA made only 10 percent of its purchases from banks, 5 percent from savings and loan associations, and 1 percent from life insurance companies Its principal function has come to be a source of funds for mortgage companies Mortgage companies may at any time dispose of FHA-insured and VA-guaranteed mortgages that they have "warehoused" to FNMA, or these companies can utilize FNMA as virtually a direct source of funds by selling to it mortgages as soon as they are made Unquestionably, FNMA has served to increase FHA and VA lending

C. THE SECOND TRUST DEED PURCHASER AS AN INVESTOR

LEGAL STATUS OF SECOND TRUST DEED HOLDER

1. *Legal Instruments*

California lenders have long employed the deed of trust with power of sale in preference to the mortgage as the standard real property security device In the typical trust deed the trustor-borrower grants the property to the trustee in trust with a power of sale for the benefit of the beneficiary-creditor for the purpose of securing payment of a given sum of money according to the terms of a negotiable note of even date The trust deed has developed into a detailed and formidable instrument granting extensive protection to lenders (a) upon default by trustor the entire indebtedness becomes due at the option of the beneficiary, (b) after such default the beneficiary may give notice of default and election to sell and may sell the property four months later at public auction; (c) or the beneficiary may choose judicial foreclosure, (d) as additional security the instrument confers upon the beneficiary the right to collect rents and profits with or without taking possession

The trust deed with power of sale device owes its popularity in part to the fact that foreclosure by exercise of power of sale is simpler and cheaper than the judicial action traditionally resorted to in foreclosing mortgages An important advantage of foreclosure by sale is that it cuts off all rights of redemption and thereby makes the property more attractive to a purchaser than does foreclosure by action which leaves the foreclosure sale purchaser with an interest subject to being redeemed Still another aspect of the trust deed that is to the liking of lenders is the immunity of the exercise of the power of sale to the statute of limitations Courts have reasoned that the trustor conveys an estate in the land to the trustee coupled with a power of sale and the trustee having title can exercise the power at any time

Rights of lenders to obtain deficiency judgments in California was severely circumscribed by legislation born of the great depression Mortgage debtors in this period were faced with the intolerable burden of suffering large deficiency judgments assessed against them after their property had brought only a fraction of its normal value upon foreclosure sale The California Legislature met this problem in 1933 by· (a) limiting deficiency judgments to the difference between the indebtedness and the "fair market value" of the property; (b) limiting the time for seeking a deficiency to three months after sale, (c) and abolishing deficiency judgments on purchase money obligations In 1939, the Legislature went still further and barred deficiency judgments in all cases of foreclosure by power of sale Today a deficiency judgment is available only on nonpurchase money obligations and only then if foreclosure is by judicial action

2. *Position of Second Trust Deed Holder*

Institutional lenders in California—banks, savings and loan associations, and life insurance companies—are limited by law regarding the

percentage of assessed value they can loan on real estate. Even without such limitations, large institutions lending the money of their depositors or policy holders would be circumspect in loaning at high loan-to-value ratios without mortgage insurance protection. This is particularly so in view of the fact that lenders on purchase money trust deeds have no right to deficiency judgments; the realty is their only security.

Under a variety of circumstance discussed *infra* borrowers who need funds in excess of those obtainable under the institutional lender's loan-to-value ratio secure loans by giving second trust deeds on their property. Holders of trust deeds subsequent to a prior recorded trust deed are *subordinate* to the rights of the first trust deed holder in every respect Foreclosure by a prior trust deed holder terminates the rights of the beneficiary of the second trust deed to the realty, and the property passes at the trustee's sale free of all right, title or interest of the trustor or of anyone claiming through him.

What are the rights of the second trust deed holder after *default* by the trustor on the first trust deed? The holder of the second should record a request for a copy of notice of default of the first trust deed This entitles him to a copy of the notice of default of the first trust deed within 10 days after such notice is recorded and notice of the time and place of sale at least 20 days before the sale. Upon receiving notice that the first trust deed is in default, the holder of the second may act under Cal. Civ. Code § 2924(c) to "cure the default" by paying within three months of the date of recording the notice of default "the entire amount then due under the terms of such deed of trust . . . other than such portion of principal as would not then be due had no default occurred . . ." In addition to this sum, the junior lien holder must pay "costs and expenses actually incurred in enforcing the terms of such obligation, deed of trust or mortgage, and trustee's or attorney's fees actually incurred not exceeding one hundred dollars in case of a mortgage and fifty dollars in case of a deed of trust or one-half of one percent of the entire unpaid principal sum secured, whichever is greater." Once the holder of the second has paid sums sufficient to reinstate the first trust deed, he may have to continue to make the payments on the first if the trustor is unable to do so If the first is in default, it is highly probable that the second is in default as well; hence, the holder of the second finds that his investment not only is bringing in no money but is, in fact, costing him substantial amounts each month.

What are the rights of the second trust deed holder after *foreclosure* of the first trust deed? If the holder of the second is unwilling or unable to cure the default and continue the payments on the first, the first will be foreclosed If foreclosure is by judicial action, the holder of the second has the right to redeem within 12 months after the foreclosure sale upon paying the purchaser the amount of his purchase price plus certain statutory charges Once the holder of the second trust deed has redeemed he is subject to further redemption by other lien holders and the trustor. If the first trust deed beneficiary chooses to foreclose by sale rather than by action, the trustor and junior lien holders have no right of redemption. The second trust deed holder's only recourse is to attempt to purchase the property at the foreclosure sale. Since the first trust deed holder has no right to a deficiency judg-

ment, he has nothing to lose by bidding the full amount of his indebtedness at the foreclosure sale; therefore, to purchase the property the second trust deed holder will normally have to bid at least the amount of the first trust deed holder's debt If the foreclosure sale yields an amount in excess of the debt owed on the first trust deed, the second trust deed holder is entitled to share in the surplus.

The foregoing discussion has concerned methods by which the junior lien holder can protect his interest as against a prior lien holder. A second area for inquiry is the position of the second trust deed beneficiary vis-à-vis the trustor-debtor *First,* if the first trust deed is not in default but the second is in default, the holder of the second may foreclose on the property and sell it subject to the rights of the first trust deed beneficiary. Only if the value of the property exceeds the debt secured by the first trust deed will a purchaser be interested in the property on foreclosure sale, and then such a purchaser must be prepared to take over the payments on the first mortgage *Second,* what are the rights of the holder of the second after the property has been sold upon foreclosure by sale of the first and no surplus remains after satisfying the debt secured by the first? The rights of the second trust deed holder to the property are gone, cut off by the foreclosure sale. But he does hold a note of the trustor secured by the now worthless trust deed Can he not sue on this note and levy on any property belonging to the trustor? Such a case was before the California Supreme Court in 1953 (Brown v Jensen, 41 Cal. 2d 193, 259 P. 2d 425). The holder of the second sued his trustor on the note and was met by the defense that under Cal Code of Civ Proc § 726 there may be only *one action* for recovery of a debt secured by a mortgage or trust deed and that is foreclosure The plaintiff answered this contention by citing authority to the effect that where the security has been exhausted or rendered valueless through no fault of the mortgagee or trust deed beneficiary, an action may be brought on the debt on the theory that the debt is no longer secured The court rejected the plaintiff's contention on the ground that his second was a purchase money trust deed and thus he was not entitled to a deficiency judgment or personal liability of any form against the trustor In the belief of the court purchase moneylenders were intended by the Legislature to look solely to the land for recovery. Are the rights of a holder of a second nonpurchase money trust deed any better? Here it is possible that personal liability can be established against the trustor after the security is destroyed by foreclosure of a prior lien but only if the holder of the second can show that at the time his trust deed was issued there was actually security for his lien, i e, that the land was worth as much as the debts secured by the first and second trust deeds.

3. Summary

The position of a second trust deed holder is precarious No one should buy a second trust deed unless he has the resources to undertake the obligation of the trustor on the first trust deed or unless the value of the property is great enough to pay off both first and second liens on foreclosure sale Since the value of real estate has always declined sharply in periods of economic downturn, the second trust deed holder can never be entirely confident that there will be sufficient funds on

foreclosure to satisfy his debt The second trust deed holder usually has no personal claim against his trustor, for reasons stated above, and, paradoxically, finds himself in a poorer position than if he had taken an unsecured note. *In blunt terms, no one should buy second trust deeds unless he can afford to lose money*

THE "TEN PERCENTER" BUSINESS

Enough has been said in the foregoing sections to point out the peril courted by an investor who buys a second trust deed under optimum conditions, i e, a second trust deed is recorded in his name; his lien is only subject to one prior trust deed; the debt secured by this second trust deed when added to that of the first trust deed does not exceed the appraised value of the property at the time the trust deed was purchased; the trustor seems reasonably able to comply with the terms of his note. When he buys a trust deed from a so-called "Ten Percenter" firm, he may not have even these elementary safeguards

The following is a description of the operation of a Southern California trust deed company (now in receivership) based on the findings of the United States District Court in a 1960 decision This summary is not intended to indicate that all "Ten Percenters" operate in this manner It is set forth to show what can happen to the money of investors in search of "secured 10 percent earnings "

1. *Investment Program*

The investment program of this company is made up of two elements. The first element of the investment plan, as described in various advertising, involves the offer and sale to members of the public of notes secured by deeds of trust covering residential and other real estate situated in the State of California The deeds of trust securing notes are either second deeds of trust subject to a first deed of trust, or first deeds of trust containing a subordination clause under which they are to be subordinated and become subject to obligations resulting from construction loans.

Under this program the company sells a trust deed note to the investor at a price which the company represents to the investor will "earn" 10 percent per annum on the amount invested, based upon the interest rate stated in the note, discount allowed the investor upon the unpaid principal of the note, and the "anticipated term" of the notes. A substantial number of the trust deed notes sold by the company do not contain a fixed maturity date, but merely establish the principal sum due, the rate of interest, and the amount to be paid monthly and provide that monthly installments shall continue until the entire obligation is satisfied. These are known as "until paid notes " The company arbitrarily establishes within a framework of "anticipated term" such variables as the amount to be paid monthly, principal amount due, and the interest rate, in calculating the discount to be allowed the investor in order that the amount invested will "yield" or "earn" 10 percent in accordance with its "earnings" formula. A substantial number of other trust deed notes sold under investment program are similar to notes running "until paid," but carry a definite maturity date, with result that, at maturity, a large percentage of the principal amount becomes due and payable. This final sum is known as the ter-

minal or "balloon" installment When a note of this nature matures, the maker or trustor is required to liquidate the entire principal amount due or arrange for refinancing of the obligation, in order to avoid foreclosure A number of the trust deeds sold under the investment program are known as "interest only" obligations By the terms of such notes, the stated rate of interest is payable monthly or quarterly, with the entire principal amount due and payable at a stated maturity date A lesser number of trust deed notes sold to investors by the company are conventional notes, carrying a specified interest rate, to be amortized over a stated period of time

After receipt of an investor's funds and a purchase authorization signed by him, the company selects and confirms to the investor a trust deed note The investor receives no information from the company with respect to the trust deed note selected for and confirmed to him, except an abbreviated description given in the confirmation, unless he insists upon receiving a more specific description of the instrument and the underlying security The company does not furnish the investor an appraisal of the real estate or the equity securing the trust deed note The investor is not consulted, in advance of the sending of the confirmation, with respect to the nature and quality of the trust deed note to be selected for his account In its brochure the company represents that investors may depend upon the "careful screening and appraisal by the company's purchasing department in order to minimize the risk incident to investing under the investment program in that 'all trust deeds which we purchase for resale to our customers are carefully checked by our title department, and full advantage is taken of the protection provided by the California Civil Code We are proud indeed of our record to date in handling trust deeds none of our customers has ever sustained a loss, nor has any customer who has held a trust deed for at least six months failed to receive his full 10 percent earnings.' "

Although under the investment program the investor may if he chooses buy a trust deed note outright and make his own collections of monthly or other periodic installments from the maker or trustor, the company recognizes that it is not feasible for investors throughout the United States and in foreign countries to so service the trust deed notes which they purchase from the company Accordingly, the investor is encouraged to authorize the company to service the note without cost to the investor by making installment collections, sending out necessary delinquency notices, and, if necessary, effecting foreclosure in event of default When the company makes such monthly or other periodic collections, the sums received are remitted to the investor or at the option of the investor applied by the company to the purchase of a new trust deed note under the investment program

The second basic element of the investment program involves the purchase of trust deed notes on "installment terms " Under this plan, trust deed notes are sold to investors on an installment basis The investor may remit a sum of money to the company for the purchase of a trust deed note on an installment basis, the title to be retained by the company until the entire purchase price is paid The difference between the purchase price of the note and the amount paid in by the investor is established as a debit balance on the books of the company,

and any additions to the account made by the investor in collections received by the company from the investor are credited toward the purchase price of the trust deed note, with the company carrying the debit balance and applying collections from the trustor and any additions to the account by the investor until his debit balance is liquidated. If the debit balance in the investor's account is extinguished, he is entitled to have the trust deed note transferred to him. While the account of the investor remains in debit balance, the company retains title to the trust deed Some 85 percent of the thousands of accounts on the books of the company are in debit balance This means that 85 percent of the investors are making monthly deposits with the company or having the company apply collections on trust deed notes which they own in full to the purchase of a new trust deed note or both and that not more than 15 percent of investors are receiving monthly remittances from the company. It is also a reasonable assumption from the evidence that many investors whose accounts are not in debit balance allow their funds to remain on deposit with the company. Thus the company at all times controls millions of dollars of investors' funds.

2. *Discount Formula*

The discount formula used by the company in acquiring a group of second trust deed notes for sale to its investors under the investment program is illustrated by an agreement entered into in 1957 under which the company agreed to purchase from a certain building company 43 second trust deed notes in the face amount of $2,400 each, bearing interest at 7 percent, to be "created" as the homes then under construction were sold. By the terms of the letter agreement, the company was to purchase trust deed notes at 60 percent of face value (a discount of 40 percent) where the notes were to be payable at the rate of 1 percent per month and have a maturity of 5 years, at 58 percent of face value (a discount of 42 percent) where the maturity was to be 7 years, and at 55 percent of face value (a discount of 45 percent) where the notes were to run "until paid" The evidence establishes that more recently the company has acquired trust deed notes for sale to investors under the investment program at average discounts of about 25 to 30 percent of face value, and sells such trust deed notes to investors at an average gross mark-up over cost of about 25 percent The trust deed notes are sold to investors at a price discounted to yield 10 percent per annum, taking into consideration the face amount of the note, the rate of interest, the amount of monthly payment, and the maturity date. The company advertises that funds deposited by the 20th of the month earn 10 percent from the first In instances where the investor's funds have remained uninvested for some time, the company introduces the trust deed note into the account at a price which will reflect "earnings" of 10 percent from the date investor's funds were received.

3. *Instruments Received by Investor*

The investor under the investment program whose account is not in debit balance receives from the company an assignment without recourse of the trust deed note, an assignment of the trust deed, a policy of title insurance, an engraved certificate of registration and owner-

ship, certifying that his trust deed has been registered in his name (or in the name of the company as trustee) on the records of the company The certificate of registration and ownership gives the trust deed number as registered on the books of the company, the name of the registered owner, the description of the lot or unit of land securing the trust deed, the face amount, the unpaid balance, and terms of the note While all investors receive a certificate of registration and ownership, they are encouraged to leave title to their trust deeds in the name of the company as trustee This of course gives the company full dominion over their accounts Some 30 or 40 percent of investors who hold fully paid for trust deeds have acquiesced in this arrangement. The company retains title to all trust deeds sold on installment terms.

4. *Procurement of Trust Deeds*

The company purchases second trust deed notes in substantial volume from subdividers and developers of residential real estate subdivisions at discounts ranging above 40 percent of the principal balances due on the trust deed notes The company enters into firm commitments with real estate subdividers to purchase second trust deed notes covering entire tracts These commitments by the company are evidenced by letter and other more formal agreements and are confirmed by the company to the vendor or supplier by separate "buy order " These arrangements permit the company to purchase second trust deed notes covering entire tracts in advance of actual construction of the homes and in advance of the actual creation of trust deed notes following the construction and sale of the houses and requires the company to apply the uninvested funds entrusted to it by investors under the investment program in fulfilling its commitments to real estate subdividers The company purchases at substantial discounts and in large volume, for resale to investors under the investment program, first trust deed notes which are executed by tract subdividers and developers and accepted by the owners of the land being subdivided in full or partial satisfaction of the purchase price of the land. These trust deed notes are known as "subordinated notes" since they contain a clause under which the subdivider may obtain a construction loan from a conventional lending institution, such as a bank, savings and loan association, or insurance company, and upon the recording of the trust deed securing the construction loan the first trust deed accepted by the landowner is automatically subordinated to the construction loan and becomes a second trust deed The arrangement under which the company purchases subordinated first trust deeds is made contemporaneously with the execution of the trust deed notes by the tract subdivider, with result that the landowner is assured of receiving the discounted price of the trust deed notes as agreed upon between the landowner, the subdivider and the company. Hence the company purchases such subordinated trust deed notes in advance of any construction, and in advance of actual creation of the subdivision, and, at times, in advance of the filing of the subdivision map and notice of intention with the Real Estate Commissioner.

The funds entrusted to the company by investors under the investment program are applied by the company to the purchase of such highly speculative subordinated trust deed notes for inventory or

"warehousing" and resale to investors. While investors are led to believe that the company brings into inventory under the investment program only "seasoned," "prime," "trouble-free" trust deeds which have been carefully "screened" and "appraised" by experts, and that such trust deeds are secured by substantial underlying equities representing the investments of homeowners, the facts are that many thousands of trust deeds which have been introduced to the account of investors under the investment program cover units of raw, vacant and unimproved land, and are subject to subordination to construction loans of indeterminable amounts Apparently no independent appraisals are made of land subject to the trust deeds

5 Commingling of Funds

For the first few months of its operation in 1957 the company distributed brochures representing that investors' money was to be deposited in a separate trust account, and was not to be commingled with the company's funds until authorized persons of the company made proper sale to the investor's account of the specific note purchase by the investor At first a special trust account was established to accommodate and safeguard investors' funds, but early in 1958 the designation of the trust account was changed to "customers' purchases account" Later the form of receipt issued to investors entrusting funds to the company for investment was modified by deleting the word "trust," and subsequently the brochure was also changed By December, 1957, all funds received by the company were being commingled with other funds including collections made by the company for investors holding notes secured by deeds of trust which the company was servicing under the investment program

6. Company Undercapitalized

From the beginning of the investment program, the company was grossly undercapitalized and was dependent upon the flow of cash from new investors' or additions to existing investors' accounts in order to meet its commitments for the purchase of trust deed notes for inventory or "warehouse," to carry the substantial debit balances established in "installment purchase" accounts, to meet its obligations to account to investors for monthly collections on trust deed notes which it has undertaken to service, to meet its general operating and other expenses Throughout the period of the investment program it was necessary for the company to apply funds belonging to investors for which it is accountable as a fiduciary in order to meet one or more of its other current obligations The company has managed to survive only through the continuous and indiscriminate commingling, diversion, and misapplication of funds entrusted to it by investors under the investment program As the flow of cash from investors to the company increased, the company's cash position was ameliorated, to the point where it began to maintain very large bank balances composed of funds deposited with the company by investors These large balances evidenced the inability of the company to obtain trust deed notes even of the low quality which evidence established they had been accepting

7. *Summary*

The security of anyone investing in second trust deeds is precarious since it may be swept away by foreclosure of the prior lien The federal court findings summarized above demonstrate that the security of investors purchasing trust deeds from this company was, for the most part, worthless Those purchasers who paid for trust deeds and had them recorded in their own names often found that there was no equity in the encumbered land to support their obligations Due to the low quality of trust deed notes procured by the company, some found their liens to be fourth trust deeds instead of seconds, others found the lien prior to theirs to be a huge blanket trust deed which they could not possibly pay off to protect their trust deed. However, most investors dealing with this company were buying trust deeds on the installment plan and did not enjoy even the modest protection of having a trust deed recorded in their names

The investor in second trust deeds is not the only party affected by the type of operations outlined above, the building industry and the general public are also injured. Some trust companies found that the response to their advertisements promising "secured 10 percent earnings" was so great that the money which poured in from investors vastly exceeded the number of high quality trust deeds available for purchase Prompt action had to be taken, for the trust deed company had to pay 10 percent on all of the money taken in. Some of these companies met this emergency by "manufacturing" trust deeds For instance, development of a tract is undertaken by a builder and officials of a trust deed company as a joint venture Sufficient second and third trust deed notes are created on each lot to cover the cost of construction of the houses and a profit thereon; these instruments are then sold to the trust deed corporation at a large discount and thence sold to that company's investors. An alternative method calls for a syndicate, including representatives from the trust deed company, to buy out a developer after the houses are built and create further trust deeds on each lot to be sold at a discount to the company and then to its investors Under either scheme the builder is bailed out at a profit to him without a house being sold to a consumer and the ultimate risk of loss is borne by the trust deed purchaser who is led to believe he is purchasing a "seasoned," "prime" trust deed The implications of this kind of operation, wherein trust deeds are created to draw off the glut of cash in the hands of "10 percenters," are ominous. Houses may be thrown up without any consideration of the public need for them or whether they can be sold at a reasonable price The promoters of such enterprises enjoy a status unique in the history of the home building industry; as conspicuous beneficiaries of the gullibility of second trust deed investors, they profit whether their houses sell or not

LEGISLATIVE AND ADMINISTRATIVE PROTECTION OF THE SECOND TRUST DEED INVESTOR

1. *Real Property Loan Brokerage Law*

In its 1959 and 1960 sessions, the California Legislature, by enacting Civil Code §§ 3081 01 to 3081 096 moved forcefully to protect second trust deed investors Under § 3081.01 real property loan brokers must

be licensed as real estate brokers and must register as real property loan brokers with Division of Real Estate. A real property loan broker is defined in § 3081.02 as one who negotiates or solicits a prospective borrower or lender for the purpose of negotiating a loan (except in connection with the sale or exchange by him of real property) to be secured by real property or one who engages in the business of buying, selling, or exchanging promissory notes secured by trust deeds.

The act affords trust deed purchasers four major safeguards. 1. *Bond.* (§ 3081 05) The loan broker must file a bond in minimum amount of $25,000 if a corporation or $5,000 if an individual but which is equal to or in excess of the total aggregate amount of all money held by him or under his control for the account of others Debtors or lenders claiming to be injured by the broker may sue on the bond 2 *Trust Account.* (§ 3081.09) All funds accepted by a loan broker for the purchase of a trust deed note or for the negotiation of a loan evidenced by a trust deed note must be maintained in a trust account in a legal depository until the buyer or lender approves or disapproves of the purchase or loan. An exception to the foregoing is made where the broker accepts funds before furnishing the statement required by § 3081.095. In such case the funds must be deposited in an independent licensed escrow. 3. *Statement.* (§ 3081 095) Before the purchaser binds himself to purchase a trust deed note, the broker must furnish to him a statement in writing setting forth the legal description of the property subject to the deed of trust, details of prior existing encumbrances, and such other information as the Real Estate Commissioner may require. In May, 1960, the commissioner prescribed a rather detailed and complicated statement (10 Cal Admin. Code § 2849 1). 4 *Recordation.* (§ 3081.096) A loan broker must record in the name of the purchaser or lender every trust deed he has sold or which secures a loan he has negotiated within a period of time fixed by the Real Estate Commissioner.

2. Power of the Commissioner of Corporations to Regulate Trust Deed Sales

The power of the Commissioner of Corporations to regulate sales of trust deeds under present law is a perplexing problem. A chronological examination of the changes in the Corporate Securities Law is helpful in interpreting the statute in its present form

In 1954, at the dawn of the second trust deed age, the Attorney General was asked for an opinion whether a promissory note secured by a deed of trust is a "security" within § 25008 of the Corporate Securities Law and whether a person dealing in these notes is a broker within § 25006(a) of that statute. The Attorney General's affirmative answer to both questions was based on the following sections of that statute:

§ 25006. " 'Broker' includes every person or company, other than an agent, who, in this State, engages either wholly or in part in the business of selling, offering for sale, negotiating the sale of, or otherwise dealing in, any security issued by others . . ."

§ 25102. "The Corporate Securities Law does not apply to any of the following classes of securities: (c) Promissory notes, whether secured or unsecured, where the notes are not offered to the public, or are not sold to an underwriter for the purpose of resale."

The opinion concluded. "It is thus obvious that the Legislature chose to classify promissory notes as securities and effectively did so. There is no exemption provided, except in instances where they are not offered to the public " 24 Ops Cal Atty Gen 60, 64 (1954). In the same year another opinion concluded that whether such notes were securities or not, guarantees of them were securities 24 Ops Cal Atty. Gen 271 (1954)

In 1955 the Legislature amended the Corporate Securities Law and stated its purpose in doing so in these words: "A recent opinion of the Attorney General (No. 54-82) holds that promissory notes referred to in section 25102 of the Corporations Code are securities within the meaning of the Corporate Securities Law and if offered to the public are not exempt from the law The person making such an offer to the public is held in the opinion to be a security broker This has been neither the practice nor the understanding of persons engaged in the securities or the real estate business Transactions in such promissory notes relating to real estate always have been conducted by real estate brokers, and not by security brokers " (Stats 1955, ch. 1792, p. 3308)

Under the 1955 amendments § 25006 1 was added " 'Broker' does not include a broker licensed by the Real Estate Commissioner in selling securities described in § 25102 1 of this code " Section 25102(c), listing one class of securities to which the Corporate Securities Law does not apply, was amended to read· "Promissory notes, whether secured or unsecured, *and any guarantee thereof,* where the notes are not offered to the public, or are not sold to an underwriter for the purpose of resale " Section 25102(d) was added to state a new class of securities to which the Corporate Securities Law does not apply "A promissory note, secured by a lien on a single parcel of real property, when such note is not one of a series of notes executed by one maker or persons associated together in the issue of notes " The final addition to the 1955 amendments was § 25102 1 "Except as expressly provided in this division, the Corporate Securities Law does not apply to the sale of a promissory note secured by a lien on real property, when sold by a real estate broker licensed by the Real Estate Commissioner, and when such note is not sold to an underwriter or is not one of a series of notes "

A great English lawyer, Sir John Salmond, once described case law as "gold in the mine" and statute law as "coin of the realm ready for use . . brief, clear, easily accessible and knowable ." Surely, he had never read the California Corporate Securities Law Whatever the Legislature attempted to achieve in the above sections, clarity was not one of its accomplishments Why § 25102 1 was added at the same session of the Legislature as § 25102(d) is not clear, their interrelationship is puzzling The term "underwriter" is nowhere defined in the statute, and the phrase "one of a series of notes" is ambiguous

Section 25102(d) seems to exempt from securities regulation all promissory notes secured by a trust deed on a single parcel of real property even though sold to the general public or to an entity like a "ten percenter" company for eventual sale to the public. There is one important exception to this exemption: the exemption does not apply

when the note is one of a series executed by one maker or persons associated in the issue of notes This exception would seem to cover what has heretofore been a popular source of second trust deeds, i e, where a developer has all the houses in the tract built, he may, prior to sale of the houses, create a trust deed on each lot in his tract and sell these instruments at a discount to a "ten percenter" Here the developer would have to secure a permit under the Corporate Securities Law because he has issued a series of notes executed by one maker Were each lot sold to a buyer who gave a second trust deed back to the developer who in turn sold them, the Corporations Commissioner would have no jurisdiction Whether such a fine line between the jurisdiction of the Corporation Commissioner and that of the Real Estate Commissioner is justified is open to question, particularly in view of the policy declaration of the Legislature to turn trust deed regulation over to the Real Estate Commissioner The Corporation Commissioner is certainly justified in regulating what would be, in effect, the creation of bonds—a series of notes of equal rank secured by the same piece of land But § 25102(d) goes beyond merely giving him control over real estate bonds.

It might be concluded that the 1955 amendments to the Corporate Securities Law went far in achieving the legislative purpose of limiting the authority of the Corporation Commissioner over trust deeds However, the impact of the concept of the "investment contract" on the operations of trust deed companies renders such a conclusion untenable Section 25008 states that an investment contract is a security. The essential test of the existence of an investment contract is whether the investor is relying on the efforts of the seller or a third party to use the investor's money and through these efforts to return a profit to the investor *(S E C. v Howey Co, 328 U S 293, 299)* Hence, a note may be exempt under § 25102(d), but the sale of that note may fall within the Corporate Securities Law if the seller enters into an investment contract with the buyer

Two kinds of agreements made by the seller in marketing trust deeds are important in showing the existence of an investment contract *(31 Ops Cal Atty. Gen 218 (1958))* First collateral agreements made by the seller binding him to perform certain services for the buyer, e.g, complete investigation and placing service, servicing collection, payments and foreclosure, seller's selection of trust deed for investor. *Second:* collateral agreements guaranteeing payment of the notes, e g, an implied or express agreement to guarantee against loss, to provide a market for the security or to repurchase it at the request of the holder; implied or actual guarantee of a specified return or yield; payment of interest prior to actual purchase of the trust deed

Since some California trust deed marketing companies make virtually all the collateral agreements set forth above, it is highly likely that a court would find that these organizations are entering into investment contracts in connection with the sale of trust deed notes Until the Legislature deals directly with the question of investment contracts, its attempts to limit the Corporation Commissioner's authority over the operations of trust deed companies are likely to come to naught

In the summer of 1960 the Commissioner of Corporations put into effect a controversial set of regulations for the establishment and regulation of second trust deed "pools". These extremely comprehensive

regulations provide that (1) a permit must be obtained by any company selling certificates secured by a fund containing promissory notes secured by deeds of trust (2) minimum capitalization of the companies managing the pools would be $100,000, (3) trust deeds going into the pools would be appraised by qualified appraisers, (4) fractional interests in the pools would be sold in the form of certificates, (5) the certificates would be redeemable at option of holder within 180 days after demand, (6) certificates would be sold in a 10 to 1 ratio, i e, $100,000 capitalization would support $1,000,000 worth of certificates, (7) the certificate-to-capital ratio would decrease at regular intervals, depending on the amount of capitalization, (8) documents evidencing the trust deeds going into the pools could be placed in a bank or escrow, (9) aggregate par values of trust deeds outstanding on properties securing the trust deeds going into the pools would not exceed 92 percent of the appraised value of the properties, (10) properties securing the trust deeds going into the pools would be diversified as to location, (11) officers of the companies managing the pools would be bonded, (12) financial reports of the companies managing the pools would be submitted regularly to the Commissioner and certificate holders and (13) advertisements of the companies managing the pools would be approved by the Commissioner

3. *Critique of Investor Protection*

The best protection a second trust deed purchaser can have is (1) a solvent trustor willing and able to make prompt payment of both the first and second trust deed notes, and, (2) sufficient value in the land encumbered to satisfy both liens in the event of foreclosure However, as trust deed investment becomes more institutionalized, it is increasingly unlikely that the investor will be in a position to determine the solvency of the trustor and the value of the property by first-hand observation With the entry into the trust deed market of the unsophisticated investor, it is less probable that such an investor will view the property or have the ability to make an accurate assessment of the soundness of his investment even if he did make a personal investigation

Immediate legislative and administrative action must be taken to curb the advertising practices prevailing in recent years which have led unsuspecting trust deed investors to believe they are putting their money into institutions that are as secure as savings and loan associations—but institutions which promise 10 percent interest rather than 4 5 percent The investor must not be misled about the nature of his investment Under the present statute, Civil Code § 3081 922, passed in 1957, false, misleading, or deceptive advertising is prohibited regarding "rates, terms, or conditions for making or negotiating loans " This measure does not expressly cover the sale of trust deeds and thereby omits the area most in need of regulation

Brokers should be required to disclose to trust deed purchasers the conditions surrounding the trust deed being assigned A proper disclosure requirement will give the investor a means of protecting himself against some of the more atrocious practices employed by brokers, e g, sale of trust deeds on land worth far less than its encumbrances or sale of third or fourth trust deeds represented to be second trust

deeds The 1960 Legislature made a start toward solution of this problem by providing that "a real property loan broker who specializes in the sale of discounted trust deed or mortgage notes" must make such disclosure as the Real Estate Commissioner prescribes, before the buyer binds himself to purchase The commissioner's form includes: (1) location and description of the property; (2) financial position of the trustor, (3) appraised value of the property, and (4) information relating to all prior encumbrances

It is noteworthy that this disclosure need only be made by "discount brokers" and the commissioner has defined the term as meaning only those brokers engaged in "buying, selling, or exchanging promissory notes secured by deeds of trust or mortgages on real property at discount as a *main or principal* business or vocation " There is no convincing reason why any second trust deed purchaser should be denied this disclosure even though his broker is not technically a discount broker The effectiveness of any such provision which purports to disclose to the trust deed purchaser the risk he is undertaking is dependent on the accuracy of the information set out, in particular, the accuracy of the *appraisal* No method of insuring the integrity of an appraisal has yet been found by the Legislature

In addition to curbing advertising abuses and requiring disclosure, the Legislature has imposed other safeguards for trust deed purchasers One of these, the bond requirement of the Real Property Loan Brokerage Law, has been criticised as unworkable in that few brokers have been able to obtain the bond since surety companies are reluctant to write performance bonds The broker who is unable to procure a bond is forced into inconvenient procedures to avoid handling money.

The new requirement that all money received by loan brokers for purchase of promissory notes must be placed in a trust account should effectively prevent brokers from misappropriating investors' funds This portion of the statute has been subject to criticism for the reason that it still allows brokers to accept money, and possibly pay interest to the investor on it, before having a trust deed to sell to the investor. It is contended that so long as brokers can accept money before offering a trust deed to the investor the danger exists that mounting deposits will force the broker into obtaining substandard trust deeds for sale. Hence, it is asserted, the only solution is to prohibit the acceptance of funds by the loan broker until he can assign a trust deed

It should be noted, however, that if the broker accepts funds from a purchaser before the broker has furnished to the purchaser the detailed statement concerning the trust deed required by § 3081.095, the funds must go into an *independent* escrow, rather than a trust account, and remain there until the purchaser approves or disapproves the purchase or loan Whether this requirement will discourage loan brokers from accepting deposits before they are ready to assign trust deeds is doubtful

The statutory directive to the loan broker to record in the name of the purchaser any trust deed sold does not make clear whether trust deeds sold on installment payments must be recorded Since a substantial portion of the discount broker's business has been on an installment basis, clarification would be desirable The commissioner was authorized to prescribe by rule the maximum time allowed for recording His regulations state that an assignment of the trust deed must be recorded

within 10 days after "said transaction is consummated A sale shall be considered to have been consummated when the broker receives the written approval of the buyer on the form prescribed by the commissioner and receives funds from the escrow, even though the funds received from the escrow leave an *amount remaining due to the broker* on the purchase price of the trust deed and note sold." This language is capable of being interpreted to require recording of an assignment of a trust deed sold on installments It is questionable whether the Legislature intended to allow the commissioner to determine by rule whether recordation of trust deed assignments sold on installments should be upon entering into the contract or upon full payment

Criticisms of the second trust pool scheme usually center around two points: (1) The extensive control exerted by the Corporation Commissioner over the second trust deed pools might lull investors into a false sense of security; the pools contain nothing but second trust deeds and are subject to great value shrinkage in a major recission, however well the plan is regulated (2) Companies operating under commissioner's certificate plan may draw funds so successfully that they lessen the supply of money available for first trust deed loans

D. LEGAL PROTECTION OF THE HOME FINANCE CONSUMER

The real estate buyer of today is not only a housing consumer, he is also a financing consumer, for a high percentage of real estate purchases involve some form of financing. The two types of financing most commonly used in California are the purchase money trust deed and the land sale contract. A summary of California law regulating both of these forms of financing follows.

REGULATION OF PURCHASE MONEY REAL ESTATE LOANS

1. *The Necessitous Borrower's Act of 1955*

Sharp and unscrupulous practices by mortgage loan brokers stirred the Legislature to action in 1955 in passage of the so-called Necessitous Borrower's Act The function of the mortgage broker is to secure funds for borrowers from lenders in exchange for a commission almost invariably paid by the borrower Abuses in mortgage brokering in California in 1955 were flagrant. (1) A consistent pattern of misrepresentation and omission existed, documents were often signed in blank (2) Balloon payments, of formidable size, were omnipresent. (3) Borrowers seeking only a few hundred dollars were persuaded to refinance existing first mortgages at higher interest rates to enable brokers to obtain higher commissions (4) Obfuscation regarding the source of the funds lent was common (5) Excessive charges were assessed for escrow services, title search and insurance, recording fees, and so forth. (6) Excessively high brokerage fees were exacted for securing loans

The Legislature recognized these abuses in stating the necessity for the act· "In many parts of the State, citizens of small means who are in need of borrowing money through loans secured by liens on real estate, especially, but not entirely, on deeds of trust, representing equities on their home property, are being required and induced to pay exorbitant and excessive fees and charges to persons negotiating said loans in the form of brokerage commissions and costs and expenses in great disproportion to the amount of money actually received. Such brokerage and charges are secured through the writing of loans for periods of one and two years, with final payments beyond the ability of the borrowers to pay This large final payment requires the borrower to renew or refinance the loan and thereby to pay another brokerage fee, and to incur additional costs and expenses. The total amount of the charges, costs and expenses, and interest become in the aggregate so high that such necessitous persons are faced with the loss of their security, or are finding themselves continuing in debt far beyond the normal amortization period of the loan There is also evidence that the charges and costs and expenses are indirect means by which moneylenders may secure rates of interest beyond those authorized "

The 1955 act, as amended, provides that a broker who negotiates a loan to be secured by real property must make rather extensive disclosure to the buyer in writing regarding the details of the transaction: loan charges (insurance premiums, other than fire insurance, appraisal

fees, escrow fees, notary and recording fees, credit investigation fees); bonuses or commissions paid for loan procurement or servicing; liens against property; interest rate, terms of note, and so forth. Maximum limits are set on the amount that can be exacted from the borrower by way of loan charges and bonuses and commissions Balloon payments are prohibited on nonpurchase money loans with maturities of less than three years Violations of the act constitute a misdemeanor An effort is made to make the statute self-enforcing in that treble damages are recoverable in a civil action where the maximum limits on bonuses or commissions are exceeded

Although the act is principally aimed at the short-term, low principal loans secured by real property already owned by the borrower, the terms of the statute do cover purchase money loans, with the exception of the section prohibiting balloon payments The question whether the measure applies to a loan granted by a lender to a borrower without the intervention of a broker has arisen; an opinion of the Attorney General states that some provisions of the act do apply in the direct loan situation Due to its extensive exclusions and limitations, however, the act has no application to the vast majority of purchase money loans in California **The act does not regulate loans by the great institutional lenders: banks, trust companies, industrial loan companies, savings and loan associations, pension trusts, credit unions, and insurance companies.** Nor does it apply to first mortgage loans exceeding $10,000 or junior mortgage loans of over $5,000

2. *General Usury Laws*

Unless a loan falls within the extremely limited coverage of the Necessitous Borrower's Act, the only regulatory safeguards afforded the buyer by California law are the general usury laws of the State. In times of low interest rates, concern over the importance of usury laws in real estate financing diminishes Only when interest rates are high, as now, does the dull subject of usury command the attention of lawmakers and legal researchers Since no analysis of California usury law has been done in recent years, a detailed treatment of the subject seems warranted

Traditionally, usury has been defined as the loan or forbearance of money, repayable absolutely, at a charge in excess of the interest allowed by law

In 1918 California enacted by initiative a general usury law allowing parties to contract for a rate of interest not exceeding "twelve dollars on the one hundred dollars for one year" By constitutional amendment in 1934 the 12 percent maximum was reduced to 10 percent Excepted from the restriction of the 1934 amendment were certain classes of lenders.

The 10 percent interest limitation in California has been held to mean *simple interest* If a borrower arranges for an unamortized $100 loan for one year at the maximum rate of interest, he must repay the lender $110 at the maturity date If the note is payable in installments the borrower cannot be required to pay more than 10 percent on the unpaid balance each month A schedule can be arranged providing for equal monthly payments with a declining portion of the payment going

to pay interest charges and an increasing proportion allocated to reduce the principal as the loan matures.

Ten percent interest on an installment loan calculated by either the *add-on* method or the *discount* method would exceed the constitutional maximum. Under the add-on system, the $10 interest charge would be added to the $100 principal and the $110 total would be repaid in 12 equal installments. Since the borrower is discharging his obligation by monthly payments, he has the *use* on the average of only slightly more than one-half of the principal throughout the year; hence, 10 percent add-on interest is the equivalent to a simple interest rate of 18 46 percent By the discount method the $10 would be deducted from the $100 principal and the borrower would be given only $90. Under the California decisions, when the interest is deducted in advance the amount actually received by the borrower will be treated as the principal in testing the loan for usuary. Clearly the constitutional rate is violated if the borrower must pay $10 for the use of only $90 for a year, and if the principal is repayable in installments the violation is even more pronounced.

The legal consequences of usury vary markedly from state to state. In some jursidictions a violation of the usury statute results in forfeiture of all principal and interest; in others only the interest is forfeited and if paid may be recovered by the borrower The mildest form of sanction is forfeiture of only that amount of interest exceeding the legal rate. Criminal penalties are sometimes found Permissible interest rates run from as high as 12 percent in some of the western states to as low as 6 percent in the eastern states.

In California, the Usury Law of 1918 set the maximum rate of interest permissible at 12 percent and set forth certain penalties for violation of the law. The 1934 constitutional amendment, in setting a 10 percent maximum, repealed the prior act insofar as it was inconsistent, but the amendment carried no sanctions Hence, the penalties of the 1918 law have been applied to violations of the constitutional amendment.

The civil statutory remedies are two-fold · First, if a loan is usurious, the borrower need not pay any of the interest agreed upon, but he is still liable for the principal. Second, the borrower who has paid a usurious rate of interest may recover *treble* the amount of interest which he paid within one year before the action to recover was brought In finding whether usury is present a court must look to the amount of interest *agreed* to be paid, but in determining the sum recoverable under the treble damages clause the amount of interest actually *paid* must be ascertained. Violation of the Usury Law also constitutes a misdemeanor.

The statutory remedies of the Usury Law have been held not to abrogate the common law rights of borrowers as parties to an illegal contract. Hence, borrowers may bring an action for money had and received to recover usurious interest paid within two years of the suit. Since the treble damages remedy and the right of a borrower to recover money paid under an illegal contract are cumulative, borrowers can recover treble the amount of interest paid within one year preceding suit and the actual amount of interest paid the year before that. The

borrower can also invoke the treble interest and money-had-and-received remedies by way of set-off when the lender sues for the principal

In a number of states, including such important commercial states as New York, Pennsylvania, Ohio, Illinois, and Michigan, a corporation cannot plead usury. California corporations, however, can avail themselves of the defense of usury.

One of the most significant aspects of usury regulation in California is that most of the important lending institutions are exempted from it. The Usury Law of 1918 which set the 12 percent interest rate maximum was presumably intended to cover all lenders The 1934 constitutional amendment reduced the maximum rate to 10 percent and specifically exempted from its restrictions savings and loan associations, banks, industrial loan companies, credit unions, pawnbrokers, personal property brokers, and certain others. The amendment gave to the Legislature the power to fix rate maxima for these exempted classes The constitutional amendment was interpreted as completely excluding the exempted lenders from the coverage of the prior Usury Law Since the Legislature has not acted to set maximum rates for banks and savings and loan associations, these two giants of real property financing are not subject to any form of interest rate regulation In contrast, the other participants in realty financing—insurance companies, mortgage companies, and individual investors—are covered by the California usury laws.

The incidental costs of obtaining a loan secured by real estate usually exceed those arising when personal property security is used In closing a real estate loan, a borrower must pay fees for some or all of these expenses brokerage for procuring the loan, appraisal, escrow, notary and recording, credit investigation, insurance, legal assistance Are such expenses to be treated as interest and thus limited by the usury statutes? If not, are there any limitations on what a borrower can be charged for these items?

The present law on this subject is more easily understood in the light of a brief chronology of pertinent statutes and interpretative decisions The 1918 Usury Law purported to limit the amount that could be charged a borrower for "all examinations, views, fees, appraisals, commissions, renewals and charges of any kind or description whatsoever . in the procuring, making and transacting of the business connected with such loans . ." In 1927 the California Supreme Court declared this provision to be unconstitutional One reason for the court's decision was that this provision violated the constitutional requirement that the subject matter of the section be included in the title of the act The title of the act mentioned "usury" and "interest" but the subject of this provision, so the court opined, was "charges and expenses of loan brokers." In drawing this distinction between "interest" and "charges," the court made it plain that the costs incident to obtaining a loan were not to be counted as interest

The 1934 constitutional amendment flatly stated that "No person, association, copartnership or corporation shall by charging any *fee, bonus, commission,* discount or *other compensation* receive from a borrower more than 10 percent per annum upon any loan or forbearance of any *money,* goods or things in action." It might well be contended that this language meant that a borrower could not be charged more

than 10 percent for interest *plus* brokerage fees and other incidental expenses Nonetheless, the California decisions construed away what seemed to be the literal import of the language by holding that this provision referred only to expenses which could be considered "compensation for the loan of *money*," that is, *interest* The expenses incident to closing a loan are not compensation for the loan of money, they are "charges" and not "interest," and the amendment does not make "charges that are not interest become interest"

Hence, at the present, the California lender can exact from a borrower the full 10 percent rate of interest allowed by the Constitution, and, in addition, may make charges for "investigating, arranging, negotiation, brokering, making, servicing, collecting and enforcing" his loan The opportunity for a lender or broker to thwart the purpose of the usury laws by adding on inflated brokerage and closing costs is apparent Some legislative and judicial action has been taken to narrow this avenue for evasion

In 1955 the Legislature by the Necessitous Borrower's Act set limitations on the amounts that could be charged borrowers in brokerage fees and closing costs, but this statute is severely circumscribed, in that it applied only to first trust deed loans of under $10,000 and second trust deed loans of under $5,000, and exempts banks, savings and loan associations, and insurance companies, among others The courts have repeatedly stated that they will carefully scrutinize the whole transaction and will disregard its form and look to its substance to find whether loan costs are bona fide or merely a device through which additional interest or profit on the loan is being exacted Thus each charge must be the result of a specific service or expense incidental to the loan, and the charge must be a reasonable one

Where the lender deducts a fee or commission from the amount loaned as compensation to himself for making the loan, the courts have uniformly considered this charge to be interest and subject to usury limitations A similar result has been reached when the lender requires a borrower to obtain a loan through a broker who is actually an agent of the lender and who shares his compensation with the lender A lender may also own an escrow company and a brokerage firm The existence of a multiple corporate identity is important with regard to usury, for a recent California case has held that since the lender himself cannot make a charge for making the loan, the lender's subsidiary brokerage company cannot properly charge a commission for procuring the loan A charge of a commission under these circumstances amounts to charging a commission when no services have been rendered

Two familiar doctrines tend to protect purchasers of notes secured by trust deeds or mortgages from the defense of usury The first is that a note which was free of usury when the maker issued it to the payee cannot be subjected to usury by any subsequent transaction Hence, a payee of a validly issued $1,000 note can sell or discount it for $800, or any valuable consideration, without running afoul of usury The transaction is treated not as a loan but as a sale As one court put it: "Negotiable notes, bonds, and commercial paper are a marketable commodity, and worth just what they will bring in the market, irrespective of face value Their value depends upon the redemptive capacity of the maker or indorser or the value of the collateral by which they are

secured, and the difference between the face value and the price realized on the market cannot be distorted into usury."

Even if the note was subject to usury as between the maker and payee, a purchaser from the payee can still take free of the defense of usury if he satisfies the requirements of a holder in due course. Manifestly, the purchaser of a note which is usurious on its face cannot meet the requirement that one must purchase in good faith to be a holder in due course.

A fact situation, variations of which seem to arise often in California, calls into play both the rule that an instrument valid in its inception may be sold at a discount and the holder in due course doctrine. Suppose seller wishes to sell his home, presently encumbered by a $16,000 note secured by a deed of trust, for $20,000, but his prospective buyer has no available cash to pay the $4,000 balance. The real estate broker suggests that the parties should agree to a $23,000 price, and he has the buyer execute a note to seller for $7,000 to be secured by a second trust deed, with interest at 10 percent per year. A third party is found who, after looking at the property and checking the credit of the buyer, deposits $4,000 in escrow as the purchase price for the $7,000 note. Now the seller has his $4,000, and the purchaser of the note has an obligation of the buyer to pay $7,000 plus 10 percent interest. Is this transaction a subterfuge whereby the third party is actually loaning buyer $4,000 at a usurious profit, or is the purchaser justified in claiming that he is protected from any defense of usury invoked by buyer (a) because he is the purchaser of an instrument valid in its inception, and as such the price he pays is immaterial (b) whether or not the instrument is valid in its inception, he is a holder in due course?

That the California authorities are not uniform in this question is hardly surprising for the issue is intensely factual: whether the issuance of the note from maker to payee was a valid origination of an instrument or whether the transaction was merely a sham designed to manufacture a note suitable for discount to a lender at a usurious rate of interest. In a 1960 California decision usury was found to exist in a situation similar to the hypothetical stated above. In this case a real estate broker apprised a lender of the need for secondary financing in in a sale he was handling. After inspecting the premises and the first lien thereon, the lender advised the broker that he would place $1,250 in escrow in return for an $1,800 note secured by a second trust deed. The lender specified the interest rate, the size of payments, and duration of the note. The court was impressed by the fact that the note and trust deed from buyer to seller were not executed until *after* the lender had agreed to take the note and had dictated his terms. The holding was that this was not an instance of a note validly issued being sold at a discount, rather the transaction was a subterfuge conceived to permit a lender who was privy throughout to make a loan at an exorbitant rate to a borrower.

The foregoing discussion concerns the possibility of usury when a trust deed is employed to aid a prospective buyer in raising enough money to purchase real estate. A related problem is the use of trust deed by one already owning land to obtain a loan for improving the land or for other reasons—the so-called "hard-money" trust deed.

Here the common subterfuge is effected by the borrower making a note secured by a trust deed payable to a dummy payee, who gives no value to the maker and who allows his name to be used only as a favor to the parties The payee immediately indorses the note to a lender who discounts it at a usurious rate of interest The courts have been astute to see through this rather transparent situation and to hold that this was not the sale at a discount of a validly conceived note

To allow the borrower to raise the defense of usury against the indorsee of the note in the situation discussed in the last two paragraphs, a court must find (a) that there was usury, and (b) that the indorsee was such a participant in the transaction that he cannot be a good faith purchaser. In a 1950 case the California court found that the prospective borrower, his broker, and the man who planned to construct improvements on the borrower's land were all participants in a scheme to manufacture a note suitable for discounting at a rate in violation of the usury laws, however, the court found that the ultimate lender was not privy to the transaction and took the note as a holder in due course

Two doctrines based on theories of waiver or estoppel have been invoked by courts to protect creditors against a borrower's claim of usury. First, voluntary payment of usurious interest by the borrower waives the defense of usury Second, where the borrower knows the loan is usurious when he procures it he cannot recover from the creditor because he is *in pari delicto* with the lender Both of these rules have been rejected in California.

If the policy of the State, as declared in the Constitution and statutes, is to discourage loans at excessive rates of interest, these rules tend to subvert this policy, and their rejection by the California courts is entirely proper. Since a borrower in this State has no right to recover interest on the ground of usury until he has *paid* it, a holding that voluntary payment of interest waives the borrower's right to recover would eviscerate the statute. The *in pari delicto* rule, which would prevent a borrower who knew a transaction was usurious from pleading usury, is clearly not consonant with a policy of discouraging usurious loans As Justice Traynor has said. "The theory of the law is that society benefits by the prohibition of loans at excessive interest rates, even though both parties are willing to negotiate them " That a borrower is so desperate as to accept money at an exorbitant interest rate should not license a lender to flaunt the statute.

The degree to which the *in pari delicto* doctrine has been scuttled in California is best shown by a line of cases holding that a borrower who was the *moving party*, in bringing about the usurious transaction can raise the defense of usury In a 1954 case the defendant construction corporation borrowed $5,000 from the plaintiff to assist defendant in engaging in an extensive building program Defendant promised to assign to plaintiff $100 or $50 upon each duplex or single home completed, but in any event the defendant was to pay the plaintiff a total of $10.000 by the end of the first year

The court allowed the construction company to plead usury even though it clearly promoted the deal The court opined· "In order to bar the defense of usury, illegal provisions in the instruments must have been knowingly and fraudulently inserted." No California court

has yet found such a knowing and fraudulent insertion sufficient to bar the statute

The most important issue in the area of waiver and estoppel of the defense of usury is the validity of the certificate a borrower is asked to sign in the usual California real estate loan transaction which recites that full consideration was received by the borrower and that he claims no *offsets* or *defenses* relating to the loan This estoppel certificate may be executed at the time of the loan closing or a few days afterwards.

If this certificate deprives the borrower of his defense of usury as against the lender and subsequent assignees of the mortgage note, the effect is to vitiate the constitutional and statutory prohibitions against usury in California real estate financing transactions, for borrowers are almost invariably asked to sign such a certificate If such certificates are given full weight, the only effect of the State's antiusury laws as to real estate loans is to add one more printed form to be signed by the borrower.

In view of the great volume of estoppel certificates executed each day, there is a surprising dearth of recent authority on their validity. A brief summary of the prevailing views throughout the country on the efficacy of estoppel certificates is that they are effective, if at all, only against innocent purchasers of the mortgage They afford no protection to the party who knew of the usury upon taking the instruments However, there is authority that such a clause can be given no effect at all.

It seems clear that estoppel certificates should not deprive the borrower of his defense of usury as against the lender who dealt directly with him and who knew of the usury, as well as subsequent takers with knowledge Whether innocent purchasers of the mortgage paper should be free from any defenses based on usury due to such a certificate is a difficult policy decision. These certificates are taken from borrowers to facilitate the sale of the mortgage paper The public interest in promoting investment in real estate is great in a dynamic state like California, and giving effect to such certificates perhaps does encourage purchase of mortgage notes The analogy to the impact of the concept of negotiability in enhancing the free flow of commercial paper is persuasive A contrary argument could be based on the great interest of the State in protecting borrowers from being gouged by exoribtant interest rates Should the borrower be shorn of his defense of usury by two simple acts· (1) his signing a form at or immediately after the closing date, (2) the assignment of the loan to a party with no knowledge of the usury? The borrower's bargaining power may be so slight that even if he understood the full implications of the estoppel certificate (an improbable occurrence in a state where so many real estate transactions are carried out without the borrower having advice of counsel) he might not be able to resist the pressure to sign it.

Two California cases have stated that the estoppel certificate is an important factor in allowing innocent purchasers immunity from the borrower's claim of usury. The disturbing thing about each case is that the facts suggested that the assignees of the instruments were somewhat involved in the original loan.

3. *Calculation of Usury*

I Recovery of Interest Paid

To determine whether the amount of interest called for by a contract is usurious, the total amount of interest to be paid under the terms of the agreement from date of execution to date of maturity must be calculated In so doing, the sums charged as discounts, bonuses, and so forth, which under rules discussed in prior sections are actually charges for the use of the money, must be deducted from the principal amount and added to the interest sum. Hence, when a lender takes a note from a borrower calling for payment one year after date of $1,000 at 6 percent interest but advances only $900 to the borrower at the time of the making of the note, the principal sum for purposes of determining usury is $900 and the interest is $160 ($100 discount plus $60 interest). Since 10 percent interest on $900 for the maturity of the note is only $90, the contract is usurious

The usurious character of a contract is determined by the amount agreed to be paid and not by the amount of interest actually paid. Nonetheless, the borrower under a usurious contract can recover under the treble damages provision only three times the amount of interest actually *paid* When has he, in fact, paid interest? If the parties have agreed as to what portion of each payment is to be allocated to principal or interest, the court will adopt this understanding Then, too, if the lender expressly applied a part of the payments to interest, this sum could be recovered in treble The difficult problems are (a) what allocation as between principal and interest is to be made of any given payment in the *absence of an agreement* between the parties on the matter, and (b) how much has to be shown to prove an agreement as to such allocations? The answer to "a" appears to be that in the absence of an agreement between the parties, all payments will be applied to principal until the amount actually loaned has been repaid, not until that point has been reached will the borrower have paid interest Under such a rule no one could avail himself of the treble damages provisions until he had virtually paid off the loan Thus if the borrower is to have any real chance of recovering in the usual case where the loan is only partially paid down, an agreement to allocate payments to interest as well as principal must be shown In the usual purchase money loan the note will recite "said principal and interest being due and payable in monthly installments of $_____ on _____, each installment, when paid, to be applied, first, to the payment of interest accrued on unpaid principal and the residue thereof to be credited to principal . " The borrower also receives a schedule showing the breakdown between principal and interest for each payment California authorities indicate this is sufficient proof of agreement between parties

The rule that in the absence of an agreement between parties first payments will be entirely charged against principal is extremely favorable to the usurious lender in one of the most common usury cases, i e, where false discounts, bonuses, commissions, fees, and so forth, are used to cloak usurious interest Such contracts will never contain an agreement by the lender to allocate any money paid specifically to such items Hence, in the hypothetical facts set out in the first paragraph in this section, the borrower would not be treated as having paid

one cent of the $100 discount (which legally must be considered interest and recoverable as such if paid) until he had repaid the full $900 principal

II Prepayment

The usual purchase money note secured by a trust deed contains a penalty for the borrower's privilege of prepaying the indebtedness This penalty currently runs at about 3 percent or 180 days unearned interest on the unpaid balance during the first five years of the loan and is less in subsequent years If the amount paid by way of a penalty for prepayment were considered interest a usury problem would arise in some cases The California courts have not treated such penalties as interest Were they so treated a contract nonusurious if fully complied with by the borrower would become usurious by his voluntary act in exercising the prepayment option The courts reason that a debtor cannot so bring his creditor under the guns of the usury act by his own voluntary conduct

III Compound Interest

The Usury Law states "interest shall not be compounded, nor shall the interest thereon be construed to bear interest unless an agreement to that effect is clearly expressed in writing and signed by the parties to be charged therewith " Given a clause to that effect in the note, interest may be compounded if the total amount of interest, including any amounts which could be added thereto by compounding, does not exceed the 10 percent maximum If interest is payable *annually* at the maximum rate a note may validly contain the following clause "if interest is not paid when due, it is to become part of the principal and thereafter bear like interest " But if interest is payable *monthly, quarterly* or *semiannually* at the maximum rate such a clause makes a note usurious on its face Compounding interest due annually after default is not usury because the sum charged as interest in any one year will not exceed 10 percent of the amount owed at the commencement of that year If interest at 10 percent is compounded semiannually or at shorter intervals the amount charged as interest may exceed 10 percent of the sum owed at the beginning of that year

IV Interest Payable After Maturity of Indebtedness

A 1955 California case presents facts which can be paraphrased thusly B borrowed $990 from lender for one year but signed a note for $1,000 with 6 percent interest B undertook to pay 10 percent interest on such a sum of the principal remaining due after maturity Since the $10 discount must be treated as interest, the true principal amount is $990, but if nothing is paid on the note by maturity, B will be paying 10 percent interest on $990 true principal and the $10 discount The court held that no usury was involved The fact that more than 10 percent interest was payable after maturity does not render the note usurious because had the borrower not defaulted he would not have had to pay the higher rate, the borrower's voluntary action cannot make an otherwise valid contract usurious

One device that has sometimes been used to cloak usury is the *sale with an option to repurchase* In a recent California case the classic example of the operation of this subterfuge is observable In this case A owned or controlled a number of first trust deed notes and over a period of time sold these notes to B For instance, one note with a face value of $7,500 was sold by A to B for $6,000 which B advanced to A The parties then executed an agreement giving A the right to a reassignment of the note upon payment within 90 days of a sum equal to the amount he received ($6,000) plus a service charge of about 10 percent of this price, plus 6 percent interest on the principal balance The court found this to be a usurious transaction despite the contention of B that there could be no loan because A had never promised to repay These factors were singled out by the court as tending to show a loan: (a) The price to be paid by A to B to procure a resale was not based on the value of the note but was calculated on the basis of a formula designed to assure B a given return on the money he had already advanced to A (b) The price A was to pay B to repurchase the notes was sufficiently lower than the face value of the notes to insure that A would desire to repurchase them (c) A did in fact repurchase all the notes (d) A continued to collect payments on the notes from the obligors and accounted to B for them. In another recent California decision the court gave much weight to the fact that the value of the property conveyed greatly exceeded both the purchase and repurchase price in holding the transaction to be a loan The court noted that ascertaining the repurchase price by adding to the purchase sum an amount sufficient to guarantee the reseller a fair return for the use by the repurchaser of his funds is the method of a lender and not that of a seller.

4. Critique

Usury laws have long been condemned by economists and financiers who contend that an interest rate is merely the price of money and should be fixed by the same market factors that set other prices It is stated that although usury laws were enacted to protect the necessitous borrower whose bargaining position is weak, in reality interest rates are not fixed by the bargaining power of the parties, rather they are set by the dictates of the money market and by the quality of security behind the loan.

Does the California usury law play a valuable role in real estate financing? It is limited to exclude from its coverage the largest institutional lenders; its permissible interest rate is one of the highest in the country; usury is not a valid defense against one who stands as an innocent purchaser of a mortgage note; the defense of usury is usually waived by the home buyer (though he might not realize he is doing so) at the close of the deal; and the statute seems subject to evasion by discounting and other practices. Moreover, the interest charge is only one cost of financing, and there are no limitations on the numerous other loan charges except for situations falling under the Necessitous Borrower's Act

One might conclude that the present usury law is not a truly effective measure for consumer protection in real estate financing That it serves some beneficial purposes, however, is apparent. No one who has perused

the reports of a large number of usury cases can help but challenge the bland assumption that interest rates are fixed solely by the cost of money to the lender and by the risk inherent in the situation. Lenders who charge exorbitant rates will be present in our society as long as there are borrowers foolish enough, or desperate enough, to deal with them Currently, the usury law is the only bulwark of the borrower against the grasping lender, but such a lender can readily exact exorbitant charges from the borrower by other means not proscribed by the usury laws

A more troublesome problem than inquiring what the usury statute does *for* the financing consumer is the degree to which it is *detrimental* to him Does the California usury law not frustrate the legitimate needs of borrowers by drying up loan money in high risk situations? The home builder or buyer in a somewhat hazardous position who seeks a loan may find the doors of lending institutions shut to him if 10 percent is the maximum, while a higher rate of interest might enable him to obtain a vital loan In many states the prospective borrower can incorporate and avoid the usury statute altogether, but in California this solution is not available to him The fact that the major real estate lenders are not covered by the usury law does not help the home builder or buyer in a high risk situation because these institutions—banks, savings and loan associations — are prohibited by law from loaning more than a certain percentage of the appraised value of property. The very factor that often introduces high risk into real estate financing is the need of the borrower to raise money on the security of the *top* third or quarter of the valuation of his property. Not only are the large institutional lenders prohibited by law from loaning more than two-thirds or three-quarters of appraised value but they would also be reluctant to loan money in any event at 10 percent interest on security that would evaporate in the event of a major economic downturn.

The present means of attracting high risk investment capital into real estate financing is through discounting second trust deed notes. If the home builder or buyer can obtain first trust deed loans up to only 66 to 80 percent of appraised value, second trust deed financing is inevitable to lower down payments to the level where houses can be sold Since investors will not ordinarily loan money at 10 percent interest on the security of a second trust deed, secured in turn by only the top 20 or 30 percent of the valuation of the property, the investor can be induced to buy the trust deed only at a substantial discount But the price of the house to the buyer must be materially increased to assure the builder a profit after discounting the paper at 55 to 65 percent of face value Hence, if a $7,500 first trust deed loan is obtainable on a $10,000 house, a second trust deed of perhaps $2,000 is necessary for the builder to be able to move the house on the market But the builder could sell a $2,000 second for only $1,250 or less Thus he must increase the price of the house to $11,500 or $12,000 and take a $3,500 or $4,000 second trust deed from the buyer in order to realize $2,000 on the sale of the second

In some areas of endeavor wherein credit cannot be made readily available at the rates prevailing in the general usury statutes, these laws have been supplanted by statutes more attuned to the economic realities of the business. The wave of small loan legislation which has

swept over the nation in the last few decades brought interest rates of as much as 3 percent per month, justified by the steep administrative costs and high risk of servicing small-balance installment loans for marginal borrowers Since World War II over 30 states, including California, have passed statutes regulating *installment sales of personal property* with varying degrees of comprehensiveness Most of these statutes—the so-called retail installment sales acts—set rate limitations on carrying charges, some allowing higher rates where balances are small, others grading rates up in cases of automobile loans depending on the obsolescense of the automobile sold Here again the rates set often greatly exceed those imposed by the general usury law on the ground that banks and sales finance companies cannot service installment loans profitably at the lower rates permitted by usury statutes—as low as 6 percent in some eastern states The retail installment sales acts invariably call for full disclosure of all the details of the sale and frequently regulate prepayments, balloon payments, refinancing, insurance, and remedies upon default

It may be contended that in California the problems of real **estate mortgage financing are now important enough and sufficiently unique to warrant passage of a statute providing the same degree of comprehensive consumer protection in mortgage financing that the various retail installment sales acts provide in installment sales of personal property.** Such a statute would resemble somewhat the present Necessitous Borrower's Act but would extend to all borrowers using real property as security for loans Full disclosure of all terms and conditions of the transaction would be required, loan costs and expenses would be set forth; a copy of the contract would be delivered to the borrower, signing contracts containing blanks would be prohibited, encumbrances on the land should be listed, balloon payments restricted, maximum limits placed on loan costs and charges, refinancing restrictions imposed, maximum interest rates fixed Interest rate maxima might possibly be graded in such a way that higher rates would be permissible in high risk situations, i e, second trust deed financing

In times of tight money and widespread abuses in housing financing a reform measure of this sort has much to commend it Certainly, the plight of the real estate consumer has been largely ignored while legislatures throughout the land have busied themselves with framing very comprehensive legislation on behalf of the personal property consumer But a statute of this sort is not a panacea for all the ills of the real estate borrower

The lawmaker is faced with a dilemma in the area of mortgage finance Legislative policy seeks to encourage the housing industry to provide more homes for the public at reasonable prices, and low down payment financing is necessary to successful marketing of these homes On the other hand, a legitimate legislative objective is to hold down the costs of financing a home by regulating interest rates and loan charges However, a low down payment plan which enables a purchaser to move into a house by paying only 5 or 10 percent down results in the upper 20 or 30 percent of the financing on any given house being high risk financing High risk credit costs more than low risk credit, and ultimately the housing consumer must absorb the cost If

he pays less through interest costs and loan charges, he pays more through increased housing costs A possible solution is to reduce the risk a lender encounters in making loans with high loan-to-value ratios A sound mortgage insurance plan which would cover the top 20 to 30 percent of first trust deed loans ranging up to 90 to 95 percent of appraised value would greatly reduce the risk to the lender The result should be to lower the interest costs and loan charges to the consumer in securing a high loan-to-value ratio loan The expensive procedure of procuring and discounting a second trust deed loan would be obviated. The purchaser would pay the increased cost of high loan-to-value financing in the most direct and straightforward way—through his mortgage insurance premiums

REGULATION OF LAND SALE CONTRACT PURCHASES

There are two ways one can finance the purchase of a residence (1) take title from the seller and give back a purchase money trust deed, (2) buy under a land sale contract It is quite common in California for sellers to market houses by employing land sale contracts Under this device the seller retains legal title and the buyer gets a mere equitable interest until he has paid in enough money to merit a deed The land sale owes its popularity to the fact that it enables marketing of houses on extremely low down payments The mechanics of the contract transaction may be as follows a house appraised at $10,000 entitles its builder to obtain a $7,500 conventional loan, leaving a $2,500 balance—a sum far greater than the purchaser of such a home is likely to be able to put up; the builder takes a $500 down payment and sells on contract, the payments are $75 monthly, the builder applies $55 as the payment of his $7,500 loan and the remaining $2,000 balance which he is carrying himself, when the $2,000 is paid off the builder deeds the land to the buyer, subject only to the trust deed securing the remainder of the $7,500 loan, the size of the buyer's payments are reduced from $75 to $55 when this happens

1. *Hazards Confronting Land Contract Purchaser*

The very nature of the land sale contract device subjects the purchaser under such a contract to certain hazards The contract purchaser does not have title The lot he buys is usually subject to one or more encumbrances which are obligations of the contract seller and which can be foreclosed against the land upon default by the seller even though the buyer is not behind in his payments to the seller The practice in California is for the seller to give the buyer a contract which is not recordable Since both the seller and buyer must acknowledge in this State before the contract is recordable, the mere omission to acknowledge by the seller prevents the buyer from recording The seller's reason for not allowing his contracts to be in recordable form is that a recorded contract would cloud the title of the lot until removed by a proper judicial action The holder of a trust deed with a power of sale can foreclose by sale approximately four months after giving notice of default On the other hand, a vendor of land sold on a recorded contract may have to bring a quiet title action to clear his record title in case of default by the vendee, he is, thereby, at the mercy of court calendars Then, too, the process of clearing title may be complicated if the vendee is under a disability, is a nonresident, or is bankrupt

The following discussion considers the hazards that might befall a vendee purchasing land under an unrecorded contract who is in possession of the land

Federal Tax Lien: What is the right of the federal government to reach land sold under contract for tax liability of the vendor? Section 6323, I R C., provides that a federal tax lien is invalid against mortgagees, pledgees, judgment creditors and *purchasers* until the lien is recorded Hence, if a land contract vendee qualifies as a purchaser before the government lien arising from the seller's tax liability is recorded, the vendee's interest is prior to that of the government In United States v Scovil, 348 U S 218 (1955), the Supreme Court stated that a purchaser within the meaning of the statute "usually means one who acquires *title* for a valuable consideration in the manner of vendor and vendee " In Leipert v. R C Williams and Co, 161 F Supp 355 (S D N Y 1957), it was held that a vendee under a land contract is not a purchaser until full title has been conveyed to him If this case is followed, the contract vendee is subject to having his rights under the contract swept away to satisfy his vendor's delinquent taxes.

Judgment Creditors of Vendor: Even though the contract is unrecorded, a judgment creditor of vendor is put on notice of the vendee's rights due to the possession of the vendee If the vendor's interest is sold on execution sale to satisfy the lien, the purchaser with notice of the vendee's interest takes the vendor's interest with the right to receive future payments from the vendee and the duty to convey title upon full payment

Mechanics' Liens: Mechanics' liens may arise from "on-site" improvements (construction of residence and landscaping) and "off-site" improvements (streets and public utilities) In general mechanics' liens are prior to any lien, mortgage, deed of trust, or other encumbrance which has arisen subsequent to the time when the "work of improvement" in connection with which the mechanics' lien claimant has done his work or furnished his material was commenced Moreover, mechanics' liens are prior to any lien, mortgage, deed of trust or other encumbrance of which the lien claimant had no notice and which was unrecorded at the time the improvement forming the basis of the claim of a mechanics' lien was commenced (CCP § 1188 1)

A purchaser of a residence on land contract is likely to purchase subject to any mechanics' liens existing for on-site improvements. This is true because the house will be at least commenced by the time the purchaser signs the contract, and any person entitled to a lien for work done on that house, even though his work was done months after commencement of the house, has a mechanics' lien which relates back to the time of commencement of the building Though it may come as a surprise to the land sale purchaser his lot may also be subject to mechanics' liens for claims arising from the construction of streets, sidewalks, sewers, or other public utilities in front of or adjoining the purchaser's lot if these improvements were commenced before he took possession

Prior Blanket Encumbrances: The low-down-payment purchaser under a land sale contract is usually blissfully unaware of the extent of prior encumbrances on his lot One who goes into possession on a

$100 down payment is unlikely to consult a lawyer about the state of the title he is undertaking to buy, but it appears that many who pay a good bit more down are equally indifferent The purchaser usually understands that there is at least one trust deed on the land but he often does not know how much of it is allocable to his lot, he may or may not know of the existence of a second trust deed He usually has not attempted to ascertain whether his seller actually owns the property to be sold Moreover, the seller normally reserves the right to further encumber the property after the date of the purchaser's contract; until 1960 nothing in the law prevented the seller from increasing the amount of encumbrances beyond the contract price.

If the vendor fails to make the necessary payments on the trust deeds encumbering the land, foreclosure may result even though the purchaser may have kept his payments to the vendor current It might seem that the low-down-payment purchaser has little to lose by being ejected since his payments are often no greater than the monthly rental value of the land; however, this overlooks the loss of improvements which purchasers often make on their land, particularly landscaping improvements

2. *Statutory Provisions*

The California Legislature has chosen to extend protection to land sale contract vendees through the Real Estate Subdivision Law, originally enacted in 1933 and amended substantially in 1955 and 1960

Real Estate Subdivision Law: Statutory control of subdivisions was undertaken to protect buyers of subdivision lots from fraud and misrepresentation The statute covers lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels Excluded from the scope of the statute is land sold in parcels of more than 160 acres and land sold or leased solely for commercial agricultural purposes in parcels of 20 acres or more.

Before any sales or leases are made of subdivided land, the owner, subdivider, or his agent must file with the Real Estate Commissioner a "Notice of Intention to Subdivide" containing certain information required by the statute. The Real Estate Commissioner is authorized to request additional information through a questionnaire. The procedure followed is the commissioner issues a printed form combining the "Notice of Intention to Subdivide" with the "Subdivision Questionnaire." This formidable document elicits specific information regarding encumbrances, topography, drainage, water supply, fire protection, public utilities, sanitation, streets and roads, public transportation, schools, and shopping facilities Certain documentary evidence is called for a report showing the record owners and existing liens and encumbrances, a copy of the recorded map; sample forms to be used to convey title such as deed, trust deed, or contract of sale, a copy of any restrictions, conditions, reservations and covenants affecting use or occupancy of the land, a letter from the water company stating that water will be supplied without exceptions on demand or setting forth any exceptions or reservations, and certain other reports from the local flood control agency, sewage disposal authorities, fire protection agency, and soil engineer. A filing fee of $50 must accompany the questionnaire.

The information derived from the questionnaire and whatever investigation of the subdivision he makes is disclosed by the commissioner to the purchaser through the subdivision public report A copy of this report must be given to each prospective purchaser by the owner or subdivider *prior* to the execution of any binding agreement to buy or lease any lot, the purchaser must be given a chance to read this report and his receipt must be taken therefor If the subdivider is unable to supply all the information required by the commissioner and knows he will be held up for some time, he may apply for a preliminary subdivision public report This report relates what information is then available about the subdivision Although the subdivider cannot sell lots on the strength of the preliminary report, he can take reservations and deposits which must be placed in escrow, subject to rescission at the wish of the prospective purchaser

One of the primary safeguards afforded the purchaser of California subdivided real estate relates to blanket encumbrances A blanket encumbrance is a trust deed, mortgage, mechanic's lien or other encumbrance affecting more than one lot or parcel of the subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds the subdivision under an option, contract to sell, or trust agreement It is common for the subdivider to borrow money for development of the land secured by a blanket trust deed covering the whole tract Since the purchaser of any lot in the subdivision takes subject to a recorded blanket lien, whether he actually knows about it or not, he may lose the money he has paid in if the subdivider defaults on his indebtedness to the lien holder The Legislature has met this problem by prohibiting the sale of lots within a subdivision that are subject to a blanket encumbrance (a) unless the encumbrance contains a *release* clause which allows the purchaser to obtain title free of the blanket encumbrance upon compliance with the terms and conditions of his purchase agreement, or (b) unless Section 11013 2 of the B and P Code is complied with This section states that when the blanket encumbrance does not contain a release clause, the subdivision lots cannot be sold unless one of the following conditions is met (1) Any payments made by the purchaser must be placed in a neutral *escrow* pending a release of the encumbrance (2) Title to the subdivision be held in trust until release from the blanket encumbrance is obtained (3) A bond be furnished which provides for the return of the purchaser's deposits if a release is not obtained (4) An alternative plan which the commissioner may deem acceptable to carry into effect the intent and provisions of this statute The Division of Real Estate reports that an unconditional release clause is unusual If such a clause is present a copy of the clause must be submitted with the questionnaire In the usual case where no such clause is present, the relevant provisions of the questionnaire must be filled in indicating the intended manner of compliance with Section 11013 2

Where the subdivision is not subject to a blanket encumbrance, the deposit must still be impounded but only until the "title or other interest contracted for, whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee " This is interpreted to mean that the money need only be impounded until a valid contract has been delivered to the buyer or lessee Moreover, the impound re-

quirement can be met here by a trust account as well as by an independent escrow

Any person who violates the Subdivision Act or any order of the commission has committed a "public offense" and is subject to fine and/or imprisonment False advertising of land offered for sale is specifically mentioned as a violation Violations by real estate brokers or salesmen can result in revocation or suspension of their licenses The commissioner may after a hearing issue a stop order enjoining the sale of any land which would constitute misrepresentation, deceit, or fraud on purchasers Judicial decisions have, in effect, held that sales or leases in violation of the act are voidable and may be either set aside by the buyer or specifically enforced by him

1960 Amendments to Subdivision Law: Contracts of sale concerning subdivision lots must now disclose a legal description of the property, all outstanding encumbrances, and the terms of the contract Any contract vendor of a subdivision lot who avails himself of the "further encumbrance" clause to encumber the land after the contract of sale has been executed in an amount greater than the amount due under the contract without the consent of all parties to the contract is guilty of a misdemeanor Furthermore, every such vendor who fails to apply a payment of the vendee to satisfy any outstanding indebtedness on the land is also guilty of a misdemeanor

Two major criticisms may be briefly directed at the safeguards erected by the Legislature to protect California land sale contract purchasers First, the Subdivision Law places a heavy burden on the Real Estate Commissioner's office to enforce this detailed statute As of 1960 the commissioner lacked adequate staff to do the job adequately Public hearings have indicated that some aspects of the Subdivision Law are being ignored by developers Second, in directing its program toward contract purchasers of subdivision lots, the Legislature has left unprotected purchasers who buy on contract land not in subdivisions Some of the safeguards currently enjoyed by subdivision purchasers would be appropriate for purchasers of nonsubdivision lots

E. STATISTICAL DATA

TABLE 1

Nonfarm Mortgage Recordings of $20,000 or less, by Type of Lender, 1940-1958

(Dollar amount in millions)

Year	*Savings and loan associations*	*Insurance companies*	*Commercial banks*	*Mutual savings banks*	*Individuals and others*	*Total, all members*	
						Number	*Volume*
1940	$1,283	$334	$1,006	$170	$1,238	1,456,000	$4,031
1941	1,490	404	1,166	218	1,454	1,628,000	4,732
1942	1,170	362	886	106	1,359	1,351,000	3,943
1943	1,237	280	753	152	1,439	1,274,000	3,861
1944	1,560	257	878	165	1,746	1,446,000	4,606
1945	2,017	250	1,097	217	2,069	1,639,000	5,650
1946	3,483	503	2,712	548	3,343	2,497,000	10,589
1947	3,650	847	3,004	597	3,631	2,567,000	11,729
1948	3,629	1,016	2,604	745	3,828	2,535,000	11,882
1949	3,646	1,046	2,446	750	3,940	2,488,000	11,828
1950	5,060	1,618	3,365	1,064	5,072	3,032,000	16,179
1951	5,295	1,615	3,370	1,013	5,112	2,878,000	16,405
1952	6,452	1,420	3,600	1,137	5,409	3,028,000	18,018
1953	7,365	1,480	3,680	1,327	5,895	3,164,000	19,747
1954	8,312	1,768	4,239	1,501	7,154	3,458,000	22,974
1955	10,452	1,932	5,616	1,858	8,626	3,013,000	28,484
1956	9,532	1,799	5,458	1,824	8,475	3,602,000	27,088
1957	9,217	1,472	4,264	1,430	7,861	3,246,000	24,244
1958	10,516	1,460	5,204	1,640	8,568	3,441,000	27,388

SOURCE Federal Home Loan Bank Board

TABLE 2

Percentage Distribution of Nonfarm Mortgage Recordings of $20,000 or Less, by Type of Lender, 1940-1958

(Based on dollar volume)

Year	*Savings and loan associations*	*Insurance companies*	*Commercial banks*	*Mutual savings banks*	*Individuals and others*	*Total*
1940	31.8%	8.3%	25.0%	4.2%	30.7%	100.0%
1941	31.6	8.5	24.6	4.6	30.7	100.0
1942	29.7	9.2	22.5	4.2	34.5	100.0
1943	32.0	7.3	19.5	3.9	37.3	100.0
1944	33.9	5.6	19.1	3.6	37.8	100.0
1945	35.8	4.4	19.4	3.8	36.6	100.0
1946	32.9	4.8	25.6	5.2	31.5	100.0
1947	31.1	7.2	25.6	5.1	31.0	100.0
1948	30.5	8.6	22.4	6.3	32.2	100.0
1949	30.9	8.8	20.7	6.3	33.3	100.0
1950	31.3	10.0	20.8	6.6	31.3	100.0
1951	32.3	9.8	20.5	6.2	31.2	100.0
1952	35.8	7.9	20.0	6.3	30.0	100.0
1953	37.4	7.5	18.6	6.7	29.8	100.0
1954	36.2	7.7	18.5	6.5	31.1	100.0
1955	36.7	6.8	19.7	6.5	30.3	100.0
1956	35.2	6.6	20.2	6.7	31.3	100.0
1957	38.0	6.1	17.6	5.9	32.4	100.0
1958	38.4	5.3	19.0	6.0	31.3	100.0

SOURCE Federal Home Loan Bank Board.

TABLE 3

Percentage Holdings of Total Residential Mortgage Debt Outstanding, by Type of Lender (1950-1960)

	1950	*1960*
Savings and loan associations	25.0%	35.7%
Life insurance companies	20.7	20.2
Mutual savings banks	13.2	13.7
Commercial banks	19.3	13.2
Individuals and others	21.8	17.2
Total	100.0	100.0

TABLE 4

Nonfarm Mortgage Recordings of $20,000 or Less by Type of Lender and Type of Loan, 1958

(In millions of dollars)

	Conventional	*FHA**	*VA*	*Total*
Savings and loan associations	$9,557	$514	$445	$10,516
Commercial banks	3,758	1,279	167	5,204
Insurance companies	989	437	34	1,460
Mutual savings banks	841	500	299	1,640
Mortgage companies	2,497	1,743	893	5,133
Others	3,330	78	27	3,435
ALL LENDERS	$20,972	$4,551	$1,865	$27,288

* Preliminary

SOURCES Federal Housing Administration, Veterans Administration, United States Savings and Loan League

TABLE 5

Percentage Distribution of Nonfarm Mortgage Recordings of $20,000 or Less, by Type of Lender and Type of Loan, 1958

(Based on dollar volume)

	Convention	*FHA*	*VA*	*Total*
Savings and loan associations	90.9%	4.9%	4.2%	100%
Commercial banks	72.2	24.6	3.2	100
Insurance companies	67.7	29.9	2.4	100
Mutual savings banks	51.3	30.5	18.2	100
Mortgage companies	48.6	34.0	17.4	100
Others	96.9	2.3	0.8	100
ALL LENDERS	76.6%	16.6%	6.8%	100

SOURCES Federal Housing Administration, Veterans Administration, United States Savings and Loan League

TABLE 6

Residential Mortgage Debt Outstanding 1946-59

Year	*Billions of dollars*
1946	28.1
1947	33.8
1948	39.6
1949	44.9
1950	53.6
1951	61.4
1952	68.9
1953	77.1
1954	87.3
1955	100.6
1956	112.1
1957	121.7
1958	134.0
1959	145.3

SOURCE United States Savings and Loan League

TABLE 7

Outstanding Mortgage Debt, One-to-four Family Nonfarm Residences, December 1958

	Percent of total				*Percent of holdings*			
Type of holder	*FHA*	*VA*	*Conventional*	*Total*	*FHA*	*VA*	*Conventional*	*Total*
Private financial institutions	89.0	88	81	84	18	27	55	100
Savings and loan	11.0	24	50	37	5	16	79	100
Life insurance	31.0	25	13	19	27	34	39	100
Commercial banks	25.0	11	14	15	28	19	53	100
Mutual savings banks	22.0	28	4	13	27	55	18	100
FNMA	6.0	8	–	3	33	67	–	100
Other federal agencies	1.0	2	–	1	11	67	22	100
Individual and others	4.0	2	19	12	6	6	88	100
Total	100	100	100	100	17	26	57	100

TABLE 8

An Estimate of New Housing Starts in the Decade of the Sixties

Increase in nonfarm households	10,100,000
Add Housing units lost through destruction, conversion to other use, merger etc	3,500,000
Increase in vacancies	400,000
Seasonal and other "second home" requirements	750,000
Gross need for new housing units	14,750,000
Less Units supplied by conversion, trailers, public housing, etc	1,250,000
New private nonfarm housing starts	13,500,000
Annual average	1,350,000

SOURCE United States Savings and Loan League

TABLE 9

Estimated Residential Construction Expenditures and Increase in Residential Mortgage Debt, 1960-1970 (1959 Price)

(In billions of dollars)

Year	*Residential construction expenditures* *	*Increase in residential mortgage debt*
1960	19.1	11.9
1961	20.0	12.2
1962	21.0	13.0
1963	22.0	13.6
1964	22.9	14.2
1965	24.0	14.9
1966	25.0	15.5
1967	26.2	16.2
1968	27.4	17.0
1969	28.6	17.7
1970	29.9	18.5

* Includes additions and alterations, but excludes repair and maintenance
SOURCE United States Savings and Loan League

PART IV

APPENDIX: STATEMENTS

CALIFORNIA REAL ESTATE ASSOCIATION[1]

In April 1960, the California Real Estate Association opposed enactment of complex legislation relative to home financing on the grounds that it was hastily drawn No one could know what ambiguities, contradictions and inconsistencies might be involved because laws do not stand alone, but rather must be considered in the full context of all other law.

Those of you who are familiar with the present Real Property Loan Brokerage Law know that it is replete with inconsistent and incorrect terminologies, and contains many sections so ambiguous that no one has ever been able to precisely determine their meanings

Our studies were undertaken immediately upon adjournment of this year's special session During the six months since, a subcommittee of our Real Estate Mortgage and Finance Committee has gone over our draft time and again, the full committee has considered it in detail, the Legislative Committee's steering committee has given it further detailed study, and the full Legislative Committee has approved it, as has our Board of Directors Along the way it has twice been studied by industrywide conferences including representatives of banks, builders, savings and loan associations, title companies and mortgage bankers Representatives of the committee were present as observers at the second industrywide conference

Pursuant to instructions from our Board of Directors, our General Counsel has gone over the approved draft with a fine tooth comb to make sure it says exactly what we meant it to say, that the terminology is consistent throughout, that the language is clear and precise with redundancies and ambiguities removed, and that there are no inconsistencies or contradictions either within the draft or between it and other law. The draft now being reproduced is the ninth that has been drawn as we progressed toward final approval of a bill we felt willing to present to the Legislature

We undertook this study in full recognition of the violations and evasions the committee has been investigating, as a result of which we worked with four objectives constantly in mind

1 Clear delineation between the respective jurisdictions of the Real Estate Commissioner and the Commissioner of Corporations

2 Elimination of practices which have led thousands of uninformed investors to invest their money without knowing what they were getting into

3 Integration of the Real Property Loan Brokerage Law into the Real Estate Law, and clarification of its provisions

4 Strengthening of the disclosure provisions to protect both the investing and the borrowing public

[1] Submitted to the committee on October 28, 1960, by Mr Richard Wright, director of governmental relations, C R E A

For the first objective we have drawn amendments to the Corporate Securities Law which exempt all trust deeds and contracts for their servicing except in three carefully defined cases The Real Estate Law has been amended to ensure that it covers all trust deeds and contracts exempted from the Corporation Securities Law The exceptions, under which certain trust deeds are not exempt, are notes sold to a securities dealer for resale, notes in a series of equal priority which are secured by the same property, and notes offered to the public with a guaranty to either pay the principal and interest, or to repurchase or resell the notes

Objective number two is handled by forbidding the acceptance of money for the purchase of existing trust deeds or for lending until the broker has a specific trust deed for sale or has a specific borrower; and by forbidding the advertising of specific yields on discounted notes unless the components of that yield—interest rate and discount—are also disclosed The evils of "money in advance" were suposed to be eliminated by this year's law requiring such money to be deposited in escrow until a specific trust deed is accepted by the investor The trouble with this approach is that the questionable operators have not been directly pocketing the money as it comes in and going over the hill. No, the trouble has been that, with all that money in an escrow drawing "interest from the 1st if invested by the 20th," the operator is forced to lose no time in securing trust deeds to cover these deposits Good trust deeds are often scarce, so these operators have been forced to pick up poor quality paper or even, as the committee has found, to manufacture it The only solution, therefore, is to ban money in advance completely

The advertising restriction has been put in to dispell the carefully fostered illusion that the investor is depositing his money in an high interest rate savings and loan, and to make him aware of the real nature of his investment This, of course, also ties in with our fourth objective of full disclosure

The third objective basically has been satisfied by repealing the Real Property Loan Brokerage Law as it now stands in the Civil Code, and re-enacting it as part of the Real Estate Law When the law was enacted in 1955 it was supposed to expire in 1959, and was, therefore, kept apart from the Real Estate Law However, now that it has become rather generally agreed that the law will become permanent, it should be integrated into the Real Estate Law as are all other provisions guiding the professional conduct of real estate licensees To effect this integration, however, we have carefully reviewed every section of both laws to ensure that the integration is complete and that no inconsistencies or contradictions are permitted to remain between them At the same time we rewrote ambiguous sections of the Real Property Loan Brokerage Law so that they clearly express their intent We also, in the interests of clarity and precision, removed all redundancies and excess verbiage, and changed terminology to ensure consistency throughout

Our final objective was the strengthening of the full disclosure provisions. There are two of them, excluding the advertising provision mentioned above First, is the old Loan Broker's Statement, designed to

protect the borrower by telling him exactly what is happening to the money he is borrowing, and how he is expected to repay it The sections in the present law have glaring inconsistencies and ambiguities, and have poorly drafted language Without changing the intent in any way we have redrafted these sections so that they are both clear and precise

The second full disclosure provision is the Discount Broker's Statement At present the law is extremely hazy on what should go into this statement The prescribed form is directed toward dealings in trust deeds from new subdivisions and is difficult, if not impossible, to use in any other situation We have simplified the form down to the salient facts needed under all circumstances to alert the investor We have greatly strengthened the section by adding a requirement that the statement must be used in connection with all sales of discounted notes, rather than just those sold by a broker who specializes in such notes

CALIFORNIA SAVINGS AND LOAN LEAGUE[1]

It is apparent that the great bulk of sales of residential property being consummated currently are financed with both first and second trust deed loans Unfortunately, most of the second trust deeds are written with balloon payments which will become due and payable, usually within three years of the date of the loan

It will be recalled that in 1957 the State Legislature imposed some restrictions upon the so-called hard money lenders, so that loans which they made to necessitous borrowers would have to be completely amortized with substantially equal monthly payments if the loan were written for three years or less However, the loans would not have to meet this requirement if the loans were made for 37 months or more We believe that this Section of the law should be changed to require the complete amortization of any loan made by a hard money lender so that borrowers would not be required to refinance balloon payments some time in the future when their circumstances, or the circumstances of the money market in general, cannot be foreseen We believe that such a legislative change would be in the public interest

We remain concerned with the operation of the ten-percent mortgage companies which operate with a real estate license. These companies are presently limiting their operation to transactions with California residents so as to avoid supervision by the Securities and Exchange Commission. They are careful to not make any legal commitments that would bring them under the control of the Corporations Commissioner Legislation passed in the special session of 1960 was significantly beneficial, if for no other reason than that such companies must now put funds received from potential investors into an independent escrow However, from conversations which I have had with salesmen of two representative companies in recent weeks, the public is certainly getting a great deal of misinformation as to this type of investment, and I trust that it is not misrepresentation The descriptive folders put out by these companies leave much to be desired as to full disclosures, such as is required by the SEC Therefore, it is our belief that the Legislature should take action to require fuller disclosures of the nature of the second trust deed and that such firms operating in this field and selling second trust deeds to the public, must be given some minimum requirements to meet in the way of ratios of trust indebtedness to the value of the property securing such indebtedness Furthermore, we believe that legislation should provide for more close examination and supervision of these companies with the costs to be borne by such companies as are supervised by the Real Estate Commissioner

A third area of concern to the Legislature should be those companies which are organizing pools of second trust deeds to secure participating certificates sold to the public We question whether the Corporations Commissioner, who has formulated regulations permitting these pools, has not usurped the powers of the Legislature in setting up these financial institutions We further suggest that the present regulations of the Corporations Commissioner regarding these pools are inadequate in several important particulars

[1] Submitted to the committee on November 14, 1960, by Mr Franklin Hardinge, Jr, Staff Vice-President, C S & L L

The California Savings and Loan League is adequately on record as to our criticisms of the reserve requirements of the present plan We are further concerned with the fact that the advertising of these companies is not being scrutinized as carefully as should be

We believe that the Legislature should carefully study the several receiverships which have been appointed for several of the second trust deed companies with a view toward passing legislation which will protect the public from loss of savings in the future We urge the Legislature to study the difficulties in which this type of company has fallen in the State of Florida The tragedy of the plight of people who have entrusted their money to the second mortgage companies should stimulate the Legislature to pass corrective measures. It is quite obvious that the public has not understood the nature of the investment it is making and so long as these investments are solicited by fast-talking salesmen, the problems which have arisen will arise again.

Proposed Recommendations by Building and Financing Committee

It is essential to the success of the savings and loan business that there be a continuing balance between the supply of housing and the demand for it. With good information available in the two major metropolitan areas of the state, savings and loan associations have intelligently restricted credit for residential construction when an excessive supply of housing has developed from time to time.

There is an additional risk involved in determining the demand for housing when such demand is implemented through the acceptance by lenders of low borrower credit standards and the increasing use of secondary financing arrangements which have inadequate amortization and resultant heavy balloon payments

There is no way through a change in the law to force improvement of the terms of second mortgage loans as between borrower and lender However, savings and loan associations which are currently making approximately 70 percent of all residential loans originated by financial institutions can exert an influence which will inure to their benefit as well as to the benefit of their borrowers The Building and Financing Committee of the California Savings and Loan League therefore makes the following recommendations to the industry.

(1) That legislation be sought which will make it mandatory that in all notes and trust deeds secured by junior liens on residential property the maturity date and the balloon payment, if any, on such loans be printed in bold face type

(2) That savings and loan associations when negotiating construction loans with builders insist that if second trust deed loans are to be taken back by the builder, the monthly payment on such second trust deed loans be sufficient to amortize 80 percent of the loan within whatever term the loan is written If the builder wants a monthly payment of less than 1 percent of the original loan, the term must be extended If the builder wants a short term of three or five years, then the monthly payment must be increased to meet the above requirement

(3) That where associations are making loans to help families acquire existing properties and where second trust deed loans are being taken back by the seller, the association will require the sales escrow to produce a statement from the borrower reciting the terms of the second trust deed as to maturity and balloon payment, if any, and further reciting that the borrower is aware of such terms and understands that the maker of the first trust deed loan has made no commitment or in any way is obligated to refinance the second trust deed loan at any time in the future

TRUST DEED HOLDERS' MUTUAL PROTECTIVE ASSOCIATION[1]

In the testimony and information given at the hearing of the committee on October 28, 1960, our President, Mr Charles E Smith, outlined the shameful situation relating to Los Angeles Trust Deed and Mortgage Exchange, and the measures our group of investors are taking with regard to it Our recommendations are in essence that there should be a "truth in trust deeds" law based on the Federal Securities Exchange Act of 1934

Trust deeds notes have been held by the local United States District Court to come within the definition of "securities" as contained in the Securities Act of 1933 and the Securities Exchange Act of 1934 However, the protection to the investors of these acts is limited by several exemptions contained in these acts, particularly the one where the issue is sold entirely within the confines of a single state

We firmly believe that had the brochures and confirmation slips furnished to investors in trust deeds purchased through Los Angeles Trust Deed & Mortgage Exchange set forth the true facts, that most of the $40,000,000 in securities sold by them would not have been sold Many of the people who purchased trust deeds through Los Angeles Trust Deed & Mortgage Exchange are of far more than average intelligence and sophistication in financial matters The investors include contractors, schoolteachers, businessmen and attorneys

Were it not for the misrepresentations made to them, they would not have invested in these trust deeds We think a law requiring full disclosure would remedy most of the present trust deed abuses Such a law should contain at least the following provisions

(1) Every person selling trust deeds to the general public or creating or selling trust deeds to others for resale to the general public should be required to furnish a prospectus or brochure to the purchaser containing at least the following information

(a) The appraised value of the land covered by the trust deed notes and the names and addresses of the appraisers

(b) The amount and nature of any prior liens

(c) The amount and nature of the consideration actually paid for the trust deed by the seller

(d) The location and size of the parcel of land covered by the trust deed

(e) Any other information materially affecting or which could materially affect the value of the trust deed

(2) In case any part of the prospectus or brochure contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring said trust deeds may sue and recover his damages from

(a) The persons creating, issuing or selling the trust deeds

[1] Submitted to the committee on November 22, 1960, by Mr Walter Atkinson, counsel for the association

(b) Every person directly or indirectly, controlling the persons creating, issuing and/or selling the trust deeds

(c) Any appraiser whose statements or appraisals are given in said prospectus or brochure, with respect to such statements or appraisals

(3) Any person who offers or sells a trust deed by means of a prospectus or oral communication which contains an untrue statement of material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him for any damages sustained or in an action for recission, together with costs and reasonable attorney fees

(4) It should be unlawful for any person in the offer, or sale of trust deeds

(a) To employ any device, scheme or artifice to defraud, or

(b) To obtain money or property by reason of any untrue statement or omission to state a fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any transaction, practice or course of business which operates or would operate, as a fraud and deceit upon the purchaser

(5) The Real Estate Commissioner should be given power to enjoin conduct in violation of this legislation

The 10 percent trust deed merchants sell trust deeds in large quantities such as stocks and bonds are sold They should be required to adhere to the same standards required of issuers of corporate securities It is against the law to sell watered stock, but no specific provision of law prevents persons from putting a $4,000 trust deed on a $1,000 piece or land and selling it for $4,000 provided the parties are dealing at arm's length and no misrepresentations are made If the law were to force full disclosure, people would not buy such trust deeds

PENSION FUND SERVICE CORPORATION[1]

It appears to us that both the employees and the taxpayers of the State of California and its political subdivisions are either being deprived of benefits to which they would otherwise be entitled or are having to pay more for the benefits received because of failure to invest in FHA-insured and VA-guaranteed mortgages originating in California The New York State Teachers Retirement System makes such investments and is receiving a higher annual yield than is being earned by either the California State Employees Retirement System or the California State Teachers Retirement System

Jules I Bogen, Professor of Finance in the Graduate School of Business Administration, New York University, in a report published in 1959, "The Investment Status of FHA and VA Mortgages," states·

> "As a rule of thumb, it is found that each 1 percent of additional annual income realized reduces the cost of a given scale of pensions by about 25 percent Hence, a pension plan financed by employer contributions of $4,000,000 a year may require $1,000,000 less in annual payments if an additional 1 percent of investment income can be realized each year on the portfolio of the trusteed fund As an alternative, the pension plan can provide correspondingly larger retirement benefits without added cost to the employer "

During the fiscal year ended June 30, 1960, the California State Employees Retirement System earned 3 72 percent before administrative expenses of 07 percent were deducted, for a net earning of 3 65 percent Current investments of the California State Employees Retirement System are netting between 4 25 percent and 4 75 percent

(NOTE It has been the practice of the Administrative Board of the State Employees Retirement System to invest in long-term obligations so as to avoid the problem of continuing reinvestment with the result that this annual yield of 3 72 percent would be somewhat higher if the funds had all been invested as of a more recent date. Note further, however, that even if all of these funds were being invested in the current year, the return would still be substantially below those available on mortgage investments)

If the annual earnings on public funds in California could be increased by 1 percent, it would be possible for state employees and/or teachers to obtain the same benefits and contribute 25 percent less Since most of these public retirement funds in the State of California are financed by matching contributions, this also means that the taxpayers of California would either receive more for the tax dollars invested in benefits, or would have the amount of taxes necessary to finance these programs reduced by 25 percent

Contrast this with the Carpenters Pension Trust Fund for Northern California, which is now placing 35 percent of its portfolio, (that portion of the fund invested for yield), in FHA and VA mortgages

[1] Submitted to the committee on December 5, 1960, by Mr John I Hennessy, president of the corporation and also a trustee of the Carpenters Pension Trust Fund for Northern California as well as executive vice president of the Associated Home Builders of the Greater Eastbay, Inc

The net earnings on these investments are in excess of 5 51 percent (assuming a 12-year amortization period) The Carpenters Pension Trust Fund is also making other investments and the annual earnings on the total portfolio as of this date is at the rate of 4 67 percent, or approximately 1 percent more than that currently being earned by the California State Employees Fund

On November 4, 1960, Moody's Investors Service, in association with Paul L Howell, submitted a report to the Board of Administration of the California State Employees Retirement System recommending that between 20 percent and 25 percent of the total funds be invested in real estate mortgages Informed opinion indicates that the employees retirement system probably has the necessary statutory authority to make such investments in that the law provides that the State Fund may make such investments as are legal for savings banks However, there are no savings banks as such in the State of California, and consequently an opinion of the attorney general is necessary on this matter

In the event that the opinion is adverse to mortgage investments, then it is strongly recommended that enabling legislation be introduced to permit mortgage investments by the State Fund when, and as, the board of administration so decides

The above also applies to the California State Teachers Retirement System and its investments

It is also recommended that enabling legislation be introduced covering all general law political subdivisions of the State of California to enable those charged with the responsibility of investing funds to make such investments in mortgages as they deem advisable This will require some research so as to provide for general law cities, municipal utility districts, and other special districts

No recommendation is made for chartered public subdivisions, since any of these not now permitted to make such mortgage investments would have to have such legislation originate with their local governing bodies

A corollary benefit of investments in mortgages, with the security that the FHA insurance or the VA guarantees provide, will be the reduction in discounts now required from Californians to borrow money with which to purchase homes, thereby reducing the costs of home purchasing Such a reduction in discounts would contribute to the overall economy of the State

CALIFORNIA DEPARTMENT OF JUSTICE[1]

In the very enlightening report which your committee is to make to the Legislature on secondary financing, we note that the report will not recommend any specific corrective legislation However, we would urge that the report will be most useful as a basis for the various proposals which will be made if it could direct the attention of the Legislature to the basic objectives which should be achieved by any legislation on the subject

The need for corrective legislation is indicated by the following basic facts

A The highly speculative nature of second trust deeds when purchased by unsophisticated investors Not only is this type of investor unable to properly assess the value of the property securing the note which he purchases, but in most cases he is unable to protect his second deed of trust in the event of default on the first

B Present law and enforcement has not been adequate

C Second deeds of trust as they are now being sold to the public should be regarded as real estate securities and the purchasing public should be afforded protection similar to that which the law provides for the purchases of other types of securities

In the light of the above, any legislation dealing with the second financing problem as it is developed in California should seek to achieve the following objectives

1 Control of the quality of individual trust deeds being sold to the public As in the case of the sale of other securities, the licensing agency should have the authority to determine if the proposed plan of business and the type of notes and deeds of trust proposed to be issued or being issued, are fair, just and equitable, and that the seller or broker is transacting his business fairly and honestly, and that the notes and deeds of trust are not working a fraud upon the purchaser The licensing agency should have authority to require periodic reports concerning the type of trust deeds being sold and be able to check on the validity of appraisals of such deeds of trust given to the public at the time of sale

2 Solicitation and advertising Much larger authority should be given the licensing agency to prevent solicitation and advertising which is deceptive, fraudulent, and misleading, in the same way that licensing agencies supervise the advertisement of other types of securities

3 Clarification of the functions of the dealer in real estate securities At the present time there is a confusion in the function of the dealers acting at the same time as both principal and as broker-agent of the purchaser At the present time dealers are operating where there exists a conflict of interest and a breach of fiduciary duty to the purchaser

4 All types of investment plans by which the investor's funds are held for investment in trust deeds should be placed under the protective provisions of the corporate securities act

[1] Submitted to the committee on December 14, 1960, by Hon Stanley Mosk, Attorney General

5 If real estate licensees are to be permitted to receive and keep on deposit funds of investors in trust deeds, provision must be made for the adequate separation and protection of these funds so they will not be misappropriated by the licensee or used in the operation of the licensee's business

6 All plans which in effect place the operator in the banking and savings and loan business should be controlled by the state department concerned

Any legislation which accomplishes less than the above would, in our opinion, be inadequate, particularly in the light of the recent sad experience with the public sale of second deeds of trust

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REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON MILITARY AND VETERANS AFFAIRS

TO THE 1961 GENERAL SESSION OF THE CALIFORNIA LEGISLATURE

House Resolution No. 326, 1959

MEMBERS OF THE COMMITTEE

DON A ALLEN
REX M CUNNINGHAM
L M BACKSTRAND
LOUIS FRANCIS
RONALD B CAMERON
DON MULFORD, *Acting Chairman*

STAFF

FRANCIS R RUGGIERI, *Committee Consultant*

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LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
SACRAMENTO, CALIFORNIA, January 2, 1960

HON. RALPH M. BROWN
Speaker of the Assembly

MEMBERS OF THE ASSEMBLY
Assembly Chamber, Sacramento, California

GENTLEMEN: Pursuant to House Resolution No. 326, 1959 Session of the California Legislature, your Assembly Interim Committee on Military and Veterans Affairs submits its report covering its functions and activities during the 1959-61 interim.

Assemblyman George G. Crawford was chairman of the committee until he resigned from the Assembly on February 15, 1960.

Respectfully submitted,

DON MULFORD, Acting Chairman
DON A. ALLEN, SR
L. M. BACKSTRAND
RONALD B. CAMERON
REX M CUNNINGHAM
LOUIS FRANCIS

REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON MILITARY AND VETERANS AFFAIRS

A.B. 457 RELATING TO EXPENSES AT THE VETERANS HOME OF CALIFORNIA

INTRODUCTION

The committee met on August 31, 1959, at the State Building in Los Angeles to consider the question of alleged used of the Veterans Home of California by persons whose income made it unnecessary for them to receive care in the Home

SCOPE

A B 457 was introduced to amend the Military and Veterans Code to provide that veterans residing at the Veterans Home of California be required to reimburse the State in full or in part for the expense of their maintenance. Veterans receiving an income of $50 or less would not be assessed for care, but those receiving income in excess of $50 would be assessed the full cost of their care if their income was high enough to cover it, and for part of the cost if their income was not high enough to allow full repayment

The bill was designed to remedy the alleged presence of veterans at the Home in Yountville who enjoyed high incomes but did nothing to help meet the cost of their care

The public hearing produced only testimony discounting the necessity of legislation embodying the proposals set forth in A B. 457

Mr. Edwin D. Klein, Jewish War Veterans, contended that sufficient rules and regulations existed to "deter the admission and retention of patients who would by the nature of their income and disability be allowed to pursue an ordinary life on the outside of the home"

Mr. Thomas Murray, Veterans of Foreign Wars, voiced his objection to the arbitrary cut-off sum of $50, and expressed preference for board policy rather than legislative enactment.

Colonel Dunmire, Superintendent of the Veterans Home, offered testimony indicating that, due to the regulations under which the Home receives federal funds, half of any sums collected from the "member" of the Home would be lost to the State due to the loss of federal funds.

It appears that existing legislation enables the administration to investigate the income of "members" A B 458, which was signed by the

Governor on June 1, 1959, enables the department to investigate the total value of the property and assets of veterans applying for admission to the home A B. 1700, which was signed on July 11, 1959, enables the department to investigate the financial status of members not only prior to, but also during the course of their residency at the home. Monthly reports are made under this grant of authority. Colonel Dunmire presented some statistics regarding the income of veterans residing at the home.

RANDOM SAMPLES

VETERANS HOME OF CALIFORNIA MEMBERS INCOME FROM ALL SOURCES
July 1, 1959 to June 30, 1960

Month	*Member population*	*Income—pensions and compensation*	*(Avg *)*	*Income—all sources*	*(Avg *)*
July 1959	1955	$131,795 70	$67 41	$207,958 08	$106 37
August 1959	1946	132,092 24	67 88	209,307 03	107 56
September 1959	1931	132,198 93	68 46	208,934 46	108 20
October 1959	1918	131,331 77	68 47	207,826 42	108 36
November 1959	1908	130,656 83	68 48	207,101 62	108 54
December 1959	1906	131,223 93	68 85	209,146 58	109 73
January 1960	1908	130,736 64	68 52	212,446 00	111 34
February 1960	1889	130,125 87	68 89	212,692 72	112 59
March 1960	1879	127,725 64	67 97	213,281 44	113 51
April 1960	1855	127,959 68	68 98	213,524 01	115 11
May 1960	1855	128,350 51	69 19	215,166 69	115 99
June 1960	1854	129,071 16	69 62	213,937 16	115 39
Grand total		$1,563,268 90		$2,531,332 21	

* Prepared by committee staff

RANDOM SAMPLES

TABULATION OF INCOME FROM ALL SOURCES REPORTED BY MEMBERS IN THE VETERANS HOME OF CALIFORNIA AS OF NOVEMBER 30, 1960

(Income from all sources includes Pension, Compensation, Military Retired Pay, Social Security, Federal, State and Municipal Retired Pay and miscellaneous income from other sources).

Members drawing $19 or less	253
Members drawing from $19 01 to $50	45
Members drawing from $50 01 to $100	609
Members drawing from $100 01 to $150	529
Members drawing from $150 01 to $200	289
Members drawing from $200 01 to $250	80
Members drawing from $250 01 to $300	38
Members drawing from $300 01 and OVER	17
Total membership	1,860

2. Income of $250.01 and OVER is listed individually below:

Amount	*Type of care*	*Depend-ents*	*Date of admission*	*Amount*	*Type of care*	*Depend-ents*	*Date of admission*
$250 15	Hosp.	None		$282 20	Inter dom	None	
250 45	Hosp	None		282.50	Dom	None	5–6–54
251 59	Dom.	Wife	8–10–55	287 59	Dom.	None	10–1–52
252 00	Inter. dom	None		289.62	Hosp.	Wife	
254 59	Hosp	None		289 64	Dom	Wife	6–30–60
255 00	Dom	None	11–8–51	289 64	Inter	None	
256 63	Inter dom.	None		290 07	Hosp.	None	
257 09	Inter	None		295 45	Hosp.	Wife	
259 45	Inter	None		298 20	Inter.	Wife	
259 50	Dom	None	8–26–53	300 00	Dom	Child	11–21–60
260 41	Hosp	None		301 59	Inter	None	
261 59	Inter	Wife		302 50	Inter.	Wife	
263 45	Inter	Wife		303 00	Hosp	Wife	
266 15	Hosp	Wife		307 15	Hosp.	None	
267 59	Inter	None		308 40	Hosp	None	
*268 00	Dom	None	10–18–60	311 00	Inter.	Wife	
268 21	Dom	Wife	9–4–58	317 68	Hosp	Wife	
268 55	Dom	Wife	10–24–60	318 00	Hosp	Wife	
268 76	Inter dom	None		323 45	Hosp	None	
269 50	Hosp	Wife		324 45	Hosp	Wife	
271 00	Dom	None	6–2–55	332 00	Hosp	Wife	
271 45	Inter	Wife		343 95	Hosp	Wife	
272 00	Inter	None		345 02	Inter	Wife	
273 00	Hosp	None		355 50	Hosp	None	
275 00	Hosp.	Wife		376 57	Inter. dom	None	
275 00	Inter. dom.	None		409 61	Inter	Wife	
278 75	Inter.	Wife		750 00	Hosp	Wife	
279 75	Hosp	Wife					

* NOTE Income after 3-26-61 will be $20 00 per month

FINDINGS

Existing legislation has provided sufficient authority to the State to investigate the financial status of applicants for care at the Veterans Home of California, and it appears that the State will be able to determine whether or not applicants or residents of the home would, by the nature of their income, be able to pursue satisfactory life outside of the home

RECOMMENDATIONS

Legislation in this area would not serve a useful purpose at this time but there should be continuing surveillance of the income of veterans receiving care at the Home

A.B 710, RELATING TO ELIGIBILITY FOR CARE AT THE VETERANS HOME OF CALIFORNIA

INTRODUCTION

The committee met on August 31, 1959, at the State Building in Los Angeles to consider modification of eligibility requirements for admission to the Veterans Home of California

SCOPE

A B 710 was proposed to limit eligibility for care at the Veterans Home of California to veterans "who have either entered such service from California or were bona fide residents of the State at the time

of entry into service and who have been bona fide residents of the State for two years immediately preceding the date of application "

The bill also proposes to change the code to provide eligibility to those otherwise qualified by reason of residence, etc , who have received any discharge other than dishonorable

Mr. Thomas Murray, Veterans of Foreign Wars, testified against A.B. 710 He stated·

> "Veterans of Foreign Wars is opposed to this because we believe that the present law which requires 10 years residence in the State of California is sufficient protection to keep out anybody—or to keep people from coming here from other states just to get into the Statler Dunmire If a person has lived in California for 10 years he certainly is enough of a native son to be eligible for our veterans home "

Mr Murray further contended that 600,000 to 700,000 veterans in the State would be made ineligible by this law

Mr. Edwin D. Klein, representing the Jewish War Veterans, opposed A B 710, stating

> "The Jewish War Veterans of the United States oppose A B 710 Any veteran who has resided in the State of California for a period of 10 years has become, to our way of thinking, a bona fide resident of the State of California, and the background history of the home has been such that it was not placed in the same category as the specialized benefits for California veterans, and therefore we hold that A B 710 would be restrictive, would be prejudicial against those veterans who have resided here for a period of 10 years California is now their home and should be admitted solely based on the policies and regulations of the home as far as need, disability and employability We further feel that if 710 were enacted many of the veterans who were denied admission to the home would fall upon either state B P A resources, Bureau of Public Assistance resources, or other resources of the community so that in a sense by restricting the very nature of the admission to the home on purely an economical basis and that would be the reason for enactment of a bill of this type, would be economic foolishness, you'd have to pay for it out of another pocket These men who cannot afford to live on the outside and seek domiciliary care would then seek aid from the Bureaus of Public Welfare throughout the State."

Colonel Dunmire, Superintendent of the Veterans Home, commenting on a portion of the bill, said

> "We believe that the bill should be amended to read 'by an examining medical officer of the home ' We receive many applications with an outside doctor's examination who does not know conditions at the home, what constitutes domiciliary care, intermediate type care or hospitalization—he may say too that he is unable to follow gainful occupation, but we believe that our final determination of medical findings should be made by one of our doctors on our medical staff."

FINDINGS

Legislation of this type would severely limit the number of veterans eligible for care and eliminate one out of three veterans in California from the Veterans Home of California Shortening the number of years of residence required of those eligible from 10 to 2 does not compensate for the loss of benefit stemming from limiting eligibility in the manner proposed

The 10-year residence requirement seems suffice to eliminate transient veterans from the home

It appears that legislation of this sort would not benefit the California veteran or the State

RECOMMENDATIONS

No legislation without conclusive evidence that a real problem exists.

S B 799 RELATING TO EXTENDING CAL-VET BENEFITS

INTRODUCTION

On August 31, 1959, the committee met at the State Building in Los Angeles to consider the extension of Cal-Vet benefits

SCOPE

S B 799 proposed to extend Cal-Vet benefits to those persons serving in the military service in California on December 7, 1941, or June 27, 1950 In short, it was intended to extend benefits to those who were in the service in California when World War II and the Korean War began

The author did not appear in support of his bill

A representative of one veterans organization spoke briefly in favor of the measure but noted that his organization was not aware of any problem in this area

FINDINGS

The matter was taken under submission by the chairman, and due to the lack of interest evidenced at the hearing the matter was not pursued further

RECOMMENDATIONS

No legislation

COUNTY SERVICE OFFICERS PROGRAM AND THE CONTRACT SERVICES UNDER THE FIELD ACT

INTRODUCTION

The committee met on September 1, 1959, at the State Building at Los Angeles for the purpose of receiving testimony concerning an alleged attempt by the Governor's office to eliminate contract arrangements by the State with veterans organizations for the payment of service officers designated by the organization, and to curtail funds for the County Service Officers Program

SCOPE

The Governor cut $1,100,000 from the budget of the Department of Veterans Affairs for the purpose of eliminating these services This cut was restored by both houses of the Legislature but reduced by the

Governor by the amount of $333,000 after adjournment The committee met to hear testimony on the need for the services so curtailed

Since 1943, the State has contracted with veterans organizations to furnish services to the veteran in California These veterans groups receive state funds with which to augment their activities in furnishing agents to advise veterans on matters such as application for benefits, appeal from adverse decisions, etc The new plan of the administration was to eliminate the flow of state funds for these purposes on January 1, 1960

The county service officers program, which provides a similar service was to be continued, but with a budget reduced by $250,000 The administration planned on saving expenditures on what it considered to be a duplication of services The plan included the authorization of positions in the Department of Veterans Affairs for agents to perform functions similar to those performed by the veterans organizations and the county service officers

Testimony received at the public hearing indicated an obvious difference of opinion

Mr. Gene Wise, County Service Officers Association, informed the committee that the workload was going up because more veterans and widows were reaching pensionable age He contended that his office saves the State from $300,000 to $400,000 by placing people on the federal rather than the state roles

Mr. Manuel Val, State Director of Rehabilitation for the Disabled American Veterans, testified that his organization would have to

> "curtail our activities at the surrounding areas and restrict our service to the Los Angeles office and the San Francisco office . In my opinion there is no duplication of services in any of the regional offices where we maintain DAV employees The need for our services has been great and it will continue to be even greater. In view of the recent pension that was signed by the President here several days ago This new bill makes it more cumbersome and it will make it more difficult for us to properly expedite development and the prosecution and the judication of these pension claims "

In response to a question relating to the probable effectiveness of the Department of Veterans Affairs in providing the same services to veterans, Mr Val commented in substance that

> "The success of a program administered by the department rather than under contract would be contingent on its ability to recruit, as agents, those experienced men who had been serving under contract with the various veterans organizations " He expressed misgivings about the calibre of service that the department would provide if it selected as agents persons from the civil service list who had passed examinations but had no experience in veterans claims

Mr. Ben Lieberman, the County Service Officer for Orange County, testified, providing additional information on the number of agencies offering services to the veteran He stated that the U S. Veterans Ad-

ministration cannot press claims against the government and hence should not be numbered among those agencies servicing the veteran in the same manner as the county service officers

Mr. Thomas Murray, Veterans of Foreign Wars, stated that establishment of service by the Department of Veterans Affairs, in replacement of contract services, would constitute a breach of faith with the veterans organizations

Mr. Edwin Klein, Rehabilitation Director of the Jewish War Veterans, stated that his organization would have to cut the quantity of service rendered to veterans, but would maintain quality, if the contract services were terminated

Department of Veterans Affairs representatives supported the budget reductions

Mr. Joseph Farber, Director of the Department of Veterans Affairs, contended that the veterans organizations should service their own members without contract funds, and that the taxpayers should take care of the rest through service by his department

Mr. James Cowan, Manager of the Division of Service and Co-ordination of the State Department of Veterans Affairs, reported that the County Service Officers Program would be continued through 1959 but with a reduction in funds of $250,000 but that the contracts with veterans organizations would be terminated as of January 1, 1960

FINDINGS

It was readily apparent that there is a duplication of service to veterans in particular areas There was evidence of a decline in the number of veterans requiring such service At the same time the committee had very little evidence before it other than opinions and predictions as to the effect the budget reduction would have on service to veterans There is no period of experience from which to draw any information which might lead to a determination that the California veterans were adversely affected by budget limitations

RECOMMENDATIONS

The committee recommends that once a measurable period of operation under the limited program has elapsed that the services to veterans be carefully re-evaluated to determine whether or not some adjustment should be made in providing more or perhaps less money for the contract services by veterans organizations and the County Service Officers Program

REORGANIZATION OF THE DIVISION OF FARM AND HOME PURCHASES, DEPARTMENT OF VETERANS AFFAIRS

INTRODUCTION

The committee met in San Francisco on January 8, 1960, to receive testimony on personnel changes in the Division of Farm and Home Purchases involving a proposed reduction of 57 personnel positions. The hearing was held upon request of Assemblyman Mulford

SCOPE

Several local veterans organizations contended that service to the veteran seeking a Cal-Vet loan would be substantially diminished if the 57 positions were eliminated

A resolution by the Veterans Political Council of San Francisco, dated November 30, 1959, called upon the Governor to "immediately defer making effective the program recommended by the preliminary survey of November 4, 1959, in connection with the Veterans Home and Farm Loan Division until the pilot program now in effect is completed" Other veterans groups offering substantially similar resolutions opposing the reorganization were Veterans of Foreign Wars No 83 of San Francisco, the San Francisco County Council of the VFW, American Legion No 292 of Albany, and the 7th and 14th Districts of the American Legion

Dr. Angelo May, President of the Veterans Political Council of San Francisco, testified, expressing the view that the Veterans Board should have been consulted "before and not after a reshuffling of this type"

Mr Stewart McHaffie, an attorney for the Department of Veterans Affairs offered the opinion that the changes involved were administrative in nature and that, although the board had authority over policy that they have "no right to specify the method, manner or means by which the director puts the department programs and policies into effect"

Mr. Warren Atherton, also an attorney for the Department of Veterans Affairs, furnished the opinion that "the proposed changes are administrative in character and may be put into effect at any time by the director"

The proposal to eliminate positions in the Department of Veterans Affairs is not unique, and Mr Joseph Farber cited a precedent in 1958 when 43 positions in the department were eliminated without consulting the Veterans Board

Commanders of statewide veterans organizations clarified the relationship between resolutions passed by local posts and the policy of the statewide organizations

Mr. H. R. Rainwater, California Commander of the Veterans of Foreign Wars, indicated that the resolutions passed by posts and county councils did not necessarily reflect the policy of the California Department of Veterans of Foreign Wars He said that

> " the San Francisco County Council of the Veterans of Foreign Wars did submit such a resolution but it is not recognized by the Department of California in that it did not go through channels and is not approved by the Department of California, Veterans of Foreign Wars"

Mr C. S. Foote, Department Commander of the American Legion, Department of California, testified that the California Department·

> " has no mandate on this subject It has never been under discussion by any official group of the Department of California or any group that has the authority to speak for the American Legion as a whole I resent, as department commander, any other

group, organization or individual inferring that they speak for the American Legion or speak for all veterans groups, which has been stated in these articles The American Legion is forbidden, by mandate, both in our department and in the national organization from taking part in any political campaigns, endorsing candidates, or giving official viewpoints on any subject without a mandate from the organization as a whole, its national or executive committee, or on cases where a definite policy has not been established "

Mr Foote agreed that local posts had the right to pass resolutions such as the ones discussed but with the qualification that

"No resolution from a post or a district that has to do with departmentwide or statewide function can be publicized in any way or taken as the viewpoint of the American Legion until it has been duly acted upon by the executive committee of the Department of California Those resolutions are on their way up but they do not formulate the policy of the American Legion until adopted on the department or state level "

Mr Philip F. O'Brien, Vice Commander, Department of California, Veterans of World War I, testified as a representative of the department commander of his organization Mr O'Brien stated that the matter of reduction of personnel had not been officially taken up by his organization His personal view was that

" we must have economy in government and we think this is a step in the right direction To sum it all up I want to say that any organized opposition that comes from these things is just from a small minority group They do not speak for the Veterans of World War I or II in the State of California "

Mr. Joseph Farber, Director of the Department of Veterans Affairs, testified that the service rendered by his department would not be curtailed He stated that "we only have $50 million to loan out every 90 days and even if we doubled our staff we couldn't improve the service "

Supporting the director's contention, **Mr. Bernard Dalporto,** District Manager of the Division of Farm and Home Purchases in San Francisco, testified that the waiting period between the time for application and the time of securing a loan is four months and indicated that would not increase the number of loans which could be processed because of the limitation of funds.

Mr. Harlan J. Johnson, Assistant Manager of the Division of Farm and Home Purchases, was the chairman of the survey team recommending the reduction in personnel and testified that the reduction of employees would not curtail the processing of loan applications in any way

Legal opinions as to whether the director must discuss proposed procedural changes in the operation of a division and reductions in staffing with the California Veterans Board were received in evidence

The Attorney General, upon request, furnished an opinion dated December 9, 1959, indicating that the director had sufficient authority to "consolidate, abolish and create divisions in the department "

FINDINGS

The committee recognizes the reasonable conclusions that the elimination of employees could result in the curtailing of service to veterans seeking farm and home loans No evidence was presented which indicated a slowing down of processing loan applications for any other reason than availability of funds for that purpose

The reduction of administrative costs which must necessarily result from the elimination of 57 positions without curtailing service to veterans must be regarded as good management and an encouraging sign in governmental administration.

RECOMMENDATIONS

No administrative or legislative changes appear to be required

S.C R. 49, RELATING TO FARM AND HOME PURCHASES

INTRODUCTION

The committee met at 170 Fell Street, San Francisco, on June 27, 1960, to hear testimony on problems relating to farm and home purchases.

SCOPE

In 1957 the Legislature amended the Veterans Farm and Home Purchases Act to preclude loans for the purpose of refinancing purchases of farms and homes. However, the amendment made provision for refinancing loans in cases where the veteran had an application on file for such loan prior to July 2, 1957. Loans for such persons have not been available, however, due to language placed in the amendment permitting refinancing only if the department had funds in excess of the amount needed for new loans It is estimated that about 15,000 veterans were affected by this provision. It is not known how many of these still desire refinancing through the program

S C R 49 was designed to alleviate this situation by expressing the will of the Legislature in a resolution calling for keeping "good faith with veterans who filed applications prior to July 2, 1957, be carried out by the Department of Veterans Affairs by processing a proportion of those applications each month through a selective method which will consider the original date of application and urgency of need, among other factors."

FINDINGS

The Legislature intended to maintain good faith with those persons who applied before the cutoff date However, this intention needs to be implemented by legislation which will authorize the Department of Veterans Affairs to provide necessary funds for refinancing purposes.

The Department of Veterans Affairs needs legislative guidance in determining the meaning of "urgency of need" as set forth by the resolution.

RECOMMENDATIONS

Remedial legislation is recommended which will provide a formula whereby funds be made available for extending refinancing loans to those veterans who have applied before July 2, 1957

FIRE AND LANDSLIDE INSURANCE POLICIES ISSUED THROUGH THE DEPARTMENT OF VETERANS AFFAIRS TO PURCHASERS OF FARMS AND HOMES UNDER THE CAL-VET PROGRAM

INTRODUCTION

The committee met on June 27, 1960, in San Francisco to receive testimony on the extent of all physical loss insurance coverage on homes purchased under the California veterans farm and home program.

SCOPE

Every veteran who purchases a home under the California veterans farm and home loan program is required to insure the property from loss by fire and other perils

A signatory program which included approximately 300 companies has been in effect since 1936 The signatory group consisted of carriers who were willing to participate in the insurance program providing all physical loss coverage at a uniform premium rate. In addition they were required to assume full responsibility in the event of the financial collapse of any company in the group.

It was reported by a representative of the California Association of Insurance Agents that through the years a contracts committee consisting of representatives of the participating companies and the Department of Veterans Affairs selected the companies which were to be admitted to the signatory group It was emphasized, perhaps in support of the method of selection, that the signatory group has had occasion to "pick up the tab" for signatory companies that failed

It was very clear that the veteran had his choice of insurance companies provided they were members of the signatory group The veteran was also free to select his agent or broker as long as he represented a member company of the signatory group

The insurance protection provided by the signatory group included coverage for losses due to landslide or subsidence The contract assuring that protection was terminated on December 1, 1960 It was evident at the public hearing that the Department of Veterans Affairs desired that any new contract should provide coverage for losses arising from these causes.

Subsequent to the date of the public hearing it was learned that a new contract has been negotiated and awarded to a single carrier. The new insurance provides protection from all physical losses, including landslide or subsidence A new feature is a $100 deductible provision

A significant result of awarding of a new contract was the elimination of the signatory group Existing insurance policies with signatory group members may be continued until expiration of the policies All new policies must be purchased from the single carrier which was awarded the new contract

The question arises whether or not other companies which are willing to provide the same coverage at the same premium rate will be permitted to furnish insurance to veterans purchasing homes under the California veterans program. It is not known at this writing whether interested companies will be accepted and become components of a new signatory group which will again provide the veteran with the opportunity to choose his insurance carrier and his agent or broker who will

service the policy. The policy service aspect is a matter of importance, and it is not clear how the present single carrier intends to service the individual insured.

FINDINGS

The essential service to be provided under an insurance program would appear to be (1) advice to the veteran as to his insurance needs, reflecting changes in values from time to time and additions to the property, (2) prompt claims service assuring the veteran that he will receive an objective and sympathetic adjustment, (3) assurance that insurance losses can be met from the resources of the company or companies providing coverage, either directly or by reassignment of risks

Any comparison of alternative programs should take into account

1 Types of insurance coverage provided
2 Rates
3 Insurance advisory services
4 Claims or adjustment services
5 Whether the costs of the services are assumed by the contracting insurance company or by the department

Many questions remain unanswered in connection with the awarding of the new contract Of particular significance is the question, to what degree should the State participate in an insurance program of this type There is a question as to whether under this system the veteran will receive adequate counsel in respect to his insurance needs It is apparent that much more factual information must be obtained by this committee concerning the awarding of the new contract

RECOMMENDATIONS

Enact legislation which will establish a clear standard of conduct for the Department of Veterans Affairs in conducting renewal negotiations

LIFE INSURANCE POLICIES WHICH PROTECT THE VETERANS MAKING PURCHASES UNDER THE FARM AND HOME PURCHASES ACT

INTRODUCTION

Sharp criticism was directed at the Department of Veterans Affairs for developing the extension of the mortgage redemption insurance program for veterans who purchased homes under the California veteran program at a hearing conducted by this committee on June 27, 1960

SCOPE

The mortgage redemption insurance program provides for payment of the principal balance of a California veteran home loan in the event of the death of the veteran prior to full payment of the loan

The extension of additional insurance to veterans was criticized because it is alleged that it offers through the State of California individual life insurance payable to any beneficiary designated by the insured where the State has no interest or responsibility whatsoever The critics of the program contend that the State is making services available, at taxpayers' expense, to act as an agency for a private insurance

company for the sole profit of the company when no need exists which cannot be met by private enterprise competing in a free market

The supporters of the extended benefits represented to the committee that the additional insurance amounts to approximately $1,200 per person It is further contended that this cash surplus paid upon the death of an insured veteran was quite essential to his survivors in the event it became necessary to put the property in good order for purposes of a sale occasioned by the death of the veteran

FINDINGS

Mortgage redemption insurance protects both the State of California and the veteran's family

There appears to be a critical question about the actual purpose of the additional insurance coverage and the role of the Department of Veterans Affairs in making it available, particularly when the insured is permitted to designate anyone as his beneficiary

RECOMMENDATIONS

Legislation which will:

(1) Provide the Department of Veterans Affairs with clear-cut limits as to what benefits can be extended to California veterans

(2) Re-emphasize the purposes for which the benefits were originally intended in order to curtail over-stepping those limitations

H.R. 360, RELATING TO A VETERANS HOME IN SAN DIEGO

INTRODUCTION

An enthusiastic representation of various veterans groups presented information relative to the establishment of a veterans home in Southern California at a public hearing in San Diego on September 19, 1960

SCOPE

From the testimony presented it was evident there was a strong desire by veterans groups in Southern California to establish a veterans home in that area comparable to the present home in Napa County

Proponents urged the committee to initiate action to acquire the former naval hospital at Corona as a possible site The property has been declared surplus and could be obtained by the State of California Various plans were introduced to illustrate the adaptability of the former naval hospital to meet the needs of veterans requiring domiciliary care

The statistical data presented to the committee indicated that a great many veterans reside in Southern California However, it was not clear just how many veterans require domiciliary care at this time, nor how many might require it in future years

Colonel Dunmire, Superintendent of the Veterans Home, informed the committee that there are three types of services available at the Veterans Home in Yountville, Napa County, i e , hospital, intermediate-type care or long-term care (chronic disabilities), and domiciliary ambulatory care. A total of 1,854 patients were at the home on June 30, 1960 The maximum number which may be accommodated is 2,412

There were 48 applicants on the waiting list for hospital care Another five applicants were waiting admission for intermediate-type care Five women were on the waiting list for domiciliary care, and there was no waiting list for male veterans who require domiciliary care Colonel Dunmire indicated that there were 386 domiciliary care beds available for male veterans who could qualify for admission

Despite the availability of these accommodations it was the opinion of Colonel Dunmire that there would probably be a compelling need for hospital care and long-term care facilities in the future

The matter of location of such a facility should be determined on the basis of veteran population, availability of collateral services and convenience for visiting relatives who are a vital factor in the satisfactory adjustment of veterans to the environment of a veterans home

FINDINGS

The committee made the following findings

(1) A majority of the California veterans reside south of the Tehachapis

(2) Current statistical data is not indicative as to how many veterans now or in the future will require the type of care which is available at a veterans home

(3) The surplus Corona property is worthy of further investigation by the State as a possible site for some state institution or facility

RECOMMENDATIONS

The committee instructed the chairman to notify the Governor and the Department of Finance that the surplus facilities at Corona will be available for sale to the State of California, and that immediate steps should be taken to obtain this facility for the State in view of the rather apparent value it will have in the next few years

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CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON NATURAL RESOURCES, PLANNING AND PUBLIC WORKS

INTERIM REPORT 1959-1960

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JOHN L MENG, *Consultant*

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LETTER OF TRANSMITTAL

STATE CAPITOL
SACRAMENTO, CALIFORNIA, January 2, 1961

HON. RALPH M. BROWN
Speaker of the Assembly
Assembly Chambers
State Capitol, Sacramento, California

Dear Mr. Speaker and Members of the Assembly:

Your Interim Committee on Natural Resources, Planning and Public Works submits herewith the report of its activities during the interim following the close of the 1959 Session.

Contained herein are the findings and recommendations on the various subjects studied as well as a summary of the testimony received at these hearings

It is hoped that the information contained herein may aid in reaching conclusions with respect to the problems of mutual interest.

Respectfully submitted,

LLOYD W LOWREY, Chairman
VERNON KILPATRICK, Vice Chairman
TOM CARRELL
LOU CUSANOVICH
LOUIS FRANCIS
W S GRANT
SHERIDAN HEGLAND
MILTON MARKS
CHARLES W. MEYERS

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SUBCOMMITTEE ON BAY AND WATER POLLUTION

CANDLESTICK COVE PROBLEM

December 21, 1959

INTRODUCTION

Following are a few brief observations on the background of this subcommittee and the activities up to the present time.

The original house resolution was introduced at the 1957 Regular Session giving this subcommittee authority to investigate the bay and water pollution problems, and this subcommittee held a meeting in the supervisors chambers in San Francisco on September 23, 1958, to determine where existing pollution laws have failed and why the people have been required to live with the "big stink" as it has been referred to and the law enforcement necessary in the Candlestick Cove area.

From previous testimony, it would appear that the delay in solving the odor problem at Candlestick Cove is typical of the law enforcement on water pollution The people are entitled to quicker action to clean up these nuisances.

As a result of the subcommittee hearings, the Legislature at the 1959 Session passed A B 1974 and it was felt that this bill would resolve many of the pollution problems facing the State and help bring about a correction of the Candlestick Cove situation Now better than a year has passed and this situation is still very much with us, only with different problems Some major corrections have been made as far as the garbage disposal is concerned, but still the "big stink" is here.

SUMMARY OF THE TRANSCRIPT

Outlined below is a summary of what has occurred at Candlestick Lagoon since the previous legislative hearings on the matter:

(1) At the time of the 1958 hearing, the Sanitary Fill Company was dumping garbage into the lagoon and wanted to continue to do so. This particular operation, according to investigations, was the largest single source of hydrogen sulphite in the area

By way of background, the Sanitary Fill Company serves the people of San Francisco by disposing of the city's garbage and refuse collected by the two scavenger companies in the city The disposal operation is carried out in the Candlestick Lagoon area under a franchise granted to the company by the City and County of San Francisco. The problem with which so many parties now are concerned, what has been termed the "big stink" at Candlestick Cove, arose when the freeway was placed as a barrier across Candlestick Cove by the State of California.

While there are several contributors to this problem, each of which must do certain specific things to alleviate the odor, Sanitary Fill Company is meeting its obligations.

To date, the Sanitary Fill Company has complied with the San Francisco Bay Regional Water Pollution Control Board's requirements, at least substantially so It did so by diking off the northern part of the lagoon, lowering the water level therein, and confining its refuse disposal operations to dry land They stopped dumping refuse in the lagoon, stopped open burning, constructed a solid eight-foot high fence between the fill area and the freeway to screen objectionable sights, paid the Bayshore Sanitary District for construction of a ditch to maintain its access to the bay, co-operated with the Department of Fish and Game by installing a fish screen, and netted fish trapped in the area The Sanitary Fill Company is working with the City and County of San Francisco; with committees of the California State Legislature; with the State Division of Highways; with the Southern Pacific Company; with the Bayshore Sanitary District; with the Air and Water Pollution Control Boards, and have altered their method of operation to comply with all requirements of all interested parties

(2) The second source of hydrogen sulphite in the Candlestick Cove area, though to a lesser extent than the dumping of garbage into the lagoon, was by the Bayshore Sanitary District, along with the Consolidated Chemical Company, the Southern Pacific Company, the Brisbane Sewer Maintenance District who were discharging sewage and/or industrial waste into the lagoon through an eight-foot brick sewer. This sewer also served the County of San Mateo for its storm water drainage, and the Crocker-Huffman Land Company's development around Brisbane The Regional Water Pollution Control Board has given waste discharge requirements for correcting all the situations mentioned.

The Crocker-Huffman Land Company has at the present time under construction a plant designed to meet the regional board's waste discharge requirements It will provide service for the newly developed area around Brisbane, and it will also provide sewage treatment for the Brisbane Sewer Maintenance District by contractual arrangement.

When the Sanitary Fill Company diked off the northern part of the lagoon, this made it necessary to construct a ditch at the terminus of the eight-foot brick sewer to discharge Bayshore Sanitary District waste. Construction was paid for by the Sanitary Fill Company. Essentially this ditch, also known as the Visitacion Drain, is a large culvert which crosses underneath the Bayshore Freeway and empties into San Francisco Bay.

The Regional Water Pollution Board very strenuously objects to conveyance in an open ditch of raw sewage to a point where it is proposed to be picked up by pumps and then handled in one of two ways, either by pumping it to the City of San Francisco's treatment plant or into a treatment plant to be provided by the district However, this means that even if this were done, you would still have this open ditch carrying raw sewage.

In summary, the Sanitary Fill Company is essentially in compliance, Brisbane is well on its way to compliance because of the Crocker-Huffman plant now under construction. The Bayshore Sanitary District is not meeting the board's requirements at the present time and is exploring every legal loophole, utilizing every available legal means of either prolonging compliance with the regional board's requirements or avoiding them altogether.

As a result, the Regional Water Pollution Control Board has ordered the Bayshore Sanitary District to present by January 31, 1960, a firm and final schedule for meeting the requirements imposed by the board, or the board will bring action to compel compliance by the issuance of a "cease and desist" order

The Bayshore Sanitary District problem is not a new one. As long ago as 1931, the State Department of Public Health made a study of the sewage disposal problems for the Bayshore district and at that time there was visible evidence of pollution However, isolation was adequate to prevent complaints Since 1931 the problem has been greatly aggravated because of the inability to maintain the original isolation and the wastes are now discharged through an open ditch adjacent to the freeway connecting San Francisco County with areas to the south. Conditions change, as in the current case, and an intolerable nuisance exists

In this day of civilized society, this situation of dumping raw untreated sewage and industrial waste into the bay is a moral disgrace. Under the Meyers amendments to the Dickey Act, this "big stink" is bad enough to demand action and must end immediately.

The California Department of Fish and Game is also preparing to take legal action against the Bayshore Sanitary District for violation of Section 5650 of the State Fish and Game Code and is now in the process of making water tests and preparing for vio-assays on the water at the mouth of the Visitacion outfall Evidence indicates this discharge problem has been discussed and worked on over a period of better than 15 years, and it does not seem to be much closer to solution now than it was then. It is the department's feeling that all of those who have authority should proceed to use it in an attempt to speed up a solution to the problem. This would be a criminal action under the Fish and Game Code for dumping wastes into the Bay deleterious to fish-life

(3) Digest of Bayshore Sanitary District testimony: At the present time, very little hydrogen sulphite exists in the area or other odors that can be attributed to sewage in any manner. It is true that the ditch odor is occasionally unpleasant, but the main problem now confronting the Bayshore Sanitary District is the control of water pollution rather than that of odor nuisance, as has been claimed.

The district is preparing specifications and plans for a dam at a point where the tidal sea water, when backed into the ditch, admittedly creates some hydrogen sulphite. Behind the dam, a skimming device will be constructed to remove floating materials and industrial solids. Settleable solids will be retained within the basin so formed at the time, and if necessary, chemicals will be added at the outfall to control other odor formation materials

In addition to the dam and skimming basin, the district is considering the feasibility of construction of a small diameter pipeline along the side of the ditch to carry only the sewage and industrial wastes from the eight-foot brick sewer Such a pipeline would be so designed that the ditch would be dry along its entire length and the outflow would empty into the skimming basin, except in times of heavy storm

runoff. Then the ditch would carry the storm waters and the dam would be overtopped and the runoff would carry into the Bay.

During flood stages almost every treatment plant in the entire State is bypassed as a matter of policy and sewage and rainwater intermix and are allowed to pour into our rivers and harbors

The Bayshore Sanitary District agrees that floodwaters should be treated along with sewage at all times and feels that some manner of separating them from sewage flow should be accomplished or that they should be treated as sewage and not allowed to pollute state waters. However, the district alone should not be asked to take such a step unless it becomes state law They request this subcommittee to give serious consideration to such legislation.

Threatened litigation will solve nothing. The district is willing to "cease and desist" as soon as intelligent answers are arrived at through willingness of the several parties involved to work toward a sensible solution.

LIST OF PERSONS TESTIFYING BEFORE THE COMMITTEE

December 21, 1959

John B Harrison, Executive Officer, Regional Water Pollution Control Board for the San Francisco Bay, Region II.
Albert Goldberg, Assistant Attorney General, State of California.
Eugene Howell, Public Health Engineer, San Mateo County Department of Public Health and Welfare
Conrad B Reisch, General Counsel, Bayshore Sanitary District.
William J O'Connell, Engineering Consultant, Bayshore Sanitary District
Reuben H Owens, Director, Public Works, City and County of San Francisco
Elmer Robinson, Chief, Air Analysis Section, Bay Area Air Pollution Control District
Frank Stead, State Department of Public Health.
Robert L Jones, Regional Manager, California Department of Fish and Game
Raymond Van Tassell, Chairman for the Associated Sportsmen of the Pollution Control Committee
Joe Molinari, President, Sanitary Fill Company.
Donald Donaldson, Secretary, Aquatic Resources Committee.

POLLUTION OF SAN FRANCISCO BAY

April 28, 1960

INTRODUCTION

The purpose of the hearing on April 28, 1960 was to secure all available facts with reference to pollution of the San Francisco Bay. The committee called the hearing to find out what causes the pollution, what can be done to remedy the situation, to determine if there are any weaknesses in the law and what should be done to correct these weaknesses It is an established fact that the San Francisco Bay is classified as one of the worst polluted bodies of water in the State of California

Reuben H. Owens, Director of Public Works, City and County of San Francisco: Mr Owens reported on a recently completed survey of drainage outlets to the waters surrounding San Francisco These outlets total about 1,800, approximately 340 of which carry nothing but storm water, 230 of which cannot be identified, 400 are vertical outlets from washbasins, and a total of some 830 are sewer outlets. These sewer outlets are broken down as follows· 748 are on Port Authority property (710 of these 748 are direct drops to the Bay); eight are on Army property; five on Navy property; and 69 are the city's This is a brief summary of all the pipes we have found, and when we examine them and categorize them, we will be in a position to have them all corrected.

Mr. Owens also exhibited a map of San Francisco indicating in which areas sewage is presently being treated.

A pumping station is to be built at Washington and Drumm Streets in the produce area We have not been able to start building this plant because we have not yet acquired the property The board of supervisors has adopted a policy that they would not disturb individual produce merchants until they could move all the merchants at one time because moving each individually would, in effect, put them out of business.

The large wholesale produce firm of Jacobs, Malcolm and Burtt is now located on the site on which it is proposed to build the pumping station, and they are very reluctant to be moved at this time and will express their objections to the supervisors committee

A. B. Crowley, San Francisco Department of Public Health: The City Department of Public Health has made complete and comprehensive bacteriological surveys of the waters of the bay and ocean and of Aquatic Park for a period of five years prior to the construction of the North Point treatment plant We continued the sampling after construction and have reports for a total of 15 years These samplings show the difference in pollution after construction of the plants It appears that now we will have to quarantine Aquatic Park again and prohibit swimming due to the extreme pollution

In February 1948 the Department of Public Health notified the Port Authority and others concerned that we were constructing the North Point plant and to make plans to intercept their sewage and bring it into the treatment plant. By reference to a map, we can determine which outlets are not connected to the sewer lines Many of these are on Port Authority property We feel that in view of the $20 million

we have spent in San Francisco on sewage treatment plants, these outlets should be connected. The Department of Public Health regrets the necessity of closing Aquatic Park to swimming, but it is necessary.

Frank Stead, Chief, Division of Environmental Sanitation, State Department of Public Health: The requirements of statutes and regulations which are pertinent are included in Chapter 604 enacted at the 1957 Regular Session of the Legislature instructing the State Health Department to set bacterial and other standards for recognized water contact sports areas. The State Board of Health did adopt such bacterial standards of assured safety. These standards refer to coliform concentration in the water and state that they shall not exceed 10 per milliliter more than 20 percent of the time, and conversely, 80 percent of the time the water shall meet these standards

For the 1959 bathing season, based almost entirely on the laboratory work of the Department of Public Works and contained in a report of the Bureau of Sanitary Engineering, it was shown that this bacterial standard was not met during the bathing season of 1959; that instead of exceeding this number 20 percent of the time as is the limit in the regulations, this number was exceeded 40 percent of the time Here the State's requirements for bacterial standards were not met and to date in 1960, the situation is unchanged. Our department and the City Health Department feel that it should be a mandatory obligation to stop the water contact sports in these demonstrated areas

Rae Watts, Port Director, San Francisco Port Authority: I think it appropriate for me to make certain statements relative to our position. First, the emphasis seems to have been upon the condition at Aquatic Park For the record, I want to state that all of the large restaurants in the Fisherman's Wharf area which are the primary public attraction in the area are all connected to the sewer The sewage goes to a pumping station, and the pumping station moves it to the treatment plant.

Second, reference has been made to the fact that we have not connected any of the piers to the sewer. Frankly, we have not undertaken any plans to do that The piers are used only intermittently, certainly not on weekends and only during the time when vessels are tied up to the facilities. We are now in the process of connecting the Ferry Building to the city sewer and by the end of this year, somewhere between 150 and 200 outlets that now go into the bay will be connected However, the value of that relates directly to the completion of the pumping station at Drumm Street. With the few outlets on our piers, we doubt that we are a major cause of pollution or that we are contributing to the problem to any great extent.

In the area west of Jones Street, our investigation shows that there are in the neighborhood of 35 outlets that go directly into the bay These we feel are only a nominal part of the cause of the problem at Aquatic Park. There are certain other factors which contribute to the condition such as Alcatraz, Treasure Island and the Yacht Harbor We are not stating that our situation does not contribute, but we think it is only a nominal contribution to the problem

E. C. Waterman, Chief Engineer, Marketing Service Department, Standard Oil Company of California. Our plant has been at Northside

for roughly 36 years and over a period of years, we have continually tested our oil lines under pressure for breaks or leaks. In September 1959 we were advised by Mr Watt's predecessor that there was an oil slick on the lagoon near Castinello's Restaurant We immediately investigated, tested our lines and shortly thereafter the oil slick disappeared In October 1959 we made a delivery of gasoline into our plant and in trying to reconcile our records, we felt there was a discrepancy. We continued our tests and found there was a leak. We made repairs and it tested out tight On the first of March 1960 in co-operation with the Port Authority, we made tests of all lines again and found we lacked pressure which indicated we had a leak just opposite the Exposition Grotto We excavated and found a hole created by electrolysis caused by an attached ground wire to a water pipe We have the situation cleared and as has been stated by Mr. Watts, we have it under control We have worked with the Port Authority, the Fish and Game Commission, and the Fire Department where any kind of slick is found.

Paul J. Madigan, Warden, Alcatraz Penitentiary: The penitentiary has been discharging into the Bay for about 100 years, ever since 1850 when it was first occupied About a year ago, we were advised by the Water Pollution Control Board that this discharge was becoming a problem in the Bay. We thought that since the tides were strong where we are located that our sewage problem was not too great Approximately 585 people live on the Island on a permanent basis, and we want to co-operate in every way we can A representative from the State Department of Public Health is scheduled to come to Alcatraz to make a study of our situation One of our problems, of course, is the limited area in which we have to install a treatment plant, and another problem is to get the money from Congress

John B. Harrison, Executive Officer, San Francisco Bay Regional Water Pollution Control Board: Everyone has testified that they had the highest intentions and that whatever is the matter with the Bay is not their fault In the main, the pollution problem in San Francisco Bay is apparently divided into three parts; the city's responsibility, the Port Authority's responsibility and the boats in the Bay.

The board of supervisors has agreed to assume jurisdiction over all sewage and industrial waste discharges in the City of San Francisco. The supervisors promised this to the Water Pollution Control Board in writing some years ago, and since the sewage treatment plants are already in existence, it is merely a matter of connecting up It is as simple as that The Port Authority of San Francisco could connect right now to the treatment plant.

Reference has been made to the pollution problem at Aquatic Park. Who is responsible? It seems to me that the problem here is plain; it is coming from within the City of San Francisco, including the Port, and until you get the sources cleared up and connected to the treatment plants, you can anticipate this same pollution to reoccur.

Robert Jones, Regional Manager, State Department of Fish and Game· The Water Pollution Control Board is working hard to set requirements on discharges that continue to create pollution problems. Largely because of the changes in the pollution laws sponsored by your committee, the Pollution Board has been able to take a stronger and more effective position in seeking compliance with its requirements.

There remain only a few areas where raw sewage is still being discharged into the Bay It is regrettable that one of these areas is here on the waterfront in San Francisco. It is our understanding that the waterfront is the last major area that remains to be taken into the sewer system We feel that this step is long overdue and that this problem is certainly important enough for the board of supervisors to make an exception to their policy on the produce area in order to acquire the land on which to build the proposed Drumm Street pumping plant.

DISPOSAL OF WASTE WATERS IN CALIFORNIA WATER PLAN

April 29, 1960

A. J. Dolcini, Principal Hydraulic Engineer, Division of Resources Planning, Department of Water Resources: There has been much discussion and debate concerning California's water problems However, an important facet, that of mineral and biochemical quality of water, is frequently overlooked in consideration of water development. The quality of water is important, and it follows that planning for the future development of California's water resources must include provisions for the effective and economical collection and disposal of drainage and waste waters. This statement discusses the measures proposed by the Department of Water Resources for protection of quality of water to be exported from the Sacramento-San Joaquin Delta, including disposal of waste waters, and studies to evaluate the effects of increased water under the California Water Development Program on waste assimilation and characteristics of the San Francisco Bay system. Contracts for water service under the California Water Development System must include stipulations with respect to the quality of water furnished It will thus be incumbent upon the State to meet certain quality objectives, and may well involve construction of drains to remove waste waters from the interior valleys to points of final disposal in offshore sailing waters

It has been recognized for a number of years that as the land and water resources of the Central Valley are developed and utilized to a higher degree, special measures will have to be adopted to insure that the quality of water in the lower reaches of the stream system is adequate to meet the requirements for beneficial use Involved is the need for a drainage outlet to remove the saline drainage waters from the surface soils of the San Joaquin Valley Preliminary findings envision a master drainage system that will receive water of poor quality from locations throughout the valley. The purpose of the master drainage system will be to insure the continued and unimpaired use of local and imported waters in the San Joaquin Valley in the production of agricultural commodities and for urban and industrial purposes.

In the Sacramento Valley with the intensification in agricultural and industrial development, a waste disposal conduit similar to that presently under study for the San Joaquin Valley may well be necessary at some future time Under present conditions of upstream development on the Sacramento River, the annual average quality of water entering the Delta is very good There is some deterioration in quality as the water passes through the Delta, but because of the quantity of flow, the quality of water leaving the Delta is good

Under the California Water Resources Development System, surplus water will be conveyed across the Delta to areas of deficiency. Therefore, to safeguard the quality of the water, an extensive system of physical works including project channels, master levees, river control structures and possibly a physical barrier must be constructed in the Delta to provide the necessary water quality safeguards.

The projected large increase in industrial development along the channels must be recognized to create pollution problems in the Upper Bay System, and it will be necessary to define these problems in great detail to insure permissible use of the channels in this area as receiving bodies for future expanded industrial waste discharges A comprehensive study of this will require about two years and will involve State and Federal agencies and the industrial plants concerned. It may be desirable to construct a model of the Delta or to extend the existing model of the San Francisco Bay to evaluate the factors adequately.

Clarence Edwin Burr, Retired Engineer, Sebastopol. Let me say that we do not approve what we were shown and heard this afternoon, that the California Water Plan is going to be thus and so and that the Water Pollution Control Board is going to do certain things at a certain place My contention is that that is nothing more than to try to divert attention from the Reber Plan and the Riley Plan which you should be familiar with To conserve water up in the High Sierras with a series of smaller dams is far less expensive and far more beneficial, and we much prefer that Southern California develop their water close at hand or we in the north will end up like Owens Valley.

I have a report here of 537 pages from three of the best engineers in the State of California, and they tell you the whole story with regard to water conservation, water reclamation and sewage contamination, municipal refuse contamination and irrespective of what has been done in the Bay district and up along the Sacramento River, the fact that you and I sit here today is evidence that what they have done has been a flop. Anytime that you build an eight million dollar plant like the one on Bay Street and treat it with $25,000 worth of chlorine every 30 days to try to keep down the sludge, that's poor engineering. Ask the superintendent who is taking care of that plant and he will tell you about 10 percent of the sludge is removed What happens to the other 90 percent? Does it go into the Bay here? Is that good engineering?

For 25 years we have advocated using anaerobic bacteria and gas type tanks and only two years ago the University of California had just started studying the possibility of utilizing the bacteria in gas type tanks to purify water such as we recommend. It must be done if you expect to prevent the pollution of San Francisco Bay, because these other plants are not doing it If they were you would not have the pollution today.

I merely want to go on record as letting you know that for over 25 years we have tried to get San Francisco and Los Angeles to do the proper thing.

LIST OF PERSONS TESTIFYING BEFORE COMMITTEE

April 28 and 29, 1960

Reuben H Owens, Director of Public Works, City and County of San Francisco
A B Crowley, San Francisco Department of Public Health.
Frank Stead, Chief of Division of Environmental Sanitation, State Department of Public Health
Rae F Watts, Port Director, San Francisco Port Authority.
Sid Gorman, Chief Engineer, San Francisco Port Authority.
D A Larson, Office of Water Supply and Pollution Control, U. S Public Health Service
Tom Landers, Public Works Department, City and County of San Francisco
E C Waterman, Chief Engineer, Marketing Service Department, Standard Oil Company of California
Paul J Madigan, Warden, Alcatraz Penitentiary
Major Charles S Nardello, Plant Engineer, Fort Mason
John B Harrison, Executive Officer, San Francisco Bay Regional Water Pollution Control Board
Mrs Ruth Church Gupta, Member, Water Pollution Control Board for the Bay Region
Robert Jones, Regional Manager, State Department of Fish and Game
A J Dolcini, Principal Hydraulic Engineer, State Department of Water Resources
Meyer Kranski, Principal Hydraulic Engineer, State Department of Water Resources
Clarence E. Burr, Sebastopol

SUBCOMMITTEE ON RECORDS PRESERVATION

FINDINGS

NATURE OF DISASTER

In instituting an essential records preservation program, the possibility of nuclear attack has been of primary concern However, during the past years a few county records have been damaged by flood and earthquake. Fire is a constant hazard, particularly in older buildings. Hence a records preservation program must contemplate conditions in which the normal life of the community and the State is not disrupted.

TYPES OF DOCUMENTS

Three principal types of documents require preservation:

1. Those needed for alleviation of damage, such as emergency manuals and directives with associated maps and drawings
2. Those needed for re-establishment of public services
3. Those defining proprietary interests of individuals and government

PROGRESS OF THE STATE'S PROGRAM

Government Code Section 12265, added by the 1958 Legislature, provided that each state agency, with the concurrence of the Department of Finance, shall determine what state records it has that are essential to the functioning of the State Government in the event of a major disaster As of January 25, 1960, almost two years since the code section was added, there is nothing available on safeguarding the essential normal operating records of any agency.

However, we find that a number of county clerks and county recorders have instituted the practice of making security copies of their records, and we commend them for it But we also find counties and cities, even in strategic areas, that have not made any selection of their administrative documents for duplication in a protection program. There is also no clear agreement as to which administrative documents should be duplicated The experience of large corporations is to require proposals from operating branches regarding documents to be protected, and to establish responsibility for supervising such a program within the organization We believe that this experience is applicable to government and consider it appropriate to authorize administrative procedures for developing a coordinated statewide program of selecting government documents for preservation

AREAS OF PRIMARY CONCERN

While any area of the state may be subject to a major disaster, we find that the state may be divided into three classifications as designated by the Director of the California Disaster Office:

1 Critical target areas
2 Potential target areas
3 Refuge areas

Because of the high hazard to the preservation of government in critical target areas, the state may well give consideration to a matching funds program if it imposes an unreasonable burden on local government.

GENERAL CONSIDERATIONS

We find that an essential records preservation program is an appropriate phase of the emergency planning for continuity of government and methods of reproduction other than microfilm may be desirable for certain documents and that state and local agencies should not be restricted by statute to any one method of reproduction We feel that Assembly Bill 580, relating to the preservation of certain superior court records and Assembly Bill 2867, which concerns the reproduction and preservation of records of certain county recorders, should be considered in relation to the total essential records protection program for the state.

RECOMMENDATIONS

We propose to recommend legislation to cover

1 Statutory requirements that county clerks and county recorders, in strategic areas, be required to make security copies of certain of their document series, and all others be advised to do so

2 Creation under the State Disaster Council of a technical committee containing representatives of industry, state and local governments to advise with the disaster council in establishing lists of state and local government documents which are to be duplicated for security purposes

3 Assignment of responsibility to the California Disaster Office for co-ordinating the record preservation programs of all levels of government.

4 Provide for matching funds on a priority basis to cover initial costs of such a program by local governments

SUBCOMMITTEE ON RECORDS PRESERVATION

Los Angeles—December 10 and 11, 1959

INTRODUCTION

Much effort has been expended over the past several years in identifying the state and local government records which should be protected against natural or nuclear disasters The purpose of these meetings is to clarify the basic principles of an effective statewide program and to consider steps necessary to place it in operation

A summary of the most significant testimony will be found in the following pages and a list of all persons called upon to testify is attached to this report as an appendix

Assemblyman Vernon Kilpatrick, Chairman of the Subcommittee: This is a hearing on Records Preservation with representative groups of people interested in the subject matter Today we live in a world of great challenge to our way of life It is a matter of wisdom not to be caught in another Pearl Harbor The security of our essential records in the event of a disaster is a very important part of our national security.

John Caswell, Legislative Budget Committee. A statement has been prepared suggesting various factors governing what records should be preserved, how this should be done, by whom, and in what location they should be stored with some specific reference to County Clerks and Recorders' files and other government records.

First, is the document essential for the operation of government during the weeks of immediate crisis?

Second, is the document essential for reconstructing the mechanics of our government?

Third, is the information in the document so valuable that the cost of a preservation copy is justified even though the chance of a disaster occurring may be slight?

Four, is the document so precious a cultural or historical piece as to justify special pains in preserving the original or a facsimile copy?

We are acquiring some experience in applying these tests. Here are a few examples of the above questions

First, the general conclusion has been that emergency instructions are required during a nuclear attack for most state departments to direct the operations during the crisis

Second, less has been done by state and local governments to determine which documents are essential to restoring and reconstructing the mechanics of government after the immediate crisis has passed. The preservation of documents in the possession of the county clerks and recorders is essential if we are to have the opportunity to reconstruct post-disaster society in the semblance of the old Not only does such

evidence include recorded property titles, but probate records, divorce decrees and settlements, and birth, marriage and death records.

Third, the third criterion is based on the cost of reconstructing information This includes adequate protection to microfilm copies.

Fourth, the cultural or historical importance of a document has been given little consideration by state administrators. However, the State Historian and other California historians are capable of determining which groups of records has historical value worth the cost of protection

In the 1959 Session of the Legislature, Assembly Bill 2867 was introduced requiring the microfilming or other acceptable reproduction of all recorded documents in counties of 300,000 population or over. Some may inquire why smaller counties are exempt, but by doing so 47 counties are spared the expense, yet 80 percent of the population and the assessed valuation of the State is included under this provision.

Assembly Bill 580 covered three groups of documents filed with the county clerk These are civil judgments, probate decrees and minutes of the superior court The bill as drafted, like the recorder's bill, was mandatory only on counties of 300,000 population or greater. The estimated cost of $84,000 was made for microfilming documents now on file in the 11 counties on which the measure would be mandatory.

The program for preserving essential records is a problem A few principles are suggested here

First, a measure of standardization throughout the State is desirable

Second, the volume of microcopying should be reduced by segregating permanent materials from those which may be destroyed after a few years

Third, storage of microfilm is one service which should be available on a statewide basis

Mr Kilpatrick and other members of the Legislature visited several proposed sites for state-owned facilities with the thought of including a government command post built underground and containing records storage space of the type built at Portland, Oregon Also several abandoned mines and underground quarries have been reviewed as possible sites

Once suitable sites have been selected, the next step is to make a final choice between a mine-type structure and an earth-shielded reinforced concrete structure There should be space for the Governor, and space should be available for a representative of each of the 20 state agencies assigned emergency roles

Once a thorough study of what are local government needs in case of a crisis, then the immediate question is whether legislation is necessary to call local officials' attention to their responsibilities These officials vary widely in their notion of the need for civil defense and the importance of documents to reconstruction

Statement of Marvin L. Blanchard, Organization and Cost Control Division, Department of Finance The Organization and Cost Control Division, State Department of Finance, is responsible for developing a plan for the preservation of essential state records which should survive an enemy attack An executive order of the Governor described the general responsibilities of all state agencies Since issuance of the executive order, administrative orders have been issued to 20 state agencies

assigning specific responsibilities for control functions in a state of emergency

Before a record preservation plan could be developed, it was necessary to define essential records A definition was developed to embrace two categories, records essential to emergency government and records not essential but essential to the resumption of normal government service. We plan to study other essential functions to determine what records are required for the performance under emergency conditions and we have organized the survey into four phases:

1. Identification of records essential for state-of-emergency control functions, i e, the 20 administrative orders
2. Identification of essential state fiscal and personnel records.
3. Identification of records essential only to the performance of normal services which are so important they must be carried on during an emergency.
4. Identification of records not otherwise included which would be valuable for reconstruction and resumption of state government.

The first phase has been completed All 20 agencies which now have administrative orders have developed plans for state-of-emergency operations.

In the second phase of this survey, we discussed the need and uses of personnel records with the staffs of the Controller's office and the State Personnel Board Our conclusion was that personnel records are not essential to the performance of state-of-emergency functions.

The third phase of the survey is the identification of records essential only to the performance of services which are important during an emergency.

Perry L. Stauffer, Assistant Deputy, State Controller. In the appraisal of the elements involved in retention of records, in the preservation of these records in case of an emergency, we use the tests that have already been outlined A real practical appraisal has led to the conclusion that during a state of extreme emergency none of our records, in the normal usage sense, are essential, but we recognize the role of the Controller in government and we have prepared a disaster procurement and disbursement plan, copies of which have been stored. I think that is about as far as we can go toward insuring our ability to perform and to work with the rest of the government.

Joseph J. Micciche, Director, Los Angeles Office of Civil Defense: Mr. Micciche quoted from a statement made by **Dr. Willard F. Libby** of the Department of Chemistry at U C L A, in which Dr. Libby made reference to the production of paper which would preserve records from deterioration for 20,000 years or longer. It was found that by using radioactive alanine, in which a small fraction of carbon atom had been replaced with radioactive carbon we could measure the rate in which amino acid decomposes By these techniques, it would be possible to prepare paper which would last for however long they are wanted.

Harry M. Barth, Executive Vice President, Bank of America: The preservation of documents insofar as banking is concerned is covered in a series of pamphlets entitled "Preparedness Program for Emergency Operations in Banking." These pamphlets have been distributed

among all the banks in the United States. When this committee meets in San Francisco, I would suggest you ask my associate, Mr. Dana, to come before you because he was instrumental in the development of these pamphlets.

Andrew Choos, Planning Officer, Continuity of Government, Office of Civil and Defense Mobilization, Santa Rosa Continuity of government program is a four-point course of action that state and local governments must take to survive nuclear attack It has four sub-programs:

1. The establishment of emergency lines of succession for top executives, legislators, the judiciary and other key personnel.
2. Preservation of essential records
3. The establishment of emergency locations for governmental operations.
4. The full utilization of all personnel, facilities and equipment of governments for emergency operations.

Records preservation is an integral part of the continuity of government program and applies to all duly constituted governments regardless of size or location. It also applies to the three branches of government, executive, legislative and judicial The second sub-program, preservation of essential records, has two primary objectives: (1) To provide documentation support for emergency operations and (2) To preserve records which protect the rights and interests of individuals and government The Office of Civil and Defense Mobilization is pursuing a plan to attain these two objectives by providing three things:

1. Suggest legislation to provide for the establishment and maintenance of state records and a paper work management program.
2. Prepare a course of training covering continuity of government records preservation objectives and record preservation techniques.
3. Prepare a form of technical manuals and bulletins which will provide guidance and identification of essential records

Sherwood Smith, Chief Project Engineer, Atomic Energy Commission Facilities Project · Holmes & Narver, Inc : The planning and designing of safe storage facilities in this nuclear age is necessary to achieve the best protection Blast is the most damaging effect close to the explosion, therefore it is imperative that storage be beyond the range of probable blast damage Radiation has a relatively short range from the explosion while fallout is a different matter No location is safe from fallout from a nuclear explosion

Our concept of the requirements for a safe storage facility include:

1. A location remote from probable target area.
2. Accessible by road or helicopter by air.
3. Telephone and radio communication.
4. Protection of personnel and records against fallout contamination.
5. Safety against heat and oxygen depletion.
6. Security must be maintained by protective closures
7. Safety of documents and microfilm from mildew.
8. Living facilities for operating personnel; food, water, air conditioning, etc.

The above considerations indicate that an underground facility is most suitable However, an aboveground windowless construction would be feasible if sufficient roof and wall thickness were provided

Statement of **Dr. Mitchel Kaufman**, Records Management Consultant. The problem of safe storage and the cost of underground construction lags far behind After five years of study the entire program lacks co-ordination and there is no push to promote this program The State of California needs legislation to put teeth into previously passed bills Two years ago a questionnaire was sent out by the Department of Finance to the various departments to determine what records fall in the category of essential records, where these records are stored and the amount of space needed for safe storage Many departments complied, but so far no one has seen the compilation of these statistics In order for this program not to lag, it needs a more positive angle in that the department heads should be told what they should do and to do it before it is too late

Harold M. Dorman, Assistant Division Chief, Division of Drivers' Licenses, Department of Motor Vehicles. The desirability of duplication of records which will be needed in the event of disaster resulting in destruction of originals offers some interesting problems Consider microfilming After much study perhaps microfilming is the favorite method of preserving important records Microfilming has a distinct advantage over certain other types of patented process However, the expense attached to reproducing documents from microfilm does not readily lend itself to records which need constant revision. The time required in preparing the file for microfilming should be considered

The duplicating of records on punch cards is most practical where large files are being dealt with One of the greatest values derived from punch cards is the many secondary benefits it provides.

A magnetic tape system should be considered where any substantial number of records need to be duplicated, and one of the distinct advantages of magnetic tape is the ready accessibility of information Any item can be picked off the tape as quickly as it takes to tell about it. Ampex is now perfecting a system whereby records can be televised or photographed While we tend to regard some of these studies lightly, we must also recognize that they are necessary if we ever hope to perform the recordkeeping that modern business demands

Mr. Neil McLaughlin, Senior Administrative Analyst, County of Los Angeles, Chief Administrative Office In order to discuss the question of reproducing records, first we must ask ourselves what records are we talking about At present, I feel somewhat uneasy in recommending commitment of our county to a microfilming reproduction program for it is not clear exactly what records we should be saving Second, some records are so fragile that if subject to microfilming, they could be damaged I ask then what records should be considered? It is important that the program of reproduction be kept on a practical basis and I am suggesting there is need for further study in order to arrive at a clear definition, a set of standards, rather than to engage in a blanket program of microfilming the records without more discussion. Other major points to consider are financing and how are we going to reproduce records which are on film or other photographic processes.

Where are we going to find the reproducing equipment which will turn out copies of millions of documents?

Further we are concerned with the proposal to have all records stored in the state approved vault when it has been pointed out that putting all our eggs in one basket is a most undesirable solution to record preservation Any study committee or review commission should determine exactly what records should be preserved to meet the minimum needs to continue government, recommend legislation to permit optional storage of originals, paper copies or records and any other format and not be restricted to just microfilm or photo processes

Roy D. Hoover, Disaster Services Co-ordinator, County of Los Angeles There are two primary areas of interest in a records preservation program First are the operational requirements, the kinds of problems that would be faced by government, industry and commerce after a disaster Secondly, there is the long range problem What records would be needed overall in terms of years in order to protect and preserve the property rights of individuals Since government is based on law, the records preservation program must concern itself with the now existing laws Every time a decision is made by an administrator in the records preservation field, it is tested by legal officials and authorities. It seems without any detailed information, we need a body of new laws Legislation such as is contained in AB 2867 may be appropriate but it is still a piecemeal approach to the problem of records preservation

At the present time we hardly know where to start It is difficult to imagine an adequate comprehensive program of government or public agencies that was not co-ordinated with basic industry and commerce Another kind of problem we face in the postattack period is the time lag in obtaining microfilm records in useable form They would have to be reproduced There would be transportation problems which brings the question, should records be stored in a central facility or in a multitude of places

It is obvious that there is some difference of opinion on the kinds of storage facilities needed and the priority of reproducing records that are stored in key areas

There is need to study the complete records needs of local governments and it would seem that staff personnel under the guidance of the committee composed of state and local officials of government and of commerce and industry might, within a reasonable period of time, define for your committee and for the Legislature in rather precise terms some of the cost factors and eliminate some of these areas of concern plus many of the others that have been brought up from time to time

We have reached the point now where we must know more than we know now in order to make intelligent decisions on the problems and it would seem that the next legislative step would be to implement a ways and means study

Harold Jones, Deputy City Clerk, Election Division, City of Los Angeles· In the case of a disaster, there are certain records which I feel very definitely should be microfilmed, particularly those of the treasurer's office and controller's office which deal with the financial business of the city. There are certain records that the city engineer has

that certainly should be preserved. Probably the most vital records would be the tabulation or the records of the election showing the vote cast and who was elected

Truman Chapin, Senior Administrative Assistant to the County Recorder, County of Los Angeles: The use of microfilm to provide a copy of property records in the office of the county recorder for security purposes has been the subject of a continuing administrative study for many years. There are approximately 81,000 volumes of official records and index books presently stored. For the most part these records are considered current because they are referred to constantly by the public and title searchers to determine chain of title. Recognition of the permanent value of these records is given in Section 26205 of the Government Code which specifically prohibits their destruction even after they have been microfilmed for security purposes All of this film and the original negative of the documents are stored in the county's civil defense security storage facility in Biscailuz Center. Here, 60 feet underground, the reels of film are safely kept in an atmosphere of controlled temperature and humidity

It is our belief that in this film we have the information that would be required to reconstruct property ownership records in the County of Los Angeles following any type of disaster except a direct hit on the Biscailuz Center storage vault by an "A" bomb or the fall out of a hit in the Los Angeles area by an "H" bomb.

According to a survey made through the facilities of the County Recorders Association of California in April 1959, many county recorders have a security microfilm program and some recorders are in the process of filming for security while others have nothing except their original records and would be dependent on the partial records in possession of the title companies to reconstruct property ownership in the event of a disaster.

It would appear there is need for a special committee on a statewide basis to thoroughly examine the records in possession of local government agencies to determine those that must be preserved to protect the rights of the people and to make recommendations for the most economical and practical methods for filming and storing such documents.

Harold Ostley, County Clerk of Los Angeles: In our study prior to commencing upon the microfilm project permitted under the 1951 act, we determined upon certain priorities. Certain classes of records would be filmed in their entirety and destroyed Others would be examined and only essential portions filmed.

In considering the necessary steps which must be taken in advance to safeguard public records, we must begin with certain basic assumptions. First, some records are very important to our democratic way of life These are records that relate to personal and property rights. Second, other records and these by far represent the greatest volume, are records that embellish essential court actions, license applications, articles of incorporation, certificates of business and other miscellaneous filings, but of themselves do not affect personal and property rights.

To meet this problem, it is recommended that the proper state agency be delegated to establish microfilm service units. The crews would travel from county to county, filming essential records on a periodic program,

the cost of such a program to be borne by the State and county on some predetermined basis.

I would recommend that a committee be established composed of local and state officials who would recommend from actual problems at the source what records should be maintained, because I do not feel that any one clerk could or has the authority or the knowledge to do it all.

Charles MacBeth, Records Management Association of Southern California: Records information may be defined as the foundation upon which the past is evaluated, responsibilities of the present accomplished and the future anticipated and planned for. The responsibility to acquire, use and preserve recorded information is essential to the continuation and refinement of our system of private business enterprise. Preservation from destruction indicates that something is of some value to someone, for some purpose and a solution to the problem is probably the most difficult problem today in the field of records management facing private business organizations and individuals What to keep, for whom, for what purpose, for how long and why, that is the question.

Two practical approaches to solution are suggested. The federal government has taken a significant forward step in respect to assisting the public by publishing the record retention requirements contained in federal laws and regulations The list as published, shows: (1) What published requirements there are on the keeping of nonfederal records (2) what records of information must be kept and who must keep them or the information (3) how long they must be kept. It is suggested that the State of California undertake a similar effort, both for itself, for business and the public. It would appear that the Department of Finance, working with the office of the Secretary of State could be made responsible for undertaking and concluding such an effort.

The second approach in order to provide for proper preservation of recorded information without resorting to specific or general legislation is through the divisional and departmental organization existing within the state organization It is suggested that clarifying information, administrative in character, if necessary, be promulgated by various departments of the State of California and specifically by the Savings and Loan Commissioner, the Superintendent of Banks, the Commissioner of Corporations, the Real Estate Commissioner and the Insurance Commissioner The information should be published in the respective administrative regulations of these offices or commissions and released through the office of the Secretary of State.

We believe that effective preservation of private records can be accomplished and that it can best be accomplished by solving the problem of identification and appraisal and that the solution can be applied voluntarily and in a spirit of helpful competition with administrative guidance from the State.

George Derry, Richfield Oil Corporation: Today I should like to discuss some of the record protection techniques used by industry. At Richfield we have defined vital records as those necessary to (1) reconstruct the assets and liabilities of the corporation and protect the financial rights of the stockholders and employees (2) re-establish the

legal identity of the corporation; (3) reconstruct the essential manufacturing facilities, processes and operations of the corporation.

There are five methods of records protection all of which may be used in a records protection program (1) existing or built-in dispersal This method is used when duplicate copies of the records are normally filed in two or more locations (2) Designed or improvised dispersal. Extra copies of a vital record may exist within a given procedure and sent to a vital records storage area after it has served its purpose. (3) Evacuation of the original This method is used for vital records that are referred to very infrequently (4) Duplication of the original When it is not necessary to use one of these other three methods, it is necessary to provide an extra copy of the record in addition to those normally required (5) Vaulting of originals. It is common practice in most companies to house their essential records in vaults or fireproof equipment in the office areas

In selecting the appropriate method, it is necessary to analyze each vital record to determine the most economical and practical means of protection. Some of the factors which should be considered are In case of disaster, how soon will information be needed and how will it be used? Can information be transcribed from microfilm? How long must they be retained? What will it cost to protect this record?

After each record is analyzed, you should be in a position to select suitable means of protection When you have determined what records you are going to protect and how you are going to protect them, it is necessary to give consideration to the selection of a vital records storage facility

Large firms with multi-plant operations generally prefer to locate their vital records storage facility on one of their properties located outside a target area.

Smaller firms consider the use of the several commercial facilities that may be available Regardless of the type of facility used, the firm storing should assure itself that provision is made for the reproduction of the microfilm in case of disaster

It is also important that the selection of vital records center be coordinated with the company's disaster plan so that the people who will use the records will have them available when they need them

One way in which the local governments could assist private industry is in the preservation and microfilming of property records and oil and gas leases If we knew that the cities and counties in which we deal were preserving these records, we would be relieved of this responsibility.

In our company co-ordination and preparation of the vital records program is under the supervision of a Supervisor of Records in the treasury department.

Mrs. Ellma Frantz, Price, Waterhouse and Company: It is understandable that management has shied away from committing itself to a thoroughly planned emergency program because no one likes to entertain thoughts of the horrible consequences of another war It is much easier to dismiss the subject by saying, "What's the use If this business is hit, everything else will be finished, too " But American business cannot afford to take such an attitude because many of them have already experienced disasters.

Identifying and storing vital records is one of the many problems facing management in its effort to provide protection for its firm against unforeseen disasters

The type of records declared by a company to be vital depends on the business or industry operation, but in general, such a list would be comprised of the following types of records Accounting records; copies of contracts; engineering and technical drawings; insurance records and policies, lists of customers or clients and supplies; product specification, etc

It is to be expected that the use of magnetic tape to store vital information will increase because magnetic tapes, like microfilm, offer advantages of large volume storage in a small space and ease of transfer due to compactness and lightness of weight

Since a vital information storage center will be costly to construct and to maintain, to make this center economical to operate a number of companies may have to share the center's services and a large volume of records for storage will be required If documents are reduced to some form of film or tape, a carefully planned system for retrieving information will be required

Billions of dollars are being spent annually for national defense to protect and to preserve our way of life We should include in this defense program the protection of records vital to the continuance of our businesses and industries for these documents are essential to the continuity of our private enterprise, our way of life and our country.

Paul J. O'Brien, State Archivist: In order to set up the background for this topic, we must assume that the essential records have been identified and evacuated to a safe storage facility

The usefulness of these essential records will be determined by two conditions under which they will be used (1) the emergency period and (2) the reconstruction period

In connection with the emergency period, we are concerned only with those records required to conduct emergency governmental operations The California Disaster Office has assigned specific responsibilities to 20 state agencies The essential records needed by each of these agencies to carry out their responsibilities during the emergency period will be vital to our survival and important to our recovery These records then would constitute the "prime core" of any and all records selected and duplicated for use

Next we are concerned with those records essential for use during the reconstruction period Records required to protect and establish the rights of individuals and the records required to re-establish normal governmental operations We see this area as a very fertile field for a real team operation.

Therefore we would recommend that this program be scrutinized almost on a constant basis Let us make sure we have the essential documentation selected and preserved necessary to survive and carry on the great tradition of our noble state and great country

Joseph A. Greene, Manager, Bekins Business Records Center and Division of Bekins Van and Storage Company The Bekins company has developed a specialized service which cares for the semiactive office records of over 700 business firms The majority of these files are deposited in business records centers located in the major cities through-

out the West. These files are received, indexed and kept available for instant reference if needed Usually a schedule of destruction is arranged when the records have a definite life span as in the case of accounts receivable. The costs involved are extremely low and easily within reach of anyone willing to set up such a system.

If bombproof facilities are to be developed for the State, some thought should be given to the various possible uses which might be involved including the storage needs of industry and private citizens. A large bombproof facility could provide for many things such as an alternate seat of government, headquarters for civil defense, communications center, storage of supplies, concentration of reproduction equipment, and supplies and personnel.

It is very important that long-range plans be developed on a realistic basis. Bombproof facilities could be used for so many purposes if they are properly developed.

One thing that has been touched on recently in other meetings is the need for reproduction equipment, personnel and supporting supplies. It has been stated that a thousand cubic feet would suffice to store all the microfilm on hand, but this microfilm would be of practically no use without the equipment, personnel, supplies and power to reproduce it. It is like supporting a soldier in the field, you have one man in line and 15 men backing him up. So for 1,000 cubic feet of film to do a job you might need 10,000 cubic feet of space properly equipped.

James Warren Beebe, Chairman of the Committee on Atomic Attack of the American Bar Association (law firm of O'Melveny and Meyers): In California there has been considerable progress regarding records storage for disaster I wish to discuss with you one field in which very little progress has been made, namely disaster records storage for the private citizen and the small businessman

The private citizen and small businessman have unique problems regarding disaster record storage. Large corporations, large public bodies have turned to microfilming as an efficiency measure. Microfilming is not yet economically feasible for the small businessman.

Records of the small businessman should be stored in a form ready for use. No processing should be required. This means duplicates of original documents and rules out microfilm

Duplicates should be stored in such a location that they would be easily accessible. An underground storage facility located in a mountainous area seems to offer the maximum protection.

Perhaps the investigations of your committee will show a way in which large units of government could co-operate with one or more large businesses in the construction of a safe storage location. Part of the space could be under the control of a records storage organization. Small businessmen could then avail themselves of this service for the storage of vital documents. This seems to be the only way that private citizens and small businessmen can participate.

Raymond G. Stansbury, Los Angeles Bar Association: The question was raised by several in our committee as to whether or not one who put his sacred documents in storage far from home might lose them by court order, have their privilege penetrated by a subpoena duces tecum on a deposition for inspection, and I can give the answer with quite

a definite conviction that documents in storage wherever they are, are no more vulnerable to inspection than they would be anywhere else

The important thing to remember about any right to look through your papers or mine, whether we be opponents in litigation or bystanders, is that there is no right whatsoever to look through a man's papers to find out what he has in the hope that you will find something that will help you in your litigation If your papers are stored far away from home and a court order or subpoena is served on the records custodian, your rights are precisely the same as if you had them locked up in your desk or a private safe in your office.

Hugh L. MacNeil, attorney at law, firm of O'Melveny and Meyers, Los Angeles: Mr MacNeil spoke on the problem of presenting wills for probate after a major disaster. In California in order to present a will for probate you have to either produce the will itself or else explain its absence within certain very narrowly defined limits. Our Probate Code Section 350 provides the narrow limits within which a will can be admitted to probate. Probate Code Section 74 provides that a will can be revoked by being burned or destroyed by the testator with the intent of revoking it. Probate Code Section 76 provides that in case of a will executed in duplicate, if one of the duplicates is burned or destroyed that revokes the will. If you can produce two witnesses who can state quite firmly and positively that a copy which they have is a copy of the will, this is satisfactory, but it does take two people who can state this is what was in the will which, in the case of a major disaster, might present some very serious problems.

Now let's think a little bit about possible solutions to some of these problems before getting into specific solutions. In the field of wills, we have to be particularly cautious when we are considering disaster legislation in order that we not uproot some of the safeguards. Let's take the situation where the original will is found, but the witnesses are destroyed and you can't prove their signatures. In this kind of a situation, the will cannot be admitted to probate. The only apparent solution to this is something in the nature of a self-proving will. Another possible solution would be to have the will acknowledged in the manner of a deed before a notary public.

Here is another problem Suppose the original will cannot be found but an executed copy can. If the copy that is lost was last known in the testator's possession, you have the problem of the presumption of revocation. It occurs to me that the presumption is not necessary if we provide in the law that a testator can set forth in his will that this particular will cannot be revoked by being burned or destroyed.

I cannot see any disability as far as enacting such a law or amendment to Sections 74 and 76 of the Probate Code. This might help in many of these problems without changing the existing form of our laws.

The next type of situation that could come up is where only an unexecuted copy of the will can be found You have the same problems of presumption of revocation, but in addition, there is also the problem of proving that the copy is in fact a copy To me, a will is something which could be microfilmed and stored However, we need a few minor changes in the Code of Civil Procedure Sections regarding microfilming so that a microfilmed copy of a will could be presented to the Probate Court.

Eldon R. Clawson, Assistant Secretary, Bekins Van and Storage Company. Assuming the policy of the government is to encourage the private company and the individual to preserve his own vital records against a national disaster and that it also is the policy of the government to encourage them to do this through private storage facilities, then there are some legal problems presented to the depositor company or the warehouseman which need consideration by the Legislature.

First, the most important problem facing the warehouseman is what to do in the event of a delinquent account, as most of the vital records we are contemplating storing would have commercial value only as scrap paper. There have been a number of alternatives considered by people in the industry to see if we could work this out with legislation. Something which would permit the warehouseman to destroy the goods in the event the account became delinquent

We have also thought of a contractual arrangement created at the beginning of the account which would permit the warehousemen to redeliver the goods to the depositor, but this is difficult because we are only talking about accounts where people have lost interest and where the warehouseman has lost track of the depositor In the event that there is a delinquency or failure to make payment, legislation is needed in order to enable the warehouseman to participate in this type of program which would let him have the power to destroy or foreclose his lien on a vital records storage account.

LIST OF PERSONS TESTIFYING BEFORE THE COMMITTEE

Los Angeles—December 10 and 11, 1959

John Caswell, Legislative Budget Committee
Harold G. Robinson, Director, California Disaster Office
Marvin L. Blanchard, Department of Finance (Statement)
Perry Stauffer, Assistant Deputy, State Controller
Harry M Barth, Executive Vice President, Bank of America
Andrew J. Choos, Planning Officer, Continuity of Government, Office of Civil and Defense Mobilization
Sherwood Smith, Chief Project Engineer, Atomic Energy Commission Facilities Project, Holmes and Narver, Inc
Dr Mitchel Kaufman, Records Management Consultant
Harold M Dorman, Assistant Division Chief, Division of Drivers' Licenses, Department of Motor Vehicles
Neil McLaughlin, Senior Administrative Analyst, County of Los Angeles, Chief Administrative Office
Roy D. Hoover, Disaster Services Co-ordinator, County of Los Angeles
Truman Chapin, Senior Administrative Assistant to the County Recorder, County of Los Angeles
Harold Jones, Deputy City Clerk, Election Division, City of Los Angeles
Charles MacBeth, Records Management Association of Southern California
George Derry, Richfield Oil Corporation
Mrs Ellma Frantz, Consultant, Price Waterhouse & Co.
Paul J. O'Brien, State Archivist
Joseph A Greene, Manager, Bekins Business Records Center, Bekins Van and Storage Company
James Warren Beebe, Attorney at Law
Raymond G. Stansbury, Los Angeles Bar Association
Hugh L MacNeil, Attorney at Law
Eldon R. Clawson, Assistant Secretary, Bekins Van and Storage Company
Thornton W Mitchell, American Records Management Association, Bay Area Chapter
Joseph J. Micciche, Director, Los Angeles Office of Civil Defense

SUMMARY OF PANEL DISCUSSION OF THE SUBCOMMITTEE ON RECORDS PRESERVATION

ASSEMBLY INTERIM COMMITTEE ON NATURAL RESOURCES,
PLANNING AND PUBLIC WORKS
SAN FRANCISCO, CALIFORNIA, January 25, 1960

Prepared by Thornton W Mitchell, American Records
Management Association, Bay Area Chapter

The meeting agreed on a working definition of "essential records," which were defined as records containing information· (1) necessary to the operation of government in the emergency created by a disaster; and (2) necessary to the resumption of normal government operations after a disaster. Group (2) may be defined as broadly or in as limited a manner as desired and there was discussion as to whether records containing information necessary to protect the rights and interests of individuals should be included It was agreed that without careful definition the inclusion of "rights and interests" records could lead to a very costly protection program

Although several pieces of legislation have been introduced regarding the protection of essential records, only Section 12265, Chapter 63, Government Code, has been passed There is not now any legislative authorization for the protection of county and city records Although many state records are being protected, few if any are being protected as the result of Section 12265 Protection, principally by dispersion, has resulted from Executive Order 58-CD-1 and from the initiative taken by agencies The Secretary of State is storing about 2,000 100-foot reels of microfilm for state agencies as authorized by Section 12265.

There are no known countywide protection programs, and only one or two county clerks now protect their records Of the county recorders, 16 are making security films. 10 are setting up a program, and 23 do not protect in any measure Of the cities in California, only five or six, including Oakland, are known to have a protection program

Although the States of New York, Wisconsin, Minnesota, and Illinois have or are developing protection programs, none of them have had experience that would be of value to California in developing its program Very few counties in other states have developed programs, and only a few cities such as Philadelphia, Portland, and Baltimore.

It was the consensus at this stage in the discussion that the protection program should protect from the effects not only of enemy or nuclear attack but also from natural disasters such as floods, fires, and earthquakes

It was also the consensus that state agencies, counties, and cities should decide what should be protected because of differences of organization and procedures and because they were most familiar with their own functions It was agreed, however, that there should be some centralized guidance and advisory direction to the counties and cities

because of their lack of personnel and staff equipped to develop a program on their own initiative

There were differences of opinion as to the need of state legislation to effect a protection program at the county and city level It was pointed out that programs have developed at those levels without legislation but the city representatives felt that programs would not be developed without mandatory legislation.

It was agreed that any legislation should be general in nature and should avoid specifics as to particular record series that should be protected. The county clerks, however, feel that certain series of their records should be specified for protection It was also agreed that methods of protection should not be specified, and it was pointed out that records can be protected by means other than microfilming

It was also pointed out that there had been very little hard-headed, realistic evaluation of the use to which records that have been protected will be put in the event of a disaster; there was comment on the difference between records that are truly essential and those that are merely "nice" to have

In discussing the estimated cost of a protection program, the experience of industry showed wide variations in costs as follows·

Pacific Telephone—$50,000 initially; $30,000 per year
Standard Oil—$15,000 per year
California Packing—$12,000 initially; $2,000 per year
P. G & E —$12,000 initially (microfilm cost); $2,000 per year

There were no figures available to indicate the initial or recurring cost of any of the existing county clerk or recorder protection programs It also developed that there are no reliable figures of costs in any other state, county, or city programs in other states Portland, Oregon, has figures which indicate that it has spent $63,000 to microfilm about 2,200 cubic feet of records for security purposes.

It was agreed that no firm figure could be arrived at without further information as to what was to be protected and the manner of protection.

As far as legislation was concerned, it was agreed that Section 12265 should be amended to delete the second sentence ("Provision shall thereupon be made for the microfilming or authentic reproduction or reproduction by electronic process of such records . . ."). Since protection in many cases could be achieved by dispersion in the normal course of business, the requirement that protected records should be stored with the Secretary of State should be permissive rather than mandatory

With respect to county records, both the county clerks and county recorders feel that legislation is necessary It was observed, however, that programs have been initiated without state legislation and the need for legislation may properly be questioned The same conclusion was reached with respect to city records

It appeared that opposition could be anticipated to mandatory legislation on a county-level program During the discussion of a permissive program, Assemblyman Kilpatrick observed that he felt a permissive program would be a waste of time and that he favored a mandatory program or nothing

The suggested legislation sponsored by the Office of Civil and Defense Mobilization was discussed, and copies of the draft state "Records Protection Act" made available to participants That office feels very strongly that legislation is needed for an effective program

In the concluding discussion, it was obvious that there was no agreement on either the provision of any legislation, or even on the need for legislation There was an expression, however, that there is urgent need for responsibility to be assigned to one particular agency on the state level or the program will continue to drift without becoming really effective

There appeared to be some who favored limiting the essential records protection program to the records necessary in the event of a major attack to the operations of government in the emergency. These records have been estimated to approximate 1 percent of the total and would include utility maps, data on food supplies, data on communications facilities, etc Their protection could be accomplished at minimum cost.

The preservation and protection of records necessary to the resumption of government operations after a disaster, including the protection of the rights and interests of individuals, should be the responsibility of each agency, county, and city These organizations should develop procedures integrated into their daily operations which would provide for dispersal or other protection Where the cost of protecting older records which constitute the unprotected backlog is excessive, at least a program should be initiated on current transactions

SOIL AND WATER CONSERVATION

INTRODUCTION

We present a general summary report of the hearings conducted by the Assembly Interim Committee on Natural Resources, Planning, and Public Works, under the chairmanship of Assemblyman Lloyd W. Lowrey, at Salida on November 5, San Bernardino on November 10, and Red Bluff on November 19, 1959

The purpose of these hearings was to discuss the state soil conservation program as it relates to federal projects (Public Law 566, 83d Congress 1954, amended by Public Law 1018, 84th Congress 1956, known as the Watershed Protection and Flood Prevention Act) and state projects under A B 1144, Chapter 2466, 1957, Section 6816.1 of the Public Resources Code

We have selected and condensed the most significant portions of the testimony to describe in two parts a digest of Public Law 566 and A. B 1144 and how they are working here in California.

PUBLIC LAW 566

Public Law 566 provides that the Soil Conservation Service in the U.S. Department of Agriculture has the authority required to carry out technical and financial assistance to state and local organizations for land treatment, flood prevention and small watershed programs under soil conservation districts

A brief summary of P. L 566 authorizes the Secretary of Agriculture to co-operate with states and sets forth the machinery which enables federal aid in watershed management under soil conservation districts:

1. Maximum size of watershed not to exceed 250,000 acres.
2. Maximum flood detention behind dams not to exceed 5,000 acre-feet.
3. Maximum total capacity of dam 25,000 acre-feet
4. If the federal contribution is over $250,000 and the structure holds more than 2,500 acre-feet, the plan goes to the Secretaries of Interior and Army for approval
5. If the structure holds less than 4,000 acre-feet, the plan goes to the Senate and House Committees on Agriculture and Forestry for approval.
6. If the structure has more than 4,000 acre-feet, the plan goes to the Senate and House Committees on Public Works for approval.
7. The Secretary of Agriculture is authorized to make loans or grants to local organizations to finance approved projects. With respect to any single plan for work improvements, the amount from federal sources shall not exceed $5,000,000.

The program has not gone as fast in California as it has in many other states. It is very difficult to get a project economically justified with a favorable cost benefit ratio in California The fact that we have only five projects under construction illustrates this point. Watershed protection projects under P L 566 currently authorized for construction are.

1. The Arroyo Grande in San Luis Obispo County.
2 Central Sonoma in Sonoma County.
3 Adobe Creek in Lake County
4 Buena Vista Creek in San Diego County.
5 Marsh-Kellogg in Contra Costa County.

The State Department of Water Resources and the U S Corps of Engineers determine in many cases that projects are not feasible and very seldom can the U S Department of Agriculture go in and find a new set of circumstances that would make a favorable cost benefit ratio

Other federal agencies related to a P L 566 project are the Forest Service, Fish and Wildlife Service, Public Health Service, Bureau of Reclamation, Bureau of Land Management, Bureau of Indian Affairs, Geological Survey All of these agencies participate in meetings and deliberations on all applications for work and they review the final work plan to see that their recommendations have been considered in its final form

In programing a P L 566 project, the soil conservation district concerned has to be sure that there is local interest, that the county board of supervisors, the flood control district, the Chamber of Commerce, the Farm Bureau, Grange and others are in agreement that this is an important project in their community Then they collectively sign an application which is submitted to the State Soil Conservation Commission and a copy of this application is sent to the U.S. Soil Conservation Service When the Soil Conservation Commission has determined there is facility to assist the watershed sponsors and they approve the project for planning, they so advise the Soil Conservation Service who passes the word along to its administrator, with certain documentation as to the nature of the watershed application. Then the Soil Conservation Commission or the Soil Conservation Service, depending upon who has the facilities available, will assist the sponsors in developing the facts so they can decide what should be in their plan

Should the sponsor employ a private engineering concern to develop watershed plans, the Soil Conservation Commission and the Soil Conservation Service will have to approve the plans and then submit them to all interested state and federal agencies for their comments If in agreement, the plans are then submitted to the Bureau of the Budget in Washington for approval

From the time the formal application is filed with the Soil Conservation Commission and Washington authorizes money for construction, it takes a period of approximately three years The first half is an exploratory period, the second half covers planning The program under P L 566 could proceed in a more expedient manner if there were less bureaucratic interference at the federal and state levels It would relieve the workload required on a specific project, and also save the taxpayer an appreciable amount of cash.

It is the opinion of many people that "there are too many fingers in the pudding" To streamline it, it will be necessary to change the federal law and also to simplify the interpretation of this law.

The salient fact is the amount of water permitted for flood control storage behind dams is too little Under P.L 566, the restriction of 5,000 acre feet of water is killing a lot of projects in California and should be corrected. The limitations of P L. 566 for flood control for the State of California make it inapplicable to most of our projects. California needs something more pertinent and if P.L. 566 is not satisfactory, the citizenry should alert their federal representatives and at the same time state possibilities should not be neglected This call to defend our essential soil in California is sound; therefore establishment of a Department of Soil and Water Conservation should be considered by the Legislature.

California's rapidly increasing population affects our agricultural enterprises in many ways We suffer the loss of agricultural lands to population and industry uses Farmers are finding it necessary to cultivate poorer soils and move to steeper lands that present a soil and water management problem Conservation of soil is of fundamental importance to the welfare of the people of this State. California needs federal government assistance

Expenditures for P.L 566 in California have barely exceeded $250,000 in any one year. Other states smaller than California already exceed $2,000,000 annually Investigations revealed that planning is the bottleneck in California's ability to attract federal funds to programs. The objective of the planning is to demonstrate to the federal authorities that an economically justified project can be developed in a particular watershed

There are two important areas wherein the California Legislature may assist in facilitating the application of P.L 566 to California's conservation problems One involves direct action with respect to legislation and the other would involve the Legislature's influence on the Congress The direct legislative action should facilitate the solution of some of California's watershed problems by adding to P L 566 for better adaptation to California's growing demands Secondly, the Legislature should persuade Congress to amend the Federal Watershed Protection and Flood Prevention Act, P L 566, which would facilitate the incorporation of both flood control and water storage within a single reservoir

The Forest Service is one of several federal agencies responsible for P.L. 566 The California Division of Forestry also enters into the P L 566 program as an agent of the U S Forest Service to plan and carry out the forest phases of land treatment on state and private lands. The Division of Forestry has the primary responsibility for providing a fire protection system for the protection of privately owned watershed lands The major objective is to achieve soil and water conservation so as to bring about the greatest reduction in flood, erosion and sediment damage

The Watershed Protection Program of the U S Soil Conservation Service, commonly referred to as P L 566, could be the answer to establishment of proper land use on each acre within a watershed, both public and private lands However, this watershed protection program

has run into trouble here in California. The principle is sound; the program is needed; but administration policies are not consistent with California's peculiar watershed conditions.

Compare this picture with the midwestern states. California has extremely high precipitous mountains falling away sharply to valley floors covered with high-valuation agricultural lands and industrial improvements Compare the difference in problems here in California as against a project in Texas Many other states have a very active, dirt-flying watershed program well underway. California, however, has a very active planning program underway but has not, as yet, achieved much actual construction

However, many soil conservation district directors are beginning to have doubts stemming from frustrations in dealing with policy changes on the national level Certain agencies in Washington table and hold up decisions on projects that are dollar-wise large though within the acreage limitations Had Congress intended the projects to be limited to a certain given number of dollars, Congress would have so stated. The program in California can be harmed by these arbitrary dollar limitations

A determination will have to be made soon as to whether this shall continue to have California's support The entire concept of P L 566 is local, state and federal co-operation and participation, and the complete treatment of watershed is the ultimate in resource conservation

California soil conservation district directors believe that P. L 566 should buy more soil conservation; therefore, that it not be limited to only 250,000 acres per watershed Now visualize landowners having treated their land, having done a lot of soil conservation work, but there is a gully too large for these landowners to tackle It is everybody's problem It affects the people down below in little communities; it silts up reservoirs, and the feeling was to help these people build some structures that would retard this flow The difficulty with P L. 566 is in fitting this to our California conditions because it permits only 5,000 acre feet of water to be set aside for flood control.

What appears to be a good law does not adequately apply to California The benefit-cost ratio is seldom going to be met, and we should recommend to our congressmen and senators that this bill be changed The way P L 566 is set up, it is next to impossible to make it work in the State of California. P L 566 is planned for all of the states in the Union, but trying to make it work in California, we find we have very little water conservation in it

We have a program which was established to help, but it seems it does not apply in California to the extent that it should, primarily because there are gaps in the program Some phases have not been completed, and the Legislature ought to be able to at least fill some of those gaps.

Soil conservation districts' experience with P L 566 has been rather frustrating We have in P L 566 a neat little framework of possibilities which have not materialized in any conservation on the land. This is not the fault of the law It was a fine effort when it was drawn up, but a citizen and a taxpayer have a right to consider any law that we have to

be only a human effort and one that can be improved upon and made better, and that is true of this particular law.

One of the things P L 566 does not give us in California at the present is this evaluation of good land in terms of the future. Land enhancement is something that we should try to have emphasized more and more and used in the evaluation, because then our cost ratio can be made to come out right.

In watershed protection work, ranchers in soil conservation districts are frustrated by seeing several tools sitting on this counter, but there seems to be a label on each one of these tools that says "Reserved for somebody else " I can't touch that tool. They are not meant for me.

One of these tools is P L 984 administered by the Bureau of Reclamation and has some value and application, although in California very few projects have been actually developed by that law

P. L 684 and P. L 85-500 are tools designed for administration by the U. S. Corps of Engineers which seem to present interesting possibilities

We also have a state law, the Davis-Grunsky Bill, and, of course, the tool P. L 566 about which we have been speaking that is administered by the Department of Agriculture, Soil Conservation Service

Since all these tools are created out of the dollar contributed by taxpayers, they should be blended together so they can make a useful combination of laws for the people to use

A. B. 1144

A legislative accomplishment in this soil and water conservation program in California was the enactment of A. B 1144 in 1957 (Section 6816 1 of Public Resources Code) to provide $100,000 annually to be transferred from the State Lands Fund to the State Soil Conservation Commission The law states that the commission may make grants to assist soil conservation districts in carrying out work the commission determines is necessary for the welfare of the State

Due to the fact that this fund was so drastically reduced by the Governor from $750,000 to $100,000, it has been necessary for the commission to deny a number of projects or to grant only a portion of the amount requested by soil conservation districts

Some members of the commission feel that perhaps it would be better to grant a few sizeable projects and make a big show in a few places. Other members feel that it was the legislative intent to make this a California statewide program. One of the big advantages in distributing this money up and down the State in smaller allocations is to get projects started, create interest, and the support of the local landowners In every case, local participation has been greater than the state participation The $100,000 is not going to be enough money to dispense properly to get things done Soil conservation districts are doing a fine job of helping themselves, but they cannot always undertake the greater portion of the load.

The unsung hero in this work is the soil conservation district farmer who is personally paying for a major portion of the cost of this program on the nation's agricultural lands that insure watershed protection benefits for the population living in cities and suburban areas

Every citizen needs to know more about the small watershed conservation program because it enables the maximum soil and water conservation accomplishments to be achieved Each landowner's farm plan provides for irrigation efficiency through application methods that are tailored to fit the maximum agricultural production with the use of the minimum amount of water These farm plans call for tillage that promotes better producing methods so that each drop of rainfall has a better chance of entering the ground, enabling greater water penetration, leaving invaluable top soil in place.

Flood retardation dams catch and hold back peak runoff flows, recharging downstream underground water basins Runoff water caught and held upstream means detained downstream flood waters that could cause downstream destruction and misery with wasted topsoil silting.

One of the greatest needs today is to further public understanding for the conservation of soil and water The State Constitution provides that the water belongs to the people, and it will never benefit the people until it is properly harvested and stored like any other annual crop. The best way to do that is to have complete land treatment of the entire watershed and many aboveground storage reservoirs so that we will have sufficient storage to keep our future economy going

The California Legislature in its wisdom recognized this and enacted what we refer to as A B. 1144 The underlying principle was to divert income from a depleting natural resource (oil) to resources which can be conserved and restored

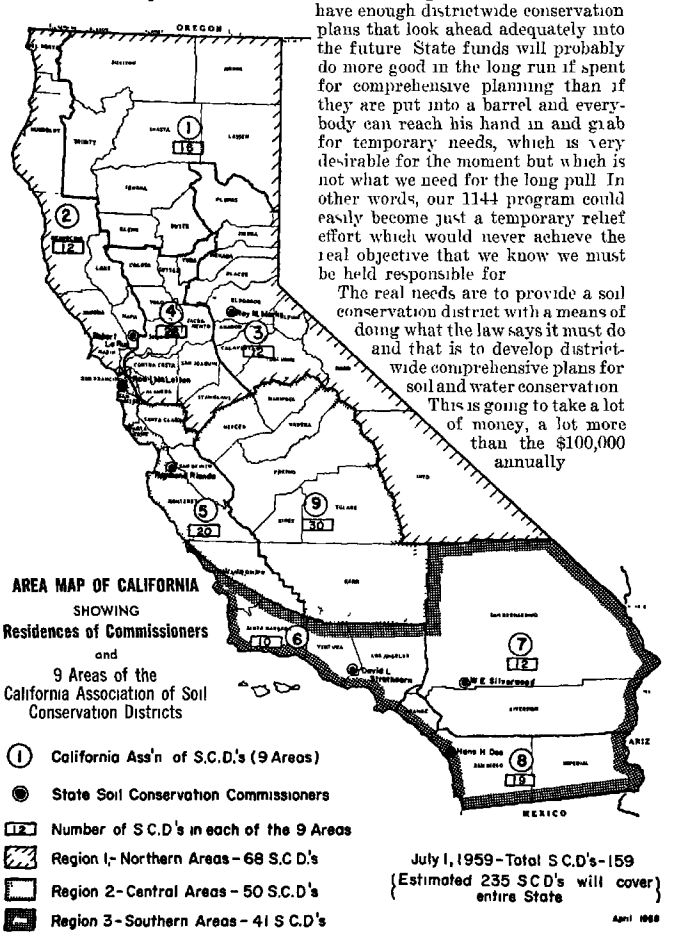
The soil conservation district directors have technical assistance available for their programs, but in many cases, very little if any money to solve some of their more difficult problems A. B 1144 was originally intended to be a $750,000 annual grant in aid to soil conservation districts under the provisions of Division 9 (Soil Conservation) of the Public Resources Code This annual grant opened the way to accomplishing a great amount of work in watersheds where the job was too small to involve the federal machinery of P L 566 However, the Governor saw fit to reduce the amount to $100,000 for a start, but to maintain it at only $100,000 annually will not be wise if we are going to try to use this as a substitute for P L 566.

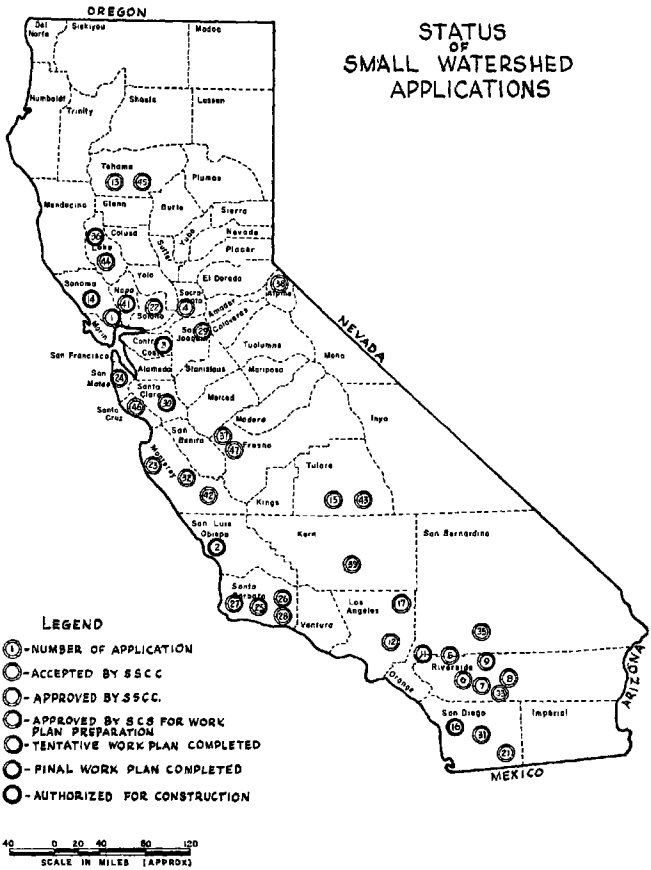
During this past year, the California Soil Conservation Commission has had to adopt more and more stringent criteria to the grants under this program because of the lack of funds Many worthwhile projects which were intended by the Legislature are no longer qualified under the revised commission criteria We in California can do a good job on the small watersheds requiring only a few thousand dollars of the total expenditures, providing the initial concept of A. B. 1144 is kept in the front of our thinking and funds for the program are brought back up to their intended level

Under A B 1144 there is opportunity for a very wide range of projects There can be almost any type of project dealing with soil and water conservation that the district might be interested in, whereas P L 566, the small watershed protection program, is limited to projects dealing with control of flood water and the management of agricultural water and is more limited in its application than A. B. 1144.

Our state program should be concerned with comprehensive long-range planning We must have a blueprint of our own state program before we expect too much from the federal government We do not have enough districtwide conservation plans that look ahead adequately into the future State funds will probably do more good in the long run if spent for comprehensive planning than if they are put into a barrel and everybody can reach his hand in and grab for temporary needs, which is very desirable for the moment but which is not what we need for the long pull In other words, our 1144 program could easily become just a temporary relief effort which would never achieve the real objective that we know we must be held responsible for

The real needs are to provide a soil conservation district with a means of doing what the law says it must do and that is to develop district-wide comprehensive plans for soil and water conservation This is going to take a lot of money, a lot more than the $100,000 annually

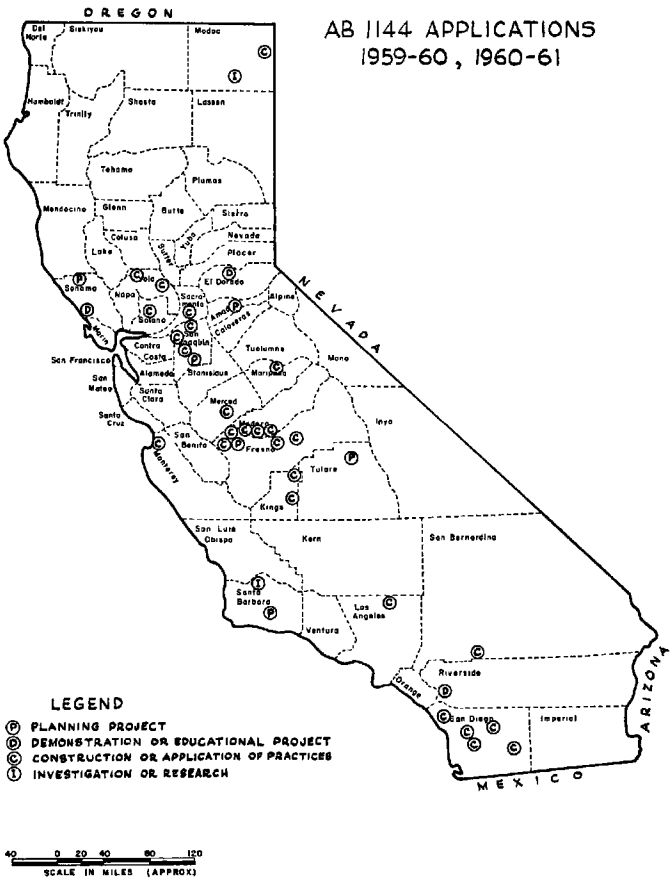




October 1959

STATUS OF SMALL WATERSHED APPLICATIONS

No	Name	County	Acres
1	Sonoma Creek	Sonoma	100,000
2	Arroyo Grande Creek	San Luis Obispo	103,400
3	Marsh-Kellogg Creeks	Contra Costa	116,000
4	Morrison Creek	Sacramento	31,700
5	San Timoteo	San Bernardino and Riverside	80,000
6	Upper Perris Valley	Riverside	64,000
7	Salt Creek	Riverside	100,000
8	Bautista Creek	Riverside	46,000
9	Smith Creek	Riverside	14,000
11	Upper Chino Basin	San Bernardino and Riverside	175,000
12	Avenue "H"	Los Angeles	11,500
13	Antelope Creek	Tehama	72,000
14	Central Sonoma	Sonoma	163,000
15	Tule River	Tulare	247,000
16	Buena Vista Creek	San Diego	8,970
17	Monroe Canyon	Los Angeles	2,855
19	Greenhorn and Spanish Creeks	Plumas	128,500
20	Cable and Devil Creeks	San Bernardino	25,800
21	Morena Reservoir	San Diego	73,600
22	Ulatis Creek	Solano	115,200
23	Carmel River	Monterey	163,200
24	Pescadero-Butano Creeks	San Mateo	39,500
25	San Antonio Creek	Santa Barbara	103,000
26	Diaz Drainage Area	Santa Barbara	2,055
27	Green Canyon-City of Santa Maria	Santa Barbara	74,550
28	Mission Creek	Santa Barbara	7,200
29	Bear Creek	San Joaquin and Calaveras	62,000
30	Carnadero-Llagas Creeks	Santa Clara	132,000
31	Escondido Creek	San Diego	30,700
32	Bryant Canyon	Monterey	13,714
33	Coachella Valley-West Side	Riverside	122,500
34	San Juan Ridge Ditch	Nevada	100,000
35	Upper Warm Creek	San Bernardino	11,300
36	Adobe Creek	Lake	21,500
37	Firebaugh-Los Banos Drainage Enterprise	Fresno and Merced	197,000
38	Markleeville and Indian Creeks	Alpine	41,600
39	Upper Tehachapi Creek	Kern	39,300
40	Laguna	Sonoma	113,000
41	Napa River	Napa	242,900
42	Alisal	Monterey	30,000
43	Lewis Creek	Tulare	26,500
44	Scotts Creek	Lake	56,000
45	Champlin Slough	Tehama	6,704
46	Corralitos-Salsipuedes	Santa Cruz	41,000
47	Little Panoche Creek	Fresno	163,400



October 1959

ASSEMBLY BILL 1144 APPLICATIONS, 1958-59

District	County	Description of project	Grant requested	Amount granted
El Dorado County	El Dorado	Plan of dam sites	$1,500	$1,500
San Juan Bautista	San Benito	Weed eradication		denied
Georgetown-Divide	El Dorado	Scotch broom	1,500	1,500
San Marcos	San Diego	Drainage	10,000	Priority 1959-60
Calleguas	Ventura	Comprehensive survey	3,000	3,000
Coulterville-Greeley	Mariposa	Channel stabilization	10,000	2,000
Pit and Adin-Lookout	Modoc-Lassen	Aerial photography	5,000	5,000
Mountain Empire	San Diego	Comprehensive survey		Withdrawn by district
Redlands-Highland	San Bernardino	San Dimas research	8,000	Withdrawn by district
Yucaipa Valley	San Bernardino	Fire protection	5,000	denied
Santa Maria Valley	Santa Barbara	Bank stabilization	500	500
Gold Ridge	Sonoma	Sand dune control	1,625	1,625
Sotoyome	Sonoma	Mill Creek planning	2,000	2,000
Coachella Valley	Riverside	Plant intruder control	10,000	10,000
Kings River and Excelsior	Kings	Equipment yard	15,000	denied
Three Rivers	Tulare	Watershed survey	1,500	1,500
Mission	San Diego	Squirrel control	1,500	denied
Antelope Valley	Los Angeles	Littlerock nursery	5,000	5,000
Cucamonga-Mt View, Mira Loma West End	San Bernardino Riverside	Wind breaks	25,365 60	8,455
Trinity County	Trinity	Stream stabilization		5,000
Upper San Luis Rey	San Diego	Channel improvement	4,000	4,000
Firebaugh, Panoche, San Luis, Los Banos	Fresno-Merced	Drainage study	5,900	5,900
Bear Creek	San Joaquin	Director education	100	denied
Escondido	San Diego	District indebtedness	500	denied
Escondido	San Diego	Watershed studies	5,000	denied
Florin	Sacramento	Wildlife	1,500	1,500
Florin	Sacramento	Secretarial assistance	500	denied
Panoche	Fresno	Drainage siphon	75,000	denied
Nevada County	Nevada	San Juan Ridge ditch	2,500	2,500
Dixon	Solano	Drainage	3,000	3,000
Santa Maria Valley	Santa Barbara	San Antonio watershed	1,500	denied
Mission	San Diego	Channel improvement	7,735	Priority 1959-60
Navelencia	Fresno	Drainage study	1,030	1,030
Santa Rosa	Sonoma	Italian thistle	10,000	denied
Hungry Hollow	Yolo	Drainage	3,000	*3,000
S T & J	Stanislaus	Drainage	2,111	denied
Amador County	Amador	Land use	770	770
Tule River	Tulare	Planning	5,000	denied
Tule River	Tulare	Ditch lining	5,000	5,000
Salida	San Joaquin	Levee repair	5,000	5,000

* Rescinded—Given priority for 1959-60 if obstacle to project overcome

ASSEMBLY BILL 1144 APPLICATIONS, 1959-60

District	County	Description of project	Grant requested	Amount granted
San Marcos	San Diego	San Marcos Creek draining	$10,000	$10,000
Mission	San Diego	Rainbow Valley drain	7,735	7,735
Hungry Hollow	Yolo	Channel No. 1	3,000	To be approved when obstacle to project overcome.
Columbia	Madera	Lone Willow drain	5,000	5,000
Santa Maria Valley	Santa Barbara	San Antonio watershed	2,500	Approved if 566 appl. is withdrawn
Santa Maria Valley	Santa Barbara	Bank stabilization	1,000	500
Coulterville-Greeley	Mariposa	Bean, Smith, Blackstone Creeks	10,000	Included with '60-61
Cucamonga-Mountain View	San Bernardino	Wind breaks	8,455	Approved if Dist can match funds.
Three Rivers	Tulare	Kaweah watershed	1,500	Cancelled at Dist's req.
Kings River	Kings	Equipment yard	15,000	denied
Elsinore-Murrieta-Anza	Riverside	Girl Scout camp	10,000	8,000
Bear Creek	San Joaquin	Drain ditches	1,000	1,000
Bard	Imperial	Weed control	7,000	denied
King Island	San Joaquin	Riprapping	1,065	1,065
Walthall	San Joaquin	Walthall Slough survey	8,000	Approved for $6,000 if total cost is $20,000 to be raised to $8,000.
Red Top	Madera	Fresno River drain	6,375	6,375
Columbia	Madera	Ridge ditch	5,000	5,000
Sierra	Fresno	Garfield siphon	5,000	Included with '60-61
Panoche	Fresno	Northside drain	10,000	Included with '60-61
East Madera	Madera	Pothole drains	5,000	denied
San Juan Capistrano	Orange	Debris dams	10,000	denied
Arroyo Grande	San Luis Obispo	Field plots	4,000	Withdrawn by district
Lone Tree	Merced	Bear Creek channel	10,000	10,000
Excelsior	Kings	Water spreading	5,000	5,000
Firebaugh	Fresno	Santa Fe Canal	6,000	6,000
Tulare Lake	Kings	Drainage Canal	5,000	5,000
Georgetown-Divide	El Dorado	Scotch broom	11,663	8,663
Mountain Empire	San Diego	Thing Dam	12,500	Included with '60-61
Surprise Valley	Modoc	Owl Creek diversion	15,000	12,726
Ulatis	Solano	McCune Creek	5,000	5,000
Elkhorn	Monterey	Carneros Creek	4,000	3,787 50
Pit and Adin-Lookout	Lassen-Modoc	Ground control	7,500	Included with '60-61
Upper San Luis Rey	San Diego	Channel clearing	4,000	Included with '60-61
Adin-Lookout	Modoc	Locate dams	5,000	Included with '60-61
Florin	Sacramento	Wildlife	1,500	1,500
Pomerado	San Diego	Rattlesnake Creek	11,700	Included with '60-61
Mojave Desert	San Bernardino	Weed control	10,000	Included with '60-61
Mojave Desert	San Bernardino	Cloud seeding	1,000	Included with '60-61
Antelope Valley	Los Angeles	Littlerock nursery	3,000	3,000

ASSEMBLY BILL 1144 APPLICATIONS, 1960-61

District	County	Description of project	Grant requested	Action taken
Coulterville-Greeley	Mariposa	Bean, Smith, Blackstone Creeks	$10,000	
Sierra	Fresno	Garfield siphon	5,000	
Panoche	Fresno	Northside drain	10,000	
Mountain Empire	San Diego	Thing Dam	12,500	
Pit and Adin-Lookout	Lassen-Modoc	Ground control	7,500	denied
Upper San Luis Rey	San Diego	Channel clearing	4,000	
Adin-Lookout	Modoc	Locate dams	5,000	Withdrawn by district
Pomerado	San Diego	Rattlesnake Creek	11,700	
Mojave Desert	San Bernardino	Weed control	10,000	denied
Mojave Desert	San Bernardino	Cloud seeding	1,000	denied
Sotoyome	Sonoma	Sausal Creek	2,500	
Honey Lake Valley	Lassen	Weed control	1,500	denied
Gold Ridge	Sonoma	Dune fertilization	1,500	
Capay Valley	Yolo	Wildlife habitat improvement	1,000	
Amador County	Amador	Low level flight	2,500	
Amador County	Amador	District progress report	200	denied
Amador County	Amador	Jackson Creek Dam	10,000	denied
Venice Island	San Joaquin	Levee improvement	7,800	
Florin	Sacramento	Wildlife	1,500	
Contra Costa	Contra Costa	Urban encroachment report	1,750	denied
Georgetown-divide	El Dorado	Scotch broom	7,725	
Santa Maria Valley	Santa Barbara	Bank stabilization	500	
Santa Maria Valley	Santa Barbara	San Antonio watershed	4,000	
Cucamonga-Mt View	San Bernardino	Wind breaks	8,455	
Antelope Valley	Los Angeles	Nursery	2,000	

SUMMARY OF FINDINGS AND RECOMMENDATIONS AS PRESENTED TO COMMITTEE

1 The State Division of Soil Conservation is bracketed into the Department of Natural Resources There was evidenced a sentiment that soil conservation does not enjoy the sufficiently important status that the critical problems involved justify

2. The present Division of Soil Conservation needs some clarification to eliminate possible conflicts with other agencies of state government.

3. If the state government is reorganized, why not a new department, a Department of Soil and Water Conservation, a development agency which must be consulted on all engineering plans—highways, reservoirs, subdivisions, etc

4. Public Law 566 was designed for eastern standards and does not particularly apply to California conditions. It provides a means whereby the people of the community can plan and control, within certain limits, the destiny of their small part of the world. It often entices local California groups into planning a program and then stops them because of impossible conditions.

5 The California Legislature should persuade Congress to amend Public Law 566 to enlarge the storage in flood control dams and remove the 5,000-acre-foot limitation in order that California could draw greater benefits

6 The California Legislature should memorialize Congress to send a committee to California to work with our California Soil Conservation Commission so that the present Public Law 566 program can be amended to serve California needs.

7 Assembly Bill 1144 appropriates $100,000 annually to assist the State Soil Conservation Commission in carrying out small watershed flood control This fund is inadequate to satisfy basic needs and should be brought up to at least $750,000 annually as was originally intended for grants-in-aid to soil conservation districts.

Appendix

PERSONS TESTIFYING BEFORE THE COMMITTEE

John S. Barnes, State Conservationist, United States Soil Conservation Service
Charles W. Thomas, Assistant State Conservationist, United States Soil Conservation Service
Gordon W. Miller, Chief Engineer, Sonoma County Flood Control District
Lloyd Hamilton, Supervisor, Lake County
Arthur W King, Ukiah News, Mendocino County
Robert LaRue, President, Napa Soil Conservation District
Harold Blatz, President, California Association of Soil Conservation Districts
Vernon Lehman, Area 4, Vice President, California Association of Soil Conservation Districts
Arthur L. Darsey, Chief, State Division of Soil Conservation
Francis Raymond, Chief, State Division of Forestry
W. E. Silverwood, Director, Redlands-Highland Soil Conservation District
Don Bauer, Forest Supervisor, San Bernardino National Forest
Norman Hixson, Director, West End Soil Conservation District
Stephen Briggs, Jr., Area 7, Vice President, California Association of Soil Conservation Districts
Robert Goodier, Watershed Planner, State Division of Soil Conservation
John O. Dean, Area Conservationist, United States Soil Conservation Service, Riverside
M. J. Shelton, Engineer, Koebig and Koebig, Consulting Engineers
Gordon Armstrong, Assistant Legislative Analyst, Legislative Budget Committee
Floyd O. Tumelson, Area Conservationist, United States Soil Conservation Service, Red Bluff
Don Coops, Director, Surprise Valley Soil Conservation District
David P Tidwell, Director, Surprise Valley Soil Conservation District
Fred A Simonet, Director, Lassen View Soil Conservation District
Lewis Reese, State Forest Ranger I, State Division of Forestry
Andrew Micke, Director, Lassen View Soil Conservation District
D M. Brady, Director, Trinity Soil Conservation District
Lynn Raymond, Supervisor, Tehama County
E. C. Pryor, Supervisor, Tehama County
Dave Dresbach, Field Representative, State Division of Soil Conservation
Leonard Leoni, Field Representative, State Division of Soil Conservation
Randall Reeves, Field Representative, State Division of Soil Conservation

SUMMARY OF CONFERENCE ON CONSERVATION NEEDS INVENTORY

SACRAMENTO, JUNE 9, 1960

INTRODUCTION

Following is a summary of the panel discussion on ways to use the soil and water conservation needs inventory material, to consider possible ways to move ahead at a faster pace, and to consider ways to classify the work so that a comprehensive state land use plan can be developed.

Because of the slow progress being made on the job of mapping California's agricultural soil needs, state, federal and University of California officials met with Assemblyman Lloyd W. Lowrey, Chairman of the Assembly Interim Committee on Natural Resources, Planning and Public Works on June 9, 1960, in Room 4168 of the State Capitol, Sacramento, to discuss a plan centered around two subjects (1) the completion of the conservation needs inventory and ways in which the information produced in this inventory could be made available, and (2) the necessity of completing the basic soil survey of California

Dr. Austin Patrick, Consultant. U S Conservation Service, Washington, D C Dr Patrick informed the group of the progress the U. S. Soil Conservation Service has made in the spot sampling unit surveys by various counties throughout the United States As this data is collected and filed under the National Soil and Water Conservation Needs Inventory, the information is tabulated in Washington and put on punch cards so that any information may be run off in short order for use by the states and other interested groups.

The Administrator of the U S Soil Conservation Service is interested in obtaining this data and is most anxious to receive information from the interested agencies as to how this program can best be accelerated and administered

California and Indiana are the two states showing the greatest interest in completing these soil sample surveys Here in California five counties, San Bernardino, El Dorado, Kern, Siskiyou and Stanislaus, have already put out a conservation needs inventory publication. In Indiana, reports also have been published

Dean Daniel G. Aldrich, Jr., University Dean of Agriculture, University of California, Berkeley. The University of California has been very much concerned in seeing to it that this conservation needs inventory program is completed It is apparent that to really get ideas growing out of the inventory, the county level is the logical place where information should be produced The State Committee on the conservation needs inventory project recognized at an early date that the information developed at the county level should be summarized and pub-

lished by the county and made available as soon as possible to help create a statewide picture, and in turn, a series of states would produce the nationwide picture and show the need for financial support.

The university has functioned in the co-operative soil surveys in this State since 1913, and in recent discussions, it was Dr. Aldrich's impression that there was going to be an effort made to co-ordinate the services involved in producing a basic soils survey in this State. It was hoped that the task would be accomplished in a 15-year period. Now it has been indicated that at the rate we are going, it will be 30 years. This means that the agencies involved are going to have to sit down with the counties, take stock and see how these basic operations can be speeded up The university is ready at any time to assist in working out a more rapid program of survey.

Mr. John S. Barnes, State Conservationist, U.S. Soil Conservation Service, Berkeley: The need for quicker results in the difficult and painstaking task of surveying and mapping California's soils, acre-by-acre, is an accepted and known fact. Furthermore, it will take up to 30 years to complete the job at the rate we are going. Good soil maps are vital in solving the problems forced on agriculture by California's industrialization and booming population, such as getting more food from less productive land At present the soil surveys are carried out in the field by Soil Conservation Service technicians Some university personnel are involved, and state agencies also help in giving information The Federal Government needs the advice and counsel of these agencies, and it is most important to speed up and streamline the program to break down some of the bottlenecks that develop.

CONCLUSIONS

The various agencies represented at the conference expressed the desire to see the conservation needs inventory completed. They were in agreement that an up-to-date Conservation Needs Inventory plan was needed and were anxious to have the University of California assume overall leadership in bringing the various agencies engaged in soil surveying together in order to expedite the program of accomplishing soil surveying in California at the earliest possible date. The plan will specify who should do what part of the work and how much it will cost. This package plan will then be presented to the State Legislature and to Congress with the request for enough money to carry it out.

DATA AVAILABLE FROM NATIONAL INVENTORY OF SOIL AND WATER CONSERVATION NEEDS

1. Basic data from sample areas expanded to area of each county (less federal noncrop lands) in the United States except for the few counties entirely built-up. These tables show kind of soil, slope, erosion, and land use State tables are also being prepared.
2. Present (1958-59) and expected land use (1975) by land capability subclasses for each county in United States and State totals by cropland (irrigated and nonirrigated in 17 Western states), pasture and range, forest and woodland, and "other."

3. Acreage of cropland needing treatment and feasible to treat by dominant kind of problem; i e, erosion, water, soil, and climate (Irrigated and nonirrigated separated in the 17 Western states.)
4. Pasture and range. acres needing treatment; acres needing seeding, acres needing management; water developments; and water conservation.
5. Forest and woodland· acres needing establishment of timber stand; acres needing improvement of timber stand; acres needing protection and/or management, and establishment of windbreaks and shelterbelts.
6. Other land—same data as cropland
7. All watersheds in United States delineated to 250,000 acres or less with problems that are applicable under P. L 566 as amended. Data will show kind of problem and whether or not "project action" is required for solution of these problems.

JOHN W. BARNARD
March 9, 1960

PRESENT AND EXPECTED CHANGES IN LAND USE *

State Total 1959-1975

Land Use Class	*1959*	*1975*
	Acres	*Acres*
Total acres in State	100,206,584 †	100,206,584 †
Federal land	45,131,319	44,388,023
Cropland	14,913	14,913
Noncropland	45,116,406	44,373,110
Urban and built-up areas	2,391,954 †	4,074,477 †
Water areas	186,577	323,810
Acreage in inventory	52,511,647	51,435,187
Cropland	12,249,356	12,860,198
Irrigated	8,180,185	9,670,111
Nonirrigated	4,069,171	3,190,087
Pasture and range	13,544,779	13,911,158
Forest and woodland	20,444,910	19,308,978
In farms	18,647,565	17,456,148
Other	1,797,345	1,852,830
With grazing	8,973,487	8,673,042
No grazing	11,471,423	10,635,936
Other land	6,272,602	6,354,853
In farms	1,025,080	1,144,431
Not in farms	5,247,522	5,210,422

* Preliminary release of data compiled by County Conservation Needs Inventory Committees Approved, subject to review by National Committee
† Includes San Francisco County, 28,800, all urban

S. W. COSBY, Chairman, California State Committee

PRESENT AT THE DISCUSSION

John S Barnes, State Conservationist, United States Soil Conservation Service
Dr Austin Patrick, Consultant, United States Soil Conservation Service, Washington, D C
Elton R Andrews, Planning Officer, State Office of Planning, State Department of Finance
James F Wright, Deputy Director, State Department of Water Resources
DeWitt Nelson, Director, State Department of Natural Resources
Tobe Arvola, State Division of Forestry
Dean Daniel G Aldrich, Jr, University Dean of Agriculture
William E Warne, Director, State Department of Agriculture
John McGuire, Chief of the Division of Forest Economics, Pacific Southwest Forest and Range Experiment Station
Arthur L Darsey, Chief, Division of Soil Conservation
Stan Cosby, United States Soil Conservation Service
Assemblyman Lloyd W Lowrey
Dr. Ian Campbell, State Division of Mines
William L Berry, Chief of the Division of Resources Planning, State Department of Water Resources

VOLUNTARY CO-ORDINATION OF RELEASES FROM RESERVOIRS

(A. B. 2007, 1959 Session)

INTRODUCTION

Assembly Bill No. 2007, introduced at the 1959 Session of the Legislature by Assemblyman William Biddick, would have authorized the Department of Water Resources to collect data on reservoir operations and streamflows from which it would develop recommendations for operation of reservoirs to avoid fluctuation in downstream water levels The bill, as distinguished from existing law, was not concerned particularly with the damage caused by unsafe dams but rather with damage caused by high flows resulting from excessive release of water from reservoirs, particularly in very wet periods of the season This bill was received favorably and passed by both houses of the Legislature, but it did not receive the signature of the Governor

SUMMARY OF TESTIMONY BY PROPONENTS OF THE BILL

1. Water rights and authority to store water and regulate the flows of certain rivers in California have been granted to a number of irrigation districts.

2. Such rights and regulations have been to the detriment of landowners adjacent to these certain rivers to the extent that extreme fluctuations of the flows have caused severe erosion and unnecessary flooding of land.

3 The landowners recommend that the State of California grant authority to one of its agencies to supervise the release of water from reservoirs on rivers and regulatory power to see to it that releases are being made according to sound engineering practices to the end that there is some protection provided for downstream landowners against fluctuations and unnecessary flooding

The South San Joaquin and the Oakdale Irrigation Districts constructed three dams on the Stanislaus River for the purpose of power generation and water storage After the dams were constructed it became evident that there was no flood control provided in the projects The Salida Soil Conservation District, sponsors of A B. 2007, discussed flood protection with the irrigation districts when these dams were in the initial stages, but no provision was made in their construction for flood control No drop gates or overflow gates were provided The only provision for water releases were lift gates The two irrigation districts operated the dams as they saw fit, and a great deal of damage was done down river from the dams due to the manner in which the releases of water were made

The Soil Conservation District discussed the manner of releases at several different times with both the irrigation districts, and each time

the operators maintained they were doing what they could and they did not have the authority to release and lower water levels They maintained the Pacific Gas and Electric Company had been granted that authority.

The Soil Conservation District went to the P G and E to work out some kind of an agreement whereby a little flood protection would be offered landowners downstream from the dams They were dismayed to find that the P G and E was unwilling to take part or be a part of any program that might look as though they were offering flood protection.

After the season was over and the landowners of the soil district had sustained the damage, they looked to the Legislature for relief and A B. 2007 was introduced, but the bill was vetoed The need for a bill of this nature still exists, according to the proponents, to give full protection and consideration to the rights of others This bill or a bill very similar to it is essential to this area and to all of the State of California for people interested in flood control.

In times of public emergency it is essential that the State of California, in order to avoid distaster, through its Department of Water Resources, do all things necessary to prevent or mitigate floods and flood waters This is a government function and should be a police power of the State, and the State should take over and regulate these water releases

There are two varying opinions, a conflict between the opinion of the Attorney General and the opinion rendered by the Legislative Counsel As this bill is now constituted, it is a reasonable exercise of police power to protect the people against a common enemy, flood waters, and should be enacted

The code says the primary use of water is the restraint of water. If so, there is no need to furnish a man with drinking water, irrigation water or other types of water uses if you are going to flood him, so flood control becomes a very essential use of water. After a man knows he is not going to be drowned, then you can supply him with the other various types of water.

SUMMARY OF TESTIMONY BY OPPONENTS TO THE BILL

1. There is excellent co-operation between federal, state and local interests in controlling floods and with the storage capacity that is now available in reservoirs, A B 2007 would be unwise legislation and not in the public interest in that it would put the State in control of the operation and management of all irrigation and power reservoirs.

2. In many instances levees have been improperly located and built close to river channels, restricting and increasing water levels at high flows

3 Legislation that would prevent levees being built until properly located and engineered by the State Department of Water Resources would probably be the greatest assistance to landowners along rivers.

In principle, there are objections to this bill, even as amended, and there are many problems connected with it This bill would require the irrigation districts, upon the request of the State, to keep records and report storage inflow and outflow from the reservoirs and any other information the State might require Then the State would make recom-

mendations as to co-ordinated releases for flood control. At present the reservoir owners are releasing in accordance with U S Corps of Engineers contracts and so far as the liability provision of this bill is concerned, from the Attorney General's report, it would appear unconstitutional.

The common entity doctrine cited by the Legislative Counsel does not appear to be applicable As a result, this bill in its present form may well be a "trap" for reservoir owners who make releases in reliance on the bill's provision as to liability We feel it is unreasonable to inconvenience the owners to keep additional records

Contrary to what has been said, the prime use of water is for irrigation, domestic, industrial and hydroelectric. Irrigation districts spend a lot of money on irrigation projects and they must conserve this water for irrigation If the State of California wants protection from floods, they should spend the money for dams for flood control and not make the irrigation districts take care of floods at their expense

The opponents of this bill stated that the information asked for in A B. 2007 is furnished to the Department of Water Resources now. The districts have very adequate records and they co-operate with the State, with the Army and with everyone who collects information They have a free flow of information and do not know what more they could do that would help

The irrigation districts face two problems One is irrigation and the other is flood control Flood control and an irrigation project do not work hand-in-hand For example, in 1959 we had a very serious water shortage and had the districts been operating under a bill similar to this, they would have been asked to release water earlier in the season because up to early spring it appeared we would have lots of water. Reports indicated that we would have floods and talk was to get the reservoirs down and ready to take the shock. Without the proposed release, the irrigation districts were just barely able to get through and keep the crops alive Had they been operating under this bill, there would have been a strong request to release water and lower the reservoirs. Some operators of reservoirs think flood control and irrigation cannot mix.

This does not necessarily mean that the problems of flood control and irrigation cannot be solved. You can have a dual-purpose reservoir, but if you have a reservoir that only has the capacity to take care of irrigation, you cannot handle flood control water If you do, you ruin your irrigation because flood control wants an empty reservoir and irrigation wants a full reservoir.

As a matter of operation, there was probably a false impression in the minds of the people in the area as to what the project was going to do in the way of flood control. The irrigation districts are vitally interested in flood control, but we must remember one thing—to control floods costs money, a lot of money, and the districts feel that any regulation by the State or any other agency could very well work a hardship upon the people needing irrigation benefits Legal commitments of reservoir operators to domestic, irrigation and power users and the failure to fulfill their obligation to these users could severely endanger the financial structure of many organizations. Any legislation

that could jeopardize water development would certainly be detrimental to California water projects.

STATE OF CALIFORNIA

INTERDEPARTMENTAL COMMUNICATION

To: Edmund G. Brown
Governor of California
State Capitol
Sacramento, California.

Date: July 7, 1959
File No.:
Subject: Bill Report
A.B. 2007

From: Office of the Attorney General
ROBERT BURTON
Deputy Attorney General

The above bill would add Sections 6510 through 6591 to the Water Code, establishing a new function in the Department of Water Resources relating to making recommendations for the releases of water from reservoirs in order to avoid fluctuations in water levels and flooding downstream. As will be explained below, these proposed sections may drastically change the present liability of reservoir owners for damage caused to downstream lands by the release of water from reservoirs. We believe this attempted change in liability may create serious legal problems both because of ambiguity as to the meaning of the proposed sections and also because the proposal is a radical change from existing law regarding liability for damages and would have the possible effect of removing all liability for such damages.

The proposed new sections provide that the Department of Water Resources shall obtain information from owners of reservoirs and shall make recommendations that it deems necessary and useful to obtain the voluntary co-ordination of releases of water from the reservoirs so as to avoid extreme fluctuations in downstream water levels and unnecessary flooding of downstream lands (Section 6560). Owners of reservoirs are broadly defined to include both public agencies and entities, including the United States and the State, as well as private parties (Section 6512) Reservoirs to which the proposed bill would apply are only relatively large reservoirs, i e , those with impounding capacity of 1,000 acre-feet or more

Recommendations made by the Department of Water Resources as to releases from reservoirs need not be followed by the owner of a reservoir unless the owner desires to (Section 6561). The only compulsion on the part of reservoir owners contained in the bill is the requirement that information be furnished to the Department of Water Resources with the provision that failure to furnish such information constitutes a misdemeanor (Sections 6580-6591).

With respect to damage liability, the bill would provide that the State was not liable for the issuance of recommendations, the furnishing of information, or the approval of releases (Section 6525). This provision relieving the State from liability is appropriate and desirable if the Department of Water Resources is to perform the functions provided for in the bill.

However, in addition the bill would also provide that if an owner followed the recommendations he would be relieved from liability for any damages caused by the release of water from a reservoir (Section 6526). This release of owners from liability is contained in proposed Section 6526 and is the provision which we believe gives rise to legal problems.

Proposed Section 6526 provides as follows:

> "6526. Nothing in this part shall be construed to relieve an owner or operator of a reservoir of the legal duties, obligations, or liabilities incident to the ownership or operation of the reservoir. No action, however, shall be brought against an owner or its agents or employees for the recovery of damages caused by releases of water from any reservoir pursuant to the recommendations of the department."

First, it would appear to us that the provisions of proposed Section 6526 are ambiguous and will cause considerable difficulty in interpretation, particularly with reference to their applicability to public agencies, including the State The first sentence of proposed Section 6526 is a provision that the operator of a reservoir is not relieved from any legal duty, obligation, or liability. The second sentence appears to provide that no action can be brought against the owner of a reservoir for damages caused by following the recommendations of the department The second sentence therefore clearly must be intended to modify in some respect the legal duties, obligations, and liabilities of the owner of a reservoir. However, the extent to which the second sentence modifies the first sentence is uncertain and presents interpretation problems which will undoubtedly require court interpretation to resolve Furthermore, it would appear to us that the second sentence can not be constitutionally applied to the public agencies or entities who have eminent domain powers if the situation is one in which the rights of downstream owners are interfered with or taken for a public use. When such situations will result remains to be interpreted, but we would suggest that under many situations which are likely to arise where damages result, a public use will be involved.

The California Constitution, Article I, Section 14, provides that private property may not be taken for a public use without the payment of just compensation The Fifth Amendment to the Constitution of the United States contains a similar provision. The California Supreme Court has held that the Legislature may impose reasonable rules involving eminent domain power and its exercise but that such rules and legislation cannot deprive a private owner of the compensation guaranteed by the constitutional provisions (see *Rose* v. *State of California* (1942), 19 Cal 2d 713, 725). Thus, if the release of water from a reservoir pursuant to the recommendations of the Department of Water Resources was made by a public agency or an entity for a public use and resulted in damage to downstream lands, we do not believe the provisions of the second sentence of Section 6526 could be made applicable under the Constitution to prevent the recovery of damages as just compensation We are given to understand that a substantial number, if not most, of the reservoirs covered are owned or

operated by public agencies or entities with eminent domain authority. Thus, as a practical matter, this provision, in addition to being difficult to interpret, probably would not be applicable to most reservoirs.

Also, it must be considered that to the extent the proposed bill would relieve an owner of a reservoir from liability for damage caused by the release of water, the proposal is a decided departure from present liability laws This may make owners of reservoirs less cautious in the handling of releases and it is questionable if this is desirable when dealing with the potential damaging forces that can be unleashed during a flood. Also, as neither the State nor the owner would be liable for damages, this will likely result in claims being presented to the Board of Control under Government Code Sections 16021 and following. This historically is the type of a situation in which, as a matter of practice, the Board of Control has previously recommended to the Legislature that compensation be paid by the State since there would be no liability on the part of anyone for the damages done and the damages would perhaps have resulted from the recommendations made by the State. Thus, as a practical matter, the State may well indirectly, and as a matter of grace, be incurring added expense.

Other than as set forth above, we find no legal objections to this bill.

(Signed) ROBERT BURTON
Deputy Attorney General

STATE OF CALIFORNIA

OFFICE OF THE LEGISLATIVE COUNSEL

SACRAMENTO, CALIFORNIA, October 27, 1959

HON. WILLIAM BIDDICK, JR.
302 California Building
Stockton, California

Releases of Water from Reservoirs—No 738

Dear Mr. Biddick:

Question

You have requested our opinion as to the constitutionality of Assembly Bill No. 2007 of the 1959 Regular Session, which bill was pocket-vetoed by the Governor.

Opinion

In our opinion the courts would uphold the constitutionality of this bill as a proper and reasonable exercise of the police power.

Analysis

Assembly Bill No. 2007 of the 1959 Regular Session would require the Department of Water Resources to supply owners of reservoirs having an impounding capacity of 1000 acre-feet or more with information and recommendations deemed necessary or useful in obtaining voluntary co-ordinated releases of waters from such reservoirs so as to avoid extreme fluctuations in water levels and unnecessary flooding of downstream lands (Wat. C. 6560). Owners of such reservoirs, both public and private, would be required to co-ordinate their releases of

water in accordance with such recommendations, to the extent they deem feasible and compatible with the primary purpose of the reservoir (Wat C 6561). Such recommendations would be inadmissible in civil injunction or damage actions against owners who do not follow them (Wat C 6560)

The department would be authorized to require such reservoir owners to keep records of, and to report on, specified matters relating to storage capacity of reservoirs, rate of inflow and outflow at various times, and other information it may require, but not if such records, reports, and information are not reasonably accessible due to weather or terrain (Wat C 6580) The failure or refusal to supply the required information would constitute a misdemeanor (Wat C 6590)

The State, the department, and its employees would not be subject to civil action for damages caused by releases of water from reservoirs by virtue of its issuance of recommendations or furnishing of information (Wat C 6525). Furthermore, no action could be brought against the owner of a reservoir, or the owner's agents or employees, for the recovery of damages caused by releases of water from a reservoir pursuant to the recommendations of the department (Wat C 6526)

In our opinion the courts would uphold the constitutionality of the bill described above as a proper and reasonable exercise of the police power. It is to be noted that the general purpose of the proposed provisions is substantially similar to that of the so-called Dam Act of 1929 (Wat C. 6000, et seq.), that is, to protect the lives and property of the public downstream from the dams The Dam Act of 1929, under which the Department of Water Resources has supervision over the construction, enlargement, alteration, repair, maintenance, operation, and removal of dams over a specified size, has been held constitutional as a necessary and proper exercise of the police power of the State (*Bent Bros Inc* v *Campbell* (1929), 101 Cal App 456; *Sawyer* v. *Board of Supervisors* (1930), 108 Cal App 446, *Los Angeles Flood Control District* v *Wright* (1931), 213 Cal 335, *Department of Public Works* v *San Diego* (1932), 122 Cal. App 159).

The only provisions in the proposed bill which give rise to possible constitutional question are the provisions in proposed Section 6526 of the Water Code which would prohibit the bringing of any civil action for damages against a reservoir owner in connection with releases of water from reservoirs pursuant to the recommendations of the Department of Water Resources.

While it is difficult to conceive of circumstances under which the owner of a reservoir would be subject to liability for damages for negligence in following the recommendations of the department, if the releases resulted in the destruction or damaging of property, it might be contended that this provision violates the provisions of Section 14 of Article I of The California Constitution by authorizing the taking or damaging of property without the payment of just compensation For reasons set forth thereafter, we believe that the courts would hold that the exemption of reservoir owners from liability for releases made in accordance with recommendations of the Department of Water Resources under the proposed bill is a reasonable and necessary exercise of the police power of the State and does not violate Section 14 of Article I of the California Constitution.

First, it should be kept in mind that the proposed bill is a police regulation for the sole purpose of protecting, not injuring, downstream owners Here, any taking or damaging that might possibly occur would be as a result of reservoir owners following the recommendations of the Department of Water Resources, which recommendations would be for the purpose of co-ordinating releases from reservoirs so as to "avoid extreme fluctuations in downstream water levels and unnecessary flooding of downstream lands"

In *Archer* v. *City of Los Angeles* (1941), 19 Cal. 2d 19, the court in considering a claim based on Article I, Section 14, held that it is well established in California that a lower owner has no right of redress for injury to his land caused by improvements made in the stream for the purpose of draining and protecting the land above, even though the channel is inadequate to accomplish the increased flow of water resulting from the improvements

We believe that the courts would presume that the Legislature has carefully investigated and properly determined that the public interests require the proposed bill (*Pacific Coast Dairy* v. *Police Court* (1932), 214 Cal 668). In the present case, it is evident that uncoordinated releases of water from two or more large reservoirs on the same stream, or on streams which empty into another stream, could, at times of flood danger, cause severe damage which in many cases might be averted if a program of co-ordinated releases is followed. By the same token, damage caused by extreme fluctuations in water levels due to uneo-ordinated releases of water from two or more such reservoirs could, in many cases, be eliminated or at least diminished by a program of co-ordinated releases And, the Legislature could well determine that reservoir owners would not participate in such a program of co-ordinated releases of waters from reservoirs if relying on the recommendations of the Department of Water Resources rather than upon their own judgment, they would be subject to civil liability for releases made in accordance therewith

Further, we believe that the courts would presume that the Department of Water Resources has carried out its functions under the proposed bill properly and efficiently and that its recommendations as to releases of water have been such as to avoid, to the greatest extent possible, the damaging of downstream property (*Ballerino* v. *Mason* (1890), 83 Cal. 447).

It should be noted, however, that it is beyond the powers of the Legislature to exempt the State from liability for unnecessary damage resulting from inadequate and negligent planning in connection with its recommendations when no emergency exists (*House* v. *L. A County Flood Control Dist* (1944), 215 Cal 2d 384, 391) This would not invalidate the proposal, however, but, in our opinion, would make the exemption of the State inapplicable under these circumstances.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel

By RAY H. WHITAKER
Deputy Legislative Counsel

PERSONS TESTIFYING BEFORE THE COMMITTEE

Speaker Ralph M Brown
F L Williams, Salida Soil Conservation District
Robert Burton, Deputy Attorney General
Tom H Louttit, Attorney, Stockton
Jeremy Cook, Attorney, Turlock Irrigation District
A M Crowell, President, Turlock Irrigation District
C W Quimley, Secy, Oakdale Irrigation District
Paul Hunt, President, Oakdale Irrigation District
Kenneth McSwain, Manager, Merced Irrigation District
Malcolm MacKillop, Attorney, Pac Gas & Electric Co
Ira W. Collins, Asst to the Vice President, Pacific Gas & Electric Company
William H. Fairbank, Asst Director, Department of Water Resources
Darwin Hamlin, Director, S. T & J Soil Conservation District
James W. Smith, Director, Modesto Irrigation District

CALIFORNIA PUBLIC OUTDOOR RECREATION PLAN, PART I

INTRODUCTION

The need for recreational planning in California arises out of three elements: (1) the increased leisure time created by the technological advances of the last few years; (2) our exploding population, and (3) the great historical background of our State

In search of an answer to our recreation needs, the 1957 Session of the Legislature enacted and the Governor signed A B 32, now Chapter 2318 of the Public Resources Code This legislation established a committee of State Department Directors to be known as the California Public Outdoor Recreation Plan Committee and authorized the appointment of a technical consulting group and an advisory council It further authorized a small staff to conduct the study and prepare a "California Public Outdoor Recreation Plan" This report was to be submitted to the Legislature and to the Governor by March 1960, and the activities of the committee were to be terminated by June 30, 1960

Part I of the plan was issued in July 1960 and in order to receive comments from all interested parties, the Assembly Interim Committee on Natural Resources, Planning and Public Works held hearings in San Jose on September 19, 1960, Los Angeles on September 20, 1960; and San Diego on September 21 We present herewith a summary of the testimony received at these hearings.

FINDINGS

In the absence of Part II, Part I was found to be rather meaningless. The data and information collected and reported in Part I chiefly repeats the programs already developed by the various state agencies responsible for outdoor recreation and land use Most of the material included in the report has been known for years

RECOMMENDATIONS

It would be fair to neither the Legislature nor the Outdoor Recreation Plan Committee to promulgate general recommendations on the outdoor recreation plan when, as the testimony showed, the major features of the program are contained in Part II. Inasmuch as it appears that Part II will probably not be available until some time after November 15 when this report must go to print, it creates an impossible situation for our committee to resolve. Perhaps one general recommendation to all future study groups would be that they plan their work so that they can meet the legislative mandates for presentation of their findings.

San Jose, California—September 19, 1960

DeWitt Nelson, Chairman, California Public Outdoor Recreation Plan Committee · California is confronted with overwhelming problems of recreation. The responsibility for solving these problems and providing reasonable recreational opportunities to the expanding population have been and are fraught with many imponderables

Legislation established a committee for executing the study and directed that a plan be submitted reporting all the factors affecting public outdoor recreation in the foreseeable future.

A report of this nature, to be of value to each level of government and to the many interested groups, must of necessity deal with and be geared to the many diverse recreation problems and interests reflecting many points of view After all, we are looking 20 years ahead Our primary hope is that the results of this study will provide legislative and other policymaking bodies with more complete knowledge upon which to make decisions than they have in the past.

During the past decade large sums of money have been spent by all levels of government to meet recreation pressures. It is recognized that demands will increase. Therefore new methods and techniques of financing need to be explored Many of our future programs must be on a partnership basis.

Part I of the report recognizes the urgent need for more co-operative planning and closer co-ordination between governmental units. To accomplish this we recommend that this responsibility be placed in the Division of Recreation. To initiate the plan we propose a budget for the fiscal year 1961-62 of $96,200.

It is difficult for your committee, the representatives of other governmental units and myself to discuss this problem as objectively as we would like to in the absence of Part II of the report We do believe, however, that the effort which has been put into this project by so many should not be nullified just for the sake of meeting a deadline. The project is too important and the long-range value is too high.

I would like to briefly review the chapters that are now under final preparation in Part II:

Chapter 1 will be a summary of findings and recommendations.

Chapter 2 will be present and future recreation needs.

Chapter 3 will be entitled "Recreation Supply and Requirements."

Chapter 4 is titled "Outlook for Meeting 1980 Requirements With Recommendations."

The appendix will set forth the methodology used in making studies and surveys. It will identify unpublished data available for reference purposes. There will also be 72 pages of tables of very basic information.

Thomas M. Wilson, Interested Professional in the Field of Parks and Recreation: The Public Outdoor Recreation Plan is the first comprehensive report outlining the needs of our State. Most important to me is the fact that it points out the need for some one agency to co-ordinate the activities that furnish or provide park and recreation service. I believe it is a step in the right direction. However, I do not think any of us will know exactly where it stands until after Part II comes out.

Betty Croly, Professional City Planner: I would like to say that we feel that the study was very well done It identifies various recreation problems in a more understandable way on a statewide basis Part I provides a logical basis for proceeding to solve the problems in sharing responsibilities in an equitable manner To my knowledge this is the first time that the various areas of responsibility of local, state and federal governments have been delineated to the public Part II should round out the basic information required to eliminate recreation deficiencies without too much overlap between government jurisdictions We give our wholehearted support to the project

Mrs. Morris Erskine, Citizens for Regional Recreation and Parks. Our organization supports, in principle, the California Outdoor Recreation Plan If we are to provide for recreational uses while land is still available, it must be done in the near future We concur with the recommendations of the recreation plan that, to insure statewide planning and uniform coverage, the initiative and authority for land acquisition should be lodged in some state agency.

We endorse the suggestion of the recreation plan that studies should be undertaken to determine possible sources of funds In this connection, we would like to call to the attention of the interim committee what New York is doing Under the leadership of the governor, a bond issue for $75 million has been authorized for the acquisition of park and recreation lands.

I think new devices have to be developed to meet a situation that is as acute as this program seems to be and what New York can do, California with its great natural resources can do even better

Harry Doughty, Northern Counties Wildlife Conservation Association, Redding, California. After studying Part I of the California Public Outdoor Recreation Plan, my organization thinks a plan is needed However, I am very reluctant to support any program until it has been completely shown that it will operate only as a plan and not as the foundation for another large bureau in our state scheme of things. We feel that a great deal of thought should be given to considering the plan, and it should be approached with caution and a great deal more analysis than it has already been given

Richard Davis, Travel Trailer Clubs of America, Incorporated, Coast District: Part I, we feel, is very good It shows a lot of work and effort To implement this plan and to improve the camping in California several steps should be taken Number one is to satisfy today's needs as quickly as possible, and number two would be to have a good plan projected into the future. I would like to see a well balanced, statewide system of en route, one-night parking areas They should be initiated as quickly as possible It is our recommendation that they should be near or immediately adjacent to major traveled routes and available to all travelers

Mike Pellock, Planning Technician, Merced County· I commend the plan and the staff under Mr Nelson and Mr Aldrich for the fine job they have done in formulating Part I of this plan We sincerely feel that the taxpayers' dollars authorized for this plan were very well and wisely spent We believe that the creation of a new unit of state government for regional administration is necessary for the proper development, operation and maintenance of Zones 3 and 4 type recreation facilities.

The wayside rests we feel are important and an effort should be made to avoid overlap of planning, financing and services to be rendered with respect to the roadside rest program which is devised to relieve highway drivers of fatigue This program is now lying dormant and should be revised and assigned for implementation to the State Division of Highways We think the Division of Highways is the agency which could best administer this program, except where it is determined roadside rests have a recreational attraction

We approve the general recommendations of Part I and from our understanding of Part II and what we learned this morning in the presentation made by Mr Nelson, we feel that the plan should be considered for adoption as a master guide plan for the entire State

Leigh S. Shoemaker, Supervisor, County of Sonoma I wish to commend the work of the committee under the leadership of Mr Nelson and Elmer Aldrich Both of these gentlemen are well qualified in background and dedication to do the job I appreciate the great amount of effort that has gone into preparing this Part I report and will look forward with great anticipation to Part II

One thing that concerns me in reading Part I is that nowhere have I been able to find where they indicate "shall" instead of "should" In all of Part I, the recommendations are "should" and no "shall" I would like to suggest that the committee come up with a firm determination There are a lot of fine recommendations and research, but there is nothing firm Perhaps that will appear in the second phase of the plan Anyway, I am suggesting that they come up with some firm determinations

I am very definitely against the grandiose approach to these problems It seems to me every idea that comes into thinking costs at least a million dollars I am inclined to believe that numerous $100,000 suggestions would benefit more people Just visualize the large number of small recreation centers, camping sites and beach areas that would be served rather than this one grandiose idea that costs many million dollars

A broad suggestion was made this morning by Mr. Nelson for a need for more study money and more personnel I recall they have borrowed personnel from other departments, this is in addition to the $300,000 budget for this survey By devious means, it was indicated a million man-hours of unbudgeted money was borrowed from other departments by contributing service That to me, as a taxpayer, sounds like a lot of money that has gone into this research

The problems have been established, but I do not believe you have a plan There are no specifics in here I believe that you have untold information and recommendations and that a plan can be devised with some close co-operation with city and county officials

Carl Kelly, Chairman, Recreation and Parks Commission, County of Mariposa The recreational potential in our county is as yet unrealized We wish and it is our desire to encourage in every way private enterprise in recreation We believe that private enterprise will, in the future, invest in our county However, the public is demanding services now We feel that we must look to the State for some of the immediate needs Referring to page 73 of the plan "Who are the present suppliers of recreation," under the heading of "Counties," we find that Mari-

posa County has all the potential for outdoor recreation However, with our limited tax base, we are unable to develop any of this potential to any extent

Mariposa County has, in a measure, received help from the State in the form of valuable technical advice and service from the State Division of Recreation We are appreciative of these services and wish to commend the State on the installation of the very fine roadside rest located in Mariposa County on Yosemite All-year Highway 140

John Baumgartner, Jr., California Cattlemen's Association I am appearing before you to express the thinking of our association relative to the California Public Outdoor Recreation Plan One portion of the report is of particular concern to us In outlining the need for cooperative planning and co-ordination between both government and nongovernment groups, the report refers to a new agency to be formed The report indicates that this new agency will be broadly representative of recreation interests Such a superagency could conceivably have veto power over all others

We feel that the superagency approach strikes at the heart of the multiple use concept, making all of our other resources second to recreation Multiple use cannot endure if one agency can dictate policy If a policy agency were needed, it would have to be made up of men representing a broader outlook than just those representative of recreational interests

We recognize that an increased program for developing public recreation resources will cost money, in many instances, tax money Therefore we take the position that as far as is practicable, all recreational areas should be self-supporting, a goal that can be reached by putting maximum emphasis on free enterprise in the development of new recreation projects

Studies projecting our future resource needs show that our expanding population cannot afford to reduce its potential production of food, fiber, timber, minerals or other natural resources We must not, in our desire to develop recreation, jeopardize the future development of other resources

We have a vital interest in this plan as outlined in Part I, and we will be equally interested in reviewing Part II and hope that we and other interested parties will be allowed to file statements on Part II soon after it is made available.

George A. Craig, Secretary Manager, Western Lumber Manufacturers Incorporated It is difficult at this time to fully evaluate the results of the study since only Part I of the report has been released and Part II is to contain the bulk of the data collected in the study Until the entire report is available, we can only state some general principles which we consider to be deserving of planning for outdoor recreation

1 Public forest areas need not be set aside exclusively for recreation

2 Commercial timber activities build the roads which give access to remote public forest areas for recreational use Such roads will permit greater expanded recreational use of these areas

3 Recreationists bring problems into the woods The privilege of using the forest for recreation carries with it the responsibility for leaving without doing damage

4. There should be more financing of recreation facilities by users of such facilities

5 Areas of public land that are presently set aside exclusively for recreational use are not developed to permit the full volume of use. Public expenditures should be concentrated on such development rather than on the acquisition of more undeveloped areas for recreation.

We hope that these factors may be given attention in any planning for outdoor recreation in California.

Bestor Robinson, representing the Sierra Club· Although this is designed as a recreation plan, we do not consider it a blueprint for action We look upon it as a valuable inventory of ideas as to how to solve a pressing problem We look forward with interest to the more detailed information that will be available in Part II

The first recommendation we make is that an agency, whether we call it the recreation division or recreation commission, be continued for the sole purpose of co-ordination and co-operation in the future development of this plan In using the words "co-operation" and "co-ordination" we emphasize that we not only do not desire but we oppose such a division or commission that is a land holding or an executing agency to do policing or interpretative work That means, as we view it, such an organization should have no power of veto over any plans of other divisions of state government or any locally financed recreation developments Bluntly, I do not see how any federal agency could tie itself closely into a co-operative plan for overall outdoor recreational development in this State if there was any intimation or semblance of the right to veto or control

Our second recommendation is that there be set up very flexible enabling legislation to permit the organization of multicounty regional recreation districts It should be flexible in that it could delegate to each county the administration of any of the particular areas which it had acquired or which it had developed

What we need is official co-ordination between counties which supply the users and the counties which supply the facilities and that includes private and public ownership and all sorts of intermediate phases of it. I am emphasizing flexibility and full public participation through representative organizations evolving these various ideas and solutions. It cannot be done by an administrative agency alone It can only be done by that give and take which results from organizations and public agencies putting their heads together and seeing if they can work out these solutions.

William R. Schofield, California Forest Protective Association· I expect to make a statement at a time when I have had an opportunity to review Part II I feel that Part I itself leads to a good report However, I will reserve that opinion until after I have seen the statistical data.

I would like to suggest to the legislators that any report coming out of the Legislature should be of uniform size. It may be that this elaborate brochure could not be printed in an ordinary report size The format of this book has commendations and it probably is a new departure. I have never seen quite such an elaborate publication coming out of a government agency, but if the second part contains the vital statistics, then I think the first part can well be embellished with a lot of color.

Los Angeles, California—September 20, 1960

DeWitt Nelson, Chairman, California Public Outdoor Recreation Plan Committee. Many hundreds of people, both in and out of government, gave generously of their time and energy in gathering data and making surveys which have provided the basic information used in this report Here in Southern California, 11 counties joined together and gathered a tremendous amount of data which was made available to us. We are indeed grateful for their tremendous contribution. Because of the data and information collected, the report brings into sharp focus the problems and their possible solutions. Recommendations and suggestions are made by which various entities of government may participate independently and co-operatively in providing recreational opportunities and facilities.

We believe the State has a responsibility to provide leadership in achieving co-operation and co-ordination with other units of government in the field of recreation planning If we are to meet the problem, it will have to be accomplished by all working together.

Recreation is not cheap. To acquire, develop and operate all of the facilities it is estimated we will need will involve a multimillion dollar program.

To comment on the multicolor printing process, we felt we were dealing with a rather dynamic subject and after much debate, the committee decided that inasmuch as we were going to issue the report in two parts, we would make Part I in color in order that it have a better attention value and could more easily display some of the graphics we had in mind

W. S. Davis, Assistant Regional Forester, U. S Forest Service: The Forest Service has for a long time felt the need of a co-ordination influence on outdoor recreation management activities in the State. Here for the first time is a co-ordinated effort to determine what we have, how much more we need, and how it can be provided

With regard to the first point, we note on page 74 the recommendation that the federal government should concern itself primarily with overnight use. We feel that this cannot be taken literally. Winter sports is largely a day-use activity Like other day-use recreation activities, the national forest land is the major supplier.

As to the second point, we are convinced that the unifying of outdoor recreation efforts in California is essential and that the needed co-ordination must be accomplished through the co-operative efforts of all concerned.

As a final observation, on pages 70 and 71 of Part I of the plan where a portion of the national forest is in a day-use zone frequented almost entirely by local people, under our multiple-use management directive the Forest Service cannot abdicate its responsibility for managing all of its resources so that they are utilized in the combination that will best meet public needs. Introducing a single-purpose agency into such a situation would make it more difficult to achieve the multiple-use objective.

Thollie R. Calkins, President Travel Trailer Clubs of America: There is a drastic existing shortage in the State of California for roadside rests, en route and destination campsites.

By checking with the Los Angeles County Parks and Recreation Department, the State Division of Beaches and Parks and the National Forest Service, we find only 1,384 overnight camping spaces available for our use which represents less than 10 percent of existing requirements.

A well balanced system of roadside rests and en route (one night) areas should be initiated by the State immediately and all present destination camp areas should be studied to see if the space and facilities of each campground are being effectively utilized.

Recognizing that public-owned areas will not suffice to fulfill total requirements, the problem is how to regulate residential use of trailer parks and private land without restricting desirable forms of recreational development Therefore, existing regulations that restrict the size and facilities of residential trailer parks should not be applied to recreational trailer parks What really is needed are travel trailer parks of unlimited size built to especially serve recreational needs

Joel H. Tedder, Chairman, Western Council of Trailer Clubs: Part I of the Recreation Plan unfortunately covers only general recommendations We are informed that Part II will include information on group and organizational camping and trailer parking

Recreational trailering offers the best outlet for family and group recreation Other recreation offers only a few hours relaxation at any one time By contrast, camping and trailering offer two full days of enjoyment per weekend plus the entire vacation time With this in mind, we object to the thinking of park planners who tell us that the ultimate use of park lands is the day use park

Considering that there is no substitute for camping, we fail to see why the State Park System should not concentrate on camping in preference to day use State parks should be used principally by those traveling for some distance. Trailer tourists are already avoiding California during our vacation season due to lack of facilities and the unfriendly attitude of our law enforcement agencies

E. B. Cordell, Maverick Trailer Club. Mr Calkins and Mr. Tedder have made very definite and pointed testimony which we fully support We believe that they have covered the points very well

Mrs. Flora Doke, Santa Ana Trailer Club: We are a typical trailer club and cater more or less to the family outings on weekends. Other people have covered so much of what I intended to mention, I would only be repeating We concur with the previous testimony

Mrs. Stella Brindley, Santa Ana Trailer Club Most camping trailers are equipped with water tanks and are self-contained, and we have facilities in our trailers to stay overnight We would not need an elaborate setup for our trailers because they are all equipped with butane and lights

All we need is a place to rendezvous. We need it badly. Many places do not care to cater to traveling trailers because they have permanent guests.

Fred J. Desch, Trailer Coach Association, Representing Trailer Coach Manufacturers· I want to take this opportunity to commend Mr Nelson and his staff, including Mr. Aldrich who has done so much of the work in preparing the report which you are considering here today.

I believe that they have done a job here that no other committee that I know of in my many years of legislative activity has done. I mean it is a program which is going to let all of us participate in the future, and it is going to let us, as individuals, know where we stand and what part we have in the program.

We manufacture approximately 85 percent of the travel trailers which are built throughout the nation, and as of July 1 of this year according to the records of the Department of Motor Vehicles, there were 210,000 trailers registered in this State With an average of 2 3 people per trailer, you have approximately a half million people who enjoy trailers today The Motor Vehicle Code prohibits or limits where you can park a trailer, and unless we do have more roadside rests, en route and destination places for our travel trailer people, these people will not be able to go away for a weekend or on a vacation.

Elmer T. Worthy, Past President, Travel Trailer Clubs of America We are an organization of 55 clubs with actual membership of 1,720 trailers I am going to show the transition from the tenter to the trailerist Young people start out with a tent and move into the campsters and then into a travel trailer. We are finding that more and more young people are buying travel trailers and these people are using them a lot more That accounts for the increase in trailers on the highways the year around and indicates the need for more roadside rests, en route and destination parks

Mrs. J. B. Atkisson, California Federation of Women's Clubs, Fresno · The California Federation of Women's Clubs, an organization of 73,595 California women, feels that the California Public Outdoor Recreation Plan is a progressive step in the economy of our State We would like to comment favorably on the recognition the plan gives to the need for water pollution control along the shoreline as well as the need for expanded pollution control to improve water quality for fish and aquatic life.

We also feel that the recommendation that highways be held to a minimum in regions where such roads would have a detrimental effect upon wild or semiwild areas shows constructive thinking. We urge that advance planning for California highways take into full consideration the preservation of state parks and that wherever possible routes be provided which do not unduly damage existing recreational facilities.

We are pleased to note that public lands with high wildlife values, such as those administered by the Bureau of Land Management, were to be held in public trust to perpetuate the wildlife.

Burt L. Anderson, California Recreation Society, San Leandro: In the wise discretion of the legislative body of this State and in the deliberations of this committee as it listens to the arguments, it would seem fitting and proper that several points of view be offered at this time

Reason seems to dictate that final approval of the plan be withheld until Part II is off the press However, it would seem both fitting and proper that the excellent work done by the survey team together with its recommendations be approved.

It seems preposterous that in this day and age we still have many people who take a negative view toward the requirements of their fellow man thus prohibiting natural processes which should have been developed and promoted years ago.

Any plan of this nature finally adopted by the authorities of our government must necessarily include provisions for staff on the state level which will be available to implement the plan in advising and counseling in whatever way necessary. The plan further points out that people in the field are in a dilemma due to the extreme pressure facing them because of the exploding population, the loss of land, inadequate budgets and insufficient personnel.

It is sincerely hoped that you and your associates in the State Legislature be ever mindful that the plan at its best will never operate in the manner everyone desires until it is implemented by the proper appropriation of the necessary funds each fiscal year. Further, where possible and as often as necessary, an inventory should be taken and changes made which will keep the plan up to date.

San Diego—September 21, 1960

Chairman Lowrey: This is the third day of our hearing. We started out in San Jose on Monday, we were in Los Angeles yesterday, and we finish up this series here today A part of this hearing today is to educate us all on the outdoor recreation program. Director Nelson gave us a resume in San Jose and also in Los Angeles It seems fitting and proper that today, on the third day of our hearing, the man in charge of the staff and in charge of preparing Part I of the Plan, Mr. Elmer Aldrich, should go through this report with us today and make his explanations and answer questions from the committee members.

Elmer Aldrich, Director, California Public Outdoor Recreation Plan Committee: The inside cover contains a description of what is in Part I in summary form and a short prospectus of what will appear in Part II. Briefly, Part I presents in broad brush strokes a summary of the findings and recommendations based on an anlysis of recreation needs. In Part II, we will present in more detail the findings of the major surveys, the location and types of recreation areas needed.

The next page treats recreation generally It dwells on the organization that was set up, including the organization of the committee, the advisory council, and the technical consultant group

Chairman Lowrey: Who was appointed chairman of the technical consultant group?

Mr. Aldrich: Sterling Winans.

Chairman Lowrey: Who took his place? He has been in Vietnam for two years.

Mr. Aldrich: I took over the functions of the technical consultant group.

Chairman Lowrey: You took over In the judgment of your group, it wasn't necessary to have an additional chairman?

Mr. Aldrich: The committee discussed this. If you read the law, it says, "The chairman of the committee may . . ."

Page 8 gives a brief summary of the studies and surveys made. It defines outdoor recreation; it treats who needs outdoor recreation It capsulizes the potential we have in California

Chairman Lowrey: Now where do I find "social recreation"? Is there a concept of social recreation?

Mr. Aldrich: I think you picked that up in the article written by *Sports Illustrated* magazine, and I should take this opportunity to explain our position in this article It is entirely erroneous that the *Sports Illustrated* article came out before the advance copy of the Outdoor Recreation Plan was given to the Legislature Upon invitation, at a meeting in San Jose of the California and Pacific Southwest Recreation Conference, our advisory committee and technical group appeared to give a final review and to ask for recommendations and comments The assistant to the editor of *Sports Illustrated* was present to cover this meeting He discussed with us the possibility of writing an article on this because it was recognized in New York as a breakthrough in social planning. Director Nelson and I made a very strong point to this gentleman that we didn't want the Legislature and the Governor "scooped." It was imperative that no article come out in

advance of the release of the plan, and he agreed to this As you note, the times were very close, just a matter of a few days Because of this closeness and some releases statewide, there has been an erroneous opinion that *Sports Illustrated* did scoop the advance copy to the Legislature

Chairman Lowrey: For benefit of those present, we are referring to an article that appeared in *Sports Illustrated*, a national weekly magazine, with 1,000,000 circulation This article appeared on March 21, 1960, before the plan was given to the Legislature

Mr. Aldrich: On page 9 is a brief summary of the organization to develop the plan and a brief of the studies and surveys As we look back on the organization established by the legislation, we of the staff many times recognize it was the best approach because we accomplished two things by having a large advisory council and a technical consultant group It not only provided us with a wonderful reservoir of professional talent, but it also brought along a group of people which largely must put it into effect We found it a most difficult task, because the field is so broad, to determine how we could best spend our time and money We had to get the best cross section of public needs and yet be inexpensive and be within the limit of our time I would like to say that even by calling in the experts in the field, we still underestimated the time it would take to analyze the data. This, I believe, was one of the reasons for missing our target date of March 1960 to present the Outdoor Recreation Plan to the Legislature. We had the alternative of throwing out the data gained and not using it or taking longer and completing it.

On pages 10 and 11, you see a graphic presentation of the breadth of the recreation field in California with our classification as mentioned in the table of contents of *Outdoor Recreation* We did feel it was necessary here, in a graphic way, to show that recreation is a lot of things as well as a big business

Page 12 treats the subject of who needs outdoor recreation, which is an attempt in the first part to have the reader become acquainted with people

Chairman Lowrey: Would you give me your impression of the thought of these four photographs on page 12?

Mr. Aldrich: I believe the general approach on this was to display a cross section of the population all the way from people who are interested in each other to people in the full gamut of recreation, as they progress through life I think we should admit right here, because of the tremendous rush in production, we probably slipped up in the final review of the selection of these photographs But I might say this, a fellow who worked on *Life* magazine said to me, "I'll bet that as a result of pages 12 and 13 you have more people reading this document than you would have otherwise "

Assemblyman Francis: For the last two days I have heard comments from the department about the rush, the pressure and the deadlines Considering that the department has this large staff of professional and technical people, what do they mean by this rush and deadline that I have repeatedly heard? Certainly you had adequate funds It seems to me that you did engage the necessary personnel

from time to time Mr Nelson told us yesterday you even had a color expert at $100 a day, and still you didn't have time to check the final proof.

Director DeWitt Nelson: I might make a brief comment on that. There were delays in printing that must be shared by all of us, the printing plant and ourselves For several reasons we did not get a chance to give a final proofing of the copy I think I will probably have to assume the responsibility for that because I am the person that caused the final rush in the printing plant which prevented our having the chance to review.

Chairman Lowrey: When there are 480 pages or more of material "plopped" down in the printer's office and the printer starts to print something and it won't print because it is an impossibility printing-wise, I am not going to let the director take complete responsibility for that The staff should have had enough foresight to know and have things edited down before they delivered the 500 pages to the printer The director and the printer may have a certain amount of responsibility, but indirectly only I place the complete and total blame on the staff that was making this preparation I charge inefficiency

Mr. Aldrich: What you and I and the general public are going to be demanding in recreation in the future is covered on page 14 Included here is an analysis of the trends of leisure time, an analysis of the trends in income, primarily spendable income, and an analysis of mobility of the public When you take these three factors and apply them to the basic population trends, you have your basic formula for appraising what you and I are going to want.

Chairman Lowrey: Refer to page 15 The average number of holidays granted full-time workers is not more than five days each year Isn't it closer to eight? I had some technicians write me on this and they were quite upset that the figure was set at five instead of eight

Mr. Aldrich: We were quite amazed to learn this, but we did employ the best statisticians, industrial relations men, the Bureau of the Census, and other agencies to tell us exactly what those figures were.

Chairman Lowrey: On page 16, I quote, "People spend most of the year at home or in nearby areas" Why do we have to be told that? I am not questioning the fact where the recreation is, but don't most people sleep in their homes?

Mr. Aldrich: I think it would be rather interesting to look over the data sheets of the surveys When we get back into the last 11 pages which indicate the blocks of leisure time and their availability, this will become obvious It leads into our entire zone concept, which treats the needs of people in relation to the home base Briefly, I might describe our four-zone system.

Chairman Lowrey: I think most of us are familiar with it. As far as I am concerned, it is the most valuable and commendable new concept that has been presented in this whole report

Mr. Aldrich: Pages 18 and 19 lead into an appraisal of diversity of factors that you must consider that supply a wide variety of recreation potential in California. It talks about topography, climate, vegetation and the animals living in these regions, which leads to pages 20 and 21

in which we define a new type of land classification called recreation regions Pages 22 and 23 go into further photographs of what these regions look like Pages 24 and 25 merely put the cap on it and brings together all of these recreation regions and says this now equals versatility in California

Chairman Lowrey: I certainly have no disagreement with you about this illustration, but over here on page 26 is another one of these profound conclusions· "Recreation travel by automobile is primarily for the purpose of reaching a recreation destination, though sightseeing or taking a drive are popular." Those are the things that irritate my intelligence and appear throughout the whole report.

Mr. Aldrich: To make that statement, we had to analyze over 50,000 survey forms which defined the difference between the needs of people and actually what they do in this kind of recreation travel. This is one of the dangers we encountered in putting out two kinds of reports One for general impression that would make people appreciate the total concept of what recreation is and the other one, more specifically for technical people The table on page 29 indicates why people take one-day sightseeing round trips We found that all too often people said that recreation is synonymous with sweat, which we hope is not true This is why we did classify a type of recreation that would permit people to go out and just look at something.

Chairman Lowrey: Under "Recommendations" still on page 29, "Recreation usage of highways will continue to increase and should therefore demand a high priority for highway location, design and appearance " Does the Division of Highways agree with you, and how do you accomplish the last clause? That is, how do you keep local people from taking advantage of the rest stops, turnouts and scenic overlooks?

Mr. Nelson: We have gone into this problem in several sessions, and there is considerable change in the thinking of the Division of Highways in regard to recognizing the scenic and recreation values that accrue through the highways. With roadside rests, we put them far enough removed from the communities so they do not become picnic grounds but are available primarily for the traveling public. We have not had any serious trouble with the rests we have

Chairman Lowrey: Under the subject of sightseeing on pages 30 and 31, we have the following statement "Sightseeing and study is a strong element in the total outdoor recreation picture. The predominant group participating in sightseeing was the family with children, older adults were also an important group. The Sunday drive or weekend drive was favored " That is another one of those simplified statements that kind of rankles me a little bit

Mr. Aldrich: Page 32 gets into the subject of recognizing sightseeing and study as an activity There are four things that people look at in this type of thing They look at outstanding elements and scenic landscape. They go specifically to see historical artifacts and monuments They look at contemporary manmade developments They go to events such as rodeos, festivals, etc. We have classified these things and data on this will be coming out in tables in Part II.

Chairman Lowrey: Are there any specific comments? We would be happy to have them. If not, we had better stop The next time we have a hearing whether it be when Part II is out or whenever we can, we will hear more of your specific recommendations.

Mr. Nelson: I would like to state that I think it is important that the committee review this page by page and we will look forward to going over the rest of it with the committee

Mr. Aldrich: The most critical thing to meet now is a matter of co-ordination I know the staff and the Outdoor Recreation Committee feel we have accomplished a great deal in not abrogating the rights of any level of government to produce its fair share of recreation, but we do offer here for recreation that the State become the co-ordinator in this field. We don't care who does it or how, but the State should assume this. We find that at the local level of government and at the federal level and from other agencies there seems to be pretty good agreement that it is the State's responsibility for this co-ordinating function.

Gentlemen, it is up to you to assess that responsibility and place it on the shoulders of someone. We have offered an action program that you can use as an entree to pick up this ball and run with it.

Chairman Lowrey: Has there been any discussion between you, Mr. Aldrich, and the Governor or any immediate confidantes of the Governor in regard to the implementation of this plan?

Mr. Aldrich: Yes.

Chairman Lowrey: Would you care to enlarge upon that a little?

Mr. Aldrich: Talking with Governor Brown, I found him very susceptible and interested in this problem We talked at some length as to how it could be solved We dwelt somewhat on the role of the State as a co-ordinator and suggested that if he was interested, we could develop it, recommending to him a program that might help in this matter We are at this stage, Mr. Lowrey, of trying to develop that program.

Chairman Lowrey: Is that ready for presentation to the Legislature at the next session?

Mr. Aldrich: No, for recommendation to the Governor. He has asked me under the leadership of DeWitt Nelson to recommend a program which the Executive Branch could take a look at and possibly assume to solve this intergovernmental problem.

Chairman Lowrey: Have methods of financing and implementation through legislation been discussed by you with the Governor or any of his staff?

Mr. Aldrich: Yes, we have discussed both financing and legislation.

Chairman Lowrey: How far along are you on the legislative recommendations? What have you done?

Mr. Aldrich: We have discussed to some extent the need for legislation which would make permissive the development of regional federations or a co-operative government to handle our regional problems, with major emphasis on co-ordination to allow all governments involved to work co-operatively, most of which carries the obligation for financing

Chairman Lowrey: When do you propose that you will have a program to present to the Governor?

Mr. Aldrich: We are trying and hopeful for a date in October.

Chairman Lowrey: If you are that far along, you must have it pretty well compiled Would you be willing to supply what you have to us by October 1?

Mr. Aldrich: I feel that I have a specific request from the Governor and perhaps I ought to discuss it with him

Chairman Lowrey: Very well Personally, I don't care what the Governor does with it I said by October 1 (See Exhibit "B")

William B. Morse, Field Representative, Wildlife Management Institute The report is commendable Its subject matter covers the field and its appearance is superior In addition to being a report on recreation, it is a document that can be of the greatest assistance in educating the public We will not comment on individual portions of the report Statistical details and recommendations cannot be discussed on the basis of facts and sources until Part II is published All organizations interested in recreation can then study Part II and present their views based on data used Any criticism of the details of this report are premature before then

H. M. Weber, M D, California Garden Clubs, Inc: In the *American Forest* magazine in August, 1954, there appeared a review of the life of Aldo Leopold who during his lifetime wrote some revolutionary conservation conceptions One of his most important contributions appeared in connection with the subject of recreation

Aldo Leopold might properly be called the patron saint of the outdoors Speaking of recreation, he wrote "The only true development in American recreational resources is the development of the perceptive faculty in Americans" That epigram should have by this time shown the American people that the conception of recreation should fit the demands of the year 1960 and not that of our forefathers of 1860. Recreational development is a job not of building roads into lovely country but of building receptivity into the still unlovely human mind.

Albert J. Haberger, County of Imperial Supervisor Langley and I came here primarily as observers and to learn something The course of action you are pursuing in reviewing this report is really of no interest at this time since we have not had an opportunity to review the report However, I would like to make a few remarks regarding recreation as we see it in Imperial County.

We have a problem in the area known as the Salton Sea, a body of water 34 miles long and 15 miles wide which, until a number of years ago, had been considered just an overflow of drainage water In the last four or five years, the interest in this area has been tremendous, and the use of it has grown year by year On some weekends we have as many as 35,000 people around the Salton Sea for recreational purposes of boating, water skiing and fishing This is a tremendous responsibility for the County of Imperial, a small county with rather limited resources in the way of tax money. Most of the recreational users come from the Los Angeles and San Diego areas, and my supervisors and I had hoped that this committee would take this into consideration in their report and in any final decision regarding recreation.

We have a great potential in Imperial County However, we are limited by our financial resources and do not forget that on the facilities such as the Salton Sea with wave action up to eight feet, the same as a sea, the County of Imperial cannot efficiently enforce law and safety

Arnold Hoke, Location Chairman, San Diego Travel Trailer Club: I am just a little bit confused over this meeting here this morning We have devoted all morning to this report and nothing has come up about the things my group is interested in We are interested in what the program is, what it is going to be, what recreational facilities we will have in Southern California

Assemblyman Francis: Sir, I think this report does exactly that if you glance through it and if you read Director Nelson's statement He outlines it very comprehensively and excellently, taking each phase of what the report does cover and what the plans are for the future Now if you could tell us as a citizen what you think should be done, this would be very helpful to the committee because we want an expression from the public That is why we conduct these hearings at various cities throughout the State

Mr. Hoke: I would like to stress one point, that is that we do not expect the State to pay the way for us We are perfectly willing and capable of paying a fee for these recreational facilities which we feel should be provided We are able to help maintain and carry some of the overhead cost

I have a little text here which I will read This is offered in evidence by the San Diego Travel Trailer Club, Inc , a member of Travel Trailer Clubs of America, consisting of 50 member families We usually hold outings within a 100-mile radius and have an attendance of from 30 to 35 trailers and suitable locations for this number of trailers over a single weekend presents a problem Some of these are described under the following headings

1 Privately Owned Trailer Parks The De Anza Trailer Harbor, San Diego, is the only privately owned trailer park within 100-mile radius which can legally accommodate 35 weekend trailers The De Anza charges $3 per day Most of our members consider this daily rental charge too expensive, regardless of their ability to pay. The generally accepted rate is $1 to $1 50 per day

2. San Diego County Parks There are only two county and one city recreation park open the year around One of these is Caliente, the other is Lower Otay County Park The city park is Morena Other San Diego County parks are available from October until May Too many of our county parks are considered too small to accommodate 35 trailers There is a charge of 75 cents plus electricity at these parks and there has never been any complaint from our members over this amount.

3 State Parks The Anza-Borrego State Park is a godsend during the late fall and winter Much of this area is not much over 100 miles and we have used the facilities Our members do not object to a charge of $1 or $1 25 for such accommodations Our greatest need is for trailer parking sites on the beaches which, after all, are the property of the State, and we suggest that such parking have an area of minimum facilities which may be reserved for trailer outings

4. Roadside Rests Here is a point that I would like to stress Some of the states back east have made outstanding progress while here in California there is a decided need for more roadside rests They should consist of a ramada large enough for two cars with trailers, and we emphasize that these spaces should be simple and constructed solely for utility.

5. The users of travel trailers are increasing tremendously, and this trend will continue necessitating more trailer parking space We realize the problem that the State is up against, but instead of doing so much planning, we would like to see a lot more action.

William C. Carson, Director, Travel Trailer Clubs of America, Modesto, California. During the 1959 and 1960 season, the tenters represented about 40 percent, the auto-camper about 25 percent and the travel trailer 35 percent Of these trailers, there are two types—the dependent and the independent

In getting into various state parks, some of them have hook-ups for the dependent trailer but very few yet have for the independent trailer In this report, I see where it says four spaces available for tenters In the case of a trailer or an auto-camper, you can put eight in the same space with less policing than you have with the four. Another factor that we have as far as the trailers are concerned is space for group activities That is very badly needed because of these clubs.

With regard to the roadside rests, that presents quite a few problems You will find that a good percentage of those pulling trailers are in the elderly ages They need a spot to pull off the highway. Whether a governmental agency will take care of it is not for us to say, but people traveling need these roadside rests Other states are way ahead of us in that particular setup.

Pauline Des Granges, City of San Diego Park and Recreation Department· Personally, having worked in the field of recreation, I am most interested in the Outdoor Plan as it was presented The overall fact is that it can bring to all of us some of the thinking that we must do particularly in relationship to land use and land development as we look at our state growth.

Unless we plan our recreation, we are going to be in a sad situation. Certainly the trailer interests, the conservation interests, the sports interests, the many wildlife interests, all of us have a great stake in this The plan to me in its entirety is for this purpose· to create interest, to act as a guide for us in seeing our State grow

LIST OF PERSONS TESTIFYING BEFORE THE COMMITTEE

San Jose—September 19, 1960

DeWitt Nelson, for the California Public Outdoor Recreation Plan Committee
Thomas M Wilson, Richmond, California
Betty Croly
Mrs Morris Erskine for Citizens for Regional Recreation and Parks
Harry Doughty for the Northern Counties Wildlife Conservation Association and the Pines to Palms Organization
Richard Davis for Travel Trailer Clubs of America, Inc
Mike Pellock for Merced County
Leigh S Shoemaker, County Supervisor, Sonoma County
Carl Kelly, Chairman of Recreation and Parks Commission, County of Mariposa
John Baumgartner, Jr for California Cattlemen's Association
George A Craig for Western Lumber Manufacturers Inc
Bestor Robinson for Sierra Club
George J Cavalier for Santa Cruz Chamber of Commerce
W. R. Schofield for California Protective Association

Los Angeles—September 20, 1960

DeWitt Nelson
W S Davis
Thollie R. Calkins
Joel H Tedder
E B Cordell
Mrs Flora Doke
Mrs Stella Brindley
Fred J Desch
Elmer T Worthy
Mrs J B Atkisson
Burt L Anderson

San Diego—September 21, 1960

William B Morse
DeWitt Nelson
Elmer Aldrich
Dr H M Weber
Albert J Haberger
Ray Langley
Arnold Hoke
William C Carson
Pauline des Granges

EXHIBIT "A"

JOINT LEGISLATIVE BUDGET COMMITTEE
SACRAMENTO, CALIFORNIA, September 15, 1960

HON LLOYD W LOWREY
Assemblyman, Third District
P. O. Box 23, Rumsey, California

DEAR ASSEMBLYMAN LOWREY. In response to your request for financial information concerning the California Public Outdoor Recreation Plan and estimates as to costs of some of the programs contained therein, the following is offered for your consideration.

The California Public Outdoor Recreation Committee, as such, has not been financed beyond July 1, 1960, in so far as per diem expenses for committee membership are concerned The committee, nevertheless, has continued to function on an "ad hoc" basis, meeting as required without payment of expenses However, the committee's staff engaged in preparing the report, particularly Part II, have continued to function on the basis of assignments from other state agencies with their salaries being part of their own agency budgets At present an editor is being furnished by the Division of Mines, a recreation planner is being furnished by the Division of Beaches and Parks, a recreation specialist is being furnished by the Division of Recreation and a senior stenographer clerk is being furnished by the Department of Natural Resources This form of contributed service has of course been furnished all through the operating life of this committee in accordance with the legislation which established the committee The contributed staff will continue to work until Part II of the report has been sent to the printers and their salaries will continue as part of the budgets of the agencies they normally represent.

There seem to be a number of variations in the supposed cost of printing the report For example, the Department of Natural Resources, whose accounting facility had to prepare all payment documents, states that the amount they transferred to the printing plant was $12,628 43. In addition to this they paid, to an artist, $2,186 52 for art work necessary in the printing job This would make a total of $14,814 95. The total printing run was 6,000 copies The printing plant on the other hand claims that the total cost of production was $14,961 43, from which they allowed a credit of $2,333, for which they retained 2,000 copies of the run to be sold through their document section and presumably thereby to recover this credit The reduction in the figure quoted above, by the amount of the credit would result in a new cost of $12,628 43 However, if we were to add all of these figures together to arrive at the total production cost which would include the amount paid by the Department of Natural Resources to the artist, we would get a total of $17,147 95 It should also be pointed out that included in the printing plant's cost was $3,000 also paid out for art work so that the total cost for art work would come to approximately $5,186 52, which would be contained within the figure of $17,147 95 mentioned above Normally, art work of this type is not considered a part of printing costs per se, but is considered part of the editorial costs. On this basis

it would appear that the actual cost for composition, typesetting, lockup, platework, press time, proofreading, binding, etc, would be $11,961.43 for 6000 copies.

The cost of the study prior to going to press, which would include research, data collection, conferences, writing and editing, etc, is even more difficult to arrive at The Legislature actually provided for a total of $320,083 to the California Public Outdoor Recreation Committee for this work. In addition, it directed that appropriate state agencies would co-operate and contribute as much as possible towards the study and the compilation of data As of June 1960 it was estimated by a member of the staff of the committee, that approximately 8,500 man-weeks of work had been contributed by agencies other than the committee and its staff This included not only state agencies, but local recreation organizations, city and regional planners and other levels of government Assuming a very conservative average of $100 per week as a value of this contributed service, we would have a total of $850,000, which added to the actual funds provided by the Legislature would indicate that the cost of the study exceeded $1,170,000, prior to going to press with Part I of the report As noted above, we believe that this estimate of cost is conservative, if we assume any accuracy as to the number of contributed man-weeks Actually, the cost may be closer to $1,500,000

Hypothetical Costs of Some of the Programs Contained in the California Public Outdoor Recreation Plan, Part I

The formulas or criteria set forth in the plan for various recreational activities are not entirely clear-cut However, we have endeavored to extrapolate from what has been furnished in the report some figures as to the needs for additional facilities by the year 1980, together with estimates of cost based on previous experience With the exception of shoreline swimming facilities, we have made no attempt to estimate the cost of land that might be involved, but have estimated only the cost of developing the necessary facilities.

The plan on page 38 estimates that the demand for picnicking units in the year 1980 will require more than 150,000 such units as compared with the 58,000 publicly owned units estimated to be available in 1958. This would mean a difference of 92,000 additional units required by 1980 Assuming that a picnic unit consists of a table with benches and some form of outdoor cooking facilities, together with commensurate shares in providing comfort stations, water supplies, access roads and parking, the cost of each such unit would be approximately $730 at current index values This breaks down to $300 for a table and benches, cooking facilities and the necessary site preparation, plus $180 per unit for a share of the cost of a comfort station based on one standard station to each 50 units, $100 per unit for a share of providing a water supply and $150 per unit for a share in providing access roads and parking facilities. The latter two figures we consider to be quite conservative At $730 per unit for an additional 92,000 units we would need to provide approximately $67,160,000. This would be exclusive of such overhead costs as the share of entrance

contact stations, repair and maintenance facilities, employees residences and other factors needed to make a completely operable area in which picnic facilities would be available.

Based on other criteria expressed under the heading of "Picnicking" in the plan, the area needed for the additional picnic units would run somewhere between 5,500 and 12,000 acres It would be difficult to estimate the cost of such acreage since it would vary widely depending on its location in the State

The plan on page 41 estimates that there will be a need for facilities to provide 1,478 camper-days for every 1,000 persons in California in 1980 Since it is estimated that the population of the State by 1980 will be 28,500,000, this would mean a total of 41,983,000 camper-days. The plan goes on to suggest that the optimum use of each camp site would be 300 camper-days which would mean that by 1980, a total of 140,000 overnight camp units would be required throughout the State. As of 1958, there were estimated to be approximately 29,000 publicly-owned overnight camp units leaving an additional 111,000 to be provided by 1980 We have estimated that the average costs per camp site would be approximately $890 consisting of $400 for a camp table and benches, cooking facilities, food cupboard and site development, $220 for a unit share in the cost of a combination comfort station which would have shower facilities as well as toilet facilities, $120 which would be the unit share for a water supply and $150, the unit share for access roads, since camp sites would be more widely separated than picnic sites Parking facilities would, of course, be a part of each camp site. This would result in a total cost of over $98,790,000 by 1980 to develop these facilities, exclusive of land On the basis of four camping units per acre of land, this would require a minimum of 27,750 acres excluding other corollary site development and facilities needed to support the camping units Since this acreage would be scattered all over the State it would be difficult to make an estimate of its cost.

The plan on page 47 states that by 1980 there will be a need for 700,000 effective feet of shoreline needed to provide ocean swimming and recreational opportunities for the State's population in 1980. An effective foot is defined as one lineal foot of shoreline having a 100 foot-wide band of water suitable for swimming backed up by a 200 foot-wide strip of beach and a 100 foot-wide buffer zone for utilities and picnicking, plus 265 feet for parking or a strip one foot long by approximately 565 feet wide or 565 square feet of usable beach and upland area The present availability is approximately 230,000 effective feet, leaving a shortage needed to be provided by 1980 of approximately 500,000 effective feet We have estimated that the cost to purchase one effective foot as described would be approximately $700, or a total of $350 million to purchase the kind of shoreline suitable for the purposes described This would be exclusive of all development costs for comfort stations, beach picnic facilities, parking facilities, water supplies, bath houses, etc

The plan on page 50 states that for boating purposes there would be a need, by 1980, for about 8,900 access units as compared with approximately 1,275 now available An access unit is described as a facility capable of launching one boat at a time and having the capacity to serve 125 trailered boats or storage facilities for 100 non-trailered boats.

We have estimated that on a conservative basis the cost to construct such an access unit and provide berths, gas docks, launching and retrieving facilities, parking areas, shower and rest facilities would be not less than $75,000 per unit exclusive of the cost of land Since the additional number of such units needed by 1980 would be 7,625, then it follows that the total cost would probably exceed $571,875,000

Irrespective of the accuracy of the estimates, it should be borne in mind that the plan does not imply that the facilities mentioned would all be provided at state expense, but represents financing by all levels of government

I trust the foregoing will supply the information needed for your hearings If there are any further data that you require please let me know

Sincerely,

(Signed)

A ALAN POST
Legislative Analyst

EXHIBIT "B"

DIVISION OF RECREATION
October 19, 1960

HON LLOYD W. LOWREY
Member of the Assembly
State Capitol
Sacramento 14, California

DEAR MR. LOWREY: In accordance with our telephone discussion today, and with approval of the Governor's office today, I have enclosed another copy previously given to you by the Governor's office, of a draft of the *Proposed Recreation Program for Consideration* of the Governor.

This program was requested of me by the Governor by October 1960, and was transmitted by Director DeWitt Nelson on October 6, 1960.

Sincerely,
(Signed)

ELMER ALDRICH, Chief
Division of Recreation

STATE OF CALIFORNIA
Sacramento 14
Date: October 6, 1960

To: EDMUND G. BROWN
Governor of California
State Capitol
Sacramento 14, California

From: Department of Natural Resources
Office of the Director

Subject Recommended Governor's Policy and Program in Recreation

Enclosed is a recommended Administration policy and program in recreation which has been prepared by Elmer Aldrich, Chief of the Division of Recreation, at your request, with the help of the State Recreation Commission

I have reviewed this statement, and recommend it to you for your adoption

DEWITT NELSON, Director

PROPOSED RECREATION PROGRAM FOR CONSIDERATION OF GOVERNOR

REASONS FOR NEW POLICY AND PROGRAM ON RECREATION

As Governor of California, head of the executive branch of state government, I am proposing a new policy and program for meeting the recreation needs of the citizens of California for the following reasons.

(1) In my personal and public life I have, for many years, been interested in participating in a wide variety of recreational activities and fostering good government to improve the opportunities of the citizens of California to make wise and enjoyable use of their leisure time

(2) In accordance with law the Governor, the President of the Senate and the Speaker of the Assembly, have been officially designated to receive for implementation the California Public Outdoor Recreation Plan This plan establishes California as a leader among states in comprehensive planning for meeting total recreational needs The development of this excellent plan was initiated by the State Legislature I intend to use it wherever possible, working with the Legislature, to foster a new and progressive program in the field of public recreation

(3) Many organized recreation interests, planning agencies and groups, legislators and members of the general public, have been requesting that I establish for the executive branch of state government a policy and positive program, broad in scope and comprehensive as to all levels of government, for improving the availability of recreation areas and facilities in the State

THE GROWING RECREATION PROBLEM

Among the problems facing all levels of government, recreation is one of the most vexing and complicated, because it cuts across so many fields of government endeavor

(1) Tremendous deficiencies in recreation facilities to meet present needs are evident In the next 20 years, when the population will approximately double, the expected demand in outdoor recreation alone will increase up to eight times

(2) California will have greater problems because of increasing competition for the use of lands As a result, four major problems will be more pronounced in the years to come:

   (a) Competition for land space between recreational and nonrecreational needs, such as timber, agriculture, mining, public works and urban development

   (b) Competition for land use between different types of recreational demands.

(c) Determination of the relative role of government to private enterprise in meeting total public recreation needs.

(d) Where public recreation must be met by government, determination of what level and which agencies can best supply specific recreation needs, with minimum overlaps and gaps in services

(3) With the impending imbalance of recreation demand over supply, government programs to meet recreational needs must be carefully developed, so that they will enhance the moral tone of our society.

STATE RECREATION POLICY

The urgency to take concerted action on the above problems in order that all citizens may make the best use of their increasing leisure, necessitates the adoption of the following policy on recreation by my administration:

(1) Recreation shall be considered of similar importance to other major state services, such as the provision of highways and other public works; provision of penal and mental institutions; conservation of natural resources; development of agriculture; education; and improvement of employment conditions.

(2) The State shall assume new leadership in co-ordination of efforts to meet total recreational needs of the citizens of California. As recommended by the California Public Outdoor Recreation Plan, co-ordination effort will seek to encourage all agencies and levels of government to assume their responsibilities rather than abrogate the rights of home rule by local government or usurp prerogatives of federal agencies. All co-ordinating efforts shall give equal consideration to those counties blessed with abundant recreational resources, as well as those counties containing the major populations; and shall consider the problems of government and voluntary agencies; as well as private enterprise, which will be encouraged to meet some of the public recreation needs.

(3) In seeking to have all interests work together to meet public needs, all recreation activities and interests shall be considered Recreation ranges from types of mass activity, such as spectator sports, through the cultural arts and social and family activities, to individual passive recreation, such as that enjoyed in the wildland areas

(4) Minority and majority interests shall be considered in fair proportion in the establishment of a state program and co-ordination of other efforts to meet total recreation needs Special attention shall be extended to those groups in our society for whom opportunities are scarce, such as youth and the aged in the crowded inner core of cities; minority group children in many communities; children of migrant families; and the mentally and physically handicapped

(5) The development of the state's role in co-ordinating all governmental efforts to meet recreation needs requires that recreational planning shall be done in concert with total land use planning, where all needs are considered

(6) In view of the unquestionable need to expedite the acquisition of suitable recreation areas and open space for recreation, high priority must be given to devising methods for securing these lands or reservations of open space, and for their development As part of the long-range land use planning that must be carried on by the State, there shall be a continuing evaluation of recreational demand and supply in order that future needs and trends may be forecast more accurately and suitable programs developed

(7) State government shall do all in its power to improve the training of professional leadership to meet the recreation challenge.

IMPLEMENTATION OF RECREATION POLICY

The policies outlined above indicate the general fields of responsibility of state government in meeting total recreation needs In order that these policies may be carried out vigorously, I am implementing them with a program of action:

(1) The development of special programs for those agencies of state government which supply areas and facilities for public recreation The State must continue to accept its share of the responsibility in meeting public recreational needs for hunting and fishing, water recreation, and recreation gained through the State Park System. I am taking steps to formulate immediately an Interdepartmental Committee on Recreation, to assure that state agencies supplying recreation will plan and co-ordinate their efforts.

(2) I am assigning to the Chief of the State Division of Recreation, through the Director of Natural Resources, and with the help of the State Recreation Commission, the major responsibility for co-ordination of recreation efforts of all levels of government to meet total recreation needs. I am asking that adequate advisory groups be established which are representative of public recreation interests and of all levels of government involved in supplying recreation. Adequate statutory authority is already provided for this co-ordinating function (Section 8700, Public Resources Code).

(3) Because of the immediate intergovernmental problems involved, I am asking the Division of Recreation to give leadership and highest priority to the development of a program for meeting county and intercounty regional recreation needs which now lie in an overlapping area between the responsibility of the federal and state government on the one hand, and city and county government on the other.

(4) I am asking that the legislative authorization for completion of the state land use and development plan be implemented as soon as possible, and that the Division of Recreation assist the State

Office of Planning as necessary to insure adequate consideration of recreation in that plan.

(5) In order to improve the quality and quantity of trained leaders to meet recreation needs at all levels of government and in private industry, I am asking that a joint appraisal be made by the Department of Education and the Division of Recreation as to immediate needs for higher educational training It is essential to train professionals with an understanding of the full scope of problems in the recreation field Based upon this appraisal, future action will be forthcoming.

(6) To enhance common understanding of all levels of government, volunteer groups and those working in private enterprise in the recreation field, I am asking the Division of Recreation to develop and carry on a series of annual in-service training workshops for professional and volunteer leadership.

(7) In recognition of the need for common data with which all recreation agencies can work, I am asking the Division of Recreation to complete the analysis of a wealth of unevaluated material in the files created by the California Public Outdoor Recreation Plan Committee, synthesize the important factors in this data, and make the information available to all interested agencies and research groups. It is essential that the Division of Recreation keep this data current by a continuing program of surveys and other types of studies.

(8) At an early date I am calling a meeting of legislators of both parties particularly interested in the field of recreation and leaders in recreation agencies, to consider legislation which would be of value to all levels of government in meeting recreation needs in a co-ordinated manner.

(9) In consideration of the great social value of recreation and the part it plays in the use of our leisure, I will convene a Governor's Conference on Recreation and Leisure in 1962.

(10) I am encouraging the Division of Recreation to continue its high standard of service to agencies, to expand this service as necessary, and to stimulate private enterprise so that all efforts may be co-ordinated to meet needs.

October 6, 1960

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ASSEMBLY INTERIM COMMITTEE REPORTS
1959-1961
VOLUME 26 NUMBER 1

ECONOMIC AND FINANCIAL POLICIES FOR STATE WATER PROJECTS

House Resolution No. 293, 1959
Assembly Concurrent Resolution No. 198, 1957
Assembly Concurrent Resolution No. 149, 1959

MEMBERS OF COMMITTEE

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PAUL J LUNARDI, *Vice Chairman*

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CARLOS BEE
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JOHN C WILLIAMSON
EDWIN L Z'BERG

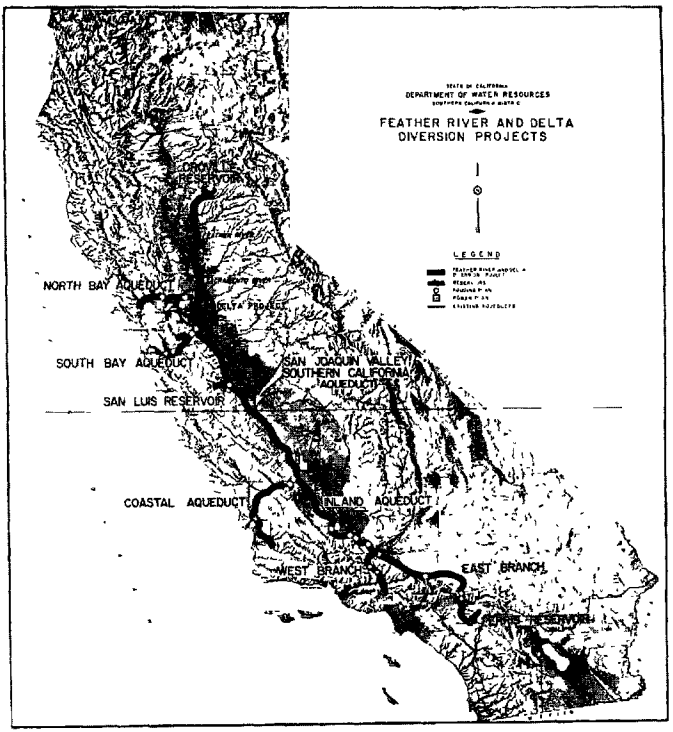
February 1, 1960

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

RALPH M BROWN
Speaker

CARLOS BEE
Speaker pro Tempore

ARTHUR A OHNIMUS
Chief Clerk of the Assembly


STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
FEATHER RIVER AND DELTA
DIVERSION PROJECTS
LEGEND
NORTH BAY AQUEDUCT
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WEST BRANCH
EAST BRANCH

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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON WATER
January 11, 1960

HON RALPH M BROWN, *Speaker of the Assembly*
Members of the Assembly
State Capitol, Sacramento, California

GENTLEMEN The Assembly Interim Committee on Water submits herewith its final report on economic and financial policies for state water projects Work on this report was started by the Joint Committee on Water Problems pursuant to Assembly Concurrent Resolution No 198 (1957 General Session) Assembly Concurrent Resolution No 149 (1959 General Session) resulted in transferring the work to the Assembly Interim Committee on Water for completion An interim report was issued under the title of Twelfth Partial Report of the Joint Committee on Water Problems This final report also covers your committee's conclusions regarding Assembly Resolution No 293 and Assembly Bill No 2861, (1959 General Session) which were also assigned to the committee

The attached report does not directly concern itself with Senate Bill No 1106 or any other water legislation Pursuant to Assembly Concurrent Resolution No 198, it sets forth the committee's general conclusions on economic and financial policies for state water projects resulting from work extending over a period of three years and including 36 days of hearings or work sessions To the best of my knowledge, this is the most comprehensive investigation yet undertaken by a committee of the State Legislature

As more fully set forth in the body of the report, your committee has concluded that water from state projects should be priced to recover all costs incurred in its delivery There should be no state subsidy to water users and other project beneficiaries, although local distributing agencies may choose to price the water to recognize differing values of the water to the ultimate consumer A state pricing policy on water which recovers all costs involves no subsidy and no need for the State to limit deliveries of water to those who are willing to pay for it Project power should be priced at its market value and used to operate the project pumps Under such a pricing policy the committee feels that there is no need for an acreage limitation as contemplated in Assembly Bill No 2861 or in some different form

The committee wishes to express its appreciation to the numerous organizations, state agencies and private citizens who have contributed generously of their time and talents The members wish to express particular gratitude to those Senators and Assemblymen who were on the Joint Committee on Water Problems and who worked on the subject matter of this report before the Legislature discontinued the use of joint committees These legislators bear no responsibility for the con-

tents of this final report Because the authority for this work and the conduct of more than half of the work were concurrent or joint between the Assembly and Senate, your committee requests that copies of this report be furnished to Members of the Senate

Finally, your chairman and committee members wish to thank the Legislative Counsel Bureau, the chairman and staff of the former Joint Committee on Water Problems and those members of the staff of the Legislative Analyst who have provided technical and staff services to the committee Their invaluable assistance made the task of the committee much easier and more profitable

Respectfully submitted,

CARLEY V PORTER, Chairman
Assembly Water Committee

JACK A BEAVER
CARLOS BEE
MYRON H FREW
ERNEST R GEDDES
FRANK LANTERMAN
HAROLD K LEVERING
FRANK P BELOTTI
(in part)

JOHN L E COLLIER
(with reservations)
EUGENE G NISBET
JACK SCHRADE
(with reservations)
HAROLD T SEDGWICK
BRUCE SUMNER
JOHN C WILLIAMSON

I. INTRODUCTION

California has a long history of water resources development. Initially this development was by private enterprise but after 1872 irrigation and other public districts were organized and began constructing projects In the mid-1930's the Federal Government began intensive construction of major projects During the last decade the State of California entered the water resources development picture with the planning of the Feather River Project and creation of the Department of Water Resources in 1956 The organization of the department coincided with initial appropriations by the Legislature for the first construction work by the State on a water project

California's water resources development has not been without serious policy problems The evolution and growth of federal programs and local water resources projects have required these agencies to accumulate substantial bodies of policy pertaining to planning, authorizing, constructing, operating and maintaining projects The State of California is now constructing the Feather River-Delta Diversion Project, the largest and most complex project yet proposed for construction in this country. Consequently, the Department of Water Resources, the Legislature and the interested public have urgent need for answers to many unusually perplexing policy problems

Certain problems relating to economic and financial policies for state projects were assigned by the 1957 General Session of the Legislature to the Joint Committee on Water Problems by Assembly Concurrent Resolution No 198 for which work the Joint Subcommittee on Economic and Financial Policies for State Water Projects was established The resolution states that the committee is

> " to hold hearings and to study the problems involved in establishing policies to be used by the State of California in evaluating economic and financial feasibility of the Feather River Project and other units of the California Water Plan and to recommend appropriate policies to the Legislature for adoption Among the specific problems to be resolved are the determination of the State's interest in constructing or assisting local projects, the determination of which project purposes of multiple-purpose projects should be reimbursable or nonreimbursable and the degree of such reimbursability, the method of cost allocation to be used, the basis of establishing rates for project services, methods of evaluating benefits and costs and the resolution of any conflicts between desirable state policies and established federal policies In undertaking the above work the Joint Interim Committee on Water Problems is authorized in addition to its other powers to secure information from appropriate federal, state, and local agencies, to obtain the services of consultants, and to secure other information and investigate related problems as may be appropriate "

It was apparent from the complexity of the problems assigned to the subcommittee that several years' work would be required Accordingly, during calendar year 1957, the subcommittee gave priority to the financial condition of the State and to project financing methods The subcommittee's work on these matters was published on March 24, 1958, as the Twelfth Partial Report of the Joint Committee on Water Problems It covered nine days of hearings and work sessions

During calendar year 1958, the subcommittee examined cost allocation methods, federal repayment policies, repayment problems of state projects and prices for project services The subcommittee, having first determined the proper method to finance a water program, then studied the problems of cost allocation, repayment and pricing It was felt that reversing this approach might lead to practices which could not be financed by the State or which would place an unwarranted strain on the State's entire capital expenditure program Hearings were held during 1958 as follows

Date	*Location*	*Subject*
May 15, 1958	Sacramento	Department of Water Resources and Corps of Engineers on cost allocation and reimbursement
May 16, 1958	Sacramento	Bureau of Reclamation on cost allocation, reimbursement and repayment The Stanford Research Institute reviewed its report to Haynes Foundation
July 8 1958	Sacramento	State and federal agencies with recreation responsibilities
July 10, 1958	Eureka	Recreation repayment
August 27, 1958	Napa	Repayment of the North Bay Aqueduct
August 28, 1958	Hayward	Repayment of the South Bay Aqueduct
September 15, 1958	Sacramento	State and federal agencies on irrigation repayment
September 16, 1958	Fresno	Irrigation repayment
September 17, 1958	Bakersfield	Irrigation repayment
September 18, 1958	Santa Barbara	Irrigation and recreation repayment
December 3, 1958	Los Angeles	Repayment of irrigation, recreation and municipal water supplies
December 4, 1958	San Diego	Repayment of irrigation, recreation and municipal water supplies

During the 1959 General Session, the work of the subcommittee was reassigned to the Assembly Interim Committee on Water by Assembly Concurrent Resolution No 149 The Assembly committee held hearings during calendar year 1959 principally on questions of acreage limitation, power preference and contracting for project services as follows

Date	*Location*	*Subject*
August 7, 1959	Sacramento	Organization meeting and release of Study of Economic and Financial Policies for State Water Projects
September 9, 1959	Quincy	Recreation repayment, acreage limitation, power preference and contracts
September 10, 1959	Shasta Lake	Recreation repayment, acreage limitation, power preference and contracts

Date	*Location*	*Subject*
September 22, 1959	Bakersfield	Acreage limitation, power preference and contracts
September 23, 1959	San Luis Obispo	Same
September 25, 1959	Sacramento	Same
October 20, 1959	Los Angeles	Same
October 21, 1959	San Diego	Same.
November 4 1959	San Francisco	Same
November 5, 1959	San Francisco	Same
November 6, 1959	Sacramento	Same
December 3, 1959	Monterey	Work session
December 4, 1959	Monterey	Work session
January 11 1960	Bakersfield	Work session
January 12, 1960	Bakersfield	Work session

On August 5, 1959, the Assembly Interim Committee on Water released "A Study of Economic and Financial Policies for State Water Projects." This study transmitted to the Assembly Interim Committee on Water an analysis of the subcommittee's work during 1957 and 1958. More than 800 copies of the study were distributed for review. Comments were received from economists, water authorities and water agencies. This final report incorporates many of their comments and the results of the hearings held during calendar year 1959. It has, therefore, been three years in preparation involving 36 days of hearings and committee work sessions.

The committee has been impressed with the interest and sincerity of the large number of witnesses appearing before it in the past three years and the sense of responsibility which was reflected in their statements. Their participation will contribute greatly to the formulation of sound policy for water resources development in California. The committee wishes to express its gratitude for this splendid co-operation.

II. PROJECT FORMULATION

This chapter deals primarily with the formulation of projects It discusses the economic factors which are pertinent to planning, sizing and staging projects and shows why these factors need to be balanced with technical engineering considerations The objective of this consideration is to establish policies for formulation of projects which are economically sound

During construction a water project takes physical form as concrete and steel are put in place Prior to construction the planning and design process must formulate a mass of data and calculations into a project which will efficiently serve the needs of people The formulation of project features[1] rests upon accurate evaluation of important non-engineering factors such as future sources and costs of energy, the economics of industrial and agricultural growth, and changing patterns of urban living and recreational interests Some marginal project purposes must be critically evaluated and the hazards of predicting future economic and social events at the limits of human comprehension are frequently incurred

In addition to the above factors, project planning and construction is different from most government activities because it involves sale of a service or product Confusion can and does arise whenever there is misunderstanding or insufficient policy guidance to indicate whether a governmental service such as police protection is being provided at the expense of the general public, or a vendible service[2] is being sold on the basis of recovering costs In California, the committee found that both governmental services and vendible services are being provided by state water projects and that careful differentiation is essential at all times between these two different categories of project services The vendible project purposes are water supplies and power which should be governed by economic theory Nonvendible project purposes such as flood control should be treated like other governmental services

In the 12th Partial Report of the Joint Committee on Water Problems, the Subcommittee on Economic and Financial Policies for State Water Projects surveyed the State's financial condition and found that the raising of sufficient capital by the State to finance the construction of projects would be difficult This difficulty resulted from (a) the substantial amount of state general obligation bonds outstanding, (b) the additional general obligation bonds authorized but as yet unissued, and (c) the annually increasing expenditures required for the expansion of existing state programs The subcommittee concluded in its 1958 report that issues of general obligation bonds the use of

[1] A project feature is any clearly definable portion of a project A project purpose is a category of service provided by the project

[2] Throughout this report the term "vendible services" is used to describe those services furnished by a project purpose which can be sold The use of the term "vendible services" is intended to differentiate the sale of project services for revenues from the term "reimbursement" which constitutes income that may come from any source, including taxes and overcharging for certain project services

revenues derived from tidelands oil leases and appropriating some General Fund money constituted "the only feasible method of financing the State's water development program"[3]

One of the most important conclusions in the 12th Partial Report was that "the difficulties of financing project construction costs will require the State to adopt all reasonable methods to secure maximum repayment of project construction costs by beneficiaries." Senate Bill No. 1106, or Chapter 1762, 1959 General Session, contains a similar approach. It has, therefore, been accepted by the Assembly Interim Committee on Water that costs of project vendible purposes would be financed by general obligation bonds and that the payment of principal and interest on these bonds by the purchasers of vendible services would be a paramount consideration in state water project policies. Nonvendible project services would return no revenues to the State and should, therefore, be financed by General Fund appropriations or federal contributions for flood control.

ECONOMIC FRAMEWORK

An economic framework is needed to guide the State in formulating projects. Traditional economic theory is based upon the businessman who produces goods and services and sells them in a competitive market to gain a profit. Economic theory does not specifically apply to government marketing of project vendible services, but our government does operate in the same economic medium as the businessman and, therefore, certain economic principles can be applied to marketing project vendible services. Nonvendible services cannot be approached in this manner but must be treated like other governmental services.[4]

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[3] The subcommittee also evaluated and found merit in two other proposals for financing certain project construction costs. The first was the use of revenue bonds to finance the construction of the power features at Oroville. With respect to this proposal, Mr. John Inglis, vice president of Blyth and Company, Incorporated, stated in a letter dated October 29, 1958:

"In today's bond market, I would say that $350,000,000 revenue bonds of approximately 50 years in maturity could be financed if a tight enough contract with a reliable purchaser or purchasers for the sale of such power were executed, and the amount of net power revenues available for debt service on the bond issue were in the neighborhood of $13,000,000 or $14,000,000." (Transcript of December 6, 1958, page 117.)

The second proposal was the capacity of local agencies to raise either a portion or all of the construction costs of various project features required to serve them by issuing their own general obligation bonds. This money could be advanced to to the State and placed in trust for construction purposes or could be used by the local agency to construct a portion of the project facilities serving them. This latter situation now exists in San Diego County where the Metropolitan Water District and San Diego County Water Authority are now constructing the southernmost leg of the original Feather River Project aqueduct into San Diego with the anticipation that it will deliver Colorado River water on an interim basis.

In many areas of the State which may be served by state projects, there appears to be no substantial capacity to assist the State in project financing. Obviously, construction funds for project facilities required to serve undeveloped areas and to construct the main storage and distribution facilities must be provided by the State.

These two approaches were not given further consideration when the Legislature approved Senate Bill No. 1106 and dedicated all project revenues to the repayment of general obligation bonds.

[4] The report of the Stanford Research Institute entitled "Economic Considerations in the Formulation and Repayment of California Water Plan Projects" discusses vendible and nonvendible services, pages 21 to 24.

"From the standpoint of economics, water is not fundamentally different from any other resource which is both useful and scarce: the same economic principles which apply to the allocation of, say, petroleum and timber apply, or ought to apply, to the allocation of water. This is not to ignore the realities of, for example, principles of engineering design, intricacies of water law, and political considerations. It is to suggest, however, that the problem of water allocation is primarily an economic one and should, insofar as possible, be solved in conformity with economic logic. Ideally, water should be allocated so that the resulting increase in benefits (real income) exceeds the resulting increase in cost by the greatest possible amount.

The Subcommittee on Benefits and Costs, now retitled the Subcommittee on Evaluation Standards of the Federal Inter-Agency Committee on Water Resources, published in 1950 and revised on May 1, 1958, a report which prescribes standards for federal project formulation and evaluation. Their report which is popularly known as the "Green Book" recognizes the inapplicability of the profit motive to most government activities. More important, it prescribes an elaborate and essentially arbitrary system for estimating and expressing "net benefits" in terms of dollars to indicate the total economic values derived from constructing a project. The Green Book considers a federal project properly formulated when total economic benefits exceed total economic costs. Revenues are not considered. This benefit-cost analysis evaluates all project services whether or not revenue producing, as though they were nonvendible services and expresses them as fictional monetary benefits.[5]

In the private enterprise sector of the American economy, resources are allocated by the impersonal forces of the market. The premise in private enterprise is that the net benefits of society tend to be maximized by the market. The allocation of resources tends thereby to be guided by the wishes of individuals (consumers) who, presumably, know better than anyone else how to maximize their own benefits.

In the government enterprise sector of the American economy, resources cannot always be allocated by the market. Indeed, it is a function of government to provide those goods and services which, although they are of direct or indirect benefit to virtually every member of society, either cannot be sold to beneficiaries as vendible commodities (e.g., national defense) or would be of considerably less overall benefit to society if they were sold as vendible commodities (e.g., public education).

Occasionally, of course, government enterprise may undertake to provide a product which is of benefit to users in so direct and identifiable a manner that it can be marketed as a vendible commodity even though it probably could not be marketed profitably by private enterprise—either at all or at a price sufficiently low to be in the public interest. Thus, most state governments attempt to pay for their highway programs, at least in part, by a charge against highway users; many local governments sell water and power, and the federal government charges for the services of the post office. When government does go into business, in this sense, moreover, it generally expects to recover a portion if not all of its costs through the sale of the product or service. In other words, it is presumed that the costs of production should be borne at least to some degree by the direct beneficiaries of the product or service.

"In principle, there can hardly be a clear distinction between those products of government which should be paid for entirely by the direct beneficiaries and those which should be paid for by taxpayers generally. Presumably, however, it is possible to distinguish between products in terms of the extent to which their costs can be assigned to a particular group of beneficiaries. Such a distinction would depend on such factors as the number of people who benefit directly, the number of people who benefit indirectly, the extent to which the direct and indirect benefits can be measured, and the relative values assigned respectively to direct and indirect benefits.

[5] The term "benefits" as used in benefit-cost analysis means all identifiable gains, assets, or values, whether in goods, services, or intangibles, which result from the construction, operation or maintenance of a project. The Green Book divides these benefits into primary benefits measured in dollars which are directly attributable to the project, or secondary benefits which are gains, assets or values other than primary benefits. Project benefits are the sum of the individual benefits to be derived from each of the individual purposes to be included in the project.

Economic costs include all identifiable expenses, losses, and liabilities, whether in goods, services, or intangibles, which are incurred as a result of constructing, operating or maintaining the project. In general it is federal practice to require that primary benefits equal or exceed primary economic costs before the project will be authorized for federal construction. This relationship of benefits to costs is known as the benefit-cost ratio and is the measure of economic feasibility.

Normally, the benefit-cost ratio includes only direct costs and benefits, i.e., those measurable in monetary terms. However, there is no rigid demarcation between direct and indirect costs and benefits. Occasionally, indirect benefits are confused with direct benefits and compared with direct costs. Nevertheless, indirect benefits can be of great significance and warrant consideration during planning and legislative authorization of a project.

Budget Bureau Circular A-47 prescribes methods of benefit computation and makes it mandatory for project evaluations prepared by the Corps of Engineers, the Bureau of Reclamation and the Soil Conservation Service.

In benefit-cost analysis, the construction agency determines the value of the project services by its own judgment and calculations. The benefits are usually based upon computations of the purchaser's ability to pay rather than by determining his willingness to pay. A project constructed pursuant to a benefit-cost evaluation may be unable to repay its costs with the result that the prices for vendible services may have to be reduced below production costs by subsidies in order to dispose of them. Such a condition may lead to anticipation of subsidies and imperil the capital repayment of any project.

Merely because governments do not operate on a profit motive and multiple-purpose projects include some nonvendible services, does not justify bypassing conventional economic analysis and ignoring revenues or market pricing. One of the fundamental principles of economics is that the price mechanism which operates in the market place is the most efficient means of establishing the value of goods and services and of allocating scarce resources. The evaluation of project benefits outside of any market, as practiced in benefit-cost analysis, produces no demonstrable dollar or market value but only an expression of fictional dollars. Project benefits are isolated into a value medium of their own where they may be manipulated by computation and assumption and are not subject to the objective test of the market. This special benefit medium for evaluation of water projects is not consistent with our basic economic system. Edward F. Renshaw, an economist from the University of Chicago, states this point clearly:

> "In a free society with both consumer and producer sovereignty, the only real test of a benefit is the willingness of people individually and collectively to pay for value received."[6]

The following comments by Professor Dudley Pegrum of the University of California at Los Angeles underscore this point:

> "The market economy or genuine imitation of it is a sine qua non for economic calculation and efficiency in economic policy. This basic fact cannot be gainsaid. Under an institutional system where individual freedom is one of the primary objectives and cornerstones, departure from the operation of the pricing system and the market economy is fraught with peril, even though at times it may be unavoidable. What should be avoided, however, is the temptation to ignore the rationing function of the pricing system under some such euphemistic term as the 'benefit' theory. A free economy demands the use of the competitive pricing system under all possible circumstances and a full recognition of the consequences when there are departures from it, together with a full evaluation of the alternatives involved and a disclosure of the costs of the alternatives. In this way an intelligent and economical decision can be made."[7]

The market concept can be approximated for water projects by permitting the purchasers to determine their ability and willingness to repay the cost of vendible services. This expression of their willingness

[6] Edward F. Renshaw, "Towards Responsible Government," Idyll Press, 1957, page 56.
[7] Dudley F. Pegrum, "Economics of California's Water Development," University of California, 1958, page 66.

to pay represents the demand for project services and this demand may be used in project formulation as a measure of justifiable investment or cost A project formulated upon such a revenue-cost analysis returns to the traditional economic theory that an economic good is worth what consumers are willing to pay for it as expressed by the purchaser in the market Since there is no government profit motive, revenues need only cover costs Hence, the simple formula is derived that revenues from each vendible purpose at least equal investment, interest, operation, maintenance and replacement costs for the purpose

Market pricing of water does not function exactly the same as it might in the purchase of a basket of fruit by a housewife Competition for project water is usually limited to one supplier and one purchaser for a given service area However, the prospective purchaser of project vendible services has alternatives to the use of project services which can, in an economic sense, serve as competition For example, when a project supplies supplemental water, the prospective purchaser can vary the quantity of his purchases by following more scientific irrigation techniques or by changing cropping patterns if the price of the water is higher than he has been paying As an alternative, he may be able to secure other water by adding capacity to existing facilities or by developing additional supplies Thus, market pricing even though having practical limitations, can determine the demand which the project must supply by relating it to any given price necessary to recover the costs of delivering the water

One of the primary arguments for a benefit-cost analysis is that government should construct project facilities and size them to furnish vendible services in recognition of computed "economic benefits" instead of market values Recognizing nonmarket values ignores the fact that a misallocation of economic resources occurs unless there is a demand for the services furnished by the investment If the revenues received from the purchasers do not justify the investment, the investment certainly can have no greater value to other persons who likewise will not pay for it, and the investment should be excluded from the project

The problem before the State is how to allocate available funds among all government functions including individual water projects, so as to achieve the highest social and economic returns possible from all state expenditures [8] Benefit-cost analysis is not a valid guide to this goal of efficient resources allocation because it ignores market-determined values where such values actually exist In the final analysis the problems of selecting projects for construction is presently based upon judgment and benefit-cost analysis tends to confuse rather than resolve the issues

An example of the unreliability of benefit-cost analysis as a guide to resources allocation occurred in the planning of the Grizzly Valley Project One plan considered by the Department of Water Resources was based upon a recreation development of Grizzly Valley with a benefit-cost ratio of 13-1 This plan with its unusually high economic justification was discarded in favor of an irrigation project at the same

[8] Messrs McGauhey and Erlich of the University of California are currently exploring this problem

site which had only a 1.8-1 benefit-cost ratio. The irrigation development was selected because "The interests of the State would best be served by developing the waters of the Big Grizzly Creek for irrigation use in Sierra Valley."[9] The benefit-cost ratio was a faulty guide to project selection or else the wrong project was selected.

The use of a revenue-cost analysis for vendible services does not cause intangible project values attributable to either vendible or nonvendible services to lose significance. They still exist and can be considered in project formulation by description and narrative discussion.[10]

There is a need to combine both vendible and nonvendible services in project formulation and to subject both categories to identical economic analysis but this need has not been solved by benefit-cost or other analytical approaches. Two dissimilar services, one susceptible to approximations of market pricing and one which public policy determines should not be market priced, are like apples and oranges. They are apparently impossible to analyze on a common basis but they must be considered jointly when both categories of project services are included in one physical structure.

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[9] Department of Water Resources, Bulletin 59, page 86.

[10] There is much misunderstanding of intangible project values which are sometimes described as "secondary" or "indirect benefits." Customarily, state expenditures for water projects, highways, schools or institutions, produce "secondary or "ripple" effects in varying degrees because of both the capital expenditure and the continuing supply of services. All justifiable state capital expenditures have such effects and water projects are not unique in this regard. When benefit-cost analysis includes such secondary effects as federal reports frequently do, it tends to infer that only water projects have such benefits and introduces a bias in favor of water resources development. The State Departments of Education, Public Works, Mental Hygiene and others could also compute extensive secondary effects, some of which might be much higher than for water projects. For example, providing facilities to educate one child for a productive life could be assigned an astronomical value compared to some water project investments.

Since benefit-cost evaluation for revenue-producing project purposes contains both theoretical and technical deficiencies, it is not surprising that it tends to break down in practice. Net benefits over costs are often attributed to federal projects even when there is no possibility of marketing the project services to recover their investment costs because no one is expected to, nor can pay that much for the services. In some extreme cases the total investment allocable to each irrigated acre could not be realized by sale of the property at its maximum value. The Task Force Report on Water Resources and Power, Volume Two, pages 629-630, Commission on Organization of the Executive Branch of the Government, June 1955 states:

"But when the Bureau of Reclamation, by a benefit-cost analysis, justifies projects costing from $1,000 per acre to $3,000 per acre in more in areas where crop yields will not exceed $50 to $100 per acre, it is the conclusion of the task group that such procedure is open to serious challenge and is something to which Congress should give prompt consideration. If a given irrigated farm is found to be worth $250 per acre in the firm sale market this is the measure of direct benefit. To this should be added indirect benefits, that is, the contribution the farm makes to the community and general economy. Even if we consider the indirect benefits as equaling the direct, we have a total of $500 per acre in benefits.

"When we expend $1,000 per acre in construction costs (and these costs must be paid in cash) to establish a contribution to the general economy of $500, then it can be said, in all logic, that the net result is a loss of $500 per acre to the national economy. Applied to a 160-acre farm the loss is $80,000.

"Use of the benefit-cost ratio by federal bureaus since 1936 shows that it is easily corrupted and gives results which cannot be interpreted in values which are readily understood by the general public. It has attempted to serve as a means by which projects which involve in their selection a high degree of humanitarian considerations, both social and political, can be assessed on an economic or monetary level, and this objective has not been realized.

"The task group concludes that the only effective measure of the economic worth of a project is the degree to which beneficiaries are willing to pay costs. It recommends, therefore, that all water resource development, not only the irrigation phase, meet the test of financial feasibility and that all beneficiaries, if they are so to be considered, share in the project cost."

In lieu of a valid common basis for measuring all project purposes during the planning phase of project formulation, the size and scope of nonvendible project purposes can be approximated by judgment and the analysis of relevant factual data Examples would be the type and amount of flood protection needed to control floods with a frequency of one in fifty or a hundred years For recreation the suitability of the project site for various types of recreation based upon indications of need related to proximity to population, experience in the use of such facilities, etc, can be used For project planning purposes these criteria serve the same evaluative purpose as in other governmental services

Perhaps the above paragraphs make clear the real significance in the use of revenue-cost analysis Repayment becomes the basis of project formulation and in terms of purchaser preference establishes the most efficient use of the resources involved The federal method of analysis contained in the Green Book does not do this as may be shown by the equations below which set forth the premise of the Green Book

Economic benefits must equal or exceed economic costs (known as economic feasibility)

Revenues must equal or exceed allocated reimbursable costs (known as financial feasibility)

At first glance, it might be inferred that total revenues must equal or exceed costs But the two costs are not the same, one is total economic costs and the other is total allocated reimbursable costs Each cost is computed differently and measures different cost values Thus, the comparison of total project revenues to total costs required to produce those revenues is never made and an economically valid test of efficient resources allocation does not occur The computed benefits only express the constructing agency's view of the values involved

MARKET ANALYSIS AND PROJECT SIZING

Accurate evaluation of the revenue-producing capacity of the project market is of utmost importance If project formulation does not accurately determine revenues and does not limit costs to revenues, this defect probably cannot be overcome in project repayment without subsidies The Irrigation Districts Association stated the problem precisely

> " there appears to be a tendency to approach our first state projects in reverse of the traditional method for the construction of financially feasible projects Instead of starting with the determination that there is an existing demand for the water and power and incidental benefits which would create a group of financial underwriters for the project, there seems to be an attitude that the Feather River Project is necessary and beneficial and must be built—so now we have to find out who will pay for it "[11]

Project formulation involves balancing the engineering or supply factors with the revenue projections or demand expressions Engineering is thus a means to construct a project purpose but does not of itself

[11] Transcript of September 16, 1958 page 15

establish the size and scope of the project purpose Balancing market and engineering considerations during the project formulation process occurs both in the planning phase and at the design phase just prior to construction

During the early stages of planning, the hydrology of the stream is determined along with the geologic and other physical conditions which limit the size, structural characteristics and project purposes which can be engineeringly served by the natural resource available at the site Simultaneously, an analysis of the market for project services must be prepared A number of pilot studies showing the ability of prospective purchasers to pay for project services should give an indication sufficient for planning purposes of the size and extent of the market and its revenue-producing capacity The preliminary engineering work can be adjusted to this market analysis Construction cost estimates need to be made as project features are sized and staged so that costs will remain within the payment ability of the market Some special engineering problems may have to be solved or in certain instances, it may be necessary to reduce the size or scope of project features If costs for each vendible purpose cannot be kept within the revenue-producing capacity of the market for that purpose, the purpose should be dropped from the project as soon as this determination is made The planning report should set forth the considerations and alternatives involved in keeping costs within revenues for vendible services and other pertinent data for nonvendible services

After studying the planning report, the prospective purchasers have an idea of the probable quantities of water at the probable prices which the project can furnish On this basis prospective purchasers can undertake their own studies to determine the quantities of water at the prices they feel they are able and willing to pay Their determinations of their willingness and ability to pay should be reduced to commitments by an interim contract The interim contract is the basis for the design phase of project formulation in which a final balance between the costs and the revenues is made A final contract must be executed after construction is completed and actual costs are available On this basis a project is formulated by using the planning agency's computations of ability to pay for the planning phase and the purchasers' expression of willingness and ability to pay for final design and sizing before construction The planning agency's computations of ability to pay are used as a planning tool but not for pricing purposes

In the case of nonvendible project purposes the committee concluded that an appropriation should be used to pay construction costs This appropriation is the expression by the Legislature of the people's willingness to pay for the nonvendible services The amount appropriated in a democratic nation with consumer and voter sovereignty can serve the same role in project formulation as revenues and should be the basis for the final sizing and design phase of a project A project so formulated incorporates the full, economically justifiable utilization of the natural resources available at the project site

The fact that price and willingness to pay affect the quantities of water used and, therefore, the size of project facilities was commented upon by Mr Howard W Crooke, the Secretary-Manager of the Orange

County Water District, when he discussed the effect of a pump tax, or replenishment assessment, which his district has levied on ground water extractions.

> "Consideration was given to the effects of the additional costs which would be added to water for irrigation and industrial purposes (by the pump tax). It was the general opinion that agriculturalists and industrialists would of necessity have to give special consideration to better planning in the utilization of water
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> "Experience from the time of the levy of the first replenishment assessment to date indicates that many farmers are producing better crops with smaller, well-planned applications of water. Many farmers indicate that with the replenishment assessments on the production of ground water and with water meters on their wells they are for the first time in their farming operations giving careful consideration to their water usage Industrial plants, where in former years water was used once and then dumped in the sewer, have re-engineered their operations and are successfully reusing their water many times before dumping it in the sewer Other industrial plants have indicated their willingness to place in operation spreading ponds to return effluent water to the ground water supplies whenever analysis indicates the water is of such quality that it should be conserved These water conservation practices no doubt are the result of higher costs of water . I believe from this trend in our area we can conclude that if water to agriculture or industry is subsidized to provide a low cost to the user, larger aqueducts will have to be built to carry excess water to provide for maximum rather than optimum use " [12]

Project revenues naturally must cover the cost of borrowing capital and this imposes stringent limitations on the excess capacity that can be included in a project before the costs become prohibitive No one knows the availability of capital to future generations but if the progress of mankind continues as in past decades, raising capital and the physical effort required to construct a major project in California will be easier by the year 2000 than it is now The sacrifices of the current generation to build a large project to supply water to meet long-range estimates of demand and the payment of the heavy interest burden on this capacity may be somewhat ill advised, for the future generation may be able to construct a project to meet its own needs with considerably less strain on its resources [13]

The North Bay Aqueduct, for example, is sized so large in Bulletin 60 that its capacity will not be fully utilized until project construction costs are scheduled to be repaid The resulting amortization and interest charges for excess capacity when coupled with the initial small demands for project water are too much for most prospective water using agencies, and particularly irrigation water users, to carry There was no

[12] The quotation is from a written statement in the committee files but is based on oral testimony furnished the subcommittee

[13] The Los Angeles panel of financiers justified the use of bonds for project financing on this same basis, when it stated

"There is also the further question of the desirability of placing the burden of paying for a development which will have benefits largely in the future upon present taxpayers A bond issue seems the only feasible solution " (Transcript of November 13, 1957, page 212)

demonstration at the committee's hearings by water users of their willingness to pay these project costs The Department of Water Resources had already proposed in Bulletin 60 that the resultant initial revenue deficiency of $17 million during the first 30 years of operation of the North Bay Aqueduct should be made up by the State If this is done, the State would have to raise an excessive amount of construction capital and then subsidize the project to make up the revenue deficiencies resulting from the large size This doubles the penalty for oversizing the project The justification given for such large sizing is that the project revenues will be adequate to repay these deficiencies in the last 20 years of the repayment period This future revenue does not, however, provide the funds to pay the heavy annual costs during the period of revenue deficiency

Another example of excessive sizing was the original plan for the San Diego Aqueduct which is now under construction by the San Diego County Water Authority The San Diego County Water Authority determined that it could not afford to construct the pipe section to the capacity recommended by the department in Bulletin No 61 because the cost increased rapidly as the capacity was increased Instead, it is constructing the pipe section at approximately half the capacity recommended in Bulletin 61 and intends to add a larger pipe when demand increases The authority concluded that a larger capacity facility in the future would involve no greater repayment burden on a larger future economic base than does the present smaller facility The Metropolitan Water District of Southern California is building the canal section of the same aqueduct Since canal construction involves little additional cost for increased capacity, the department's recommendations for a large capacity could be justified and followed In the final sizing of the above two aqueduct sections, both a lesser capacity than recommended and the recommended capacity were justified when the engineering cost factors were balanced with the limited revenue available to pay for the excess capacity

A report was submitted in September 1959 by the board of consultants, appointed by the Department of Water Resources to review the selection of alternative aqueduct systems made in Bulletin 78 Their report on pages 34 and 35 comments upon the cost implications of the sizing problem

> "The Department has concluded that only a limited amount of staging is practicable and beneficial This conclusion is based in part upon the concept that it would be impracticable to enlarge either canals or tunnels at some later time because they must be maintained in continuous operation Accordingly, the Department's estimates for these features are based upon initial construction of these features to the capacity estimated to be required in year 2020 Similarly, all dams and reservoirs are assumed by the Department to be built initially to the 2020 capacity This procedure was based on the premise that adequate funds could be made available The Department, however, has assumed stage-construction for pipe-siphons and for pumping and power plants and penstocks The Department argues plausibly in this connection in Bulletin 78 and it may well be that it is correct in its conclusions Nevertheless,

we have certain misgivings and believe that the whole problem of staging of construction requires further study

"While duplicate tunnels and canals of smaller size would certainly cost more than single structures of larger size, the initial capital cost and interest charges would be much less if smaller ones were constructed initially We wish to re-emphasize a point made earlier, that the projections of growth of population and water demand, although as good as can be made, contain elements of speculation, and may prove to be erroneous for periods in the more distant future, and the ultimate capacities now thought to be required 30 to 60 years hence may be too high or too low Developments now unforeseen may occur in the fields of construction, pumping and power generation before the turn of the next century We question the wisdom of building at the outset in accordance with present anticipations of the total demands and the technologies of the remote future"

A 50-year repayment period is about the maximum which can be justified for a project [14] An interest rate of 3 percent, which approximates a long-term average for general obligation bonds, can be expected to result in cumulative interest charges exceeding the capital if repayment does not occur within 50 years Interest rates higher than 3 percent become difficult to justify unless the bond repayment period is reduced correspondingly, otherwise total interest charges are greater than the principal With the current high interest rate of approximately 4 percent on state general obligation bonds, the interest at the end of a 50-year repayment period will be $1 32 for every dollar of principal If water users cannot carry such an interest burden, it may be necessary to re-evaluate or modify the project to keep costs within revenues [15]

Senate Bill No 1106 provides for a 50-year repayment period, including a 10-year development period, during which no principal is paid on the bonds and only interest, operation, maintenance and replacement costs must be covered by the revenues The principal is repaid during the remaining 40 years Bonds will be issued as needed to pay construction costs, and construction of major facilities will be scheduled over a period of years with the completion of all facilities in Senate Bill No 1106 not scheduled until approximately 1985 The initial repayment obligation of a contractee for a facility begins with construction but does not reach full repayment until the construction of the facility is completed and the 10-year development period which runs additionally on each successive bond issue is terminated A total of 15 to 25 years' delay after the initiation of construction is thereby provided

[14] Article XVI, Section 1 of the State Constitution also limits state bond issues to 50-year terms

[15] The relationship of interest rates to interest burden is shown in the table below

Interest rate	*Dollars of interest in 50 years for every dollar borrowed*
3%	$ 94
3½%	1 12
4%	1 32
4½%	1 53
5%	1 73

by the construction period and the development period before a contractee's full annual repayment obligation will occur

If a contracting agency desires a larger supply of water than permitted by the above-described construction and development periods in Senate Bill No 1106, it must contract and pay for any excess capacity If the State provides additional capacity without a repayment agreement with the contractee, it is subsidizing that contractee The total of these capacity components, that is, the capacity needed during the construction period, during the 10-year development period and any additional capacity paid for by the contractee, is the maximum size and investment the State can economically justify

Unnecessary commitment of capital to water projects should be avoided by careful sizing because California's future economic growth will require the wise use of its capital for the development of many other resources in addition to water As observed by one well-known authority, Professor Karl Brandt of Stanford University

> "The expected growth of the economy will depend largely on the availability of a sufficient flow of capital into investment in raw material producing, heavy and manufacturing industries, in power generation, transportation, housing, agriculture, and service facilities of all sorts Such capital will be continually a scarce resource"
>
> "In the development of water resources lies the great challenge to the ingenuity of this nation But there also lies in it the temptation to make exorbitant errors in timing and scope of investment which would lead inevitably to a detrimental impact on the development of the economy by laying idle for years capital, labor, and research resources—all of which are scarce amidst our relative wealth" [16]

[16] "Problems in Planning for Future Demand of Water," by Professor Karl Brandt, Stanford University published in "Economics of California's Water Development," University of California, February 1958, pages 8 and 18

III. COST ALLOCATION

In both the planning and design phases and at the completion of project construction an allocation of project construction costs must be made among the different project purposes This allocation or distribution of costs is not strictly a cost accounting function because it involves complex engineering and economic factors

For cost allocation purposes project costs are customarily divided into three categories

(a) A *specific cost* is for such facilities as a power plant, diversion works or a pumping station which can clearly be related and charged to the purpose being served

(b) *Joint costs* are incurred for certain joint-use features that serve more than one purpose of a multiple-purpose project and cannot be directly related to a purpose

(c) *The separable cost* for a project purpose is a computed cost intended to minimize joint costs by permitting more costs to be directly associated with each purpose than is possible using specific costs It is computed by omitting the purpose from the project design and then deducting the cost of the redesigned project from the total cost of the multiple-purpose project It is not an incremental cost because the sum of all incremental costs equals total project costs In an incremental approach joint costs are not spread over all project purposes but are primarily borne by the first project increment

In general the addition of more purposes to a project is economically advantageous to each project purpose Although the total project costs will be increased, that portion of the total costs which is properly chargeable to each purpose should be less than the costs of an alternative single-purpose project because the joint costs are spread over several project purposes The essence of multiple-purpose project development has been concisely stated by Brigadier General W E Potter, United States Corps of Engineers

> "There are a number of advantages inherent in multiple-purpose planning and development One is economy, for it is usually cheaper to provide for several water uses in a single project than to build several single-use projects Another is conservation of project sites Favorable damsites are rare, and it is essential that the potentialities of each site be utilized as fully as is practicable Multiple-purpose construction may permit development of water uses which could not be justified individually "[1]

[1] National Water and Power Policy, Chamber of Commerce of the United States, Water Policy Conference, January 24-25 1956 page 16 The General also defined multiple-purpose planning

"Multiple-purpose planning means simply the planning of a single project or program to serve a number of needed water uses rather than relying upon several individual projects or programs each to serve a single use In the case of reservoirs, for example, storage allocations adequate for each of several water uses often can be provided above a single dam The multiple-purpose project is analogous in some respects to the department store in which we may purchase in one place a number of products we would otherwise have to visit several stores to obtain"

Before it is proper for any costs to be allocated to a project purpose, a portion of the reservoir space must be guaranteed for the use of that purpose with respect to both time of use and reservoir capacity. Otherwise, a portion of the project construction costs should not be charged to the purpose. In both project formulation and operation, satisfactory reservoir operations are essential to sustain the integrity of each project purpose to which costs are allocated.

Cost allocation for water projects is subject to much disagreement. Suspicion is sometimes voiced that methods of cost allocation are selected in order to arrive at predetermined results. It is possible that cost allocation can be used to conceal subsidies by reducing the portion of project costs to be repaid by any purpose. As a result, abuses can occur in the cost allocation of multiple-purpose projects which justify giving it careful attention.

Allocation of costs at water projects is frequently troublesome unless its function in project formulation and cost distribution is understood.[2] In multiple-purpose water projects, cost allocation provides the formula for distributing joint costs to each project purpose. Joint costs, by definition, cannot be physically identified with any project purpose. Economic theory is not directly adaptable to cost allocation at multiple-purpose government water projects because it looks to net revenues or profits to establish the value of an investment rather than making an apportionment of costs. Economic theory holds that the value of an investment is determined by capitalizing or imputing worth on the basis of net revenues. It looks to the prevailing rate of return in the market to determine the investment value. Over the long run the businessman will adjust his investment and modify his production to maximize his net revenues or profits within the limitations of the market.[3]

However, government water projects introduce a number of complexities. As discussed in Chapter II, the market for project vendible services is only partially similar to a truly competitive market because there is normally only one supplier and one purchaser for a given service area. Furthermore, a price agreement between the government, as the supplier, and the purchaser contains no requirement that the government maximize profits by securing the highest return possible. Instead, governments, for policy reasons, can reduce prices below cost and subsidize the operation with tax money or other funds. The political orientation under which government operates rather than the profit motive makes it necessary to have a floor under the pricing of vendible services and, if costs are to be recovered, that floor is the cost of providing the service. A further difficulty is that while nonvendible project purposes produce no revenues, a portion of joint costs still must be allocated to them. It is apparent from the above discussion that establishing investment value by capitalizing net revenues leads to difficulties when used as a guide to water project cost allocation.

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[2] The committee is indebted to Professor Dudley F. Pegrum, Professor of Economics, University of California, for assistance on certain phases of economic theory pertaining to cost allocation.

[3] See Economic Analysis, Kenneth E. Boulding, Harper & Brothers, Revised Edition, pp. 707-708.

However, economic theory does offer certain useful principles to apply to cost allocation First, revenues control the justifiable investment of costs and, secondly, cost allocation must tend towards a balance in which revenues cover investment in the long run Chapter II has already pointed out that the same dual requirement is the proper guide to project formulation and the same two requirements reappear in cost allocation The cost allocation process merely converts the same revenue-cost balance into a more complex tool for the determination and limitation of costs in a multiple-purpose project [4] Economic theory demonstrates that revenues must be the basis for the distribution of joint costs to each project purpose A cost allocation method to achieve such a distribution will be discussed later in this chapter

As indicated previously, when the willingness to pay of purchasers is unknown, ability to pay may be used in the planning phase of project formulation to approximate revenues for the cost allocation process However, willingness to pay as demonstrated by interim contracts must be used to measure revenues for cost allocation during the design stage For the nonvendible project purposes, the appropriations made pursuant to legislative authority should be substituted for revenues at the design phase of cost allocation

Many different methods have been tried by the federal government in past years for allocating project costs [5] In May 1950, the Subcommittee on Benefits and Costs, after extensive study recommended the separable costs-remaining benefits method This method is now widely accepted throughout the federal government and is the standard method in use by the Corps of Engineers, the Bureau of Reclamation and the Soil Conservation Service

Application of the separable costs-remaining benefits method of cost allocation begins with a series of individual computations which derive the separable cost for each project purpose, whether vendible or nonvendible. The separable cost is computed by deducting the cost of a redesigned project, which does not contain the project purpose whose separable cost is being computed, from the total project cost After the separable cost has been computed for each project purpose, the total of the separable costs is deducted from the total project costs The residual is the joint costs

A further calculation is necessary to provide a basis for distributing the joint costs by proration to each project purpose This is done

[4] The order of progression or controlling factor in economic theory is from net revenues to investment and from investment to revenues in cost allocation The significant difference between cost allocation and economic theory is in the controlling factor or order of progression but this does not eliminate the need to tend towards a balance It is, therefore, necessary at all times for revenues to cover costs while the project costs are being adjusted to balance with the market prices or willingness to pay This requires a certain amount of trial and error adjustment of costs and revenues

[5] For a review of some problems in federal allocation of project costs see

(a) Statement of Department of Water Resources, transcript of May 15, 1958, page 12

(b) The Allocation of Costs of Federal Water Resources Development Projects, Report from the Subcommittee to Study Civil Works, 82nd Congress, 2d Session, House Committee Print No 23, Washington, December 5, 1952

(c) Conservation and Development of Water Resources, Senate Committees on Interior and Insular Affairs and Public Works in connection with S 281, 84th Congress, Government Printing Office, January 24 1957

For other discussions of the separable costs-remaining benefits methods of cost allocation, see the report of the Subcommittee on Benefits and Costs or the Bureau of Reclamation Manual, Part 118

by deducting the separable cost for each purpose from the benefits or the alternative costs for each purpose, whichever is the lesser The alternative cost is the cost of the cheapest single-purpose alternative capable of providing the same project services The amount obtained is the remaining benefit for each project purpose The ratio of the remaining benefit for each project purpose to the benefits for that project purpose gives a series of proportions, one for each project purpose which is used to compute the distribution of the joint costs assigned to each purpose The cost allocated to each purpose is the sum of its separable cost and its apportionment of joint costs The allocation to each purpose is limited by a floor which is the separable cost and a ceiling which is the lesser of either the benefits or the alternative cost

Several deficiencies are apparent in the method In addition to its great complexity, the foremost of its deficiencies is that alternative costs are used to limit any inflation of benefits in the project formulation process In project formulation benefits are required to exceed costs, but in cost allocation only those benefits which do not exceed alternative costs are used, in other words, the basis for including costs in the project is nullified when it comes to the allocation and repayment of the costs The limitation of benefits by alternative costs leads to the further deficiency that joint costs may in fact be allocated on the basis of alternative costs Furthermore, the ceiling of alternative costs which is placed upon the total allocation to each purpose can conceal an uneconomic investment in a purpose because the excess of costs must be reassigned to other purposes Finally, any use of benefits lacks the economic validity which can be secured when revenues are used The separable costs-remaining benefits method is an improvement over many previously used methods of cost allocation but it is obviously not the tool needed in California to balance costs and revenues

A simpler and sounder method for California to use in allocating costs can be constructed from the separable costs—remaining benefits method, if instead of using benefits, the joint costs are distributed on the basis of revenues The separable and joint costs would still be computed in the same way but the joint costs would be distributed to each project purpose in the same ratio as the revenues or appropriation for that purpose bear to the total of revenues and appropriations for the project Specific costs for each purpose can be used in small projects but the computation of separable costs is preferable for large complex projects because the use of separable costs reduces the amount of joint costs to be allocated Cost allocation by this method contains the minimum opportunity for manipulation of the allocation because willingness to pay in the form of revenues for vendible services and appropriations for nonvendible services are used in the allocation at the design and construction phase These should be fixed amounts at the design phase of project formulation

The above cost allocation method which the committee recommends treats vendible services as nearly as possible within the principles of economic theory while allowing the nonvendible project services to be treated in keeping with traditional government services Thus, both types of project services are not forced into economic theory intended to determine investment value nor are they forced into the benefit ap-

proach as is done by the separable costs-remaining benefits method. Each is placed in its proper context but both are placed as nearly as possible upon a comparable basis for the allocation of joint costs. Finally, no ceiling is placed on costs allocated to each purpose and it is, therefore, possible to limit costs for each purpose to its revenues or appropriations

A second cost allocation method, the use of facilities, involves a distribution of costs based on the proportion of use of the facilities for each purpose It is preferable in those cases where there are only two or three purposes with clearly identifiable capacity requirements such as in aqueducts and where joint costs are not involved

No method of cost allocation should be considered to be free of possible bias or manipulation The application of any method leaves large areas of discretion in the computational work and the assumptions made, particularly with respect to computation of separable costs However, if a project is properly formulated and the costs of alternatives, as well as the sizing of facilities have been properly evaluated, the separable cost should be reliable and realistic Even so, the interested public should carefully review the computation to assure that excessive allocations of cost have not been made to nonvendible project purposes The prospective purchasers of project services should carefully review the allocations to vendible services because these allocations are the floor under the pricing of the project services they purchase

IV. PRICING AND REPAYMENT OF VENDIBLE SERVICES

The preceding chapters have been built upon the predominant view of the witnesses before the committee and the committee's own conclusion that revenues from each vendible project purpose should fully repay the allocated costs of providing that purpose These chapters have also shown that full repayment can best be achieved by market pricing, to the extent it can be applied to a water project and that it is the only rational and economically sound pricing basis in our economic order The pertinent aspects of project formulation and cost allocation have been discussed in order to assure that the planning and construction of state projects will support rather than subvert a market pricing system It now remains to apply these principles to pricing water and power and to analyze the problems associated with such pricing

PRICING BASIS

Market pricing of water or power are not true examples of market pricing because limitations on price are established by the State in the public interest In the pricing of water to irrigation, industry, and domestic users, the State and the purchaser are the only two entities in a given transaction and they determine the market price which is not expected to be higher than the costs In the pricing of power, there is an existing market with prices established by the State Public Utilities Commission upon the basis of fair investment value plus a fair return upon investment[1] The fair return upon investment allowed by the Public Utilities Commission is the equivalent of an adequate interest rate on state bonds which will induce investors to purchase the bonds Although market pricing of water and power are similar in that costs plus interest constitute the rate base, a practical difference lies in the costs included in the pricing base and the use of amortization on water projects instead of depreciation

A true market pricing system can contain no subsidies or excessive profits because competition will quickly adjust prices and investment values to eliminate any excessive returns Producers pricing their goods at less than cost and purchasers paying too much for the goods are forced from the market Large profit margins will bring more competition into a lucrative market and force a downward adjustment of profits In the long run, a true market pricing system will tend towards an equilibrium based upon cost plus a fair return Market pricing does not mean, however, that the value of the goods to each purchaser is exactly the same even though all purchasers pay the same price The value of the goods to each purchaser can vary with the need and use each has for the goods.

[1] The law on utility rate making is complex For a brief statement see the commentary in volume 57, Wests Annotated California Code

The value of project water to each purchaser will vary and the State's price, which only covers costs, will not fully reflect these variations in value Different cropping patterns, managerial efficiencies, distribution costs, sizes of operation and other factors will cause the value of the water to vary among purchasers Local distributing agencies have the prerogative to price water to the ultimate purchaser upon a combination of tolls and assessments which can partially equalize the payment for water according to the value of water to the different purchasers The water will not be cheap compared to present supplies and full repayment will require the distributing agency to secure a fair share of costs from all properties and persons who receive any substantial value from the water supply

With any pricing policy, it can be expected that water resources development by the State will provide some residue of benefit above and beyond the prices paid for the water or there is no incentive to use the water Both recipients of project services and adjacent communities will probably have a larger residue of benefit than the general public These benefits constitute one of the main reasons for state construction of the project It is implicit, therefore, in such a governmental activity that benefits will result The willingness of the public to allow the State's credit to be used to create these benefits is tested, among other factors by submitting the bond financing proposal to the electorate for approval The question for consideration in this report is whether any benefits attributable to a state pricing policy occur in such a pattern and quantity as to be judged excessive A special problem and an unusual opportunity to secure excessive benefit can occur among irrigation water users since a water supply is provided for direct application on private farm lands

In furnishing water to farm and other lands, excessive benefit can occur if there is (a) subsidy, (b) land enhancement attributable to subsidy or (c) land enhancement without subsidy Both the consensus of testimony before the committee and the conclusion of the committee have been that there should be no subsidy to irrigation water users or other purchasers of vendible services The committee gave careful attention to the elimination of subsidy because it has been generally conceded that eliminating subsidy removes the need for an acreage limitation A subsidy occurs when a project service is furnished at less than cost and government makes up the revenue deficiency from other sources Government frequently limits or conditions the subsidy to further a public purpose

In order to eliminate subsidy, Chapter II has pointed out that great care must be exercised to assure that capacity in project facilities is provided only when a repayment contract covers the addition of such capacity Providing capacity for which no payment is made would result in both subsidy and unconscionable land enhancement Any benefit attributable to subsidy is eliminated by the requirement in project formulation that revenues cover costs for each purpose

Land enhancement attributable to subsidized water results because a part of the subsidy is capitalized as increased land values In the long run, the chief beneficiary of cheap water is apt to be the landowner who may or may not be the farmer Eliminating subsidy also removes this windfall land enhancement.

Without any subsidy, land enhancement can still occur to some limited degree irrespective of the land use Furnishing a supply of water, whether used for farming, industry, urban development, recreation, salinity repulsion, navigation or to replace diminishing ground water supplies will tend to sustain or enhance the value of land In addition, surrounding nonproject lands may be enhanced because project water supplies either indirectly add to their ground water supplies or release some existing ground water supplies for their use

Concern has been expressed that any land enhancement attributable to government development of natural resources, even when there is no subsidy, should be limited to some undefined small individual land ownership by either charging premium prices for water or by placing special taxes on larger landholdings One of the difficulties in limitations that do not arbitrarily restrict water to a specified acreage is the problem of administration For example, the determination of the increment of enhanced value of farmlands attributable to the addition of a water supply, even with a full repayment policy, involves isolating this factor from enhancement attributable to other investments in land leveling, drainage, water supply facilities, leaching, fertilizing, adding buildings, roads, or fences and the establishment of vineyards, orchards or similar perennial plantings Supporters of limitations sometimes make the error of assuming that land enhancement resulting from the added value of investments made by the farmer is attributable to a water supply Such an error can lead to overcalculation of the extent of land enhancement [2]

It has already been pointed out that some residual of benefits and this probably includes land enhancement, must remain after the water is paid for irrespective of who uses the water or for what purpose Otherwise there will be no incentive to use the water It has only been assumed and not demonstrated by proponents of limitations that under a state full-repayment policy, land enhancement or other benefit occurs which warrants or can support a premium price or special tax The belief that there is land enhancement which is sufficient to require a limitation when there is no subsidy may be a transfer of attitude from federal-subsidized projects to a state project without recognizing the differences between federal and state programs Furthermore, the committee has received no reasonable explanation why excessive enhancement is claimed to result only from irrigation water deliveries and not from other project purposes It is true that irrigation water is more directly dedicated to service irrigated lands, because of the facilities needed to deliver the large quantities of water used by irrigation, than is the case with other purchasers of project services This fact, however, does not necessarily relate to, nor does it control, the amount of land enhancement involved Land enhancement is a function of the profitableness of the use to which the water is put Merely because enhancement of irrigated lands is readily isolated and identified does not mean that enhancement is a function of land ownership per se

[2] Extemporaneous testimony of California Labor Federation, AFL-CIO, before the committee Also see statement of the same agency submitted to Senate Fact Finding Committee on Water, November 19, 1959

The committee has concluded that a full-repayment policy with no subsidy is the most economically sound and easily administered restraint upon excessive land enhancement that the State can adopt in its water pricing It has further concluded that pricing water to recover costs also most effectively and fairly secures the necessary revenues for repayment purposes Full repayment recovers a larger portion of the project benefits, including some portion of increased land value, to pay for the project than does a subsidized price It follows that there should be no limitation on water deliveries except a full repayment of costs

It was generally agreed by witnesses that the State should charge a one-rate, zoned price for water consisting of, (a) a capacity charge to repay principal and interest on the aqueduct capacity designated for the purchaser, (b) a demand charge to cover the operation, maintenance and replacement costs of the actual quantity of water delivered at any time to the purchaser, and (c) a Delta Pool charge representing the cost of furnishing water at the Delta [3] The demand charge and the repayment to the Delta Pool would contain escalation clauses to permit revision of charges The demand charge would vary with the costs of energy for pumping and the wages for labor to operate and maintain the facilities The payment at the Delta Pool would increase with the addition of new projects needed to supply the water at the pool or decrease when projects supplying water to the Delta Pool have been paid off The capacity charge would pay off the construction costs financed by the bonds issued for aqueduct facilities and would, therefore, terminate when the capital repayment obligation specified in the repayment contract is completed The committee has not studied in detail the problems of operating a Delta Pool and recommends that more study of the Delta Pool be undertaken

The net effect of using a one-rate, zoned price for water is to eliminate the need for the State to differentiate in either its pricing or water deliveries between water intended for agriculture, industry or domestic use The State would sell at wholesale and the local distributing agencies would make whatever differentiation with respect to ultimate use would best serve the local conditions This principle is very important to irrigation water users because applying water to farmlands is generally reflected in a substantial increase in commerce and trade throughout the irrigated area and in the adjacent communities [4] In appearances before the committee, local businessmen recognized this benefit and expressed willingness to assume some reasonable portion of the repayment burden for irrigation Assistance from secondary beneficiaries to help repay irrigation costs, usually by an assessment on real property, has been used by the Bureau of Reclamation with considerable success in the "conservancy district "

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[3] See Appendix, page A-229, for an excellent statement by the Southern California Water Co-ordinating Conference on a three-part rate

[4] This effect is well documented in "The Contribution of Irrigation and the Central Valley Project to the Economy of the Area and the Nation".

The Hoover Commission Task Force on Water Resources and Power made a very strong observation on this point

"It has long been recognized that increase in property values of agricultural lands under irrigation development is at least matched and usually exceeded by the increase in value of nonagricultural suburban and urban areas Indeed, it seems that from these latter areas actually comes much of the great pressure for expansion of irrigation Entirely too frequently demand for an irrigation project stems from main street rather than from the farming area itself " Volume 2, page 630

The committee explored in detail the use of the conservancy district in Solano, Santa Barbara and Ventura Counties for the repayment of Bureau of Reclamation projects in those areas.[5] Each county firmly supported the technique and the committee found that its application had been satisfactory. In the Southern California area, the major water agencies are already operating under relatively flat rates for water, irrespective of use, with any resulting revenue deficiency being made up by property assessments. While this is not precisely the concept of the conservancy district, which these agencies also support, it is roughly similar in effect and can be considered the equivalent of a conservancy district.

The committee found wide support in California for the use of the conservancy district coupled with a one-rate, zoned price system in which the State charged one price for water at each zone along the aqueduct. A zone is defined as an aqueduct section along which the pumping, operation and construction costs are substantially the same. The one-rate, zoned price removes from the State's purview not only consideration of pricing to the ultimate consumer of the water but also the related questions of subsidy, quantity discounts, premiums, or the equalization of values by combinations of water tolls and assessments. It should be noted that a one-rate, zoned price does not solve these problems, but leaves them to the local public distribution agency which is closer to the ultimate water user and local business interests. These local people know best the advantages of bringing water to the area and how much it is worth to both the farmer and the local business community. Under a one-rate, zoned price it would be possible for the local agencies to equalize the value of the water to various users by combinations of assessments and water tolls which consider both the type of use and the profitableness of its use. This is a long standing principle of the irrigation district movement in California. Where irrigation districts do not exist and large land ownerships are most concentrated as in certain large agricultural areas of the San Joaquin Valley, there are only minor adjacent urban communities. In these areas of large land ownerships the cost of the water must, therefore, fall almost exclusively on the large landowner.

Virtually all the identifiable agencies now anticipating receiving irrigation water from the State have indicated their support for a one-rate, zoned price based upon no state subsidies. The Department of Water Resources indicates its computations of ability to pay show that these agencies can afford to purchase project water on this basis.

AGRICULTURAL SURPLUSES

There are a number of special problem areas in pricing vendible services to which the committee has given detailed attention. Any state irrigation repayment policy must contemplate the well-established policies of the Bureau of Reclamation as well as an array of economic and political farm problems ranging from surplus crops, price supports

[5] The Kern County Board of Supervisors submitted a resolution supporting this practice. See Appendix, page A-97. Mr. Kenneth Kuney, representing the Tulare Chamber of Commerce, outlined a somewhat similar approach taken by the City of Tulare. See Appendix, page A-100.

The details of the Solano, Santa Barbara, and Ventura Projects are in the committee's files, but also see Appendix, pages A-26 to A-29.

and soil banks to the international complications of dumping surplus crops on foreign markets. Most of these are national rather than state problems but they will affect the ability of California's agriculture to repay the costs of a state project.

Agriculture is an important part of the State's economy. The long-range desire of this sector of the State's economy to expand is normal and part of such expansion is probably justified by the forecasts of increasing population and increased demands for agricultural products. Nevertheless, the nation faces a problem of agricultural overproduction which is working hardships on both farmers and taxpayers. Although we are fortunate to have a supply of food and fiber which exceeds our needs, the very abundance of this supply creates problems which are well known.[6] The magnitude of this oversupply indicates that the nation's farm policies face some readjustment.

[6] The Committee for Economic Development has stated its view of the farm surplus problem in its report "Toward a Realistic Farm Program," December 1957, pages 5 to 6:

"In the last quarter century we have spent well over $25 billion on programs to help the American farmer. About half was spent to stabilize farm prices and income. We have spent another $22 billion on other programs, such as purchases of farm products for foreign assistance, not specifically designed for agricultural aid, but of direct or indirect benefit to the farmer. In mid-1957 the government was holding $7½ billion of surplus farm products.

"Yet, despite these vast outlays of public funds, farm income is declining. It has declined about 30 percent from 1951 through 1956. This decline has occurred in the face of a general, high level of prosperity and growth of population that have increased total domestic consumption of United States agricultural products by 11 percent over the past decade.

"There is only one reasonable conclusion from this: our farm programs have not accomplished their announced purpose of stabilizing, supporting and protecting farm income and prices. In fact, our farm programs have worked in the long run—as we show here—to make the farmer's position increasingly insecure.

"The farm problem is complex in the extreme. But the basic difficulty with present public agricultural policy is simple: in trying to underwrite farm prices and income, it perpetuates an unreal price structure that encourages overproduction of farm products and keeps too many people in farming, resulting in ever-growing surpluses of foods and fibers in government storehouses, surpluses that weigh down the very price structure public policy tries to underpin.

"Thus, under present conditions, public policy can only react to the growing insecurity of the farmer by increased outlays for price and income support, encouraging the farmer to imprison himself ever more hopelessly in his own basket of plenty, the while drawing an ever larger tax tribute from the public for the purpose of keeping the public's food and fiber bills artificially high.

"Basic to every other defect is the economic waste involved in public policy that keeps people, and material resources, at work producing surpluses of farm products while the nation is straining to fulfill simultaneously its desires for economic growth and national security.

"Such policy makes no sense, from the standpoint of the farmer, of the public at large (including the farmer), or of the national well-being."

The Hoover Commission Task Force on Water Resources and Power commented:

"The task group has examined the question—why should more irrigated land be developed when we have crop surpluses? But in the examination it found that farm policy has a considerable influence on irrigation development, not through effect on federal irrigation development, but in the much larger field of private development.

"With the possible exception of cotton there are no significant surpluses of agricultural commodities produced on irrigated land in the West. Price support for cotton has caused a material increase in irrigation on a basis that will not be permanent. The irrigation works for much of the recently developed cotton areas have been provided entirely by private initiative, but the whole program has been heavily subsidized because of cotton support.

"In Central Arizona more than three million acre-feet of water are being mined from the ground water annually for raising of cotton. More than 1.5 million acre-feet are being mined annually in the western great plains of Texas. In an area west of the Pecos River, 300,000 or 400,000 acre-feet are mined annually for the same purpose. Much of this development will gradually disappear as pumping costs increase because of lowered ground water levels, or when the price of cotton is reduced, or both.

"The task group is perturbed but makes no comment on an agricultural program which will distort a wholly economic and desirable effort—crop production, efficiently and at low cost—to one of raising a crop for the purpose of selling it to the Federal Government." Volume Two, page 635. Commission on Organization of the Executive Branch of the Government.

California cannot correct the nation's overproduction of farm commodities but it need not aggravate it or unnecessarily expose the repayment of its projects to jeopardy from revisions in federal farm policies. The taxpayers of California contribute about 10 percent of the billions of dollars in federal expenditures to help alleviate agricultural overproduction. California's contribution in taxes to federal farm programs is greater by several times than the annual capital requirements for a state water development program [7] Thus, to a certain extent, if California should subsidize state irrigation water its taxpayers would help pay for agricultural water; would pay for federal taxes to buy up surplus farm production and to store substantial amounts of food and fiber not needed at this time or in the immediate future.

However, the farm surplus picture is fortunately not quite so dark for California as for some other states Although there have been sizeable federal expenditures in California for both the soil bank and surplus crops in the past few years, the crops grown on irrigated lands in California are not generally under federal price support [8] California-grown citrus, nuts, grapes, row crops, fruits, tomatoes, et cetera, are marketed without federal price supports although some of the commodities in this category are under state marketing orders. Production of these and a variety of other commodities is already increasing without state projects because existing districts are expanding their facilities, new districts are being formed, and new federal projects are being constructed

The committee has no specific evidence on how much the State's agricultural production can expand but general indications are that expansion is limited. The California Department of Agriculture has advised·

> "We are not aware of any crops grown in California on irrigated land now normally in short supply either locally or nationally. In fact, many of our fruit, nut and vegetable crops are ordinarily in good supply by comparison with market requirements. Peaches are being produced in overabundance. Potatoes, lettuce and melons, too, are being produced in overabundance Also, such crops as cotton and rice are in ample supply. California cotton is in a relatively favorable position, however, because our cotton is of a staple which normally brings market price premiums Furthermore, in California cotton is produced more generally with machine methods than in the older cotton-producing areas of the United States.
>
> "We are not aware of any agricultural crop grown in California on irrigated land for which increased acreage should be developed in the immediate future, with the possible exception of alfalfa. This is because of its soil-improvement characteristics and its importance as a feed for livestock and poultry. . . .

[7] The gross cost to the State's taxpayers for the federal farm program was approximately $300,000,000 in 1953 and $640,000,000 in 1958 The net cost is less because some returns are realized by the Federal Government from disposal of these surplus commodities

[8] In 1957 soil bank payments in California were $14,851,722 for 192,977 acres and in 1958, $8,744,675 for 134,346 acres California products placed under price supports in 1956 were $20,141,431 and in 1957 were $30,304,536 In addition, large amounts of products were placed in purchase agreements at no current cost to the federal government

"With improved technology, yields per acre have increased beyond previous expectations Such progress is still taking place. The additional irrigated agricultural acreage needed for California in the immediate future is more particularly to offset that which is being diverted to nonfarm uses. Otherwise, the need is for only gradual expansion In terms of water use, however, many underground sources of water have been drawn down to uneconomic levels, and need to be augmented by surface water sources.

"The need for expansion in irrigated agriculture for the period 1970 to 1980 will depend in a large measure upon population trends in California, specifically, and in the nation generally. By 1975, population in California may reach approximately 25,000,000 persons, or something approaching an increase of about seventy-five percent (75%) over recent numbers Nationally, the increase is likely to be approximately thirty percent (30%), which is less dramatic, but nevertheless very substantial Furthermore, diets are likely to continue a recent and present trend toward more fruits, leafy vegetables, poultry and eggs, red meats and dairy products, with fewer potatoes and cereal grains, including rice. California will need a substantial increase in the use of land suitable for the production of fruits and leafy vegetables, and a more intensive use of land for feeds for animal products Acreage increases for cotton, potatoes and rice need not be substantial.

"Through the decade indicated (1970-1980), acreage increase in California need not parallel increases in population An increasing percentage of our production will be marketed within the State, and a lesser percentage of our production will be marketed in out-of-state markets because our rising costs of transportation and marketing are making the movement of our products to midwestern and eastern markets increasingly difficult. Furthermore, advancement in technology very likely will continue, a development which will make it possible to produce more products from the acreages available than has been the case in the past; although irrigated land acreage of necessity will be increased gradually, this rate of increase may not prove so rapid in California as population increases would tend to indicate "[9]

The problem of furnishing additional water supplies to California's agriculture may be stated simply, even though its solution is not simple It is to pace the expansion of agricultural water supplies for new lands and overdrawn ground water basins without causing overproduction of crops. Market pricing of water does not resolve this problem but it does not aggravate the problem of farm surpluses in the same way as subsidized water.

[9] Letter to the Chairman from State Department of Agriculture, dated January 30, 1959. See Appendix, page A-164.

BUREAU OF RECLAMATION POLICIES

Careful and conscientious consideration has been given to the policies of the Bureau of Reclamation and to the appeals for their adoption in California Federal programs and policies primarily serve national purposes and objectives so that what is appropriate as a federal policy is not necessarily appropriate as a state policy. There are several overall reasons why federal reclamation policies were not found to be appropriate for California.

First, federal reclamation policy has evolved from a long series of controversial policy changes with roots going back 50 years Its original concept was merely the investment of interest-free money received from the disposition of public lands to build projects for the improvement of public lands Later, the Bureau of Reclamation began using power and municipal and industrial water revenues to repay irrigation costs and also received federal tax moneys to finance construction. Along with the relaxation of repayment policies, there occurred a shift from project construction which benefited public lands to project construction which primarily benefited private lands

The public interest required a limitation on benefits accruing to private lands which the 160-acre limitation, as it was originally incorporated in Reclamation Law from the homestead program, did not provide. New limitations were added to Reclamation Law in the form of recordable contracts and stringent anti-speculation provisions Reclamation Law is presently highly controversial with both powerful critics and supporters. It may be surmised that any similar state program which provides highly subsidized water may lead to extensive unearned benefits and will be exceedingly controversial because the public interest will tend to limit and condition the receipt of the extensive benefits provided. There is room for doubt in view of the testimony before the committee that a water program of the extensive scope contemplated by the State would ever become a reality if it contained such inherently controversial provisions.

Second, it makes a difference to California's economy and the policies the State should adopt whether the state or federal government constructs a project If the federal government constructs a project in California, the State benefits from the influx of capital This is a net gain to California's economy as an individual state even though California pays a portion of federal taxes But when the State does the same thing on a relatively statewide basis or for a local project, it is only taking money from one pocket and putting it into another, for there is generally no inflow of capital

Third, the use of bonds in California to finance projects requires the State to find some method to pay the interest on these bonds if irrigation water users do not. Interest is foregone on irrigation costs of federal projects. The federal interest costs are diffused and concealed by the use of appropriations instead of bonds

Fourth, Messrs. McGauhey and Erlich of the University of California have pointed out that the future economic growth of California will depend primarily on industrial expansion rather than agricultural growth The committee found in Solano, and even in Kern County, a growing recognition that industry is needed in addition to agriculture

for continued growth and prosperity.[10] These areas are seeking both agriculture and industry and are planning to supply the water needs of both.

The thesis advanced by Messrs McGauhey and Erlich is not that farming has no place in California's future economic expansion; rather, they attempt to define the future role of agriculture in California and to establish its importance in relationship to other future needs for water In exploring this problem the committee has found no justification for placing industrial water supplies delivered by state projects in the subordinate role presently contained in reclamation policy[11]

Fifth, the problems of limiting subsidy to irrigation water users are particularly difficult once a subsidy is granted[12] Only a modicum of pressure may be required to change a little subsidy into a large subsidy. No witnesses at the committee's irrigation repayment hearings presented any acceptable basis by which subsidy could be limited nor has the committee's study of federal policies shown any specific basis on which federal subsidies are actually limited[13]

The concept of ability to pay as measured by "repayment capacity" was not found to limit subsidy. Repayment capacity or ability to pay tends to be a ceiling on water pricing and not a floor which can assure prices that will recover all or even a designated portion of costs Ability to pay is a satisfactory measure of the market during project planning

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[10] See Statement of Greater Bakersfield Chamber of Commerce, Appendix, page 97, and letter from Mr David Balmer, County Administrator, Solano County, dated October 2, 1958, Appendix, page 122

[11] Messrs McGauhey and Erlich, in the report of Economic Evaluation of Water, Part I, pages 212 and 213, Water Resources Center, University of California, 1957, conclude that federal reclamation policies will not provide the necessary guidance if maximum economic advantage is to be secured from the State's development of its water resources

"In underpricing water to carry out land use objectives, federal policy has been an inflexible substitute for supply and demand As the agent for channeling the utilization of this resource to producers, public policy has encouraged uneconomical use in the sense that it has led to the apportionment of water in a manner unrelated to the relative yields that might result from its use as a factor of production When industrial growth burst forth, water policies founded exclusively on a concept of maximum land reclamation were rendered ill-adapted to the changing pattern of western economic development Industrialization stimulated a trend toward urbanization and a shift of population from farms to cities Consequently, urban water demand persistently increased and it became possible to put important amounts of water to uses yielding a higher return and creating wider economic benefits than irrigation Clinging to tradition, however, federal policy tended to stress the application of water to land and, in turn, to perpetuate an agrarian economy in the west Thus, it became a faulty gauge of the economic value of water"

The future economic development of the State and the associated need to provide job opportunities for the increasing population resulting both from immigration and births is surely one of the major objectives of water resources development Water projects are needed to supply the market for water created by California's population, which is currently increasing at the rate of 500,000 persons annually Industrial growth has been the basis for the major expansion of the State's economy in the past and will be the source of most of the future new jobs available to support the increasing population It is also a major contributor to the growth of the State's tax base and general wealth In 1950 the President's Water Resources Policy Commission noted this problem and gave the following advice

" even taking into account possible new developments, it is not considered likely that irrigation will provide support for more than 700,000 additional people in the Central Valley, including those indirectly dependent on farming activity

It is therefore evident that searching attention will have to be directed toward other means of supporting people, particularly manufacturing"

Mr Warren Thompson, Director Emeritus, Scripps Foundation of Research on population problems, in referring to the Central Valley Project, stated

"In spite of the fact that the land in cultivation is likely to increase greatly, especially the land under irrigation, agricultural employment is more likely to decrease than increase Thus means that no significant part of the future increase of population in the State will be absorbed in the expansion of agriculture"

In view of the growing importance of industry, Messrs McGauhey and Erlich conclude, on page 196·

"The foregoing comparisons by no means suggest that if all our water resources were put to urban and industrial uses instead of into irrigation, Cali-

but it is not a basis for pricing. The Department of Water Resources has substituted "residual income" for "ability to pay" in its reports because residual income does not imply a basis for water pricing and leaves open the question of incentive [14]

FACTORS AFFECTING REPAYMENT CAPACITY OF IRRIGATION

A policy of full repayment is not necessarily oppressive and unfair for irrigation Indeed, farmers of the State are not unmindful of the competitive or perhaps unfair advantage which subsidized water can give to some areas of the State Mr Elmer Wood, president of the Irrigation Districts Association, expressed his personal opinion with particular reference to a state subsidy for irrigation in Southern California.

> ". . . I don't see that subsidies are fair in transporting water . . I think you might as well transport my peaches to Los Angeles if I am going to help transport some water down there in a competitive area If it costs more for water somewhere on a competitive basis, I feel those people should pay more for water We have this difference If you have climate or an arid climate with no rain and you take water to it, (it is) going to out-produce . the rainfall area There is no question about it We have a disadvantage in climate So these things are eveners It costs more to

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forma's wealth would be unbounded They do, however, provide a basis for judging the economic wisdom of consigning limited water supplies to the irrigation of land without a thorough study of the quality of the land and without carefully considering the possibility that a greater economic good might come from assigning water to some competing beneficial use This becomes especially critical in view of the irretrievability of water committed to irrigation—both because of the vested rights which go with the commitment and because irrigation water is consumed during use The comparisons also suggest a revision of our past widespread tendency to consider the relative economic importance of industrial and irrigation water to be in the same ratio as the relative quantities used by each"

[12] One suggested guide for irrigation pricing to limit subsidies is the cost of water supplies in an area adjacent to a state project The Merced Irrigation District furnishes water without an acre-foot charge to the user Friant water users pay $3 50 per acre-foot for Central Valley Project water, the San Luis Project proposes to charge $7 50 per acre-foot, but the semitropic area in Kern County probably can afford to pay around $15 per acre-foot for Feather River Project water Thus, any effort to price irrigation water from state projects on the basis of water prices at nearby projects is no help, for the State is presented with a wide range of water prices These prices generally do not reflect current conditions pertaining to state financing or present levels of construction costs but rather, reflect conditions peculiar to a limited service area or construction costs of many years ago For further explanation of this problem see letter of October 10, 1958, from the subcommittee chairman to the Director of Water Resources, Appendix, page A-160

[13] See, for example, Table 2, page 11 of the publication "Our Water Resources, Project Note No 33," published by the Tax Foundation, 1953 This table shows the variation in the repayment pattern for selected reclamation projects

[14] Summary Statement by State Department of Water Resources, Economic Demand for Surplus Northern California Water in Southern California Area, Los Angeles, California, December 5, 1958

The Bureau of Reclamation proposes that San Luis water users should pay $17 50 per acre or $7 50 per acre-foot for project water with the remaining repayment to be made from municipal and industrial water revenues and power revenues The Bureau computes the repayment capacity of San Luis lands to be $37 per acre Deducting the cost of water from the computed ability to pay gives $20 per acre, which is called the incentive to use project water The Department of Water Resources has reported on a proposed development by the Palo Verde Irrigation District in which the water users are anxious to secure water even though no subsidy from municipal and industrial water users or power users is available, and the incentive to use water is only $5 per acre (Letter dated July 17, 1958 from Director of Water Resources to Palo Verde Irrigation District) It is obvious that the State cannot objectively determine the minimum incentive required to assure a market for project water whether it is $5 at Palo Verde, $20 at San Luis, or some other amount, because that is the function of the market mechanism and only the desire for project water, as determined in the minds of each water user, can establish the incentive

get water in an arid country. They have better climate to produce certain crops, such as avocados and lemons. Maybe they are frost-free and they are close to a market. If the market is there and you can grow it in your back yard and somebody helps to produce it there in your back yard (by supplying cheap) water, I don't think that is fair to the people that are living where the water is" (Transcript of September 16, 1958, page 43)

Careful scrutiny of the repayment capacity of agriculture indicates that several factors have an important bearing. An understanding of these factors and their judicious incorporation in project plans, as discussed in Chapter II, can largely eliminate or substantially mitigate the repayment difficulties of irrigation

1 The range in quality of lands to be irrigated by a project has a direct bearing on the ability of irrigation to repay its costs. The price which can be paid for water will tend to be limited by the poorest quality lands.[15] Where this happens, the repayment capacity of the average quality lands is not controlling and better quality lands do not repay according to their real capacity In an extreme application of this approach, if land quality is ignored and water is priced by ability to pay, it is theoretically possible to put water on rocks at no cost to the farmer.[16]

2. Including excess capacity to serve future needs directly increases construction costs and reduces the ability of irrigators to repay costs if substantial repayment of the project must occur with only partial use of the project's capacity

3. The type of crop grown and the managerial efficiency of irrigators influences repayment capacity If water rates are based on repayment capacity and all irrigation water users are to be charged a flat rate for project water, the less efficient farmer is supported in a marginal operation by low-cost water and tends to establish the price of project water In the final analysis, the real determinant is the willingness and skill of the farmer in shifting to crops giving higher returns, provided the market will absorb increased production of these crops.

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[15] Assessments of lands within irrigation districts are by statute declared to be based upon quality and value. In practice, however, this is frequently not done See Transcript of September 16, 1958, pages 31 and 32 Where a flat assessment is used and there is no variation in water rates according to quality of the irrigated lands, the poorest quality lands establish the repayment.

The Department of Water Resources report on the Proposed Semitropic Water Storage District, Kern County, dated June 1958, indicates a net repayment capacity (residual income) after deducting the cost of a distribution system, which ranges from $9 75 to $15.75 per acre-foot for irrigation water depending upon land quality with an average of about $14 75 per acre-foot for the entire district This is based on a land classification survey showing about 12,000 acres of excellent lands, 166,000 acres with limited crop adaptability and productivity because of soluble salts and exchangeable sodium, and 45,000 acres with shallow soil depths in addition to being affected by salts The report estimates payment capacity for water at the farmhead gate would range from $15 per acre-foot for the poorer lands to $21 per acre-foot for the better lands

[16] The Director, Department of Water Resources, stated

"If water were to be delivered under a pricing policy based solely on ability to pay, then extremely poor land would receive water free Under present water laws, it is difficult to take the water away from such an area once the use has been established Therefore, it is possible that under liberal application of such an ability-to-pay policy, nonproductive land could obtain a full and free water supply, while more productive land which might be developed at a later time and which could pay its costs, would not have a full supply available Furthermore, as heretofore stated, low quality lands tend to be used for crops having high water requirements" (Transcript of September 15, 1958, page 148)

4. The size of the farm unit can affect the repayment capacity. In the Department of Water Resources report on the Palo Verde Irrigation District, dated July 17, 1958, the department found the residual income ranges from about $45 per acre for a farm unit of 40 acres, to approximately $67 per acre for an 80-acre farm unit The use of project water on small acreages increases the cost of distribution facilities to the farm headgate. There are substantial economic advantages tending towards larger acreages and the continuing squeeze between farmers' costs and returns will force him to the economies of larger, more efficient operations.[17]

5 Cheap water will result in high-priced lands under well-established economic principles [18] Because the productive capacity of land is relatively fixed, cheap water will be capitalized in higher prices for lands. High purchase cost for lands will increase land and interest payments which the farmer must make. Conversely, if the lands are priced lower, the irrigation water user can afford to pay more for irrigation water, other factors being equal, because his land, interest and tax costs are less Thus, higher prices for project water will not only return more of the project's construction costs but, by reducing land values, may cost the farmer no more because it reduces the investment he must make in land Variation in land values helps to explain the fact that farmers serving the same produce market can pay widely differing prices for water.

The net effect of a full repayment or market pricing policy for irrigation may be a smaller acreage of higher quality land served with project water compared to subsidized water However, each acre watered will produce more revenues for both the farmer and the project Any costs to the State will be eliminated, no additional tax burden will result nor will excessive land enhancement occur. A full repayment policy will minimize the unneeded production of commodities already in surplus. Subsidized competition between different parts of the State resulting from the introduction of cheap water will not be encouraged and thereby unnecessarily upset established agriculture. All of these results appear to be in the best interests of both agriculture and the State as a whole.

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[17] Paper entitled Current Trends in California Farms by Professor T R Hedges, Giannini Foundation, University of California, Appendix, page A-287

[18] Letter from the Regional Director, Bureau of Reclamation, Sacramento, California to the committee chairman, dated September 12, 1958, states

"It is a generally accepted theory that the market value of land tends to reflect the capitalized net earning capacity of the land Water costs, being one element of production costs, should influence earning capacity and, therefore, should reflect in the market value of land in inverse ratio" Transcript of September 15, 1958, page 67

The Task Force Report on Water Resources and Power, Volume Two, page 643, comments on the problem

"It has been found that the repayment ability of a beneficiary is closely associated with increase in his land values Then it behooves the government to avoid the establishment of falsely founded prices for agricultural property Reasonable land values, based on local conditions, will not over-extend beyond his limits a settler adequately supplied with capital The possibility of success of the irrigation venture is considerably improved thereby"

Mr James Forbes, appearing in behalf of the Stanford Research Institute also commented on this problem

"It should be recognized that such a policy (of subsidy to irrigation) is not likely to benefit farmers as farmers The principal effect would be to increase land values Thus, over a period of time, as farm land is bought and sold, the farmers who own or rent the soil will not be the people who derive the benefit from low cost water, they will have paid a price for their land or for their lease which includes the capitalized value of the water subsidy, and they will then be dependent on continuing water subsidy" Appendix, page A-44

POWER

The generation and sale of electric power at most water resources projects produces ample revenues to repay costs allocated to power because hydroelectric power finds a ready market when priced competitively with other sources of energy The power plant generally produces full revenues almost immediately after completion of construction and excess generating capacity is not installed to meet an estimated demand 20 or more years in the future If planning of irrigation, municipal and industrial or recreation features of projects were as easy as power features, there would be fewer problems in water resources development

Marketing electric power presents two problems which do not exist for other vendible purposes There is an existing market with established prices and there may be an excess of power revenues over minimum power repayment requirements Because of these factors which do not exist in the sale of water and because federal marketing of power developed under different circumstances than marketing of water, the federal government has adopted a somewhat different policy in the sale of project power The power is sold at rates generally lower than the prevailing market rate and preference in its availability is given to public agencies [19] Federal policy also allows certain power revenues to be used to subsidize irrigation It attempts to benefit both power and water users by lower rates for each because public funds and public enterprise create the project

The effect of the federal power policy varies considerably from project to project depending upon the suitability of the project site and the associated streamflows Sites with a potential to generate low-cost power obviously are required for low-cost power generation In the Central Valley of California there are probably no more major, low-cost hydroelectric power sites.

For many technical reasons the energy available at Oroville can best be utilized as high-value, on-peak power However, this power cannot be directly used by a preference customer. The State would have to undertake a program of building or securing additional generation to make Oroville power usable in a state power marketing program The committee received no testimony or evidence that either the Department of Water Resources or the public support such a program. Furthermore, capital for additional generating capacity is not included in the bond financing authorized by Senate Bill No 1106 Finally, no customers or prospective purchasers requested service as preference customers from the State This is presumably because the cost of state power will be relatively high Judging from the evidence available, both the low-cost physical natural resource and the economic base for a state power marketing program do not appear to exist There is, therefore, no indication that a state power marketing program could be successfully undertaken, and without an assured source of low-cost power it might operate at a loss.

If project power is not marketed by the State, there are several alternative uses for it When considering these alternative uses a problem arises which requires clarification. The committee's record shows

[19] In federal law a preference customer is a public agency, co-operative or municipality which is given a preference in the availability of federal hydroelectric power

what appears to be a contradiction in thinking among many agencies concerning their willingness to use power revenues to aid water users while at the same time stating that there should be no subsidy The origin of this contradiction may lie in the distinction between power generated at the aqueduct crossing of the Tehachapi Mountains as contrasted to power generated at Oroville The cost of power facilities at Oroville are presently allocated to power and power users will repay all costs allocated to power Power at the Oroville site is developable because of the natural resource and hydrologic conditions indigenous to the area

At the Tehachapi Mountains and elsewhere there may be some power recovery from dropping the water down the southern side of the mountains This electric power may be sold or used to operate the pumps on the adjacent uphill slope The power generation at these drops is possible because of the importation of water and water users will pay the aqueduct and pumping costs required to bring the water to the Tehachapi Mountains Power at the Tehachapi Mountains is attributable solely to single-purpose water supply facilities whose water and power costs are to be fully repaid by the water users The benefits from such power generation should accrue to the water users who have paid the costs Therefore, the use of power to aid water users would be a subsidy at Oroville but not at the Tehachapis

The idea that power should be used to aid water users and that this is not a subsidy may also stem from the belief that power is a byproduct of a project whose primary purpose is to provide a water supply This view tends to overlook the concept of comprehensive multiple-purpose water resources development and leaves out of consideration the need for flood control, recreation, fish and wildlife and other project purposes each of which might also be equally entitled to claim power revenues for its exclusive or partial benefit. A multiple-purpose project is not based upon a concept of producing byproducts Each purpose stands alone because of the project formulation process and because an allocation of the project cost is made to each project purpose

Testimony before the committee strongly favored using project power to operate the project pumps rather than using the power in a state power marketing program. However, the committee found that considerable confusion also exists regarding the generation and use of power in the project Energy is capacity to do work and is by convenience usually expressed as kilowatt-hours Water passing through a turbine is one source of energy known as electric power Lifting of water requires energy which may be secured from many sources such as utilizing the electric power generated by the project, driving the pumps by coal-, oil- or natural gas-burning steam plants or the use of atomic reactors either through direct drive or intermediary electric generation

In Bulletin 78, Preliminary Report on Alternative Aqueduct System to Serve Southern California, the Department of Water Resources has not selected a pumping scheme; it merely shows total energy needed for pumping a given quantity of water and this gives no indication of the value, source, or form of such energy The available information does show that more energy will be needed for pumping than the quan-

tity of hydroelectric power generated and the project is therefore energy deficient However, assuming the likelihood of on-peak generation at Oroville, the project may generate on-peak power which is unusable at the pumps and it may therefore have a surplus of on-peak power at the same time that it has an energy deficiency.

Whatever the final engineering decisions on the details of the installation and operation of power generation and pumping facilities, there will remain a need for some method to make the power generated available or usable as needed for pumping The State will probably have to generate certain quantities of hydroelectric power even though it is not needed by the pumps or waste the water downstream. This power can be traded for power available at some later time when it is needed for the pumps Trading or exchanging power is a valuable means among utilities for making hydroelectric power more flexible and usable For this purpose an "exchange agreement or exchange contract" can be entered into between two or more utilities. The exchange agreement will permit crediting the account of a utility when unneeded power is generated by one utility that can be used by a second utility and debiting the account when power is needed by the utility and is available from the second Periodically, the exchange is settled by cash payments or special arrangements By means of an exchange account the power generated at the State's project can be credited to power at its market value at the time of generation and replaced when needed at its market value by the type of power required to operate the pumps. Unless the power is credited to the project and debited to water users for pumping purposes at its market value, a subsidy to water users will occur through the operation and maintenance costs Since the overall project is energy deficient, an exchange account can also become a part of the purchase and billing arrangements for the additional pumping power which the project needs but does not generate.

The committee has concluded that all forms of subsidy should be eliminated, therefore, the use of power revenues to aid water users in any form is foreclosed as an alternative disposition of power revenues This means that power revenues cannot be diverted to aid water users with either their operation and maintenance costs or their capital repayment The committee has also concluded that power should be priced at its full market value When this is done, power users receive no preferential pricing treatment and neither should any other vendible or nonvendible project purposes receive preferential pricing at the expense of the power users.

Having considered the above alternative uses for power revenues and having found each alternative to be unsatisfactory, the only remaining disposition of power revenues is to use all such revenues to accelerate the payment of costs allocated to power. This will speed the retirement of outstanding water bonds and indirectly aid the credit of the State Technically, there are no power revenues surplus to the repayment of allocated power costs until all power costs are repaid because delaying repayment increases the total power interest charge. Since the repayment obligations of other purchasers of project services will be based upon contracts calling for full repayment, accelerating the repayment of any particular contractee will not involve subsidy.

Finally, it should not be overlooked that any policy of spreading power revenues at the Delta Pool after minimum annual principal and interest payments on power have been paid would disrupt the efforts of irrigation water users to avoid acreage limitations. These irrigation water users have testified that they are so anxious to avoid any acreage or other service limitations that they have expressed a willingness to pay the full costs of the water they receive Electric power generated at Oroville should be priced at market value and exchanged for usable power at the pumps.

V. NONVENDIBLE PROJECT PURPOSES

The attitude of the public in California appears to be that recreation and flood control should be nonvendible project purposes. These purposes should therefore be fitted into the governmental service framework in project formulation and cost allocation rather than into a vendible service framework The present chapter deals with the problems involved in recreation and flood control to the extent that they require any special attention

RECREATION

When federal, state and local agencies construct water resources projects for flood control, power, irrigation or urban water supplies, they usually open the projects to sightseeing, picnicking and other limited recreation uses [1] At more attractive reservoir sites, increasing attendance and public demands have prompted construction of camping, boating, fishing and other facilities which required modest investments usually made at the expense of the constructing agency of government

This type of at-site recreation development needs no reservation of water It is not charged any of the separable and joint costs of the dam and reservoir because the project design is not intended to create recreation values Recreation facilities are merely incidental to the project

As long as recreation is incidental to the project, it naturally is subject to the rights and privileges of the project purposes which produce revenues and pay the costs. As a result, reservoirs are drawn down during the summer when the recreation need is greatest In winter time and during flood periods, the reservoirs are full but winter time weather conditions are not favorable for such recreation

At federal projects the costs allocated to recreation include only specific at-site costs such as picnic tables, sanitary facilties, access roads, etc [2] With few exceptions these costs are not repaid by recreation, they are added to the repayment obligation of other project beneficiaries or are not reimbursed at all.[3]

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[1] In this report the term recreation includes at-site swimming, boating, fishing, scenic attractions, private cabins or rental rooms, restaurants, boat launching ramps, water supplies, sanitary facilities, parking areas, picnic tables, trailer and camping spaces, and access roads or trails Downstream from the project, recreation includes the maintenance of stream flow for scenic purposes Fish and wildlife enhancement is a separate project purpose but for simplicity is included within the term recreation unless otherwise specified The above recreation facilities are termed at-site recreation facilities to distinguish them from separable and joint recreation costs

In certain circumstances, water transported for irrigation, or municipal or industrial purposes will be available in a re-regulating reservoir for recreational use This will be a secondary result of transporting the water

[2] Hoover, Shasta, Folsom, Friant, Pine Flat, Isabella, Cachuma, Trinity and all other major federal dams in California and the west were designed and constructed without regard to recreation, in the sense that the design of the dam and reservoir with or without recreation features would not vary Several bills have recently been introduced in Congress to liberalize federal recreation policy

[3] The Central Valley Project is an unusual exception because $2,804,000 is allocated to reimbursable fish and wildlife and $11,628,000 is allocated to nonreimbursable fish and wildlife The funds to repay the reimbursable fish and wildlife costs come from sales of water to the grasslands area and from power revenues See

As the population of the State has grown, the demand for recreation has also grown. The concept has been advanced that in some locations only new projects can create lakes or sustain stream flows for recreation purposes. In addition, many northern areas of California anticipate that recreation will stabilize and enhance their local economies All of these factors point toward a new role for recreation in water resources development, a role that would elevate recreation from an incidental project purpose to a full project purpose

If recreation should become a full project purpose, as at the five Upper Feather River projects, its role in project formulation and project repayment would change A water right would be required so that water can be stored in the reservoir to maintain a year-round, relatively stable, lake elevation Both separable and joint costs would have to be allocated to recreation because a lake is being created especially for recreation, fish and wildlife purposes. Such a water project is different from the beaches and parks program in which the State pays the costs of adding facilities which make the park site useable, and user fees are charged to partially cover operation and maintenance costs A natural resource is utilized in the beaches and parks program When separable and joint project construction costs are incurred specifically to create recreation values at water projects, an artificial recreation resource is created at considerable additional cost Some means to finance these costs which are in addition to the costs of the at-site recreation facilities is necessary

It has been set forth, in preceding chapters, that the simplest and soundest guide to including project costs is the willingness of project beneficiaries to pay for the services they receive If the project is a good one, with fine recreation features and attractions, the concessionaires and businesses adjacent to the project will prosper A good project will also be attractive to the recreationist who will be more inclined to pay a reasonable fee to enjoy its facilities On the other hand, if the project has poor recreation characteristics, is poorly located or planned, no justifiable expenditure of state funds can enhance its

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Audit Report to the Congress of the United States, by the Controller General for fiscal year ended June 30, 1956, pages 20 and 26

In recreational navigation projects constructed by the Corps of Engineers, the costs of small navigation projects primarily for recreational use are divided between the Federal Government and the local interests concerned In practice, application of this formula requires that local interests pay a large part, and in some cases the major part, of the first cost of such projects In Corps of Engineers' projects of primarily local significance, the costs of fish and wildlife and recreation are borne by local interests Reference material in subcommittee's files

Frequently, Corps of Engineer recreational or fish and wildlife features are nonreimbursable to the beneficiaries, but are added onto the costs to be repaid by other project purposes The Corps of Engineers stated

"Normally, there is no specific allocation to recreation use We are not authorized under the law to allocate to recreation, except in very specific instances where the benefits can be clearly defined Usually the recreation feature is allocated to other uses, and the other primary users carry such costs as are incorporated in the project plans for recreation" (Transcript of May 15, 1958, p 65)

The Corps also stated

"In our estimates (of construction costs), we provide for minimum facilities to take care of the public, and I mean minimum, absolute minimum, drinking water, sanitary, parking, access roads, a nominal amount in connection with our maintenance and patrol roads And these costs, as previously stated, are normally charged back to primary project functions They are allocated and carried by the flood control, irrigation, power beneficiaries, or the costs are allocated to those uses We have no authority to allocate them to recreation as such except in very specific cases where they are a part of a national forest or other specific situations like that " (Transcript of May 15, 1958, p 80)

recreation values or enable the recreationist to receive enjoyment from a visit to the site.

Recreation, as well as all other project purposes, has certain demand characteristics which should determine the nature and extent of the recreation investment that can justifiably be included in the project. Unfortunately these demand characteristics are not now known. Mr. DeWitt Nelson, the chairman of the California Public Outdoor Recreation Plan Committee, stated:

> "The plan and program of our study provides for an appraisal of the present and future need for outdoor recreation, a survey of the existing and potential supply, and an examination of the means for assuring an adequate future supply. From this study, preliminary recommendations will be prepared concerning the kinds of land and water areas which will be needed for outdoor recreation; where, in general, they should be located; the extent to which government should take action; and the jurisdiction of government which can reasonably be expected to finance the acquisition, development, and operation of the areas needed
>
> "A large share of the present recreation interests of the California population is in activities requiring water Recent trends indicate that these interests will continue We are, therefore, examining prospective water resource developments as *one* of the future sources of supply for types of recreation requiring water areas Other sources include the natural streams and lakes, the ocean, and the bays and lagoons The extent to which we will examine the potential of reservoirs will be related to their location within the State Reservoirs located close to heavy concentrations of population will be subject to the greatest demand on a year-round basis, since they will lie within weekend range of population centers We will be especially interested in these nearby reservoirs The more distant reservoirs will have their main potential during the vacation season when people have the necessary time to travel longer distances
>
> "Reservoirs vary widely in their recreation potential, both in quantity and quality, and we will be interested in classifying and evaluating them accordingly For this purpose, we will have to rely upon limited experience since reservoir recreation is comparatively new "[4]

The committee made a special effort to evaluate the capacity of the recreation industry and the recreation users to pay the additional separable and joint costs as well as the cost of the at-site recreation facilities Throughout the State it found the attitude widely accepted that recreation ought to pay its operation and maintenance costs and the committee feels that this policy should be adopted wherever possible by the State There was a feeling among water agencies that recreation should repay the separable and joint costs of constructing recreation facilities. In lieu of repayment by recreation, the water agencies felt that General Fund or other special fund moneys should be used so that recreation costs would not be a burden upon the water users. The recreation users, however, frequently expressed the attitude that recreation capital costs could not and should not be repaid.

[4] Appendix, page A-46

There are several instances in the State where recreation developments are now repaying some of the construction costs of at-site recreation facilities At Lake Piru in Ventura County, Lake Cachuma in Santa Barbara County and Lake Henshaw in San Diego County, recreation is now paying all costs of operation and maintenance plus an appreciable portion of the capital invested in the at-site recreation facilities.[5] The above three examples are only indicative There is no conclusive data on the potential of recreation to repay separable and joint costs allocated to recreation when it becomes a project purpose because no such project has yet been built

The committee also received testimony on the role of recreation as a form of commerce or business. Because recreation, besides being valua-

[5] See Transcript of September 18, 1958, page 8, for data on the revenues received from Lake Cachuma, and page 38 for information on Lake Piru Mr. Doe presented the following data on the operations of Lake Henshaw

"A concessionaire has operated Lake Henshaw for the Vista Irrigation District as a hunting and fishing resort over a period of years, and the return has been rather impressive The Vista Irrigation District receives a flat minimum rental regardless of conditions and then a share of the net profits Now, that is after expenses have been deducted from the receipts Those payments have fluctuated between $25,000 and $70,000 in all but one year when it was somewhat less It went down to $12,000 or $14,000 by reason of the fact that there wasn't any water in the lake The capital cost of the facilities that are devoted specifically to recreation, to fishing, would be in my guess a sum of $100,000 something like that It would be possible for the project to assume some of the costs of construction" (Transcript of December 4, 1958, p 45)

The prevalance of the practice of charging substantial fees for the use of project waters and recreational facilities is illustrated by the booklet prepared by the California Recreation Commission, entitled "Recreation Opportunities at Selected Water Reservoirs, 1957"

Even though there is no data available on the repayment capacity of recreation, there is evidence that a substantial repayment capacity does exist and that recreation can repay its costs·

First, the anticipated repayment period for state projects is 50 years This means that the annual capital repayment is small Furthermore, large allocations to recreation and large repayment burdens at any one project are not anticipated.

Second, the market for project recreational facilities is expected to continue growing Recreation will also support an increasing segment of the State's economy Recreation is already a major item in the budgets of most California families The amounts of money spent annually on vacations, weekend trips, motor boats, skiing equipment, swimming pools, etc, is large and is increasing Recreationists have demonstrated that they will spend substantial sums for expensive recreation and hobbies (See National Survey of Fishing and Hunting, U S Fish and Wildlife Service, Circular 44, Government Printing Office This report shows the average expenditure by fishermen in the United States in 1955 was $91 98, and for hunters $79 49. It is obvious from the survey that there is a very wide range in the expenditures of hunters and fishermen This is to be expected since expenditures are related to income, and there is substantial variation in income)

Third, California projects having recreation as a major purpose are likely to be located in the more remote mountainous areas Most visitors at these projects will be vacationing or spending an extended weekend They will visit the project with full knowledge of the expenditures involved and they will be prepared to spend the money Remote recreation projects will have fewer visitors than projects close to metropolitan areas but each visitor will spend more money Those projects close to metropolitan areas will have to rely upon large numbers of day use visitors, each paying a small fee and staying only a short time for a picnic, swim or boat ride

Fourth, the heavy attendance at existing major reservoirs such as Millerton and Folsom when facilities for recreation were virtually nonexistent, indicates that all other things being equal visitors would be willing to pay a fee for the use of additional facilities at properly equipped recreation projects

Fifth, the nature of the recreation potential at some projects will support private cabins, motels, commercial establishments and other private concessions A lease fee or assessment on such private properties and any business located at the project site or in adjacent areas which benefit from the construction of the project would assist in repaying project costs This repayment assistance would be similar in some respects to use of the conservancy district for irrigation repayment because it secures repayment from those secondary beneficiaries who prosper from the project or whose properties it increases in value

The proposed plan for recreational development by the Sacramento Municipal Utility District and Bulletin No 59, Department of Water Resources' report on the Upper Feather River projects, illustrate the possibilities of attracting high value investments

ble to the recreationist, is also the basis of a growing business at the project site, any General Fund expenditures in behalf of the recreationist also aids the at-site recreation business which is a part of our free enterprise system The local operating agency should draw upon some of this benefit in securing funds to pay recreation operation and maintenance costs in somewhat the same manner as local water distributing agencies use tolls and assessments in charging for water

There was almost unanimous agreement among witnesses that a local agency should operate and maintain the recreation features of a state project wherever possible The Department of Water Resources now has the authority to prepare a master plan for all the project recreation features as well as to acquire necessary lands. There is a minimum of five existing state and federal programs which can finance certain at-site recreation facilities at water projects These programs had their origin in circumstances other than state construction of water resources projects The committee has not attempted to reconcile the different policies of these programs with respect to reimbursement, charging of interest, user fees, etc Instead, it only recognizes them as authorized programs having substantial funds available which can contribute to at-site recreation development at water projects [6]

The Department of Fish and Game believes that it is the responsibility of the constructing agency, whether public or private, to provide downstream water releases which will prevent reduction in fisheries' values resulting from the construction of any project This policy also appears equitable for application at state projects The costs of preserving existing fisheries or wildlife resources should be a cost of the state project and should be included in the costs allocated to each project purpose because there would be no fisheries detriments if the project were not built.

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[6] There are a number of programs already established which can assist in the development of recreation at state projects Some of the most important of these are

1 The Wildlife Conservation Board of the Department of Fish and Game has a program for the construction of access roads and boat launching ramps to be used by fishermen which is financed from parimutuel racing funds. The board finances and owns the facilities it constructs but operation and maintenance is by local agencies No repayment of capital costs is required The program can readily provide recreation facilities at state-constructed projects as well as local projects Since it is impossible for the Wildlife Conservation Board to confine the use of its facilities to fishing, the board's program actually provides access and boat launching facilities for public use as well as fishermen (Appendix, page A-49)

2 The Division of Small Craft Harbors is lending funds to local agencies for the construction of boat harbors and launching facilities The construction loan must be repaid with interest Although the program is just getting started in the State's coastal areas, it could include boat harbors at reservoirs created by state projects (Appendix, page A-50)

3 The Division of Beaches and Parks is currently constructing and operating recreation and park facilities at Folsom and Millerton Lakes as part of the State Park System The division charges only a nominal fee for the use of these facilities The revenues received cover only a small part of the division's operation and maintenance costs at the project (Appendix, page A-51)

4 The Department of Fish and Game assumes the responsibility to stock reservoir waters and downstream reaches of benefited streams with fish and to provide adequate fishing at a state recreation project (Appendix, page A-148)

5 In addition to these state programs, the United States Forest Service assumes the responsibility, to the extent of its available funds, for providing access roads and picnic areas or other needed public facilities at projects located in national forest lands These facilities involve no investment by the State or user interests but are classed as a part of the development of national forests (Appendix, page A-54)

A different situation occurs, however, when enhancement of fisheries and wildlife is included in the project plan This enhancement creates values supplemental to preservation of natural fishery or wildlife resources Paying for these values is not properly a responsibility of the beneficiaries of the project The Department of Fish and Game recommends that the costs of such enhancement should be borne by the General Fund in the same manner as recreation costs For purposes of this report these costs are included within recreation costs.

The committee has carefully considered the dilemma posed in the foregoing discussion There is support among recreation users of the State and among proponents of recreation in the Northern California areas for expenditures from the General Fund for the separable and joint costs allocated to recreation However, some recreation interests are opposed to repaying any portion of the above construction costs Therefore, the justification for incurring separable and joint costs for recreation is seriously undermined because the beneficiaries do not feel the investment has sufficient value to them to warrant their repaying it.

The committee felt that the State, through appropriations from the General Fund or through other existing state programs should finance the costs of the at-site recreation facilities It has not felt that the disinclination of recreation beneficiaries to repay any separable and joint costs necessarily justified removing the recreation purpose entirely from a project However, the committee concludes that the Legislature should determine on the basis of its judgment the amount, timing and location of recreation expenditures by appropriating them from the General Fund until such time as a clarification of the demand characteristic, public attitudes and project operations will develop an experience record which will objectively determine the recreation investment to be included in a project.

FLOOD CONTROL

The more populated and highly developed an area becomes, the greater is the potential for property damage and loss of life from floods and, therefore, the greater is the flood control investment which can be justified to protect the area For any given situation, the least expensive facilities to provide flood protection may be secured by constructing levees, channel rectification works or a dam and reservoir. Therefore, economic factors also constitute a limitation on the investment which can be justified for flood control storage and, at a dam and reservoir, establish the amount of reservoir space reserved for flood control purposes

In general, flood control storage can be more economically provided at multiple-purpose reservoirs rather than at single-purpose reservoirs because the same joint-use reservoir space reserved for flood control can be used after the flood season to store water for later release to generate power or to serve irrigation or municipal and industrial markets. Although there may be some conflict between these different purposes, the Corps of Engineers includes these other purposes in its flood control projects because of their mutually beneficial relationships [7]

[7] See the statement by the Corps of Engineers on the flood control allocation at Oroville, Appendix, page A-11

The committee has found no equitable and workable basis for local repayment of costs allocated to flood control which appears capable of being administered The federal government has experimented with local participation in federal dams and reservoirs for flood control purposes, but without success In Section 3 of the Flood Control Act of 1936, Congress required local interests to pay for the costs of lands, easements and rights of way for federal flood control dams and reservoirs This was repealed in Section 2 of the Flood Control Act of 1938 [8] Flood control dams and reservoirs are frequently remote from the built-up coastal or valley areas and upstream from population centers which benefit most from the protection Presumably, it was found inequitable to expect the local interests at the project site to pay for project costs which primarily benefited others

In addition to the geographic separation of the project from its benefited areas, flood control is probably the least vendible project purpose and is most similar to the usual government service If flood protection is supplied to one person, it is supplied to all inhabitants of a flood plain without regard to benefit or location Like fire or police protection it is only needed when emergencies occur However, when federal channel and levee works which provide flood control protection also result in substantial enhancement in values of adjacent lands, Congress has required a local contribution to construction costs [9]

The general taxpayers would not have to pay for the flood protection afforded a limited project flood plain if a district constituting the protected area could repay flood protection costs by assessments However, the uncertain boundaries of benefited areas, the overlap of districts when several projects contribute differing amounts of flood control benefits to an area such as the floor of the Central Valley, and other reasons, appear to make the district concept unworkable for large projects Since the federal government is moving towards the policy of paying the construction costs of nonfederal projects allocated to flood control, the repayment problem is largely a moot point

When the federal government pays for the flood control features at state projects, it evaluates these features on the basis of the benefit approach and then appropriates funds for those flood control costs which are justified by its benefit analysis [10]

This eliminates the need for the State to resolve for itself the difficult economic problems of establishing the size of the investment for flood control Therefore, the committee has not considered the flood control evaluation problem, beyond the general comments on benefit computation in Chapter II, because it is at present basically a federal problem The State should treat the flood control appropriation made by the federal government for a state project during the project formulation and cost allocation processes in the same way as state appropriations for other nonvendible project purposes [11]

[8] Transcript of May 15, 1958, pages 60 to 62

[9] Transcript of May 15, 1958, pages 92 and 93

[10] The practices of the United States Corps of Engineers in evaluating flood control benefits have been repeatedly criticized by Congress and other federal and private agencies

[11] The use of similar methods of cost allocation by the State and the federal government appears desirable but not entirely obtainable However, the use of revenues instead of benefits in the cost allocation method suggested in Chapter III should cause no serious problems in this regard

VI. SUMMARY AND STATEMENT OF CONTRACT POLICIES

After three years' work the committee has concluded that, during project formulation and in the disposition of project services, the services from state water projects should be under two categories vendible purposes including water and power and nonvendible purposes including recreation and flood control Construction costs of vendible purposes should be financed by general obligation bonds Water should be sold upon a market-determined one-rate, zoned price which will recover all costs Power should be sold at the prevailing wholesale market price which is based upon the prices established by the Public Utilities Commission

In order to assure that project costs allocated to each vendible purpose are repaid by each purpose the project should be formulated so that the revenues cover costs. Sizing of aqueducts should include capacity to serve the demands at the time of initial water deliveries plus the demands anticipated during a 10-year development period and any additional capacity requested by water purchasers and accompanied by a repayment commitment Total costs of the multiple-purpose project should be allocated by computing the separable cost of each purpose. The joint costs should be added to the separable cost of each purpose in the same proportion as the revenues for the purpose are to total project revenues

A one-rate, zoned price for water in which all costs allocated to water are recovered eliminates all subsidy to irrigation and any land enhancement attributable to subsidy in the State's pricing policy. Local distributing agencies may establish their prices for water to equalize the value of the water to different users by a combination of assessments and tolls. Some benefit will accrue to both land owners receiving water and adjacent communities This residual of benefit is normal for any governmental investment and is one of the main reasons for constructing the project The only limitation on water deliveries should be the full repayment of costs.

Nonvendible purposes should be included in the project upon the basis of General Fund appropriations made by the State Legislature for recreation and appropriations from Congress for flood control Local agencies should operate and maintain the recreation facilities by charging the recreation beneficiaries assessments and user fees

Contracts for the sale of project water should incorporate the following policies.

1 Full repayment of all allocated costs based upon a one-rate, zoned price which includes a capacity charge, a demand charge and a payment for water taken from the Delta Pool

2 An interim contract containing a full repayment commitment upon which final designs are based

3 A final contract after construction is completed and all costs are known

4 Full repayment of allocated costs within 50 years of issuing bonds for facilities serving a contractee, including a development period during the first 10 years.

MINORITY REPORT

LETTER OF TRANSMITTAL

ASSEMBLY, CALIFORNIA LEGISLATURE
January 25, 1960

Hon Carley Porter
Chairman, Assembly Water Committee
State Capitol, Sacramento, California

DEAR MR. PORTER: The undersigned members of the Assembly Interim Committee on Water herewith respectfully submit their minority report on economic and financial policies for state water projects

Very truly yours,

EDWIN L. Z'BERG
PAULINE L. DAVIS
BRUCE F. ALLEN
LLOYD W. LOWREY
CHARLES B GARRIGUS
PAUL J. LUNARDI

The undersigned members of the Assembly Interim Committee on Water have not concurred with the majority report of this committee, and for this reason have prepared this minority report. We believe that the policies urged by the majority are inconsistent with the greatest public good for the people of the State of California Our conclusions are as follows:

1 We disagree with the proposition that the benefit cost theory of justifying a project be discarded in place of a revenue cost formula

2. We disagree that in all cases water must be sold at its allocated cost with no regard to public benefit or secondary values

3 We disagree that water should be sold in unlimited quantities to agricultural users instead of limiting benefits based on a formula method

4 We disagree that power should be sold at its market value instead of at cost to preference agencies.

5. We disagree with the proposition that there should be no recreation development on a multipurpose project unless there is first specific legislative approval.

6 We disagree with the proposition that there is evidence that project sizing should be done on the basis of immediate ability to contract without regard for future use.

WATER

1 The majority report of this committee rejects the benefit cost analysis utilized by the federal government in determining the feasibility of a water project It urges instead a so-called market concept based on a revenue cost analysis. Both approaches deal with the method of evaluating the vendible services (services to be sold on the basis of recovering costs) and the nonvendible services (services such as flood

control provided at government expense) The majority report describes the benefit cost ratio of vendible services as being computed on the basis of the purchaser's benefits, while those services are determined under the market revenue cost basis by the willingness of the purchaser to pay. It asserts that a project constructed pursuant to the benefit cost evaluation may be unable to repay its allocated costs with the result that prices for vendible services may have to be reduced below production costs in order to dispose of them

The market revenue cost concept evaluation is founded by the majority on the theory that the only benefits to be derived from services, such as the sale of water, are the primary monetary benefits derived by the purchaser If the production cost of the services, again such as water, are greater than the amount the purchasers are willing to pay or able to pay then under the policy urged by the majority, as they state, the project would be abandoned

This revenue cost concept completely ignores any secondary benefits that would flow from the use of the vendible services. With regard to the benefits flowing from the distribution of water, the maintenance of an adequate food supply and the balancing of the economic and social structure of the State of California as well as benefits derived from economic prosperity, cannot be considered under the policy urged by the majority—even though a monetary value of such benefits could be determined and the benefits are of a nature to be properly paid from general funds of the State In other words, the policy of the majority precludes a subsidy for vendible services such as agricultural water, even where it may be clearly justified and to the best interests of the public.

2 The majority urge that "merely because governments do not operate on a profit motive and multiple-purpose projects include some nonvendible services, does not justify bypassing conventional economic analysis, and ignoring revenues or market pricing "

It is submitted, however, that even assuming this to be correct, it does not follow that all factors other than revenues or market pricing should be ignored, as contemplated by the majority. Such a policy is clearly inconsistent with that traditionally followed in governmental activities, such as in connection with the Central Valley Project, Federal Forest Service and the United States Post Office.

As a practical matter, we submit that the adoption of such a policy would result in limiting projects to the supply of water for municipal and domestic purposes which can support relatively high production costs, and perhaps the largest factory farms This is contrary to the avowed policy of the State of California of providing a water supply for all beneficial purposes to areas of deficiency throughout the State as evidenced by the California Water Plan, and has substituted for the philosophy of supplying water to areas of need, the philosophy of supplying water to areas that can pay, regardless of considerations of need.

3. The majority report states that "A true market pricing system can contain no subsidies or excessive profits, because competition will quickly adjust prices and investment values to eliminate any excessive

returns." The majority concludes that the elimination of a subsidy eliminates the need for any acreage limitation, and as a matter of fact the majority has quite candidly written in their Chapter on Pricing and Repayment that "these irrigation water users have testified that they are so anxious to avoid any acreage or other service limitations that they have expressed a willingness to pay the full costs of the water they receive."

This ignores the fact that even under the proposed market pricing system advocated by the majority there are subsidies from several sources First, unless power is sold at cost, and the majority advocates selling power at market value rather than cost, the excess revenues from power will subsidize the water users This is particularly true because under the provisions of the California Water Resources Development Bond Act (Chapter 1762, Statutes 1959) all revenues from all sources are pledged to the repayment of the bonds sold to build a project The application of any excess revenues from power under that act will necessarily reduce the bond debt and consequently the interest to be paid on bond funds expended on costs allocated to water.

Second, the conclusion ignores the millions of dollars which have been and are being spent in preliminary work such as planning, relocation of highway and utilities and acquisition of property. To the extent the share of such costs attributable to the production of water is not recovered from the sale of water, there is a subsidy There are other lesser subsidies also which have not been considered These include, among other things, the cost of administration, the use of the credit of the State and other services already paid from general funds which are necessary to the construction of facilities to produce water.

Lastly, no consideration has been given to the millions of dollars in nonreimbursable costs which will be spent from the General Fund

4 After careful consideration of the testimony presented to the committee by interested, informed persons at its numerous meetings, we are of the opinion that the vast majority of potential irrigation water users cannot pay sufficient sums of money to pay all the allocated production costs of the water sold While many persons who were opposing any acreage limitation urged that water be sold at cost, even those persons were not willing to commit themselves to purchasing water at the prices indicated in the Department of Water Resources various bulletins In order, therefore, that the vast majority of smaller farmers in the State of California enjoy any benefit from water development by the State, a limited subsidy is essential, when it is determined that the project is feasible, because of the benefits to be derived. Such a subsidy, however, can be justified only on the basis of the benefit of all of the people of the State of California, and carries with it the right of the people of the State to define the social changes to be effected by the water development project (the right of the people of the State to limit the benefits in such a manner as to provide the greatest good for the greatest number of people) We respectfully submit that it is the desire of the people that the right to the use of water from a state project be so limited in order to prevent unlimited subsidies and unjust enrichment We believe that some such limitation can be effected by limiting each user to an amount of water as may

be necessary to irrigate a given area of land (to be determined by the Department of Water Resources based on the geographic location of his land and other relevant factors) as will produce a prescribed net profit to the user Such a procedure will preserve to a great degree what is known as family farming, and will enable such farming to compete with large corporate enterprises It is the belief of this minority that family farming is good for the community and for the State, for the small businesman, for the lawyer, the doctor, and others dependent on the farmer for a living, and that such farming produces an economy where there are homes and communities in which children can grow up to become useful citizens So called "efficiency" in corporate farming carries a high price tag, which has eliminated human values and benefits.

COST ALLOCATION

In an effort to justify the revenue cost concept the majority has derived a cost allocation based not upon benefits but upon revenues In Section 3 the majority has concluded that a determination of the revenues to be derived from the sale of a project vendible, such as water, should be used to determine the cost allocation to such a vendible This effort to justify their position leads to a completely incongruous situation.

The purpose of a cost allocation is to provide a basis for charging prices which will produce sufficient revenues to pay the allocated cost If you must determine first revenues that would be paid by purchasers willing and able to pay in order to determine your cost allocation, then what is the need of a cost allocation, since you have already determined what the purchasers are going to pay If you have first determined, on the basis of the majority's market concept, what will be paid by purchasers there is absolutely no need for a cost allocation, since any formula which would use revenues in cost allocation would, if producing a higher figure than what would be necessary to produce those revenues, mean that the project would be dropped, and by the same token, if the formula using revenues determines that the service will be sold to produce less revenue than have already been determined by the market concept, then you are supplying a subsidy In short, what is proposed by the majority is simply a method of justifying the original precept of substituting revenue for benefits in a water development program It is submitted that the separable costs, remaining benefits formula should not be supplanted by the majority's new formula.

Another completely incongruous situation could arise, because the majority states that they will accept the determination of the federal government as to what should be the allocated cost to flood control Since under the proposition of the majority the State would use a different cost allocation method, namely, separable costs, remaining revenues, rather than the federal government's separable costs remaining benefits formula, it is conceivable that a project could wind up with costs that have no place to be allocated For instance, assuming the Oroville dam, with a total cost of 500 million dollars, has allocated

70 million dollars, to it by the federal government for purposes of flood control, and let us assume the State, using the different formula than the federal government in allocating costs of water, power and recreation, winds up with only 400 million dollars allocated to those purposes The next question is, where does the remaining 30 million dollars come from? Since it cannot come from water, power or recreation, unless those purposes are later overcharged on their allocations, it would have to come from the General Fund, and this, of course, would be a subsidation of those purposes.

POWER

The position of the majority report, that power be used to subsidize water, cannot in our opinion be justified on any basis

One segment of our society can be subsidized in whole or in part only on the basis that there will be good which will be derived by the State as a whole, and that it is in the interest of the State as a whole that there be such a subsidy. A subsidy is the shifting of economic benefit from the State as a whole, or a segment of the State as a whole, to another segment of the State.

Water is going to be subsidized in the State Water Plan because sums of money paid for by the General Fund have been used and will be used in the State in the State Water Plan. This is a subsidy—a shifting of economic benefit from the State as a whole to a segment of the State—namely, water users We have seen under our discussion relative to water that there exist great subsidies in the water plan of our State in the areas of planning and engineering studies, costs of administration, relocating of highway and utilities, and all those nonreimbursable costs that the General Fund will pay, together with the possibility that the General Fund will be used to pay part of the allocated costs to water of the bonds and interest thereon

Now, superimposed on top of all of this the majority of this committee desires that the power derived from a multipurpose project be sold, not on the basis of returning to the State its allocated cost (as the majority advocates with water) but rather at its market value so that the profits that are derived from the sale of power may be used to lower the cost of water to water users This, of course, is subsidy—subsidy by the power users for the benefit of the water users

We, therefore, have the situation that although the justification for a subsidy to water users is that it benefits the State as a whole, we would require only one segment of the State, the potential power users, to directly subsidize the water users

The charges for water and power by the State at any comprehensive multipurpose project should be set at the lowest price consistent with sound business principles Accordingly, this minority believes that the prices established for water and power should not under any circumstances exceed the amount necessary to recover the construction costs properly allocated to these commodities, together with interest, reflecting the long-term cost of money to the State plus operation and maintenance. The only deviation from this should be when the State desires to subsidize a particular group, and this is done by payments from the General Fund on the basis of general good.

To justify the position of the majority, many witnesses claim that power was merely incidental to the development of water at a project such as the Oroville Dam. The committee heard testimony from the State Department of Water Resources that the tentative allocated cost to power at the Oroville Dam was 60 percent of the total cost of the project of $516,977,000 There is allocated to power alone the sum of $292,942,000

Such a figure is subject to criticism particularly when one remembers that the justification given by these many witnesses for selling power at market value was that power was only incidental to the water problem, and it is also subject to criticism when one compares the allocated cost on the entire Central Valley Project operated by the Federal Bureau of Reclamation As of June 30, 1959, on the entire project the allocated cost to commercial power was merely 40 percent, and the astounding fact is that both the Bureau of Reclamation and the State Department of Water Resources were supposedly using the same formula, the separable costs remaining benefits formula

If the Oroville Dam is a water project and that is all, and power is merely incidental, then one might very well wonder if the allocated cost figure arrived at was not one calculated to derive as great a revenue as possible, and therefore subsidize water costs by reducing allocation costs.

The principle which states that any vendible from a multipurpose project should be sold at a figure which will return the State its cost, plus interest, plus operation and maintenance is a good point of departure. From this point we can determine whether any vendible should be sold at less than its cost, and under what conditions We have determined this with respect to the sale of water From here also we can determine if there is any equitable reason why any vendible should be sold at more than cost

With respect to power, no one is arguing that power be given a subsidy or that power customers pay anything less than the full allocated cost to power The dispute arises between those who feel that power users should pay more than the allocated cost and those who feel that they should not pay more than the allocated cost. This minority believes that power users should be treated the same as water users, and not have to pay more than their allocated cost The historic doctrine of cost preferential disposal of hydroelectric energy to public agencies has stood the test of time and has proved its soundness This principle should apply equally well to the undertaking by the State of the sale of electric energy The vast benefits to be gained from electrification, and the inherent justice and equity of not forcing power users to subsidize water users are ample justification for such a principle in state water law

This minority believes that in the sale of any power by the State whether it be called surplus to the system or not, be sold on a preference basis, preference on cost as well as purchase to public entities

Curiously, none of the witnesses who testified before the Assembly Interim Committee on Water and who argued that power be sold at market value felt that water should be sold at market value if this figure would be higher than its allocated cost. An immediate question

could be asked, and that is, why not? It is quite conceivable that in certain areas water could be sold at more than its allocated cost. As an example, it is possible that in metropolitan areas water users have the repayment capacity to buy water at more than its allocated cost Why not do this and then use this profit to subsidize other areas of the State where the water cannot be sold at its allocated cost

This minority believes the opposition to such a principle is on two grounds First, this would involve subsidation and give rise to demands for acreage limitation; and secondly, because there is not any logical justification for doing this, as we have already seen in our analysis of justification for subsidy. Here again, one segment of society would be called upon to subsidize another segment when the justification for subsidy is the statewide benefit involved.

Is, then, not this argument propounded by the water users themselves just as cogent when applied to power? This minority believes that it is Why should the people, when the power is generated as a natural resource, pay more than their allocated cost in order to subsidize some other area of the State.

It is said by opponents of the public power preference philosophy that this is a power deficient project Nothing could be further from the truth As far as the dam and the transportation of water to the delta is concerned, this is a power surplus project. It is only a power deficient project when there is added to the dam and appurtenances a giant distribution system to be used by water users taking water from one hydrographic area and removing it to another hydrographic area The removal of this natural resource by means of an aqueduct system is not the responsibility of the people of the area where the natural resource is generated, but rather a responsibility of the users who desire that the water be so removed What justification is there for charging potential power users where the natural resource is for the cost of the distribution system to take the resource to some other area of the State?

Another vital reason for the establishment of a power cost preference to public agencies is readily apparent when we answer the question In what manner will the State as a whole best be served in the sale of power, and first, let us preface this by asking what do we need more of in the State of California with its rapidly expanding population—more water which is subsidized, or a larger supply of low cost firm power? This minority believes that economists will agree that the tremendous economic growth experienced in the State since World War II has been due to the influx of industry and the changing of the picture of the State from an agrarian one to that of an industrial complex In order to put to work the millions who have and will come to California, and to establish a tax base so that services can be rendered, do we need more industry or more agriculture? The answer is obvious We need to attract industry and business to this State in order to create a large tax base and employment All states are now competing with each other to attract industry so that the individual citizen will not have to shoulder an unduly heavy tax that increased services would require. Industry will pick and choose the areas that are best suited to their needs A firm supply of low cost electric energy is definitely one factor that

will guide and attract industry Therefore, since it is so vital that we attract new industry, and that we have a supply of low cost energy, is it not in the best interests of the State to sell this power at its cost, and therefore encourage industry and electrification rather than selling power at its highest market value so that private utilities would in each case outbid public entities and then merely increase their rates

One final comment is necessary The majority, recognizing that a direct application of power revenues to water is a subsidy, has attempted to evade the question of subsidy by providing that the distribution of the power revenue merely be used to accelerate the payment of costs allocated to power They say that technically there would be no power revenues surplus until all allocated power costs were repaid This overlooks the provisions of Senate Bill 1106, which provides that all revenues from the sale of water or power must be used to repay the bonds, and, therefore, any moneys paid by power users would be repaying the bonds that were used to build the project, which is delivering water to water users In addition to this, after the allocated costs were paid then power users would be required to pay for power coming from facilities that were completely paid for, and again, under the provisions of Senate Bill 1106, these moneys would have to be used to retire the outstanding bonds The only way that theoretically the position of the majority here would be sound would be if the power were distributed free to power users after the allocated costs to power were paid, and, of course, as stated above, this is impossible due to the fact the revenue must be used to pay outstanding bonds

RECREATION

The majority report recognizes that recreation, like flood control, should be considered a non-vendible project purpose

It also recognizes that in view of the great demand of the people of this State for future recreation and the desire for stabilization and enhancement of local economies, recreation has been elevated from an incidental project purpose to a full project purpose

As such, the majority report also recognizes that the costs of recreation should not necessarily be measured by any repayment contract or commitment, but rather should be financed from general funds

There must also be a recognition that the inclusion of funds to defray costs allocated to recreation is essential to the feasibility of many projects Therefore, a proper consideration of such costs involves not only the question of providing recreational facilities but, in many instances, the construction of the entire project The majority report would require that the recreational facilities of each project must be dependent upon prior specific determination by the Legislature of "the amount, timing and location of recreational expenditures by appropriating them from the general fund " The emphasis of this approach fails to properly consider the requirement of Section 233 of the Water Code and also the practical effect of such a policy on the proper preliminary planning of state-constructed water projects

Section 233 requires the Department of Water Resources, prior to submitting plans or proposals for authorization of a project for construction or operation by the State, to determine the water and facilities

necessary for public recreation justifiable in terms of state-wide interest and feasible as a non-reimbursable cost of the project.

Thus, the necessary and justifiable recreational costs of a project are required to be determined at the outset of the planning of such a project To require that the recreational facilities of a project must await a specific legislative determination of "the amount, timing and location of recreation expenditures" is to place the department in the position, on one hand, of being required by law to make a prior determination of such facilities as a nonreimbursable cost and, on the other hand, of being requested to await a legislative decision on such matters This is further accentuated because of those features of a project which involve joint costs as distinguished from separable costs It is difficult to understand how the proper planning of a project could proceed, not only as to recreation but as to any other aspects of the project, if the determination of the portion of joint costs which will be borne by recreation must await specific legislative appropriation, where the appropriation is to be based on a consideration of the completed plan or proposal.

Recreation features which are consistent with the other uses of the project and determined by the Department of Water Resources as necessary and feasible must be included in each state-constructed water project without further legislative action and included as a part of the payment from the California Water Fund.

This would not preclude the Legislature's examination of the expenditure for recreational facilities of each project as it may at any time examine the propriety of any such inclusion This would allow the proper preliminary planning to proceed without causing unnecessary delay If, on completion of such plans, the Legislature agrees with the departmental determination of the proper recreational features to be included, it would not be required to separately appropriate funds to the project for recreation but would permit consideration and authorization of the entire project as a whole

PROJECT SIZING

The majority has concluded that the willingness of immediate purchasers to pay allocated costs of water shall determine the sizing of a project In other words, that a project should not be built large enough so that future needs will be taken care of from the original construction features of a project. The reason given by the majority is because they state that the "payment of the heavy interest burden on this capacity may be somewhat ill advised for the future generation may be able to construct a project to meet its own needs with considerably less strain on its own resources "

This may or may not be true Suffice it to say that no testimony or evidence was given to this committee by way of dollars and cents figures or anything approaching an economic evaluation of this situation to permit such a conclusion Therefore, this minority is not in a position to state that the position of the majority is correct, particularly when the Department of Water Resources has indicated their desire that project sizing be to the project's ultimate capacity because the total

project costs will be paid off in the later years of development. Under the view held by the majority, if such would be the policy of the State, it is easy to see that the first project built would be sized so small that users who would come into existence 10 years from now would not have any of the benefit of the first project Under the view of the majority, only those agencies immediately able to contract would receive a benefit from a project even though there was overwhelming evidence that in those areas which could not contract immediately they would in the space of a few short years be able to contract because of the tremendous population expansion expected.

ADDITIONAL COMMENTS

ASSEMBLY, CALIFORNIA LEGISLATURE
January 30, 1960

THE HONORABLE CARLEY V. PORTER
Chairman, Assembly Interim Committee on Water
State Capitol, Sacramento 14, California

DEAR MR. PORTER: As I advised you at the time I did so, I signed the report of the Assembly Interim Committee on Water with some reservation.

I consider the report to be an outstanding document in the field of water project policy and have found myself in almost complete agreement with the recommendations of the committee as set forth in the report. Nevertheless, there are two points on which I feel the report inadequate; namely:

1. I fully concur that there must not be any acreage or other limitation in the delivery of available water However, it has not been conclusively demonstrated to me whether, with a full repayment pricing policy, there will be or will not be a substantial unearned increase in land value which is not recovered through some form of tax I believe, therefore, that the committee should have recommended that a continuing economic study of this aspect be made by the Department of Water Resources, and if and when it ever should become evident that there is a substantial unrecovered increase in land value that a policy should be developed or legislation recommended that will effect recovery

2 As the report states, there has been no evidence or testimony which has indicated that it will be practical to sell power to public agencies at a preferential price as is done by federal projects, nor has any public agency indicated to the committee that it wishes to purchase power from the Feather River Project under any conditions While these circumstances must guide state policy at this time, I feel that, should the Feather River Project or any future state project develop conditions wherein it would be practical to do so, and where there would be a demand for project power by public agencies, such power should be sold to public agencies at the lowest price consistent with good business principles.

I respectfully request that this statement be presented along with the committee report, and that it be printed as supplementary to that document

Respectfully yours,

JOHN C. WILLIAMSON
Assemblyman, 39th District

APPENDIX

The voluminous testimony gathered during calendar years 1958 and 1959 has necessitated some process to reduce it to a more manageable, usable and printable form The principal statements made before the Assembly Interim Committee on Water and the former Joint Subcommittee on Economic and Financial Policies for State Water Projects have been reviewed and those portions directly pertaining to the committee's work have been included in this appendix The complete transcript is available in the committee's office Included at the end of this appendix is also a series of letters containing basic information

In order to make this appendix more useful, most statements carry a citation to the volume and page of the transcript where it appears The index to the appendix lists material in the appendix by agency, witness and date of hearing to facilitate identification.

The questionnaires used as a basis for these hearings have been included at the beginning of the testimony pertaining to each questionnaire In several instances the statements of witnesses appear as direct answers to the appropriate questionnaire and should be so read

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STATEMENT OF FRANK KOCHIS

U. S. Corps of Engineers

BACKGROUND OF LOCAL PARTICIPATION IN FLOOD CONTROL PROJECTS

1 General legislation requiring local participation in projects constructed by the Corps of Engineers was initially contained in the 1936 Flood Control Act In Section 3 of that act, Congress provided that no money could be expended on the construction of any project until states, their political subdivisions, or other responsible local agencies had given satisfactory assurances that they would (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the project; (b) hold and save the United States free from damages due to the construction work, and (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of War These requirements of local co-operation are now generally known as the a-b-c assurances

2 Section 2 of the Flood Control Act of 1938 modified the requirements of local participation by directing the Secretary of War to acquire title to all lands, easements, and rights-of-way necessary for any dam and reservoir project or channel improvement or channel rectification project for flood control, i e, the "a-b-c" provisions of the 1936 act were declared to be no longer applicable

3 Although the Flood Control Act of 1941 and subsequent acts restored the a-b-c assurances required for local flood protection projects (i e, levees, channel improvements, etc), they reiterated the policy that the Federal Government would acquire all lands, easements and rights-of-way for federal reservoirs The only exception to this policy is where a flood control reservoir is constructed in lieu of a channel improvement to protect a purely local area In such cases the a-b-c assurances apply to the reservoir in the same manner as they would have applied to the channel work Also in cases where such local flood control reservoirs result in land enhancement benefits, local interests are required to pay 50 percent of the first cost proportionate to that benefit. Although the local co-operation requirement is usually consistent with the foregoing enunciated policy it may vary widely as a result of specific provisions that may be incorporated in the authorizing legislation.

4. In general, all flood control and navigation costs of reservoir projects are borne by the Federal Government The cost allocated to irrigation storage is required to be repaid by the beneficiaries Where hydroelectric power is provided, the portion of the project cost allocated to power is repaid to the Federal Government by sale of the power output. Where storage for municipal and industrial water supply is made available, the water users are required to repay the cost allocated to such storage. Project costs are allocated to recreation only when the recreational benefit is local and the cost is borne by the local interests Only in cases where a recreational facility is of national significance, in connection with national parks or forests, is the cost borne by the Federal Government Usually the cost of recreation facilities is allocated to other project functions

5. Under current corps policy, a project must be economically justified and financially feasible both prior to authorization and prior to construction. Economic feasibility requires that the total benefits, to whomsoever they may accrue, must exceed the project cost. Financial feasibility means that the services of the project are needed within a reasonable period of time, that the reimbursable costs are within the repayment ability of the beneficiaries and that the beneficiaries are willing and able to take the service and repay the allocated costs. Since 1956 both the House and Senate appropriations committees have directed that no construction contracts could be awarded until a responsible local interest entered into a binding agreement to provide the required local co-operation In case of multiple-purpose reservoirs involving irrigation service, the corps has interpreted this mandate as requiring written assurances from a responsible local political entity that they will enter into a repayment contract upon completion of construction

If a project will result in appreciable enhancement of property values in addition to the usual benefits through prevention of flood damages, appreciable local contribution to the cost of the project may be a requirement of local co-operation Determination of the benefits attributable to the higher utilization of property is based on the increase in earning power (net earnings) of the property Evaluation

of this benefit requires consideration of past use and the probable future use, both with and without flood control. Care is taken to exclude that portion of the earning power of property creditable to the additional investments other than for flood control, that must be made in order to realize an increased or higher utilization of the property This is particularly important when use of land for residential and industrial purposes is involved When prevention of flood damages is also involved in an area expected to benefit through increased utilization, care is taken to avoid duplication in the estimate of total benefits

STATUS OF COST ALLOCATION STUDIES FOR OROVILLE RESERVOIR

1. Studies were authorized September 21, 1956, by Senate Public Works Committee resolution requesting "* * * review of reports * * * with a view to determining whether any modifications of the recommendations contained therein is advisable at this time, with particular reference to studies of proper cost allocations for the Oroville Dam on Feather River, proposed to be constructed by the State of California, such economic justification for allocation of contribution for flood control to be reported to the committee at the earliest possible date"

2 The procedure for allocating the cost of a multiple-purpose project to the various functions it serves, such as flood control, irrigation, power, recreation, fish and wildlife, etc, has been fixed by agreement (dated March 12, 1954) between the federal agencies engaged in this field of endeavor and by Bureau of the Budget Circular A-47 dated December 31, 1952 Three alternative methods of cost allocation are available to determine the justified federal contribution All three will be considered by the corps in its current studies The one now being considered in detail in the "Separable Cost-Remaining Benefit" method While the detailed procedure is rather complex, the fundamental concept is rather simple Such concept provides that (a) all costs incurred exclusively for a specific purpose or function shall be charged to that function, (b) that all savings to be achieved by combining all functions into a single multiple-purpose project are to be shared equitably by these functions and (c) that the total amount allocated to each function shall not exceed the benefits provided by that function The application of this method necessitates obtaining detailed information relative to both the multiple-purpose project and to possible alternative projects to fulfill the requirements of each function In practice, this means that it is necessary to prepare cost estimates for different reservoir capacities to serve different purposes, not only for the Oroville site, but also for other available alternative reservoir sites

3 The accomplishments and benefits to be provided by the Oroville Project have to be determined as accurately as possible for purposes of cost allocation This requires, first a decision as to the method of project operation It is then necessary to determine the physical accomplishments of the project and to place a monetary unit value on each accomplishment In order to do this, it is necessary to determine where the new or regulated water supply, made available by the project, is to be used, and the benefits to be obtained at the place of use equated back to the point of storage A similar determination must be made with respect to the new power output and the flood control accomplishments and benefits must also be evaluated These are complicated operations and we are now engaged in co-operative studies with the Department of Water Resources in this regard

4 One of the most important parts of these studies is the determination of the space required to control floods, and the criteria for the flood control operation of such space. The problem is complicated because as of now no flood control storage is available on the Yuba River, and the flood control operation of the Oroville Project must be fully co-ordinated with the flood waters of the Yuba River

5. Preliminary reservoir operation studies of the Oroville Project, its irrigation and power accomplishments, and the monetary benefits creditable to such accomplishments have been completed by the State The result of such studies have been furnished to the corps for use in connection with the cost allocation appraisals The State has also furnished the corps first and annual costs for various size dams and power plants at the Oroville site for the same purpose The corps is now reviewing this data with a view to conferring with the state engineers at an early date as to the basic criteria to be used for the final operation studies needed for the cost allocation In this connection, it is the corps' intent to ask the Federal Power Commission and the U. S Bureau of Reclamation to assist the corps in arriving at the power and irrigation benefits creditable to the Oroville Project

6. The corps itself is currently making studies with a view to determining the amount of flood control space that should be reserved behind the Oroville Dam to

provide an adequate degree of protection along the Feather River. Such study involves the method of interrelated conservation and flood control operation that should be used so as not to unduly interfere with the irrigation and power accomplishments of the project In connection with such studies the corps is also deriving the flood control benefits creditable to various amounts of flood control storage space The flood control storage space reservation being considered varies from 500,000 to 1,000,000 acre-feet Upon completion of the corps' studies, they will be discussed with the State with the objective of reaching mutual agreement on the amount of flood control space to be provided behind Oroville Dam

7 Although a substantial amount of preliminary work has already been completed, much additional work remains to be done Such remaining work essentially consists of determining the basic criteria for final operation studies and the making of such studies, a more accurate determination of the various accomplishments and benefits; and finally the selection of the method of cost allocation to be used It is hoped that the work remaining to be done can be completed in time to meet the presently scheduled report submission date of December 1, 1958

Oroville Dam and Reservoir

Gross capacity		3,500,000 a f
Flood control reservation	about	500,000 a f
Inactive pool	about	97,000 a f
Height of dam		730 ft.
Power Plant:		
No units		5
Total capacity		440,000 kw.

The Oroville Reservoir will be operated for flood control, irrigation, power production, and to provide a firm water supply for exportation to areas of deficiency It is estimated that the Oroville Reservoir on Feather River, together with the proposed Bullard's Bar Reservoir on Yuba River, would have controlled the 1955 flood and would have prevented the loss of 40 lives and about $50,000,000 damages In addition, control of the flood flows would have relieved the threat to the remaining portion of the Sacramento River levee system below the mouth of Feather River.

RECREATION PLANNING AND DEVELOPMENT AT MULTIPURPOSE RESERVOIRS IN THE SACRAMENTO DISTRICT

Recreational development by the Corps of Engineers on projects constructed for flood control is based upon the provisions of Section 4 of the 1944 Flood Control Act as amended by Section 4 of the 1946 Flood Control Act, which provides.

> "The Chief of Engineers is authorized to construct, maintain, and operate public park and recreational facilities in reservoir areas * * * and to permit the construction, maintenance, and operation of such facilities * * * to grant leases of lands * * * in reservoir areas * * *."

The act, as amended, provides that preference shall be given to federal, state, or local governmental agencies, and licenses be granted without monetary consideration to such agencies for the use of all or any portion of a reservoir area when such action is in the public interest. The act further provides that leases to nonprofit organizations may be granted at reduced or nominal rentals in recognition of the public service to be rendered in utilization of the leased premises

The matter of providing a minimum reservoir pool for recreational purposes is an extremely complicated one, not only because it is necessary to allocate storage space to recreation but also because, in many instances, the waters are totally appropriated for irrigation or domestic uses. In these cases, it becomes a question of recreation interests obtaining the necessary water rights for the recreational pool The subject therefore goes beyond the limits of Corps of Engineers' authority, and becomes a matter of local interest and the state authorities having jurisdiction of the water rights.

Recreation potentialities are given full consideration in the preparation and evaluation of proposed water resources programs and projects In general, federal participation is limited to providing public access and the basic facilities necessary to permit detailed development by the local interests. This usually means that the corps provides access roads, parking areas, drinking water, and sanitary facilities, and that further development is carried out by state or local agencies or private organizations

The following subparagraphs contain information on reservoir projects completed and operated by the Sacramento District.

a. Harry L. Englebright Reservoir, Yuba River

(1) *Recreational Facilities* Public use facilities at this reservoir, all government-owned, comprise access roads, parking areas, an overlook point, picnicking facilities, a boat-launching ramp, designated swimming area, sanitary facilities, and drinking water supply Present annual usage is about 26,000 visitor days Public use has been increasing at about 6,000 visitor days per year, but is reaching the maximum capacity of the existing facilities.

(2) *Recreational Management* All public-use facilities at the reservoir were provided at government expense and are operated and maintained by the Corps of Engineers A master plan for recreational development has been prepared by the Sacramento District and submitted to the Chief of Engineers for approval The master plan includes all existing facilities and proposes additional development depending on future conditions There are no outstanding agreements pertaining to public-use facilities at the project The Sacramento District is now advertising for bids for leasing of approximately 90 acres of federal lands at the reservoir for development of public-use and recreational facilities on a commercial concession basis The general provisions of the lease, which will be for a term of 10 years, are:

(a) Concessionaire will provide minimum facilities consisting of drinking water supply, permanent-type sanitary facilities, boat-launching and pickup facilities, rental boat docking and mooring facilities, and will provide for the sale of fishing tackle, bait, food and refreshments, and miscellaneous supplies

(b) Concessionaire will pay $100 annual fixed rental In addition, he will pay the government a percentage of the annual gross income Minimum acceptable percentage of gross income is 3 percent.

(c) The Corps of Engineers will continue to maintain the existing parking areas and access road Maintenance of all other recreation features will be the responsibility of the concessionaire.

b. North Fork Reservoir, North Fork American River

(1) *Recreational Facilities* Public-use facilities comprise government-owned access roads, parking areas, an overlook point, picnicking facilities, sanitary facilities, and drinking water supply In addition, there are privately owned facilities consisting of floating docks, a boat-launching ramp, concession stand and clubhouse Annual public usage has leveled off at about 24,000 visitor days, which approximates the maximum capacity of the existing facilities

(2) *Recreational Management* The Federal Government has provided most of the recreational facilities at the reservoir Prior to the execution of a license agreement with the Auburn Area Recreation Park and Parkway District, the Corps of Engineers administered the public use of the reservoir and maintained all the existing facilities The existing license agreement was negotiated for a 15-year period ending in 1968 Under the terms of the license, the licensee handles all recreational uses of the reservoir; enforces the rules and regulations prescribed by the Department of the Army, maintains all existing public-use facilities excepting the access road, parking area, and public restrooms, and provides additional recreation facilities as funds are available The available facilities are open to all on equal terms, a nominal fee being charged by the licensee Since November, 1955, the licensee has been fulfilling the above obligations through its concessionaire, the Auburn Boat Club The license does not provide for a monetary return to the government

A master plan for recreational development of the reservoir area has been prepared by the Sacramento District but has not yet been submitted to the Chief of Engineers for approval The existing developments are included in the master plan

c. Pine Flat Reservoir, Kings River

(1) *Recreational Facilities* Facilities for the public at this project comprise (1) government-owned access roads, an overlook point, parking areas, boat-launching facilities, campground and picnic area, water supply, and sanitary facilities, (2) a county-administered picnic area including parking space, water supply, and sanitary facilities; and (3) privately owned access roads, parking areas, boat launching, docking and mooring facilities, boat and motor rentals, bait, tackle, food and refreshment concessions, picnicking facilities, trailer parking areas, water supply, and sanitary facilities. Public use during 1957 amounted to over 352,000 visitor days, an increase of 45 percent over the previous year.

(2) *Recreational Management* The overlook point, access road, boat-launching site, and appurtenant facilities were provided at government expense and are operated and maintained by the Corps of Engineers The campground and appurtenances were provided at government expense and are operated and maintained by the U S Forest Service. The county-administered picnic area is being developed by Fresno County under the terms of a license agreement negotiated for a 25-year period ending December 31, 1979 The license requires the licensee to provide needed public facilities on a tract of government-owned land. The license provides no monetary return to the government. In addition to the above license, two leases for commercial boat concessions have been negotiated with the owners of property adjacent to government-owned land These leases run for five-year periods, expiring in 1960 and 1961 and require a payment to the government of $100 per year plus 3 percent of the gross income from the concession Both lessees have developed other facilities on their own properties in conjunction with the commercial boat concessions

The Corps of Engineers has prepared a master plan for recreational development and management of the reservoir area. It incorporates all of the existing improvements and describes potential areas for future developments.

d. Isabella Reservoir, Kern River

(1) *Recreational Facilities.* Public-use facilities at Isabella comprise (1) a government-owned observation point and parking area with drinking water and sanitary facilities at the main dam, (2) county-administered campground areas, sanitary facilities, water supply, and two patrol boats for rescue and law enforcement; and (3) privately owned boat launching, docking, and mooring facilities, boat and motor rentals, and associated bait, tackle, food and refreshment concessions. Public use during 1957 amounted to about 849,000 visitor days, a 60 percent increase over attendance during 1956.

(2) *Recreational Management.* The observation point and appurtenant facilities were provided at government expense and are maintained by the Corps of Engineers Under a license agreement negotiated with Kern County, the county has assumed the responsibility of planning, developing and administering the public lands in the reservoir area. The license runs for 25 years, terminating in 1980, and does not require a monetary return to the government The license provides that development of the area can be by the county or through use of commercial concessionaires To date Kern County has executed three agreements for commercial boat concessionaires

The approved master plan for recreational development of the reservoir area was developed jointly by Kern County and the Corps of Engineers and comprises a part of the license agreement with Kern County, and requires all development of recreational facilities to be in accordance with the master plan The licensee is fulfilling all obligations assumed under terms of the license.

(Transcript of May 15, 1958, page 51 The above material is the original from which the statement before the subcommittee was made)

COPY OF
STATEMENT BY GENERAL ITSCHNER
Before the Subcommittee of the Committee on Appropriations, House of Representatives, Eighty-fourth Congress, Second Session

CALCULATION OF BENEFIT-COST RATIOS

The benefit-cost ratio is a device for measuring in mathematical terms the economic worth of a project We by no means claim that it is a precise method of evaluating a project, since it is only as reliable as the figures going into its two components—the benefits and the costs Further, the benefit-cost ratio is not the sole criterion in justifying a project Loss of life is never included in our cost analyses, but it is adequately treated by discussion Likewise, there are many intangible benefits, such as the promotion of health, increases in recreational opportunities and fish and wildlife values, that are thoroughly considered but generally no attempt is made to give them a monetary evaluation However, the benefit-cost ratio is the best method we know of to indicate in simple terms the relative economic justification of a project Professor Ciriacy-Wantrup of the University of California, an outstanding economist and a recognized authority in the field of natural resources development, stated in an

article in the November 1955, edition of the *Journal of Farm Economics* that the benefit-cost analyses provide the only objective basis for guiding political decisions

Benefits are computed without regard to who receives them and without consideration of the question of repayment for services The questions of reimbursement and local co-operation are independent of the problem of economic justification of projects The computation of benefits is inherently inexact because it involves consideration of future events and the projection of past experiences It is accomplished by estimating conditions with and without the project, and taking the difference between the two as the measure of the benefits attributable to the project

In the case of flood-control projects, there are two general types of benefits (1) those attributable to prevention of flood damage; (2) those attributable to land enhancement, that is, higher type of utilization of the property made possible through the alleviation of the flood hazard

Benefits accruing from the prevention of flood damages are divided into two categories (1) Primary or direct; (2) secondary or indirect

Primary benefits are based on savings attributable to the prevention of direct damages inflicted by water on real and personal property, and reduction or elimination of costs of flood-fighting measures, evacuation and reoccupation They also include credit for prevention of certain indirect losses, that is losses not directly affected by inundation, which are fully as real as water damage Examples are loss of wages and business and increased costs of travel of rerouted traffic Primary benefits are used in our economic analyses

Secondary benefits from a project are those economic effects beyond the immediate zone of influence of the project, such as the benefit to an automobile agency that can sell more cars in the area because wages are not lost due to periodic stoppage of work in a factory which is shut down by severe floods Secondary benefits are not included in our economic analyses because of their speculative nature

Crop losses, which fall into the direct damage category, are appraised in terms of market value of the expected crop, less any costs that have not been incurred at the time of loss, such as cultivating, harvesting and marketing costs When replanting is possible it is taken into consideration in estimating the net crop loss

To determine flood-control benefits we must estimate the amount of damages that would be prevented throughout the assumed economic life of the project, but with a maximum life of 50 years. This information, which must be obtained by an examination of maps or aerial photographs and an appraisal made on the ground, is plotted as a stage-damage curve, which shows the damage that would occur at every stage of the river.

The second phase of the problem is to estimate the frequency of each stage This is extremely difficult for the stages which are reached infrequently. If we had reliable records going back 2,000 years we probably would be justified in saying that a certain flood would occur on an average once in 100 years, or possibly a larger flood would occur once in 500 years, but our records are extremely short If the infrequent floods produce very large damages, as they generally do, the average annual damages are affected greatly by the assumption made as to their frequency For instance, had the Thomaston Dam in Connecticut been built prior to the August, 1955, flood, it is estimated it would have saved 77 million dollars of damage in this rare flood But how rare was that flood? If it occurs once in 500 years, the average annual damages preventable from it are $154,000, if it should reoccur with a 100-year frequency, its average annual damages preventable will be five times as much, or $770,000 The difference is $616,000 Yet prior to the 1955 flood we assumed total annual damages preventable by this dam to be $750,000 So you can see that the benefit-cost ratio can be almost doubled in this example by assuming the 1955 flood would occur once in 100 years instead of once in 500 years

To estimate what would be the flow and stage for the rare type of flood that causes so much damage, such as the New England floods in 1955, on streams where we have not experienced such floods, we must take the severest storm that has occurred, perhaps in some other part of the Country that has similar weather characteristics, and place its rainfall pattern over the basin being studied. With this as a start, considering both the amount of rainfall and time elements, we derive a hypothetical rare flood The frequency will not be great, obviously, but the effect might be great, as it was in the example I gave in New England. The stage and frequency of this flood are used, along with experienced floods, in plotting the stage-frequency curve.

The next step is to produce, from the other two curves I have mentioned, a frequency-damage curve, from which the average annual damage and the average

annual damage preventable is quickly obtained In addition to the flood-control benefits, other benefits produced by a flood-control project, if any, are evaluated These include benefits to navigation, irrigation, power, recreation, fish and wildlife, water supply, pollution abatement, and others

I have gone into some detail to show you how flood-control benefits are computed In the case of navigation projects, benefits taken include damages prevented due to groundings, increased loadings, and savings in ship time General benefits are also claimed where commodities can be moved by water at less cost than alternative means of transportation In the case of other types of projects the methods are equally thorough but necessarily different

In addition to the general types of benefits discussed above, another general type is attributable to the increased or higher utilization of property made possible through alleviation of the flood hazard, improvement of drainage conditions, creation of usable land by spoil disposal, etc These increased utilization or enhancement benefits are measured in terms of increased net earnings for the improved conditions, or by the improved market value of the land resulting from the project While such benefits are considered in project formulation and justification, they are considered of especial local value and are the basis for increased local co-operation

The sum of the general benefits and land enhancement constitutes the benefit side of the benefit-cost ratio

The other element in the ratio is the cost of the project, converted like the benefits, to an average annual amount It includes amortization over the economic life of the project but not to exceed a 50-year period, interest, operation, maintenance and replacements, and an allowance for contingencies of 15 or 20 percent, depending upon the size and nature of the project It includes local costs, whether cash contributions, real estate, or any other participation in the project itself, but not in self-liquidating facilities or developments which are not an essential and integral part of the project For instance, in a navigation project the costs borne by local interests in building docks and intransit warehouses required to make the project usable are included, but not storage warehouses, railroad sidings, off-site access roads, and so on The accuracy of costs improves as design progresses, bids are awarded, and the construction proceeds Contingencies, in decreasing percentages, are included to cover inaccuracies and unanticipated difficulties However, it is not until the project is completed that the true cost is known

Losses in agricultural production which will result from provision of flood-control works, such as the inundation of lands in a reservoir area, are accounted for in the price paid for lands required for the project These are acquired by the Corps of Engineers at their fair market value after negotiation with owners It is considered that such a value generally reflects the long-term productive capacity of the land that is lost to agricultural use

Both benefits and costs, and consequently the benefit-cost ratio, are computed in the survey report which is the basis for congressional authorization of a project, and again, if much time elapses, at the time of the committee hearings on the project which result in authorizing legislation They are brought up to date when advance engineering and design funds are requested, and thereafter when necessitated because of changes in estimates or conditions

Experience has shown that on the program as a whole the Chief of Engineers has been extremely conservative in estimating his benefits and in computing his benefit-cost ratios In recent years his costs, also, have been on the conservative side as general price levels have become more stable

From this discussion the committee will see that benefit-cost ratios are only approximate, but they are the best measure available as to the worth of a project They are the result of a thorough economic analysis, which is not concerned with questions as to whether reimbursement is to be made to the Government, who is to make this repayment, or even who gets the benefits These problems are important, but independent of a determination of a benefit-cost ratio

Now let me give you an example of a simple determination of a benefit-cost ratio

BENEFIT-COST RATIO

Hypothetical Local Protection Flood-control Project

Average Annual Damages Average annual damages without the improvement are $46,000, consisting of $20,000 to residential areas, $19,000 to industrial areas, and $7,000 to agricultural areas.

Annual Benefits Damage prevented is $38,000, consisting of $17,000 to residential areas, $15,000 to industrial areas and $6,000 to agricultural areas Residual or nonpreventable average annual damages of $8,000 still exist due to being outside the protected area or because of the possibility of overtopping the levees in those floods which exceed the project design. There are no land-enhancement benefits

First costs	
Federal first cost	
Channel enlargement	$50,000
Levees	611,000
Pumping plants	74 000
Total federal first cost	$735,000
Nonfederal first cost	
Lands and rights-of-way	$46,000
Relocations	64,000
Total nonfederal first cost	$110,000
Total federal and nonfederal first cost	$845,000
Annual charges	
Federal annual charges:	
Interest. $735,000, at 2 5 percent	$18,375
Amortization (50 years) $735,000, at 1 03 percent	7,570
Total federal annual charges	$25,945
Nonfederal annual charges	
Interest $110,000, at 2 5 percent	$2,750
Amortization (50 years) $110,000, at 1 03 percent	1,130
Maintenance and operation [1]	3,000
Total nonfederal annual charges	$6,880
Total federal and nonfederal annual charges	$32,825

Comparison of benefits and costs:

$$\text{Benefit-cost ratio} = \frac{\$38,000}{\$32,825} = 1\ 16.$$

[1] Maintenance and operation is normally a responsibility of local interests in a local protection project

COST ALLOCATIONS

In a water-resource-development project serving more than one primary purpose —such as navigation, flood control, irrigation, power and water supply—it becomes necessary to allocate costs among the purposes This is done in order to determine the amount of local financial participation or to provide a basis for establishing the sale price of power or water-storage space It has nothing whatsoever to do with a determination of the economic justification of a project, or its benefit-cost ratio Obviously a final cost allocation can be made only when a project is completed, although it is necessary to make tentative cost allocations based upon estimated costs before the project is started

Usually it costs something extra to incorporate any purpose in a multiple-purpose project. For instance, an intake structure, penstocks, and a powerhouse with its turbines and generators and a large amount of smaller equipment are required solely in order to include power generation in a project Usually, too, the dam must be built higher in order to provide storage to be utilized solely for power purposes, and therefore more real estate must be acquired in the reservoir area. These incremental costs of including a purpose in a multiple-purpose project are referred to as the separable costs for that purpose I believe everyone agrees that the separable costs should be allocated to the purpose for which they are incurred

But the sum of the separable costs for each purpose in a project usually fails by a substantial percent to equal the total cost of the project The remainder is called the joint cost, and usually consists of the major cost of the dam proper, much of the real estate inundated by the reservoir, and the cost of other features

serving all of the purposes of the dam The method of distributing these joint costs to the various purposes is the source of most disagreements and misunderstandings on cost allocations.

There are some who believe that power should not share in the burden of bearing the joint costs, on the theory that the flood-control dams are required anyway and therefore power should only pay for the separable, or incremental costs. The generating and transmission co-operatives of the Southwest so testified at recent hearings before the Senate Interior and Insular Affairs Committee However, the three government agencies most concerned in this subject, the Corps of Engineers, Department of the Interior, and the Federal Power Commission, are in complete agreement that all purposes should share equitably in bearing the joint costs. The difficulty comes in determining what is an equitable share

Perhaps the simplest method, and certainly a fair one in many cases, would be to divide the joint costs in proportion to the storage provided for each purpose. This method is an acceptable one in some cases, but it has the defect in that it does not recognize that power depends upon head as well as storage, and it is conceivable that a power project could utilize the head provided by a recreation reservoir without any storage specifically reserved for power, and thus not be required to share in the joint costs

In 1954 the three principal federal agencies concerned agreed to the use of another method, the separable costs-remaining benefits method of cost allocation, as being applicable for most cases Since that time the Chief of Engineers has used this method exclusively except where authorizing legislation prevented. This method allocates cost in two components. the separable cost, which already has been described to you, and a share of the joint costs determined by the remaining-benefits method.

To apply the remaining-benefits method of distributing the joint costs, it is necessary first to determine what benefits will accrue to each purpose. However, if there is an alternative method of accomplishing the same purpose which would cost less than the benefits accruing to that purpose, we use the smaller figure From the amount thus obtained we subtract the separable cost for that purpose, and we have the remaining benefits for that purpose. The remaining benefits are the excess benefits over the amount required to cover the separable costs, which obviously must be charged to each purpose Joint costs are then distributed to each purpose in proportion to the remaining benefits for each purpose.

You will observe that the application of the separable costs-remaining benefits method of cost allocation results in each purpose paying a different amount per unit of water storage. In effect, it is akin to our graduated income tax system, where tax is predicated upon the amount of income, which in this case is benefits However, as a minimum each purpose assumes the incremental cost of including it in the project, so there is no loss, and as a maximum it pays the amount it would cost to produce the same benefits in an alternative project, so there is no danger that the user of a purpose might prefer to build the alternative project

All who have studied the matter thoroughly agree that the separable costs-remaining benefits method of cost allocation is the most equitable and practicable, if the basic premise is accepted that all purposes should bear an equitable share of the joint costs It insures that the advantages usually derived from constructing a multiple-purpose project as compared to a different project for each purpose will be distributed fairly to all purposes. If there is any better, more equitable method of cost allocation, we would like to hear about it, but none has been developed thus far

In conclusion, I would like to emphasize again that a cost allocation is not a determination of a benefit-cost ratio. It is only the process of distributing the entire cost of a project to the various purposes it serves, without regard to the benefits the project will produce, which generally are greater than the costs. Project payout schedules for those purposes such as power, water supply, and irrigation for which reimbursement to the government is required (without interest in the case of irrigation) are based upon cost allocations. Payout schedules presumably could be established so the government would make a profit on its projects, with the amount of the benefits or the cost of an alternative project, whichever is less, as the limit However, it has not been the policy of the government to make a profit on its water resource development projects. The Chief of Engineers is very anxious, however, that where reimbursement is required that payout schedules conform to the cost allocations, so that over the assumed economic life of the project, which we take as 50 years, full compensation is made to the government, with interest,

except for irrigation. The government's profit will come after the 50-year period, as many projects will serve indefinitely into the future It is true that the consumers of the power or water profit by the amount that the benefits exceed the costs, but they would also if they built the project with their own capital. They generally prefer to participate in a government project if one is available because of the inherent cost advantages of a multiple-purpose project and the lower government interest rates and finance charges.

Now let me give you an example of an actual cost allocation, simplified only by rounding off the figures

Allocation of Costs An actual project for flood control, power, and augmentation of low-water flows (figures are average annual amounts, rounded off to simplify as an example):

1. Cost of project	$1,800,000
2. Cost of project for flood control and power only	1,800,000
3 Separable cost of low-flow augmentation (1 minus 2)	--
4 Cost of project for power and low-flow augmentation only	1,200,000
5. Separable cost of flood control (1 minus 4)	600,000
6. Cost of project for flood control and low-flow augmentation only	1,400,000
7. Separable cost of power (1 minus 6)	400,000
8. Sum of separable costs (3 plus 5 plus 7)	1,000,000
9. Joint costs (1 minus 8)	800,000

	Flood control	*Power*	*Low-flow augmentation*	*Total*
10 Benefits	$2,000,000	$500,000	$100,000	$2,600,000
11. Cost of alternative project	1,300,000	1,200,000	800,000	--
12. Limit on total allocation (lesser of 10 or 11)	1,300,000	500,000	100,000	--
13 Minimum allocations (separable costs 3, 5, 7)	600,000	400,000	--	1,000,000
14 Remaining benefits (12 minus 13)	700,000	100,000	100,000	900,000
15 Proportion of remaining benefits (percent)	78	11	11	100
16 Share of joint costs (line 9 times line 15)	624,000	88,000	88,000	800,000
17 Total cost allocation [1] (line 13 plus line 16)	1,224,000	488,000	88,000	1,800,000

[1] Average annual costs include amortization, interest, operation, maintenance, and replacement charges

COST SHARING IN WATER RESOURCES PROJECTS

The costs of water-resources projects under the jurisdiction of the Chief of Engineers are shared between federal and nonfederal interests in accordance with (1) the provisions of general river and harbor and flood-control laws, (2) the specific requirements of acts authorizing the projects in some cases, (3) administrative instructions issued by the Bureau of the Budget where rules for sharing of cost in particular functions are not specified by law

The extent to which project costs for the various functions of these projects are shared between federal and nonfederal interests is as follows

Navigation. The costs of navigation projects are borne almost entirely by the Federal Government. As a general rule, local interests are required only to provide terminal facilities, rights-of-way, dredge spoil-disposal areas, and alterations of highway bridges and utilities, such as pipelines and sewage outlets which may be affected by the projects. Navigation improvements are maintained and operated by the Federal Government The River and Harbor Act in Section 2 provides for determining special and general benefits of navigation projects and for recommendations as to local co-operation to be required on the basis of special benefits.

Recreational Navigation Under an administrative formula developed by the Chief of Engineers, the costs of small navigation projects primarily for recreational use are divided between the Federal Government and the local interests concerned. In practice, application of this formula requires that local interests pay a large part, and in some cases the major part, of the first cost of such projects The cost of maintenance and operation is considered in computing the local share in the first

cost of projects of this kind, but the actual maintenance and operation is by the Federal Government.

Local Flood Protection The general flood-control acts, beginning with that of 1936, provide as a minimum requirement of local co-operation that nonfederal interests shall provide lands, easements, and rights-of-way; hold and save the United States from damages due to the projects; and agree to maintain and operate the works upon completion In addition, administrative instructions issued by the Bureau of the Budget (BOB Circular A-47, dated December 31, 1952) require that where land enhancement constitutes a benefit of a project, local interests shall pay 50 percent of the first cost proportionate to that benefit

Major Drainage The Flood Control Act of 1944 (Sec 2) defined flood control to include major drainage outlets and channels The cost of major drainage elements of flood-control projects is divided between federal and local interests in a manner similar to the requirements described above for local flood-protection projects

Flood-Control Reservoirs In accordance with the provisions of the Flood Control Act of 1938 and subsequent acts, reservoirs purely for flood control are constructed and operated entirely at federal cost This provision is based on the fact that reservoirs for flood control generally affect long reaches of river where the effect often crosses state lines, and where beneficiaries are not readily identifiable In interpreting this law, however, the Chief of Engineers has required local co-operation, similar generally to that for local flood-protection projects, where reservoirs are provided in lieu of the normal type of local flood-protection works, such as levees and channel improvements In addition when flood-control reservoirs provide land-enhancement benefits, local interests are required to pay 50 percent of the first cost proportionate to that benefit

Hydroelectric Power In multiple-purpose projects which provide for the development of hydroelectric power, the part of the cost of the project allocated to power is fully repaid to the Federal Treasury by revenues collected by marketing agencies The Chief of Engineers is responsible for determining the part of the costs of a project which should be allocated to hydroelectric power Rates for sale of such power to recover the costs are established by the marketing agency of the Department of the Interior and approved by the Federal Power Commission

Water Supply Where storage for municipal and industrial water supply is made available by multiple-purpose projects, water users are required to pay the cost allocated to such storage The Appropriations Act for Fiscal Year 1938 authorizes the addition of water supply storage, providing that water users pay for the extra or incremental cost of adding it Under the River and Harbor Act of 1944, the Secretary of the Army is authorized to dispose of "surplus" water for domestic and industrial uses at such prices and terms as he may deem reasonable

Irrigation When reservoirs under the Chief of Engineers provide storage specifically for irrigation of agricultural lands, the part of the cost allocated to irrigation storage is required to be repaid by water users Under present practice such repayments in the 17 western states are generally handled by the Bureau of Reclamation under the provisions of reclamation law In the past some projects have been authorized by the Congress with the requirement that repayment arrangements be made by the Secretary of the Army

Pollution Abatement Where pollution abatement is a project function and project costs are allocated to it, such costs are borne fully by local interests This is in accordance with administrative instruction contained in BOB Circular A-47 Assignment of such costs to local interests is based on the fact that the effect and benefit of reservoirs in pollution abatement is to eliminate or reduce the need for treatment by municipalities and industries of sewage and other waste discharged into rivers

Preservation of Fish and Wildlife Where projects have as a function the preservation or enhancement of fish and wildlife resources, present administrative instructions (BOB Circular A-47) require that the cost of this function be borne by local interests unless the improvement to fish and wildlife is of national significance and part of a federal fish and wildlife program In the latter case, it would be borne by the Federal Government.

Recreation When project costs are allocated to recreation and the recreational benefit is essentially local in character, the cost allocated to this function is borne by local interests If the recreational function provided is of national significance, such as a facility in connection with a national park or forest, the costs would be borne by the Federal Government

Land Enhancement In all cases where projects produce land-enhancement benefits and these can be measured and utilized in the economic justification of the im-

provements, regardless of the type of project, nonfederal interests are required to bear 50 percent of the part of the first cost proportionate to the land-enhancement benefit.

Summary It will be seen, therefore, that under existing law and administrative instructions, the sharing of costs between federal and nonfederal interests varies according to the functions of a project, to reflect essentially the present federal interest in that particular function Thus the share of cost to be borne by local interests in any specific function will be the same regardless of the type of project or where it is located The degree of local participation in any particular project as a whole, however, will vary with the functions which are incorporated in that project and with the benefits that it produces

(The above statement by General Itschner was provided to the subcommittee but was not included in the transcript)

STATEMENT OF I. H. STEINBERG

U. S. Army Corps of Engineers, San Francisco District

The Russian River Reservoir was authorized by Congress in the 1950 Flood Control Act as the initial stage of an adopted step-by-step plan for developing the water resources of the Russian River basin Other phases of the adopted (but not authorized) plan contemplate the construction of a multiple-purpose reservoir on Dry Creek and raising the initial stage Russian River Reservoir to its ultimate height to provide additional storage for water conservation.

The authorized reservoir is located on the East Fork of the Russian River at Coyote Valley, about six miles northeast of Ukiah. The major contract for its construction was let in June, 1956, and the project is scheduled to go into full operation by the middle of this coming December. Of its 122,500 acre-feet capacity, 48,000 are for flood control and 70,000 for water conservation The remaining 4,500 acre-feet are for silt reservation.

Although the Russian River Reservoir at Coyote Valley is the only Corps of Engineers project of this type in the San Francisco district, there are some features pertaining to cost allocations and basis for repayment which may be of some interest to your committee.

The principal purposes of the project are flood control and water conservation. Under this latter term are grouped the various beneficial purposes to which the water is to be put, such as supplementing present or furnishing additional supplies for domestic, industrial or agricultural uses, and augmenting the summer low-water flow in the interest of maintaining established recreational areas along the lower reaches of the Russian River

In arriving at an allocation of project cost between the Federal Government and nonfederal (or local) interests, consideration was given to the two aforementioned principal project purposes, namely, flood control and water conservation. In addition it was recognized that the water conservation aspects could be further separated into two categories, namely (1) water supply for various purposes and (2) augmenting low streamflow Thus, initially, three specific project purposes were utilized in arriving at cost allocations, and then combined into the two principal purposes By the use of the method of least alternative cost, it was determined that of the total $16,250,000 estimated reservoir cost as given in the project document, $9,330,000, plus a percent of the annual maintenance and operation costs, should be allocated to water conservation Although the amount allocated to flood control was nonreimbursable, that is, the cost would be borne by the Federal Government, the amount allocated to water conservation was subject to repayment The District Engineer, in his report suggested several methods by which local interests could repay the required $9,330,000, such as contributing, in cash, the present worth of this amount prior to start of construction.

The Board of Engineers for Rivers and Harbors in its review of the report arrived at the amount of repayment from a somewhat different approach. As a result of an analysis of a number of federal projects involving water resource developments and from a consideration of the various uses to which the water would be put and the general nature of some of the benefits, the board concluded that there was a federal interest in the water conservation, and that the Federal Government should participate to the extent of 40 percent of this feature The board recommended therefore, that local interests contribute only 60 percent of the $9,330,000, or $5,598,000 in cash, prior to start of construction of the project It also considered that to insure the full realization of flood control benefits, the reservoir should be con-

structed, maintained, and operated under supervision of the Chief of Engineers with conservation operation to be in accordance with desires of local interests, subject to flood control priority The project was authorized substantially in accordance with this recommendation As many of you may be aware, Sonoma County, through a successful bond election, raised the required total amount, and in March, 1956, made the payment to the Secretary of the Interior, who in turn transferred the funds to the Secretary of the Army for application towards the project in accordance with the authorizing act Subsequently, Mendocino County reimbursed Sonoma County around $650,000 for its pro rata share of the water conservation features of the project All maintenance and operation of the project is to be accomplished by the Corps of Engineers with federal funds at no further cost to local interests Releases from the dam for water conservation are to be made at the direction of the Engineer of Sonoma County Flood Control and Water Conservation District, subject to flood control priority The cost for constructing works, such as pipelines, for the distribution of water to urban or agricultural areas is a local responsibility. At the present time Sonoma County is constructing a distribution system to furnish water, initially, to Santa Rosa, with facilities to expand to other areas where water will be needed The point of takeoff for the system is on the Russian River at the Wohler Bridge, which is located a few miles upstream from Mirabel Park

Among the benefits evaluated in the project document were those in the recreational areas along the lower reaches of the Russian River which would result from providing a minimum flow in the river during the summer low-water season It is recognized that certain areas of the Russian River, such as Guerneville and Mirabel Park, are important recreational centers The major attraction of vacationists to these areas is considered to be the fact that there is a substantial flow of water in the river during the summer which is utilized for boating, swimming and other such recreational sports This summer flow is due to the Pacific Gas and Electric Company diversion from the Eel River through its hydropower plant at Potter Valley. This diverted flow enters the upper reach of the East Fork of the Russian River and thence down the main stream to the ocean Continued increase in upstream withdrawals for agricultural and other purposes is depleting the flow in the river, and during a period of low-water years, the flow in the Guerneville area would be reduced to zero during the summer months. This condition would greatly detract from the area to the point that it might deteriorate to some extent With an assured sustained flow, however, the area can be expected to expand until it has attained its maximum growth as a recreational center. For determining the benefits resulting from maintaining a summer flow, estimates were made of the net return in income under conditions without and with augmented low-water flow over a period of 50 years, which corresponds to the economic life of the project. The difference between these two was taken as the benefit due to maintaining the flow in the Russian River. Owners in the resort areas have recognized the value of the summer streamflow and are being assessed an additional tax for assurance that water will be released for this purpose

In connection with the preparation of the project document, the U. S. Fish and Wildlife Service was requested to investigate the effect of the proposed project on the fish and wildlife. Although that agency found that there would be some detrimental effect due to construction of the dam, the increase in fishery value of the Russian River downstream from the dam due to augmenting summer streamflow and the fishery value of the reservoir itself would more than offset the losses The net effect therefore, would be beneficial. The U S. Fish and Wildlife Service also arrived at a monetary evaluation of the benefits, but, in accordance with existing policy, these were not included in project benefits or in cost allocations

The National Park Service made an appraisal of the potentiality of the reservoir area for public use and recreational development, and their views were considered in the planning of real estate requirements for the project. As the result of such planning, there are now available several areas around the reservoir suitable for such type of development.

The general policy of the Corps of Engineers in furthering and aiding the development of areas for public use was described to your committee yesterday by Mr Kochis, Chief, Engineering Division, of the Sacramento district It has been the view of the Chief of Engineers that benefits resulting from recreational use of reservoir areas by the public is of a local nature, accruing principally to the local region which gains through increase in business, in assessed property valuations and the like. For this reason the local agencies are encouraged to assume the responsibility of developing the reservoir lands for public use. The lands are made available to

the local agencies under a lease, or license, subject to certain established rules and regulations The Corps of Engineers will normally provide a minimum of facilities, such as access roads to the reservoir, water supply and comfort stations.

In the case of the Russian River Reservoir, inquiries were sent to various agencies of the federal, state and local governments to determine their interests in accepting the responsibility for developing the reservoir lands for public use purposes Several of the agencies indicated they would be willing to co-operate to limited extents. Mendocino County, however, has given assurances, in the form of a resolution, that it will accept the responsibility for planning and developing the area for public use. They have engaged the services of a planning consultant to prepare general plans for the area When completed, these plans will be submitted to us and upon approval will be included as a part of the lease, or license, to be granted Mendocino County

As a step toward implementing the public use program, the San Francisco district will develop an "overlook" area on a knoll just north of the dam This site presents an excellent vantage point from which to obtain a panoramic view of the entire reservoir and dam The facilities to be provided are an access road, parking area, water, comfort station, sewage system, and a boat-launching ramp

In addition, studies are underway for developing plans for an access road at the northeast side of the reservoir This road would provide access to a relatively large and flat area which has been considered as the most desirable for initial public use development.

It is expected that the construction of the overlook adjacent to the dam and the access road at the northeast side of the reservoir will be the extent to which the Corps of Engineers will participate in providing access and public use facilities for the reservoir It is assumed that Mendocino County, with assistance of state agencies and through leases to concessionaires, will provide the necessary facilities to adequately take care of the visiting public

(The above statement is as revised by the Corps of Engineers after being presented in the transcript of May 16, 1958, page 97)

STATEMENT BY A. N MURRAY

Sacramento Regional Office, Bureau of Reclamation

I. INTRODUCTION

Three points should be noted at the outset·

(1) Economic justification and financial feasibility, while important factors involved in the decision to construct a reclamation project, are by no means the only factors The decision to construct is reached after considering engineering, economic, legal, and political factors

(2) Economic standards governing reclamation development are derived in a manner similar to many other public policies Some of our standards are expressed directly in Reclamation Law; some are expressed in other law; some are derived through the exercise of discretionary authority granted the Secretary of the Interior, still others are based on broad principles of engineering and economics In general, reclamation projects are authorized individually—economic standards being used in our planning reports today may reflect our understanding of congressional policy as expressed in legislation governing other projects recently authorized

(3) Benefit-cost analyses, cost allocations, rate-making policies and procedures, and repayment requirements, while related to each other in greater or lesser degree, may be founded on differing policy bases Reclamation projects undergo two economic tests benefit-cost analysis and an analysis of repayment prospects. The benefit-cost analysis tests the justification of the project to society as a whole, the repayment analysis tests the ability of the direct beneficiaries to pay the reimbursable costs.

II. TWO MEASURES OF ECONOMIC EVALUATION OF RECLAMATION PROJECTS

Originally, the economic soundness of reclamation projects was tested solely by a repayment analysis However, federal water policy during the past 25 years or more has brought into Bureau of Reclamation multiple-purpose projects functions which are not reimbursable or are reimbursable at varying rates of interest The questions then arise as to how we are to test the economic soundness of projects which cannot be tested through repayment studies The benefit-cost ratio is a tool which permits

comparison of the values created with the costs It is written into law for some agencies, it is required in our evaluations by administrative policy

Many of our problems—and of other public agencies in the water field—focus on the assumptions and techniques employed in benefit-cost analyses If the benefits could be accurately and consistently determined, application of the principles of economics to those benefits would give just as dependable results as in the case of private financing However, it is difficult to measure the benefits of irrigation, flood control, municipal and industrial water service, power, navigation, fish and wildlife, recreation, salinity control, and other functions of multiple-purpose projects by a common yardstick Primary irrigation benefits are defined as the increase in net farm income and can be measured with reasonable accuracy Secondary irrigation benefits, though just as tangible, are less certain and their derivation has led to controversy Flood-control benefits may include prevention of damage and enhancement of land values—certainly not wholly the same kind of dollar benefits that flow from irrigation development Municipal and industrial water benefits usually are considered to be equal to the alternative cost of supplying the service, this is true also of power benefits Thus, these two are by no means the same kinds of benefits as are flood control and irrigation benefits There is no common technique of benefit measurement Thus, to some extent, apples and oranges are being added to pears and prunes when we derive the total benefits of multiple-purpose water development

There are several controversial elements involved in benefit-cost analyses One of these concerns the period of analysis Annual benefits are higher if it is assumed that the period of analysis is 100 years than would be the case over a 50-year period Annual costs are higher if it is assumed that during the period of analysis average interest costs will be 3 percent as compared to, say, 2½ percent Benefits will be higher if we assume that price levels in the future will be higher—who is to say what the relative value of the dollar will be 30 or 40 years from now as compared to today? In computing operating expenses, only a few years ago our reclamation analyses were predicated upon the assumption that price levels in the future would be 180 percent of 1939 costs Recently, price levels were used to about 260 percent of 1939 costs Today we estimate future operating expenses as equal to the average costs prevailing during the three preceding years In estimating the prices to be received and paid by farmers in the future, we have raised our sights three times in the postwar period so that today we are using an index of 265 for prices paid and 250 for prices received on the 1910-14 base of 100 What *will* price levels be in the future? A dynamic economy has made long-range forecasting of price levels and costs a hazardous undertaking; however, economists in several departments of the federal government are constantly studying and attempting to improve estimating techniques

I mention the above elements pertaining to benefit-cost analysis only in outline, but emphasize the importance of the benefit-cost ratio as a tool It is a principal means of sizing a project or features of a project Direct irrigation benefits go into studies to determine irrigators' ability to meet water charges Finally, a favorable benefit-cost comparison insures that the economy as a whole will be improved by the expenditure of public funds

The other and more controlling economic analysis governing reclamation development is the repayment analysis. Repayment standards are fairly well established in federal law and policy although those standards change from time to time For example, in its early days, reimbursement of capital expenditures for reclamation projects had to be secured in 10 years, subsequently, this was raised to 20 years. At present, general reclamation law provides for reimbursement of irrigation capital expenditures in 40 years with as much as 10 years additional for a development period. Specific projects have provided for even longer repayment periods In general, these standards provide as follows: (1) costs allocated to irrigation must be recovered in not more than 50 years without interest; (2) costs allocated to flood control and navigation are nonreimbursable, (3) costs allocated to commercial power must be recovered in not more than 50 years with interest, (4) costs allocated to municipal and industrial water supply must be recovered in not more than 50 years with interest; (5) costs allocated to prevention of damage to fisheries may be nonreimbursable, and (6) costs incurred for construction of minimum basic recreational facilities are nonreimbursable

Two major steps are required in making a repayment analysis for a multiple-purpose reclamation project The first is the allocation of costs equitably among the several authorized project purposes inasmuch as those costs may be nonreimbursable,

reimbursable without interest, or reimbursable at varying rates of interest Following this step and using assumed rates for water and power service, repayment of the costs allocated to reimbursable functions is tested

III. COST ALLOCATIONS

The cost allocation process has been and, to some extent, still is highly controversial The reason for this is simple Allocation results—and, therefore, water and power rates necessary to repay allocated costs—can be influenced heavily by the selection of the method of cost allocation There are many such methods, all of which have some arguments in their favor or against them Costs can be allocated on the basis of proportionate use, of relative benefits, of alternative costs, of alternative justifiable expenditures, of incremental costs and benefits, and still other methods As of today, federal agencies are agreed on using the cost allocation method known as the "separable costs-remaining benefits" method While the method itself is simple, the factors going into its use can be very time consuming for a large and complicated water project. Its primary characteristic is that joint costs of a multiple-purpose project are equitably distributed among the various functions served by multiple-purpose construction in proportion to the relative ability of those purposes to absorb those costs Thus, if a project can be used jointly for irrigation and flood control, and construction of the project is justified for either purpose, savings due to multiple-purpose use are shared and reimbursable costs are not derived by subtraction of justifiable nonreimbursable costs The method has become, I believe, well known, and examples of its application are extant in libraries and technical publications

Today we are applying this method of cost allocation in testing the feasibility of the Central Valley Project The method has been employed on Reclamation's Santa Maria Project in Santa Barbara County, and the Ventura River Project in Ventura County Brief statements are attached summarizing the allocation and repayment aspects of several of our smaller projects in this region The complexity of the Central Valley Project is such that I would suggest committee staff study of the application to that project rather than an attempt to explain it succinctly to the committee today

Whatever provisions we may have in general reclamation law for an allocation of cost, as such, to recreation are applied very sparingly as a matter of policy Present policy has been reflected in administration recommendations to the Congress on specific projects and approval of those policies in the act authorizing the project In general, we recognize that a reservoir will serve a recreational use, we recognize also that the benefits of that use are difficult, if not impossible, of measurement It is the policy to regard those benefits as being properly paid for by the general taxpayer only when they are of broad national significance, such as is the case in our national parks and monuments Present policy, therefore, is to provide for construction of what are termed minimum basic recreational facilities on a nonreimbursable basis, provided a local or state agency will take over and operate those facilities and the area in the interests of recreation For example, we are authorized to expend $100,000 for construction of such facilities at Casitas Reservoir in Ventura County, we expect to do so and expect also that the County of Ventura or another local entity will operate and manage the area for recreation, and may spend considerable additional funds of its own for further development The act authorizing the Trinity River Division of the Central Valley Project permitted expenditures for construction of the same types of facilities; we anticipate spending about $250,000 of nonreimbursable federal funds on such facilities out of total project costs of $262,000,000 I might say parenthetically that minimum basic recreational facilities are those essential sanitary, water supply, and similar types of structures vital to public health, convenience, and safety.

IV. REPAYMENT

I have remarked that project economic evaluation focuses on benefit-cost and repayment analyses In benefit-cost comparison all project benefits are considered irrespective as to who or where they accrue Repayment analysis is more restrictive and requires an examination to determine that portion of the benefits to each purpose that might legally and reasonably be drawn upon and converted into revenues to repay costs Costs allocated to commercial power or M and I must be repaid with interest from their own revenues Costs allocated to irrigation may be paid from water toll or tax revenues received from beneficiaries of the irrigation service; provided, charges to irrigators must be within their expressed willingness and

demonstrated ability to repay. Additional irrigation repayment assistance may be provided from excess commercial power and M. and I. net revenues Policy requires that power rates be set to produce net revenues sufficient to repay the commercial power investment and provide necessary irrigation repayment assistance.

Irrigation water marketing contracts between the bureau and a district legally organized under state law are usually negotiated pursuant to the Reclamation Act of 1939 Subsection 9(d) of that act provides for fixed periodic payments to repay the cost of facilities. Subsection 9(e) of the same act provides that the Secretary of the Interior may, at his discretion, enter into contracts to provide a water supply—usually at a fixed rate for each acre-foot of water delivered The 9(d) type is referred to as a repayment contract; the 9(e) as a water service contract Both are limited to an initial period of not more than 40 years, exclusive of a development period Both forms of contract are widely used The 9(d) repayment contract has been used for irrigation distribution systems of the Central Valley Project and will be employed for the full cost of the Ventura River and the Santa Maria projects Water service 9(e) type contracts are used for the storage and conveyance features of the Central Valley, Solano, and Cachuma projects

It is interesting to note how reclamation water marketing policy has changed over the years In early reclamation development the United States often contracted with each individual water user This did not prove satisfactory, and legislation was adopted requiring contracts with water user organizations to secure group participation and liability

Changes in the scope of repayment responsibility have also occurred Early direct irrigation beneficiaries entered into individual contracts but collectively assumed full repayment responsibility. With water user associations, the irrigation repayment obligation still was directed at the direct irrigation beneficiary, although repayment assistance from excess power revenues became important Today, irrigation, water conservation, and flood control districts are recognizing more and more the many indirect benefits that accrue to an area from water resource development, and have indicated an increased willingness to assume repayment responsibilities for project costs by ad valorem taxation. Bureau repayment contracts for the costs of the Santa Maria, Ventura and Solano Projects will be, in each case, with a single contractor Each proposes to use the taxing power of the district to assist in some degree in repaying project costs. Since future projects may well become larger, more costly, and economically more significant to adjacent communities and districts, it seems likely that districts will more than ever resort to taxing powers to obtain a portion of the indirect project benefits for repayment purposes

SANTA MARIA PROJECT

Summary of Cost Allocation and Repayment

Authorization

The project was authorized September 3, 1954, by P. L. 774, Eighty-third Congress, Second Session The secretary's report was published as House Document 217, Eighty-third Congress, First Session The levee project for construction by the Corps of Engineers was presented to Congress in a report dated May 24, 1954, and authorized by P L 780, Eighty-third Congress, Second Session

Cost Allocation

The Bureau of Reclamation and the Corps of Engineers collaborated in planning the flood control and water conservation features of the Cuyama and Santa Maria Rivers Twitchell Dam, located on the Cuyama River, was included in the bureau authorization; levees and channel improvements were authorized to the corps The total project cost (dam, levees, and channel improvements) was allocated between flood control and water conservation by the separable cost-remaining benefits method. The result was that all of levee and channel improvement costs and 17 742 percent of the dam cost is allocated to flood control This percentage is recorded in the contract between the United States and the Santa Barbara County Water Agency The latest cost estimate of bureau features for the project is $12,440,000, of which 17 742 percent, or $2,207,000, is assigned to flood control The remainder of $10,233,000 is assigned to water conservation The cost of corps work is estimated at $10,182,000 and is allocated to the flood control purpose

Repayment

A contract with the Santa Barbara County Water Agency was executed on April 6, 1956, pursuant to Section 9(d) of the Reclamation Project Act of 1939 and the authorizing statute

The contract provides for the county water agency to repay the cost allocated to irrigation (water conservation) in 80 equal semiannual payments, without interest The agency in turn contracted for repayment with the Santa Maria Water Conservation District, a member unit of the agency The contract further provides for operation by the district. If costs are converted to an annual basis, the annual payment for amortization in 40 years is $255,800 Operation, maintenance, and replacement would add $11,450 to estimated district costs. The Santa Barbara County Water Agency contributes $50,000 a year in aid to the Santa Maria Water Conservation District repayment obligation The remainder of the payment is met by ad valorem taxation on real property by the Santa Maria Valley Water Conservation District Tax revenues required are estimated at $217,250 annually, of which approximately $144,000 would be derived from agricultural lands

SOLANO COUNTY PROJECT

Summary of Cost Allocation and Repayment

Authorization

The Solano County Project, California, was authorized November 11, 1948, by the Secretary of the Interior, in accordance with the provisions of Section (9a) of the Reclamation Project Act of 1939 (53 Stat 1187) The secretary's report was published in House Document 65, Eighty-first Congress, First Session

Cost Allocation

The latest estimated construction cost of the project is $49,699,000, of which $12,302,000 is for distribution and drainage systems The remainder of $37,397,000 is allocated among flood control, irrigation, and municipal and industrial water service. The flood control allocation is $1,132,000, this allocation is the present worth of an annual $44,000 benefit for 50 years at 3 percent interest. The remaining project cost was distributed between irrigation and M. and I proportionate to estimated water deliveries over a 50-year projected repayment period The tentative cost allocation is as follows.

Flood control	$1,132,000
Irrigation	33,132,000
M and I	3,133,000
Subtotal	$37,397,000
Distribution systems	12,302,000
Total	$49,699,000

Adjustments to the allocation have normally been made annually to reconcile with the latest project cost estimate For a number of years the procedure has been to hold the flood control assignment fixed at $1,132,000 Allocations to recreation and federal expenditures on recreation were not contemplated in the authorization Lake Berryessa is currently receiving heavy recreation use and is expected to be used for this purpose even more in the future

Project repayment contracts were being negotiated before adoption of the separable cost-remaining benefits method of cost allocation Also, although installation of a small power plant appears feasible, no part of the dam and reservoir cost is currently allocated to power because such a power plant is not yet authorized

Repayment

On March 7, 1955, the Solano County Flood Control and Water Conservation District entered into a 9(e)-(c) type contract with the United States to receive water service from the Solano Project and to operate Putah South Canal Member unit contracts have been executed between that district and the Solano Irrigation District, and the Cities of Vallejo, Fairfield, Vacaville, and Suisun

Maximum water rates to the Solano County Flood Control and Water Conservation District are $2 65 an acre-foot for agricultural water at canal headworks, and $15 an acre-foot for municipal and industrial deliveries at turnouts from the main canal The county district will finance and perform operation and maintenance work on the main canal A 35-year M and I development period is projected, leading to an ultimate use of 27,200 acre-feet annually The irrigation development period is 15 years, and full development use is projected at 219,800 acre-feet Repayment is expected to be completed in 51 years Although procedures differ, irrigation uses are subsidized similarly to Cachuma Project, since the county district expects to sell water at $2 25 canal side

On June 12, 1957, a contract between the United States and the Solano Irrigation District was executed for a loan to construct the distribution system under P. L 130, Eighty-fourth Congress This construction cost will be repaid directly by Solano Irrigation District

VENTURA RIVER PROJECT

Summary of Cost Allocation and Repayment

Authorization

The Ventura River Project was authorized March 1, 1956, by P L 423, Eighty-fourth Congress, Second Session The secretary's report was published as House Document 222, Eighty-fourth Congress, First Session

Cost Allocation

The cost of the project was estimated originally at $27,669,000 The original project cost included $169,000 for minimum basic recreational facilities The remaining cost of $27,500,000 was allocated between irrigation and municipal and industrial water service by the separable cost-remaining benefits method Proportionally, 57 33 percent of that cost was assigned to irrigation, and 42 67 percent was assigned to the M and I purpose The latest project cost estimate is $31,000,000, of which $100,000 is for nonreimbursable recreational facilities The remainder of $30,900,000 is distributed between M. and I and irrigation proportional to the percentages derived in the earlier allocation, and results in assignments of $17,326,800 to irrigation, and $12,896,200 to M and I.

Repayment

A 9(d)-(c) type repayment contract between the United States and the Ventura River Municipal Water District was executed on March 7, 1956 The district expects to receive revenues from water sales and ad valorem taxation The per-acre-foot water rates contemplated in our repayment analysis are $25 for irrigation and $50 for M. and I Approximately 50 percent of the repayment obligation is estimated as derived from water charges, and the balance from tax revenues A repayment period of 50 years was considered beginning in 1961 and concluding with year 2010 The M and I allocation is expected to be repaid with interest of 2 591 percent by year 40 of the repayment period Thereafter, M. and I revenues are expected to be used to aid in amortizing the interest-free irrigation allocation.

CACHUMA PROJECT

Summary of Cost Allocation and Repayment

Authorization

The Cachuma Project was authorized March 24, 1948, by the Secretary of the Interior in accordance with the provisions of Section 9(a) of the Reclamation Project Act of 1939 (53 Stat. 1187) The finding of feasibility was published in House Document 587, Eightieth Congress, First Session

Cost Allocation

The latest cost estimate for the Cachuma Project is $43,625,000 No formal allocation of this cost has been made since neither the municipal and industrial nor the irrigation assignments are reimbursable with interest Approval not to charge interest on the M. and I. allocation was given by the Secretary of the Interior in accordance with the discretionary authority of Section 9(c) of the Reclamation Project Act of 1939 There is, however, a nonreimbursable assignment of $13,788 to recreation. This assignment was made pursuant to P. L. 350, Eighty-first Con-

gress, First Session, the Appropriation Act for Fiscal Year 1950, which allowed the Bureau of Reclamation to use not to exceed $25,000 on any one reservoir area for planning of recreational development.

Repayment

On September 12, 1949, the United States and the Santa Barbara County Water Agency executed a contract for water service under Sections 9(e) and 9(c) of the Reclamation Project Act of 1939. The county agency in turn contracted for the delivery of water to member agencies which include the Carpinteria, Goleta, Montecito, Summerland, and Santa Ynez River Water Conservation Districts, as well as the City of Santa Barbara The county agency derives its revenue from the sale of water and from ad valorem taxation Countywide ad valorem taxes are expected to contribute $100,000 annually to project repayment, in a manner somewhat similar to Solano Project. Thus, others than the direct beneficiaries share the project costs. Payments to the United States under the 9(e) contract are based on water deliveries. The water rates are $35 an acre-foot for M and I deliveries and $25 an acre-foot for irrigation except for those irrigation deliveries to the Santa Ynez Water Conservation District which are at Cachuma Dam and are at the rate of $10 per acre-foot.

The project, except for Cachuma Dam, has been turned over to the Santa Barbara County Water Agency for operation and maintenance The United States credits the agency for these costs since the 1949 water service contract was predicated on operation by the United States.

The recreational aspects of the project are handled by Santa Barbara County Nominal charges are made for the use of these facilities to cover operation and maintenance expenses.

(The above is the original from which the statement to the subcommittee was made Transcript of May 16, 1958, page 116)

EVALUATION OF RECREATION BENEFITS

Bureau of Reclamation, Denver, Colorado

The need for a sound method for evaluating recreational benefits has received increasing attention in recent years. This felt need has arisen in connection with planning of multipurpose water development programs, and has stimulated the search for an adequate method for determining economic values

Why has this need arisen? The answer is that the economic procedures used in selecting plans for federal multipurpose water development depend on monetary evaluation of benefits for each of the project purposes. The key processes of project formulation and cost allocation are in large part mathematical procedures which use dollar measures of benefits Adequate provision, in the planning process, for each purpose of a project depends on the relative magnitude of the benefits arising from that purpose. Each specific function should yield enough benefits to justify its separable costs and a fair share of the joint cost of the major structures Thus, the need for determining dollar values for each project purpose arises from specific technical requirements of modern project planning methods

One might almost say it is not the actual amount by itself which is important, but rather the use which is made of the figure If one only wanted to entertain a dinner partner, the dollar amount of the annual recreation benefit of a large multipurpose project might be an interesting but unimportant bit of chit chat But the dollar amount of the annual recreation benefit as an element in deciding the scope of a $50,000,000 project and in establishing plans for its financing and repayment is serious business Thus, the ability to determine the economic extent of recreation benefits helps to determine what provisions for recreation will be recognized in project planning These considerations have encouraged general interest in the problem of recreation benefit valuation

An earlier method of recreation benefit evaluation may be illustrated by a July, 1947, report for Enders Reservoir on Frenchman Creek, Chase County, Nebraska This report, entitled "Estimated Monetary Evaluation of Recreational Benefits and Estimated Cost of Recreational Development," was signed by Guy B Edwards, Chief of Recreation Planning, National Park Service After a study of population characteristics, it was estimated that 8,936 persons annually would seek recreation at Enders Reservoir. Then values deemed attributable to recreation were derived from the amounts individually spent by these visitors for travel, light refreshments, lunches, sporting equipment and similar expenses. The total of these values multi-

plied by the annual visitation gave an annual estimate of $13,279 for recreation benefits at Enders (It is interesting to find that in contrast to the estimate of 8,936 annual visitation made in 1947, the visitation experienced at the completed dam in 1955 was 35,600 persons) The per capita value of recreation determined by this method was $1 49 per visitor It is worth noting, too, that the Park Service estimate was used only to justify a $2,500 annual expenditure for separate recreation facilities; it was not used in formulating the major project features nor were any of the costs of these structures allocated to recreation

In 1948 and 1949 the National Park Service explored methods for evaluating recreation benefits A study entitled "The Economics of Public Recreation" prepared by Dr Roy A Prewitt was published early in 1949 Dr Prewitt's conclusion was that "recreational values cannot be measured in dollar terms other than on some arbitrary or judgment value basis" But Dr Prewitt also concluded that there would be nothing inherently wrong with dollar estimates of recreation benefits based on such judgment values, "where such is necessary in order to protect the interests of the Service, or where it is necessary for an allocation of costs to recreation or water impoundment projects in order to obtain funds for the construction of recreation facilities" Dr Prewitt omitted project formulation from the uses of such judgment value estimates By his method recreation facilities are limited to separable, special purpose adjuncts of projects designed for other purposes

The National Park Service agreed with Dr Prewitt's conclusion, and adopted the assumption that recreation benefits created by the reservoir would equal, in monetary terms, the cost of development of recreation facilities that were considered necessary and desirable

With few exceptions, this policy has been followed down to the very recent past. Subsequent to the initial administrative determination to use the cost of separable structures for benefit evaluation, the procedure was made more specific Recreation benefits resulting solely from the reservoir itself would be equal to the net benefit arising from the construction of recreation facilities The cost of specific recreational facilities was to be allocated to recreation, and reservoir benefits were to be used in allocating a share of joint costs to recreation However, any allocation to recreation of more than 7½ percent of joint costs was to be referred to the Director of the National Park Service for his consideration and concurrence

A recent illustration of this method is provided in connection with plans for 88,400 acre-foot capacity reservoir on one of the southern tributaries of the Missouri River This reservoir will provide irrigation service to 4,150 acres. Benefits will accrue from flood control, irrigation, fish and wildlife conservation, and recreation Total estimated development costs are $9,808,000; the estimated cost of dam and reservoir is $6 597,000 Included in the dam and reservoir cost is an item of $43,000 for recreation The recreation benefit calculation is as follows

Annual recreation development costs (excluding private or non-federal development, $43,000 amortized for 25 years at 2½ percent) (0 0543)	$2,335
Annual operation and maintenance cost	3,500
Total annual cost	$5,835
Capital value of annual cost (50 years at 2½ percent = 28 36)	$165,500
Existing recreation values destroyed	None
Net benefits arising specifically from development of facility	$165,500
Adjusted net benefits (construction cost index factor = .59 × $165,500)	$97,600
Benefits resulting from joint use of reservoir	97,600
Total recreation benefits (50 years at 2½ percent)	$195,200
Average annual recreation benefit	6,900

By this method the measure of benefits is the cost of the specific recreation features constructed at the reservoir site.

It is interesting to note how the dollar amount of benefits calculated by this method differs from that in the 1947 evaluation by Guy Edwards' method Since the reservoirs are comparable in size and location, an 8,900 annual visitation might have

been projected and annual benefits would have been $13,300 However, if the 1955 Enders visitation of 35,000 were used, then the unadjusted annual benefit would have been $52,000, with a capital value in 50 years of $1,500,000 instead of $331,000 (two times $165,500).

Very recently a new method of recreation benefit evaluation has been under consideration by the Park Service In August of this year, Region 2 of the National Park Service wrote to the Chairman of the Interior Missouri Basin Field Committee describing their current method of determining recreation benefits. By this method, somewhat similar to the older formula, estimated annual visitation at a proposed project is multiplied by a computed market value for recreation established at *$1 60* per visitor day. This value was derived from 1951 price schedules of charges by privately owned outdoor recreation activities obtained by the Office of Price Stabilization or from other rate schedules Net annual recreation benefits are obtained by deducting negative recreation effects from the gross recreation benefit figure Capitalization of net annual benefits is at 2½ percent The multiplier for a 25-year expectancy is 18 425 and for 100 years it is 36 614 per dollar of annual net benefit No mention is made of the 7½ percent ceiling on allocation of costs of joint facilities, but this limitation may still be in force.

Let us see how this method would apply to a reservoir with the annual visitation at both Lakes Mead and Mojave in 1955. The calculation for gross recreation benefits would be 2,675,000 annual visitation multiplied by $1 60 and capitalized with a multiplier of 28.362 (2½ percent for 50 years). The figure would be a $4,280,000 annual benefit, with a capital value of $121,389,360 Since few reservoirs of this size would be built, the example is somewhat extreme but does illustrate the magnitudes possible under this method

But all along there has been dissatisfaction with the several methods of evaluating recreation benefit in multipurpose projects. This dissatisfaction is expressed in the report of the President's Water Policy Commission, in the recommendation of that commission, in comments on that report by the Department of Interior task force set up to review it, and in other sources In July, 1950, a Report of the Conservation and Development of Outdoor Recreation Resources was issued by the Federal Interagency Committee on Recreation This report voiced the sentiment that recreation benefits were probably not measurable. The committee felt, however, that recreation should be considered as a major not a minor purpose in water project planning, that recreation benefits should be of great enough importance to influence project formulation including site location and relative distribution of emphasis among purposes The thought has generally been expressed that federal recreation costs should be nonreimbursable All of these documents agree that more recreation legislation is required, particularly legislation in support of national recreation policy.

Budget Bureau Circular A-47 of December 31, 1952, supported the principle that recreation potentialities should be given full consideration in the planning and evaluation of proposed water resource projects Nevertheless, the circular modified this principle by stating that costs specifically incurred for recreation and benefits creditable to recreation should be evaluated and considered apart from other project costs and benefits This view tended to reaffirm measurement of recreation benefits based on costs of separate recreation facilities Such a policy, along with other limitations introduced in the circular, reduces the importance of recreation as a project purpose because the development of the central project plan must proceed without an initial consideration of recreation as a significant project purpose. It is only when recreation values of a magnitude comparable to the primary purpose of the project are attributed to central structures that recreation can achieve equality of consideration with the established major purposes of power, irrigation, and flood control Such a role for recreation probably depends on legislation and the establishment of a federal recreation policy Consequently, the problem of determining recreation values is to some extent also a policy and legal question Circular A-47 implies that the only use of recreation benefits would be in connection with separable rather than joint facilities

There are indications that changes in the situation with respect to recreation benefits and the place of recreation in project development plans will occur in the future. In the last session of Congress, Senator Kerr of Oklahoma introduced S. 1164, a bill to make the evaluation of recreational benefits resulting from the construction of any flood control, navigation, or reclamation project an integral

part of project planning This proposal authorizes the inclusion of recreation, fish and wildlife as major purposes of water resource development Plans for major structures may be made to accommodate these purposes; up to *15 percent* of the cost of a project may be allocated as a nonreimbursable cost The bill cuts through the difficulties of recreation benefit evaluation by authorizing a value of $1 per visitor day.

Although the ultimate fate of this bill is unknown, as an item in the series of efforts to evaluate recreation benefits it is significant. It is significant also as a possible indicator of the direction of future action.

The $1 per visitor day of the Kerr Bill contrasts with the recent $1.60 figure of the National Park Service and with $2 per day recommended by Harold F Wise and Associates in their study of recreation values made in connection with the State of California's investigation of the Upper Feather River Basin Development But despite these differing views on the value of visitation, all these recent proposals do recognize the importance of *use, measured in visitation*, as a basic factor in their determinations Can we assume that this common agreement represents a partial solution of the difficult problem of evaluation? I believe that if this point is conceded, then a concentration on establishing agreement and rationale for a unit value for visitation should be possible, at least possible in terms of administration and of legislation if not of full agreement among economists

Yet the economists have a point They suggest that the central problem is not one of greater or smaller recreation values, but of greater or smaller error in the proper allocation of scarce resources Two mistakes seem likely to flow from undervaluing recreation effects of federally constructed water control projects. (1) an inadequate allocation of resources may be made to recreation; and (2) purposes other than recreation may have to bear costs which should be borne by recreation There is little doubt in my mind that recreation seekers at many reclamation reservoirs are receiving benefits from expenditures made for irrigation, power, or flood control.

This comment does not enter a judgment as to whether allocations of cost to recreation should be reimbursable. Most of us would be happier, I presume, if we had confidence that the allocation to each purpose of the impoundment was net of costs which should be allocated to other functions actually performed and other services actually provided

Concerning the magnitude of recreation values created at federally constructed reservoirs, I am convinced that they are very great, much greater than the modest values yet attributed to the visitor day. Take, for example, the enormous increase in the real estate values which have occurred on privately owned lands at some reservoirs It occurs to me that a rough guide to the magnitude of the recreation value might be derived by taking the net increase of real property values within one mile of the reservoir shoreline at several typical impoundments This lump sum could be reduced to an annual income equivalent by the application of a capitalization formula and contrasted to income from the same land before the reservoir was constructed This net annual income equivalent is an index of the value created by the impoundment

I believe that the gross value of recreation is not less than the annual amount which recreation seekers are willing to spend for travel, and for the other costs which enable them to realize the recreation value This, nationally, is an enormous sum. I do not claim this entire sum for recreation, but it is logical at least to recognize these values as benchmarks to help us survey the recreation topography

The assignment of the Pacific Southwest Interagency Committee to the Recreation Subcommittee was "The assembly and analysis of available data on recreation economics, both for benefit-cost estimates used in water resource projects and in estimating the value of recreation to the economy of the State" The Recreation Subcommittee does not have the resources at its disposal to fully discharge this responsibility of assembling and analyzing all available and pertinent data. The subcommittee could render a useful service, however, by analyzing and recommending sound procedures for evaluating recreation values at water control projects

As a preliminary suggestion, the Recreation Subcommittee might recommend that a basic element of the evaluation of recreation benefits should be the annual number of visitor days General agreement on this one point alone would be a useful decision It would settle for this region one-half of the problem and could lead to refined methods for recording and classifying visitation at established projects The next

step could be to recommend that estimates of visitation for planning purposes be based on careful study of judiciously selected comparisons. For example, visitation records at Lake Mead might be useful in estimating future use of Glen Canyon Finally, while recognizing that the establishment of a monetary value for units of visitation must necessarily be a judgment value, the subcommittee could show that a similar problem in reality has been met and overcome by all sorts of governmental regulating bodies The courts have said in respect to public utility commission rulings in contested rate cases "The rates are what the commission says they are" If we know the relative magnitude of the national recreation demand in dollar values; if, as is already the case, we have a range of visitation values; then, is it too much to suppose that this subcommittee can help to narrow the range?

The broad authorizations for investigation, planning and construction of public recreation, fish and wildlife facilities in the Colorado River Storage Project and in participating projects are of direct importance to this subcommittee Section 8 of Public Law 485, Eighty-fourth Congress, Second Session, recognizes the costs associated with these facilities as nonreimbursable It is suggested that the subcommittee consider whether it desires to suggest to the Pacific Southwest Interagency Committee a uniform method for evaluating recreation benefits to be used in development of plans for the recreation phases of the Colorado River Storage Project and of participating projects If such a consensus exists, it is suggested that the subcommittee may wish to endorse the principle of unit values applied to annual visitation which has been outlined in this paper.

Perhaps it is not possible to find a scientifically perfect or even a logically supportable method for evaluating recreation But can we not help to find a workable method which avoids the twin dangers of excessive development and neglect? A timely contribution toward a more adequate evaluation of recreation benefits now may be more valuable than a perfect solution after structures are complete

The foregoing comments are necessarily confined to the field of recreation in its narrower sense Time has not permitted consideration of the evaluation of fish and wildlife benefits These benefits, related as they may be to recreation, arise under somewhat different conditions resulting from a somewhat different legal relationship (60 Stat 1080) than those with which this paper deals, although many of the same problems of evaluation are involved.

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(The above material supplemented the statement of Mr Murray and is not in the transcript)

STATEMENT BY HARVEY O. BANKS

Department of Water Resources

At prior meetings of your committee you have dealt with the subject of possible sources of funds and magnitudes thereof required for water projects to be constructed by the State For purposes of today's discussion, it is assumed that the capital funds are available and that project benefits and costs have already been computed The next step then is the allocation of costs of the project among its various purposes and subsequent to that, in terms of sequence of project analysis, are the determinations to be made as to whether the direct beneficiaries served by the project purposes shall reimburse the State for all of the costs, or only a part thereof, or none at all

Cost allocation has as its objective the equitable distribution of the total costs of the project among the several purposes served by the project It accords recognition to the underlying premise that multiple-purpose use of a structure or facility can be accomplished at less cost to each purpose than would be the case if separate facilities for each purpose were provided. It embodies the basic principles that such savings should be shared by all purposes served and that no purpose should be assigned costs in excess of the benefits realized.

The minimum cost which normally can be allocated to an identified purpose applies to those project facilities or components which are provided to serve that purpose only The maximum cost which normally can be allocated to each purpose is the value of its benefits or its alternative single-purpose cost, whichever is less

On the other hand, with respect to justifying a maximum cost higher than indicated above, a situation may arise when the single-purpose alternative costs are controlling and several alternatives for different purposes envisage use of the same physical site which is particularly advantageous in providing the limited services of a single function, but which cannot provide each service as economically when all functions are combined Under these circumstances, the one site is not a real single-purpose alternative for all purposes, and some upward adjustment in the normal maximum would appear to be necessary to distribute the total cost of a correctly formulated multipurpose development at the site in question. The cost allocated to each individual purpose served by a multipurpose project would therefore be expected to fall within the previously indicated range, with the actual monetary amounts being dependent upon the allocation method employed

There are a number of methods of cost allocation which conceivably could be used by the Department of Water Resources in project analyses Comparatively speaking, these methods will yield somewhat different results when applied to the same project Therefore, within certain limits, the relative weight of allocated cost among the several functions served by a single project or structure could be predetermined depending upon the methodology employed This point is illustrated by the attached summary comparison of the results obtained by applying four of the most widely accepted methods of cost allocation to the Coyote Valley Project on the Russian River (Table 1) You will note that the smallest of the reimbursable allocations to water conservation is less than two-thirds of the largest allocation to this purpose Prior to 1954, the problem generated by the differing results obtainable by the various cost allocation methods was subject to compounding, in the case of agencies of the Federal Government, both by variation in preference among agencies and by changing preference over time within a single agency As an example of this situation, the cost allocations on Bonneville Dam, Grande Coulee, Hoover Dam, and Fort Peck were each accomplished by the use of different methods, while the original cost allocation for the Central Valley Project was essentially a compromise between two methods As a result of this unsatisfactory situation agreement was reached in April, 1954, among the United States Department of the Interior, the Department of the Army and the Federal Power Commission on a "preferred" method of cost allocation, namely, Separable Costs-Remaining Benefits However, latitude for variation still exists in that two other methods were also considered acceptable under a

relatively flexible set of criteria. The other two methods were: (1) the Alternative Justifiable Expenditure Method in those cases where only limited information is available and the expense of obtaining additional data is not warranted; and (2) the Use of Facilities Method in those cases where use which is made of a dam and other joint features by the various functions of the project can be measured on a comparable basis and where such a method would be consistent with the basis of project formulation and authorization

There are many methods of allocating project costs and, although only three of these are now accorded preferential status by the federal agencies, any one method might be applicable in a particular situation which may confront us in the future None of the methods so far devised appears to conform fully to the basic principles of cost allocation However, we believe that preliminary selection can be narrowed down to four methods These methods are those shown on Table 1.

The first two of these, Separable Costs-Remaining Benefits and Alternative Justifiable Expenditure, depend to varying degree upon the benefits obtained from the various functions served as the basis for the allocation of joint costs In either case the total cost allocated to any purpose will not exceed the corresponding benefits With regard to the mechanics of application, Table 2 indicates that these two methods are almost identical in that each method has seven major steps The only significant difference between them applies to the identification of the minimum functional allocation, it being a derived separable cost in one case and a calculated direct or specific cost in the other The separable cost of each project purpose is the difference between the total cost of the multipurpose project and the cost thereof with the purpose omitted; whereas, direct costs are the costs of specific or physically identifiable facilities serving only one purpose Consequently, separable costs include not only direct costs but also the added cost of increasing the size of structures for that particular purpose

The last two of the four methods, namely Use of Facilities and Priority of Use, are based on the concept that the cost of joint facilities should be apportioned among the various purposes in terms of "use" as reflected by capacity requirements or relative importance in project justification. In our opinion, each of these two methods is unsuitable for cost allocation of a multiple-purpose water storage facility in which flood control is one of the functions served, and where space reserved for flood control during a portion of the reservoir operation cycle is utilized for conservation storage at another time However, either is well suited for limited use in making suballocation such as dividing the cost of a canal between municipal water supply and irrigation water The Priority of Use Method is considered acceptable on a limited-use basis by the federal agencies previously mentioned

Based on the foregoing process of reasoning, we consider it appropriate for the State to adopt a policy on cost allocation for water resource projects patterned after the policy established in 1954 by the federal agencies We propose that only one method be accorded general acceptance; that is, that preference be given the Separable Costs-Remaining Benefits Method for general application. It is considered acceptable for use by the federal agencies with which we must co-ordinate our activities and will thus constitute a basis for common understanding Furthermore, although this method is the most complex of all methods and requires detailed cost analyses of hypothetical alternative projects in order to be effective, it is believed to be the most equitable of all methods so far devised

With respect to the department's specific applications of cost allocation methods, one of the first such applications is reported on in Department of Water Resources Bulletin No 59, entitled "Investigation of Upper Feather River Basin Development," dated February, 1957. In that bulletin there were two multipurpose projects investigated, namely, the Frenchman and Grizzly Valley Projects Each of the projects was designed to serve the same two purposes—irrigation and recreation. At page 29 of Bulletin No. 59, the general procedural approach was described.

> "In current studies it was assumed that funds to meet the costs of acquiring lands, easements, and rights-of-way, and relocating public utilities would be provided by the State As a result, although included in the total project costs, these items were not allocated among the several purposes Also, no allocations of costs were made for flood control This position was justified on the basis that all flood control benefits were incidental to the other reservoir purposes, no features of the projects being designed specifically for flood control All other project costs were allocated by the Separable Costs-Remaining Benefits Method."

Specific applications of the foregoing general procedural approach are shown at pages 63 and 73 of said bulletin Subsequent reflection indicates that the costs of lands, easements, and rights-of-way, assumed to be borne by the State and therefore nonreimbursable, should have been included in the costs to be allocated This would have had the effect of increasing initially the costs allocated to both irrigation and recreation inasmuch as there would have been more costs to allocate However, if the costs of lands, easements, and rights-of-way were considered to be nonreimbursable as we recommended in the report, then such costs would be subtracted from the allocated costs assigned to irrigation and recreation in the same proportion that the allocated costs of each bear to the other, with the net reimbursable costs allocated to irrigation remaining about the same as indicated in the above two cited tabulations.

At about the same time, the department issued Bulletin No. 60 entitled "Salinity Control Barrier Investigation" This bulletin reported, among other things, on the feasibility of the North Bay Aqueduct Project This was a single-purpose project, water service, but within that purpose there were two types of water service, namely, irrigation, and municipal and industrial use Benefits and costs were computed and compared However, no so-called orthodox cost allocation was made for this project Instead, costs were segregated "* * * between those features which would be reimbursable and those which would be nonreimbursable" Again, as in Bulletin No 59 heretofore referred to, it was assumed that the State would pay for the costs of lands, easements, rights-of-way, and relocation of utilities The costs could have been allocated by any one of the four methods discussed above

Both extensive and intensive economic and engineering studies continue to be conducted by the department on the Feather River Project Many alternate aqueduct systems are being analyzed, with each system being analyzed under several sets of assumptions and with benefits and costs being computed and compared in order to select the best of several alternate routes These studies will be completed and submitted to the Legislature during the early part of the 1959 Regular Session For the Feather River Project as a whole the Separable Costs-Remaining Benefits Method is being used in allocating costs However, the work done on this latter phase to date has not been completed to the point of finality, so we cannot report thereon at this time.

We recommend that the Legislature not enact statutes which would require the use of particular or specific methods of cost allocation The matter is highly technical, any one method is not adequate under all circumstances, and technological improvements may occur that would reduce the value of any existing and preferred method In our opinion, it would be preferable for the Legislature to state policy in this regard by concurrent resolution

If rigorous (reimbursement) policies were adopted by the State, that is, whereby all project beneficiaries would repay their allocated share of project costs, then irrigated agriculture would not in many cases, it is believed, be included as a project purpose. Neither would project purposes and sites be exploited to their maximum potential benefit, particularly where they are of such a nature that collection of payments from the beneficiaries therefrom is difficult, if not practically impossible. Furthermore, the inherent advantages of multipurpose projects, such as economy of scale, maximizing development opportunities and flexibility of operation, would be reduced

On the other hand, if very liberal nonreimbursement policies were adopted by the State, then heavy subsidies might be required in some instances and more construction capital required Such a course of action would tend to reduce the activity of districts and cities and also tend to preclude the Federal Government's activities in California.

Prior to further discussing reimbursement policy for specific major project purposes, it is believed important to emphasize that the financial condition of the State Government, together with its existing large subvention program must be given prime consideration, as well as the degree of inequity resulting in those cases whereby the taxpayer does not gain sufficient direct or indirect benefits to offset his forced contribution to the project

In addition to the foregoing heavy demands on the taxpayer, the State in recent years has undertaken a heavy general obligation bond sale program, a portion of which costs is nonreimbursable by those benefited It appears, as your committee has found in receiving testimony, that this large bond selling program will continue for years to come. Consequently, it is our belief that apart from the economic

and social implications of reimbursability versus nonreimbursability, the State Government of financial necessity must in general adopt fairly conservative reimbursement policies

It is believed that only the following recommendations can be made at this time

1 The total of the reimbursable capital costs of state projects, that is the capital cost remaining after deducting the nonreimbursable costs such as described below, from the total capital cost of the project should be repaid in full over a 50-year period (10-year development plus 40-year repayment), with a reasonable rate of interest (or necessary rate in case of financing through the sale of bonds), by the direct project beneficiaries through purchase of water and power However, the specific pricing policy as regards prices to be charged for power and for water for each of the various uses to effect this repayment cannot be stated until our A C R No 14 studies have been completed

2 Costs allocated to fish and wildlife protection and enhancement should be nonreimbursable.

3 Costs allocated to public recreational developments and facilities associated with state water projects should be nonreimbursable

We have fairly conclusive evidence, in support of 2 and 3 above, that the users of public recreational facilities and those who fish in the streams come from all parts of the State They are not limited to the areas or groups immediately benefited by the other functions of a project Furthermore, it would be extremely difficult if not impossible, to collect capital repayment directly from such users Any fees that can be collected will very likely be no more than sufficient to pay the operation and maintenance costs of the recreational facilities. It is possible that under some circumstances, local agencies should be required to pay part of the cost of providing recreational facilities, such as constructing access roads, particularly where the local tax base will be appreciably enhanced However, we are not yet in a position to make specific recommendations on this aspect either

4 Since the secondary benefits of a water development project extend beyond the areas or groups directly benefited or directly using the project's products and services, it is believed appropriate that some portion of the remaining project costs be nonreimbursable, that is, borne by the general taxpayer This is the reason that we have advocated in the past, as have others, that the costs of lands, ease-

TABLE 1

RUSSIAN RIVER RESERVOIR (COYOTE VALLEY), CALIFORNIA

Summary of Results of Applying Various Methods of Cost Allocation

Item	*Flood control*	*Water conservation*	*Total*
1 Separable costs—remaining benefits			
(1) Allocation of joint reservoir costs			
(a) Separable cost	$4,830,000	$5,530,000	$10,360,000
(b) Allocation of remaining cost	2,735,000	2,735,000	5,470,000
Total reservoir allocation	$7,565,000	$8,265,000	$15,830,000
2 Alternative justifiable expenditure			
(1) Allocation of joint reservoir costs	$7,710,000	$8,120,000	$15,830,000
Total reservoir allocation	$7,710,000	$8,120,000	$15,830,000
3. Priority of use			
(1) Allocation of joint reservoir costs	$10,300,000	$5,530,000	$15,830,000
Total reservoir allocation	$10,300,000	$5,530,000	$15,830,000
4 Use of facilities			
(1) Allocation of joint reservoir costs			
(a) Separable cost	$4,830,000	$5,530,000	$10,360,000
(b) Allocation of remaining cost	2,265,000	3,205,000	5,470,000
Total reservoir allocation	$7,095,000	$8,735,000	$15,830,000
5 Average of 1, 2 and 4	$7,457,000	$8,373,000	$15,830,000

ments, rights-of-way and relocation of utilities be considered nonreimbursable This is an arbitrary procedure, based on policy already established in connection with federally authorized flood control projects where a local contribution of such is required. However, in addition to the above, if the state project possesses such characteristics as. (1) a balanced use of water resources for all purposes; (2) resolving conflicts between competing pressure groups representing particular purposes and/or particular areas; and (3) the inclusion of potential values not represented by any organized groups, then the state interest is believed to be sufficiently large as to justify this type of "across the board" assistance by the State

In some cases such assistance may amount to an excessive contribution Therefore, we would suggest that not in excess of say, 15 percent of the total project costs be nonreimbursable under this purpose.

It is assumed that costs allocated to flood control and navigation be borne by the United States as a nonreimbursable contribution to a state project This is in line with past and present federal practices, not only with respect to its own agencies, but also is exemplified with respect to the federal contribution to the Cherry Valley Project of the City and County of San Francisco in the interests of flood control and the expected contribution to the Oroville features of the Feather River Project

TABLE 2

COMPARISON OF STEPS INVOLVED IN TWO PREFERRED METHODS OF COST ALLOCATION

Separable Costs-Remaining Benefits Method	*Alternative Justifiable Expenditure Method*
(1) The benefits of each purpose are estimated.	(1) The benefits of each purpose are estimated.
(2) The alternative costs of single-purpose projects to obtain the same benefits are estimated.	(2) The alternative costs of single-purpose projects to obtain the same benefits are estimated
(3) The separable cost of each purpose is estimated	(3) The specific cost of each purpose is determined
(4) The separable cost of each purpose in the multiple-purpose project is deducted from the lesser of each purpose's benefits or alternative cost The lesser figure is used since alternative cost is used in this method only if it represents a justifiable expenditure, that is, if it does not exceed the benefits	(4) The specific cost of each purpose in the multiple-purpose project is deducted from the lesser of that purpose's benefits or alternative cost The lesser figure is used since alternative cost is used in this method only if it represents a justifiable expenditure, that is, if it does not exceed the benefits.
(5) From total cost of project deduct all separable costs to determine residual costs	(5) From total cost of project deduct all specific costs to determine joint costs
(6) Residual costs, designated as joint costs in this method, are distributed in direct proportion to the remainders found in step 4.	(6) Joint costs of the multiple-purpose project are distributed among purposes in direct proportion to the remainders found in step 4.
(7) To determine the cost allocated to each purpose, add the separable and distributed costs for each purpose and, in the case of power, subtract from that sum the amount of taxes foregone which was used in computing power costs under steps 2 and 3 above	(7) Allocation of project cost is determined in the same manner as under the separable costs-remaining benefits method

(Transcript of May 15, 1958, page 10)

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
SACRAMENTO, September 9, 1958

HONORABLE CARLEY V PORTER, *Chairman*
Subcommittee on Financial and Economic Policy for State Water Projects
Joint Committee on Water Problems
State Capitol, Sacramento, California

DEAR MR PORTER This letter is in response to the request of Assemblywoman Pauline L Davis during the course of the hearings before your subcommittee on May 15, 1958, for a comparative illustration of the results of applying various methods of cost allocation to the Grizzly Valley Project In its preparation we have utilized the four methods discussed in the department's presentation before the subcommittee, which methods in our opinion, most nearly comply with the basic principles of cost allocation The objective of cost allocation is to provide for equitable distribution of project costs among the several purposes served Our analysis demonstrates that these four methods yield somewhat different results when applied to the same project.

Physical considerations are often predominant in the decision as to multiple-purpose construction However, if this factor is discounted, the justification of use of one structure or facility to provide more than one service rests on the determination that this practice involves less cost for all of the associated services than would be the case if a separate structure were provided for each service Therefore, the incremental cost of providing each service as an addition to the other functions of the multiple-purpose structure should be less than the cost of the most economical *single-purpose alternative means of producing similar benefits for that purpose* The total cost allocated to a specified purpose normally would be expected to fall within a range established by a minimum representing all costs which are required to specifically serve the purpose and a maximum representing the lesser of either the value of its benefits or the alternative costs necessary to yield equivalent benefits

The Grizzly Valley Project in the Upper Feather River Basin would serve the purposes of irrigation and recreation It would comprise a multiple-purpose reservoir and single-purpose facilities for both irrigation and recreation However, in order to properly allocate the costs of this project, it also has been necessary to estimate the investment required for a single-purpose recreation reservoir The significant items of cost for the project are as follows (for most of the detail shown below, see Table 14 at page 72 of Department of Water Resources Bulletin No 59, dated February, 1957):

Item	*Capital costs*	*Annual costs*
Single-purpose recreation reservoir	$347,800	$20,400
Multiple-purpose reservoir	$568,800	$34,800
Irrigation canal	729,000	34,500
Land, easements and rights-of-way for irrigation canal	27,900	1,100
Land, easements, and rights-of-way for reservoir construction (this amount applies to either the single- or multiple-purpose reservoir)	320,100	12,400
Public recreation facilities	255,000	24,200
Totals for multiple-purpose project	$1,900,000	$107,000

Investment of the above amounts is estimated to yield average annual project benefits of $193,500 of which irrigation accounts for $134,100 and recreation for $59,400 (see Table 15 of Bulletin No 59) The alternative single-purpose capital cost for irrigation *required to yield equivalent benefits is $1,900,000 less $255,000,* or $1,645,000; the comparable expenditure for recreation is the sum of three amounts listed in the above tabulation: the single-purpose recreation reservoir cost of $347,800, the investment in recreation facilities of $255,000, and the investment of $320,100 in land, easements, and rights-of-way for reservoir construction The attached four tables reflect application of these significant values to the process of cost allocation in accordance with accepted procedure for the four methods to which reference previously has been made

At page 73 of Bulletin No. 59, it is indicated that prior to the allocation of project costs by the Separable Costs-Remaining Benefits Method—the costs of lands, easements, rights-of-way and relocation of public utilities were deducted. This was done so at the time on the basis that they "* * * were assumed to be a responsibility of the State" However, for purposes of allocating total costs among the purposes served, all costs should have been included and were so included in the four attached cost-allocation computations. This procedure, of course, has the effect of increasing the apparent allocated costs to each of the purposes The matter of reimbursability or nonreimbursability would depend upon policy and would require further allocation after total costs are allocated among the purposes

I hope that the attached information will help your understanding of the principles of cost allocation and help to clarify any questions on the subject which may have been troubling you or members of your subcommittee The process of cost allocation will become an increasingly significant activity of the Department of Water Resources as our work progresses It plays a fundamental role in the field of project financial analysis which, together with planning, design, and construction, constitutes the four cornerstones of water resource development

Very truly yours,

HARVEY O BANKS
Director

GRIZZLY VALLEY PROJECT—ALLOCATION TABLE 1

SEPARABLE COSTS-REMAINING BENEFITS METHOD

Item	*Irrigation*	*Recreation*	*Total*
1. Annual benefits	$134,100	$59,400	$193,500
2. Single purpose alternative	(1,645,000)	(922,900)	--
Annual costs	$82,800	$57,000	--
3 Justified annual investment	$82,800	$57,000	--
4. Separable costs	$977,100	$255,000	$1,232,100
Annual costs	$50,000	$24,200	--
5. Remaining benefits	$32,800	$32,800	$65,600
Percent distribution	50 0	50 0	100 0
6. Remaining costs to be allocated	$333,950	$333,950	$667,900
Annual costs	$16,400	$16,400	$32,800
7. Allocated annual costs	$66,400	$40,600	$107,000
8. Allocated capital costs	$1,311,050	$588,950	$1,900,000

GRIZZLY VALLEY PROJECT—ALLOCATION TABLE 2

ALTERNATIVE JUSTIFIABLE EXPENDITURE METHOD

Item	*Irrigation*	*Recreation*	*Total*
1 Annual benefits	$134,100	$59,400	$193,500
2 Single purpose alternative	(1,645,000)	(922,900)	--
Annual costs	$82,800	$57,000	--
3 Justified annual investment	$82,800	$57,000	--
4. Specific costs	$756,900	$255,000	$1,011,900
Annual costs	$35,100	$24,200	$59,300
5 Remaining alternative costs	$47,700	$32,800	--
6. Percent distribution	59 3	40.7	100 0
7. Total joint costs to be allocated	$526,600	$361,500	$888,100
Annual costs	$28,300	$19,400	$47,700
8. Allocated annual costs	$63,400	$43,600	$107,000
9. Allocated capital costs	$1,283,500	$616,500	$1,900,000

GRIZZLY VALLEY PROJECT—ALLOCATION TABLE 3A

PRIORITY OF USE METHOD (FIRST PRIORITY TO IRRIGATION)

	Item	*Irrigation*	*Recreation*	*Total*
1	Single purpose alternative	$1,645,000	$922,900	--
2	Allocation of joint costs	$888,100	--	$888,100
3	Specific costs	$756,900	$255,000	$1,011,900
4	Final allocation	$1,645,000	$255,000	$1,900,000

ALLOCATION TABLE 3B

PRIORITY OF USE METHOD (FIRST PRIORITY TO RECREATION)

	Item	*Irrigation*	*Recreation*	*Total*
1	Single purpose alternative	$1,645,000	$922,900	--
2.	Allocation of joint costs	--	$667,900 [a]	$667,900 [a]
3	Specific costs	$977,100	$255,000	$1,232,100
4.	Final allocation	$977,100	$922,900	$1,900,000

[a] The final allocation to recreation cannot exceed its single purpose alternative costs and since the recreation benefits could be derived from a reservoir costing $221,000 less than the required irrigation reservoir, joint costs assigned to recreation reflect the smaller reservoir cost

GRIZZLY VALLEY PROJECT—ALLOCATION TABLE 4

USE OF FACILITIES METHOD

	Item	*Irrigation*	*Recreation*	*Total*
1	Annual benefits	$134,100	$59,400	$193,500
2	Single purpose alternative	$1,645,000	$922,900	--
	Annual costs	$82,800	$57,000	--
3	Justified annual investment	$82,800	$57,000	--
4	Separable costs	$977,100	$255,000	$1,232,100
	Annual costs	$50,000	$24,200	$74,200
5.	Percentage distribution — joint costs [a]	64 5	35 5	100 0
6	Allocation of joint costs	$430,500	$237,100	$667,900
	Annual costs	$21,200	$11,600	$32,800
7.	Allocated annual costs	$71,200	$35,800	$107,000
8.	Allocated capital costs	$1,407,900	$492,100	$1,900,000

[a] Distribution is based on the ratio of storage required for each purpose with irrigation requiring capacity of 80,000 acre-feet and recreation requiring capacity of 44,000 acre-feet—derived ratio irrigation = 64 5 percent, recreation = 35 5 percent

(Transcript of September 15, 1958, page 211.)

STATEMENT OF JAMES H. FORBES
Stanford Research Institute

Public water resource development has broadened in scope over the years, progressing from single purpose projects to multipurpose projects This multipurpose nature of the modern project has complicated economic evaluations and the assignment of cost sharing responsibilities It has become administratively necessary, therefore, to allocate the total costs of a project among the various project purposes in some manner

Cost allocation, if properly accomplished, serves the following functions:

1. It provides a means of estimating the total costs of incorporating each separate purpose in a project
2. It provides a means by which the economic and financial aspects of the individual purposes can be analyzed and evaluated separately
3. It provides a means by which the economic and financial performance of each purpose can be audited and re-evaluated after project operations have commenced
4. It can provide a framework within which cost sharing and cost recovery arrangements can be planned.

In considering the basic principles of cost allocation, two terms require definition These are "separable" cost and "joint" cost Separable costs are all those costs that can be identified positively with an individual project purpose Joint costs are those incurred in connection with the overall operation that cannot be identified with a specific project purpose. The separable cost of a project purpose is the total additional cost of incorporating a particular purpose in a project

For example, the separable cost of the flood control purpose of a project includes more than just the cost of specific flood control features, it includes all of the extra cost that might be involved, for example, in increasing the size or capacity of a dam or in changing the design of the dam to accommodate the flood control purpose The joint costs of a project are the residual costs remaining after all separable costs have been identified

A public project should be evaluated in terms of its expected economic benefits and costs rather than in terms of its revenues and costs alone Benefit measurement serves the same purpose in evaluating a public undertaking as revenue measurement does in evaluating a private undertaking Thus, where private enterprise uses revenue value or market value as a guide to the allocation of joint costs, public water resource enterprise should use benefit value

There is another important principle to be considered in selecting a cost allocation method *When used as a basis for assigning repayment responsibilities, the method should not result in an allocation of costs to any project purpose in excess of the benefit value to be derived from that purpose* In other words, the beneficiaries of a particular project purpose cannot be expected to bear costs greater than the value of the benefit that they derive

Of the many methods that have been used to allocate costs in public water projects, the Separable Costs-Remaining Benefits Method seems clearly preferable The method seeks to identify the separable costs of each project purpose, and to distribute joint costs among the project purposes in proportion to each purpose's so-called "remaining benefits" The method is described in detail in the report

When used as a basis for repayment arrangements, the method cannot result in an allocation of cost to a particular project purpose in excess of the value of the benefits expected to be derived from that purpose or in an amount less than the separable cost of the purpose In general, the method follows sound economic principles and, at least in theory, results in a reasonable and fair cost allocation It would seem suitable and appropriate for use by the State, particularly in that its adoption would make for uniformity in the State's dealings with the Federal Government

It is important that cost allocation be consistent An allocation method is essentially a statement of certain economic and ethical principles which are either accepted or are not Thus, it is illogical to employ different methods or combinations of methods for different projects or different parts of the same project If the State should adopt the separable costs-remaining benefits method, that method should be used for all cost allocations, whether the objective is to allocate the costs of a dam or an aqueduct system Moreover, in establishing a basis for local repayment, the same method of cost apportionment would apply The separable cost assignable to a particular contracting agency would be determined by computing the total cost of the project purpose with and without service to that agency Joint costs, if any, would be assignable to that agency in proportion to the computed value of its "remaining benefits"

A further consideration of some importance is that all project costs be allocated by project purpose regardless of whatever arrangements may exist for cost sharing or whether or not certain costs are considered nonreimbursable One of the principal functions of the cost allocation process is to provide a full and clear disclosure of project costs, regardless of reimbursement provisions

While the cost allocation process may serve as a framework for repayment arrangements, the State must decide whether it intends that the costs allocated *to each project purpose will be repaid in full, in part, or not at all by the beneficiaries of those purposes*

As you know, it has been the practice of the federal agencies to declare the costs of some project purposes either wholly or partly nonreimbursable And this practice has led to many abuses There has often been a tendency to understate the reimbursable costs and overstate the nonreimbursable costs In some cases, benefit estimates for the nonreimbursable purposes have been exaggerated to permit

those purposes to absorb a greater share of the project costs If for no other reason than this, it would seem desirable that the State lean as far as possible in the direction of requiring full reimbursement from beneficiaries

The best single indication of the economic soundness of a project proposal is a willingness on the part of the beneficiaries to repay the allocated costs in full. A requirement for full reimbursement would tend to prevent the authorization of unsound projects, would minimize the burden of the general taxpayer, would largely eliminate the possibility of unjustifiable subsidies, and would remove a strong incentive to abuse economic techniques and economic arguments in planning and justifying projects

Moreover, as the report discusses in some detail, if each project is formulated properly on the basis of clearly identifiable direct benefits and reasonably accurate estimates of the economic demand for its products and services, the beneficiaries of each project purpose ought to be able to repay the costs allocated to that purpose

It would seem that there are two major premises under which it might be logical for the State to waive full reimbursement First, it may be impossible or impractical to establish an adequate repayment mechanism in a given instance Or, secondly, in other specific instances, the State may consider that for reasons such as the protection of public health and safety it has some social or legal responsibility to share in the costs

Rather than declaring as a general rule, however, that the costs of certain project purposes are wholly or partially nonreimbursable, it would seem preferable that this question be considered on the merits of each individual case In other words, the general rule ought to require full reimbursement even though exceptions to the rule might be considered in particular instances in which ample justification is presented

Since it is the special nature of each individual project purpose that might influence the State's decisions with respect to the reimbursability or nonreimbursability of costs, there would seem to be no logical basis for declaring nonreimbursable those costs that relate to a project as a whole For example, it has been suggested that the State regard as nonreimbursable the costs of acquiring land, easements, and rights-of-way Not only are these costs likely to represent a substantial portion of the total cost of a given project, but they are merely elements of total capital cost that are properly allocable to the various project purposes in the same manner as any other elements of capital cost Thus, reimbursability of costs in connection with a given project should be decided in terms of the individual project purposes rather than in terms of the project as a whole

In general, the Federal Government has not made an effort to collect substantial contributions from the local beneficiaries of flood control works, although federal disposition in recent years has favored requiring more rather than less local financial participation to obtain project authorizations

Although it can be argued that the State has a responsibility to protect lives and property by providing flood control measures, the economic benefits by which these projects are customarily justified are largely private and local Thus, as a minimum, municipalities and local flood control districts should be expected to contribute to an appropriate extent in view of their particular benefits, circumstances, and repayment capacities

As in the case of flood control, local repayment districts might serve as suitable cost recovery mechanisms for such project purposes as salinity control and pollution abatement In the case of the recreational purposes of projects, it would seem possible for the State to effect recovery of a substantial portion, if not all, of its costs by assessing charges to the recreation industry through recreation districts established for that purpose, or by leasing land around state reservoirs to private recreational enterprises.

Because of historical distinctions, different methods of benefit measurement, and separate cost allocations, water to be supplied by state projects may be regarded as consisting of two distinct products—"irrigation water" and "municipal and industrial water" These products may also be considered as having separate and distinct market values

In federal practice, irrigation water is heavily subsidized by the general taxpayer and by users of project power and municipal and industrial water These Bureau of Reclamation policies, however, have permitted the sale of irrigation water below cost as a means to such ends as the disposal of public lands, the settlement of the West, and the promotion of "family-sized" farms. As its name

implies, the bureau manages a *land reclamation* program rather than an irrigation water supply program as such

It is unlikely that the State shares the objectives of the Bureau of Reclamation in furnishing irrigation water To a greater degree than in most states, agricultural enterprise in California is characterized by large-scale, mechanized operations involving sizeable land holdings and highly industrial methods For this reason, the State has consistently opposed the 160-acre limitation in connection with irrigation water supplied by the Bureau of Reclamation

A review of the State Water Code and the California Water Plan suggests that the interest of the State in supplying irrigation water is no different from that of supplying municipal and industrial water For both project purposes, it would seem logical and proper to require full reimbursement of costs from the project beneficiaries

The report points out a further consideration in connection with the question of a state subsidy of irrigation water It should be recognized that such a policy is not likely to benefit farmers as farmers. The principal effect would be to increase land values Thus, over a period of time, as farmland is bought and sold, the farmers who own or rent the soil will not be the people who derive the benefit from low cost water, they will have paid a price for their land or for their lease which includes the capitalized value of the water subsidy, and they will then be dependent on a continuing water subsidy

A requirement for full reimbursement for irrigation water service would not necessarily mean that unit costs to be repaid by irrigators would be the same as the unit costs to be repaid by users of municipal and industrial water Probably, irrigation repayments on a per unit basis would be considerably lower than those of municipal and industrial water because of basic differences in benefit values and the manner of allocating costs

Because the State's objectives seem to be fundamentally different from those of the Bureau of Reclamation, however, it is likely that any repayment policy that the State might adopt with respect to irrigation water will result in repayment terms less attractive to irrigators than those of the bureau In order to compete with the bureau, the State would have to adopt a very substantial program of subsidization If the State does not wish to compete with the Federal Government, as is stated in the California Water Plan, or if it is unable to compete, this factor would have an important bearing on the degree of popular support for incorporating irrigation water supply purposes in state projects

The repayment problem in connection with the power generation function is different from that of the other project purposes The question is not whether costs can be recovered Rather, the question is whether the State should seek a profit on its power sales

The issue of low-cost versus high-cost public power has long been a subject of controversy, and its resolution is largely a matter of political philosophy. The apparent purpose of the State in generating and selling power, however, is to obtain additional revenue with which to further the objectives of the California Water Plan For this reason, and for the reason that the issue of low-cost versus high-cost public power has not been a source of substantial controversy in California, there would seem to be no clear-cut reason why the State should sell its power at less than the market (or highest possible) price

If this is done, however, and if a profit is realized on the sale of power, the State must decide upon the disposition of those surplus revenues If the State should follow federal precedent, these revenues would be applied to assist in the repayment of other project purposes (specifically, the irrigation water supply purpose) But this has a number of ramifications.

To understand the nature of the problem, it is important to regard the general taxpayer, the power user, and the water user as *separate* individuals. The general taxpayers are the "stockholders" in the "corporation" It is their responsibility to raise the money with which to construct the project initially Once the project has been built, these "stockholders" hope to recover their investment through sales of water and power to the "corporation's" customers (that is, to the water users and the power users).

All power revenues derived from the operation of the project therefore belong to the "stockholders" (or general taxpayers) If these revenues are used to repay costs allocated to a water supply purpose of the project, the general taxpayer subsidizes the water user Such a subsidy would be justifiable only if it could be

shown that the general taxpayer receives *enough* benefit indirectly from the program to make the subsidy worth his while

Looking at the matter differently, it could be considered that the power user is being overcharged in order to reduce the costs assigned to the water user In other words, the power user is subsidizing the water user And this has special significance when the power user is located in one economic region (for example, Northern California) and the water user is located in another economic region (for example, Southern California).

Although it is not likely, it is nevertheless conceivable that a given project might generate sufficient excess power revenues to offset completely the costs allocated to the water supply purposes In that event, the repayment requirement of the water users would be zero. When viewed in this extreme, the deficiencies of the policy become obvious

There are other problems as well Some projects may have a substantial hydroelectric power output and others may have little or none If excess power revenues were applied as offsets to project costs, the repayment requirements of water users would vary widely from project to project Also, those projects having the greatest hydroelectric power potential might appear to be the most economically desirable, possibly preventing construction of projects in which the benefits to be derived from *water supply* were actually greater If the State should regard power generation as a means of reducing project costs, the incentive would be to select those projects or aqueduct routes having the greatest power potential, regardless of whether or not the selections were consistent with the objective of maximizing the benefits to be derived from *water supply* In other words, the State might find itself emphasizing power projects rather than water supply projects

One further distinction should be made The power that a project produces should not be confused with the power that it consumes It is only coincidental that in both instances electrical energy is involved At first glance, it may seem reasonable to utilize power revenues to offset power costs. But it would seem far less reasonable to do this if, for example, the pumps were driven by diesel engines rather than by electric motors The point to be made is that the cost of electrical energy utilized for water pumping is merely one element of the operating cost of the project in the same manner as though fuel oil rather than electricity were the source of the pumping power The fact that a project incurs a pumping power cost should have no bearing on the disposition of revenue derived from the sale of power produced by the project.

For these various reasons, it would seem preferable that surplus power revenues not be applied against the costs of other project purposes It would seem more logical to assign these revenues to a special water development fund to be used in financing (but not repaying) future water development projects Upon completion of all construction, the funds would revert to the general treasury

Arrangements in which the costs of two or more projects are averaged together for purposes of determining repayment requirements have a certain attractiveness from the point of view of economics One possibility would be to average costs so that all beneficiaries of all projects would bear equal charges As each new project was added to this "utility" system, costs would be reaveraged and charges would be adjusted accordingly A variation would be to establish an f o b pricing point, either actually or hypothetically, at the so-called San Joaquin-Sacramento River Delta "pool" The costs of works required to deliver water to the pool would be averaged and apportioned equally among all water users The additional costs of transporting water from the pool, however, would be borne by the beneficiaries of each project

Because there would be no assurance that costs assigned to a particular beneficiary group would not eventually exceed that group's benefits, these systems would likely force a redistribution of the available water supply from lower- to higher-value uses, which would tend to increase the total benefit to be derived from the program

As a practical matter, however, this would violate the historical approach to water development in the State which has been based on a maxim of firm water rights Moreover, many projects may be wholly unrelated, and so separated in terms of both physical distance and time of construction as to make the logic of a utility pricing system questionable Subsidies are also involved in any system based on an averaging of costs, and, also as a practical matter, it is unlikely that water agencies would be willing to sign, in advance of project construction, contracts which do not guarantee firm water rights and do not provide for the assessment of water repayments on the basis of known and simple formulas Moreover, unless some means exists by which projects could be financed and authorized automatically,

it is unlikely that the beneficiaries of early projects would, as general taxpayers, cast their votes in favor of constructing new projects from which they would not benefit but whose repayment costs they would be required to share For these reasons, it would seem preferable that repayment arrangements be established on a project-by-project basis

(Transcript of May 16, 1958, page 148a)

STATEMENT BY DeWITT NELSON

Chairman, California Public Outdoor Recreation Plan Committee

The Outdoor Recreation Committee, of which I am chairman, is a study committee Recommendations to the Governor and the Legislature will be made only on the basis of a study now in process They are due to be presented to the Legislature in March, 1960

The plan and program of our study provides for an appraisal of the present and future need for outdoor recreation, a survey of the existing and potential supply, and an examination of the means for assuring an adequate future supply From this study, preliminary recommendations will be prepared concerning the kinds of land and water areas which will be needed for outdoor recreation, where, in general, they should be located; the extent to which government should take action; and the jurisdiction of government which can reasonably be expected to finance the acquisition, development, and operation of the areas needed

A large share of the present recreation interests of the California population is in activities requiring water Recent trends indicate that these interests will continue We are therefore examining prospective water resource development as *one* of the future sources of supply for types of recreation requiring water areas Other sources include the natural streams and lakes, the ocean, and the bays and lagoons The extent to which we will examine the potential of reservoirs will be related to their location within the State Reservoirs located close to heavy concentrations of population will be subject to the greatest demand on a year-round basis, since they will lie within weekend range of population centers We will be especially interested in these nearby reservoirs The more distant reservoirs will have their main potential during the vacation season when people have the necessary time to travel longer distances

Reservoirs vary widely in their recreation potential, both in quantity and quality, and we will be interested in classifying and evaluating them accordingly For this purpose, we will have to rely upon limited experience since reservoir recreation is comparatively new Based on preliminary reports of this experience, reservoirs have received heavy attendance by Californians during the summer months of June, July, and August At Millerton Lake, one of the older operations and for which attendance data are available since 1947, the annual number of visitors ranged from 315,000 in 1947 to 922,000 in 1957 Most of this growth has occurred since 1955 At Folsom Lake, a more recent development, the attendance was close to one million in 1957, its first year of operation We have noted that such attendance occurred at these reservoir lakes with *minimum* facilities available

Reservoir recreation to date has largely been available to the public on a free or minimum charge basis This may be an important factor in explaining the heavy use The extent to which demand will continue at high levels where use charges are made will depend largely on new experience Where charges are made, facilities and services must be provided These involve capital outlays and operating costs before it is reasonable to obtain the user revenues

How much of these costs can be borne by users? The experience at state parks throughout the Nation provides one indicator The National Park Service, in reporting on state parks throughout the United States in 1956, calculates an average cost per visitor of 33 cents Of this amount, capital improvements took 14 cents and operation and maintenance, 19 cents Revenues from visitors averaged 8 cents per visitor, reducing the cost per visitor for operation and maintenance to only 11 cents In other words, visitor revenues partially offset operation and maintenance costs. They contributed nothing to capital improvement costs

A second major source of cost-revenue experience is the Lake Mead Recreational Area, which is the reservoir most extensively developed for recreation to date In 1957, Lake Mead received 3,000,000 visitors This is a year-round operation but the heaviest use is in June, July, and August An estimated 65 percent of the attendance is by California residents. The National Park Service has invested about $5,000,000 in capital improvements There is no entrance fee and there are free

campgrounds and free swimming A large staff for maintenance and protection is necessary Charges are made only for special services, such as boating, trailers, and food These are provided by concessionaires Extensive developments are under way by 12 concessionaires The National Park Service prepares the site and the concessionaire constructs the facility with opportunity for lease up to 30 years Concessionaire rates are limited by the National Park Service and the concessionaire pays a ground rental plus a percentage of his gross income, usually averaging from 1½ percent to 2 percent, which varies with the rate of profit on the items of service Most of the major concessions are in the process of development at this time, and their revenue experience is not yet available However, the National Park Service does not anticipate that the federal share of such revenues will offset the federal operating costs The National Park Service does not expect to limit its plans for Lake Mead to the level of prospective revenues Instead, under Mission 66, the National Park Service plans to invest, by 1966, an additional $10,000,000 in capital improvements

Another observation that may be made is that costs vary with the size and complexity of the operating problems Some of these problems are as follows:

1 *Location of the Reservoir* Location in relation to the time and distance users must travel from their homes is critical Demand on the reservoir and problems associated with heavy demand vary with its location

2 *Surface Area of the Reservoir* The problem of providing adequate services to the public seems to increase with the area of the surface

3 *Access Routes and Points of Entry* As the number of these increase, so do the administrative problems and public services demanded

4 *Type of Terrain and General Land Form* The distribution or scatteration of usable land areas, for example, widens the area to be supervised

5 *Acute Problems Affecting All Recreation Reservoirs:* (a) sanitation and domestic water supply, (b) public health and safety, (c) fire prevention and control, and (d) law enforcement

6 *The Amount and Location of Privately Developed Property in Relation to the Area of Control Around the Reservoir* Subdivisions and other private developments that have exclusive use of a public facility complicate administration

7 The varying policies of the operating agency relating to degree and standards of public services, both in quality and quantity, have a very large effect on operational costs and problems

At times the need for finding a dollar value for recreation benefits has derived from the desire to obtain a favorable benefit-cost ratio for projects which otherwise are not economically feasible In other cases it has been an attempt to recognize the value of recreation benefits to determine what share of the costs of projects should be borne by the general taxpayer

The National Park Service has asserted its belief from time to time that the value of recreation cannot be estimated in monetary terms However, the National Park Service makes recreation studies on proposed reservoirs for other federal agencies and, for this purpose, has found it necessary to estimate monetary benefits In "A Method of Evaluating Recreation Benefits of Water Control Projects," August, 1957, the National Park Service states, "The primary benefits from recreation consist of the personal welfare gains accruing to the consumers of recreation services * * * they consist of the value of any increase in the amount of recreational use expected as a result of water-control projects" The secondary benefits include, "* * * other benefits * * * from such supporting activities as hotels, camps, and restaurants, which provide goods or services to recreationists"

The secondary benefits require special study for each proposed reservoir so the figures listed below are primary benefits which are estimated market values for recreation These values are based on 1951 prices calculated in terms of full development of the total recreational potential of the water-control project

The national average benefit is estimated to be $1 60 per user-day for all recreation uses except fishing If fishing is included, the value jumps to $2 05 per user-day

The Bureau of Reclamation in their report, "Reclamation Pays an Extra Dividend in Recreation and Conservation," includes figures for 1951 They used a "conservative" figure of $6 per visitor-day as expenditures by those visiting their projects Where fishing is involved, this figure is shown as $10 per day This report cites the case of Strawberry Reservoir in Utah where 1950 estimates of number of anglers,

number of fish taken, and pounds of fish (trout) taken were available At an estimated value of $1 per pound, the total worth of trout was more than one-fourth the total value of the farm products produced by the project

Two bills, S. 1164 and S. 1221, were presented to the United States 85th Congress, First Session, which would have attached a value of $1 per user-day for recreational benefits on flood control, navigation, or reclamation projects The Bureau of the Budget recommended against passage of the measure in its then present form. It is our understanding that the bill has not been passed

In Appendix A, Bulletin No 58, "Northeastern Counties Investigation" of the State Department of Water Resources, July, 1957, the consultants estimated expenditures at $8 per user-day They also estimated a figure of $2 per user-day as the recreation benefit, but felt that this figure was too low The $2 figure was based on studies made by Professor Andrew Trice of Sacramento State College It was arrived at after "extensive review of the literature of recreation benefit analysis, and a series of conferences with representatives of most public and private agencies having a direct interest in the measurement of recreation benefits." (Page 13, Appendix A, Bulletin No 59, "Investigation of Upper Feather River Basin Development" of the State Development of Water Resources, February, 1957)

These various sources seem to be generally agreed that there are primary benefits directly involved which range in market value between $1 and $2 per user-day and, in addition, secondary beneficial spending of approximately $8 or more per user-day, at 1956 prices. Such values apparently can be realized at an average cost under 50 cents per user-day excluding capital outlays As I have said, these are preliminary observations by our staff We will be very interested to follow the course of your study and to co-operate in your efforts Thank you

(Transcript of July 8, 1958, page 12)

STATEMENT OF MRS. JAN MOWER

Pacific Interclub Yacht Association

We all recognize that the growth of boating in California has been fantastic in the last eight years Anywhere you go in a nice climate, nice weather, you find water, and you find boats, and lots of them There has been almost a constant 12 percent increase in the sale of new large boats in California, and a 25 to 30 percent increase in outboard-sized or life-sized boats yearly, over the previous year

From the boat a man can fish, he can cruise, he can race, he can water ski, or he can swim

Now, to go into a second phase of what does the boating man contribute financially to a water area that he uses the boating man historically has always paid his own way.

Two years ago, I received some statistics that showed that the average fisherman dropped an average of $20 a day in the area in which he went to fish, providing that the facilities that he needed were there

Unlike the picnicker, the boat owner is prone to buy his needs of the day, rather than to bring them with him, and the only reason I can figure out is that the man leaves so early in the morning, he doesn't dare make any noise fixing his lunch

Today in one county in California, the man who owns the boat is paying $10 per day to get his boat on this waterway, which is a reservoir The man who owns the boat needs concessions and facilities and services in the form of boatels, restaurants, launching ramps, repair service, gasoline, boat rentals, and a sport shop.

Now, to go into, perhaps, a third phase, and that is, what are the boating people in California asking this day to recognize? In opening up any new reservoir area, they wish to have the State recognize boating and allow it on the waterway if humanly possible, and there should be no restriction as to the use for recreation In other words, if you are going to open up a reservoir for fishing, then it should also be opened up for sailing, for swimming, and all of the related water recreation sports

The boating people ask the State to recognize the inequality that now exists on our reservoirs throughout the State that are being utilized for water recreation They feel that the State must make some sort of a stabilizing plan so that a man can buy a permit—and this is just a suggestion—which he pays for like a fishing license entitling him to use any State water reservoir area for a period of a year for a fee rather than to have to go to one (area) and pay, say, $10 a day, in another $2 a day, and so forth

A further request of the boating people is that, on any state water reservoirs the rules be stabilized so that when the man brings his boat, he knows or can anticipate that the rules on that one are very much, if not identical, to the one he used last week

The boating man is asking this State to have restricted areas for water use, and a restricted area for water skiing, swimming, fishing and general cruising, and a restricted area for small sailing boats, and to have them designated and well marked That is pretty much where the boating person stands.

In my experience with the boating man, the fisherman, who owns a boat, and the recreational boating man, he demands many services which, if provided, will help offset the cost of your installation to some extent He demands concessions that no other type of recreation demands, and he is very willing and happy to pay for them

Launching fees (in California) average from 50 cents to $2 50 In one area in Northern California, the launching fee is $5 and $6 and the boating people are complaining strenuously about that Now, that is just launching in your average Northern California area There is no, what we call, use of the waterway charge

In Southern California in the few waterways that they have down there, are encompassed by many charges, and overlapping of charges, and the boating people feel that it is not paid—they don't mind paying a fair share or even slightly more, but they do feel that $10 to use a waterway to run their boat on for one day is high, and they don't think it is fair

(Transcript of July 8, 1958, page 45)

STATEMENT OF EVERETT HORN
Wildlife Conservation Board

The Wildlife Conservation Board was established by the Wildlife Conservation Act of 1947 to administer the Wildlife Restoration Fund, and to carry out the functions and purposes set forth in this act.

It can be simply stated that the Wildlife Conservation Board makes certain capital investments for the improvement of hunting, fishing and related recreation for the Department of Fish and Game

Initially the board determined that fish hatcheries and waterfowl management problems were of the highest priority and presented the greater needs Hence, some 9¾ million dollars were allocated for acquisition, development and construction of waterfowl areas and fish hatcheries

After the needs of hatcheries and waterfowl areas had been met, the board determined major emphasis should be directed to acquisition and development for warmwater (spiny-rayed) fishes and to provide public access to existing waters supporting a good fishery. These two categories of projects are now receiving major attention.

As of June 30, 1958, $2,032,719 15 has been allocated to warmwater and other related fisheries projects and $633,200 to acquire and develop access to fishing waters along the coast, the Sacramento and San Joaquin Rivers, their delta and the San Francisco Bay, and the Feather and Colorado Rivers

At the last regular session of the Legislature, the Wildlife Conservation Act was amended to permit the board and the Department of Fish and Game to contract with the counties, cities, or districts for construction, operation and maintenance of such state projects as are authorized by the Wildlife Conservation Act

How well received this plan of co operation is accepted by local governmental bodies is illustrated by the fact that the Wildlife Conservation Board now has before it for consideration over 2½ million dollars in requested projects of this co-operative type, and receives $750,000 annually to do the job

Wildlife Conservation Board funds are not given as grants-in-aid to any organization or body of government They are expended to acquire and develop state projects Under the amended Wildlife Act, the State acquires the rights to the property either by purchase or by lease for a sufficient number of years to amortize the State's investment The State may then develop the project by contract, or it may contract with counties, cities, or districts to do the development and the State pays for the actual cost of construction In either case, the county, city, or district agrees to operate and maintain the completed project.

There is no repayment of any of the costs of acquisition or development.

On projects such as access to fishing, where launching ramps, parking areas and sanitary facilities are the major developments, the counties or cities do not collect

any revenue from users of the facilities Cost of operation and maintenance is relatively small, and the counties or cities defray these costs out of general funds.

On the reservoirs where costs of operation and maintenance are higher, certain charges are permitted by the State, such as parking or vehicle entrance fees, boat license and registration fees and income from any concessions permitted by the operating agency, but not constructed at state expense The State does not authorize any charge for ingress or egress to the area for the purpose of fishing, nor for use of launching ramps or sanitary facilities Since everything we get must be paid for one way or another, it seems only fair and just that the agencies operating and maintaining these state-provided facilities should be permitted to collect revenues sufficient to defray the cost of operation and maintenance

The Wildlife Conservation Act permits and authorizes the Wildlife Conservation Board to expend Wildlife Restoration Funds for improvement of fishing and hunting and the preservation and restoration of wildlife, but not to provide facilities for general recreation This is often a disappointment to those who desire nonreimbursable help in developing campgrounds, parks, facilities for general boating and water skiing It does not deter counties, cities and districts from making these further developments at their own expense, and such additional development usually enhances the state project

The State Water Plan envisions the creation of several hundred new reservoirs for impoundment of water for the several beneficial users now recognized Such impoundments have certain basic, inherent values for fishing, wildlife and recreation The program of the Wildlife Conservation Board could, if deemed advisable, be expanded to provide the same type of development as is now provided on existing reservoirs On many of these reservoirs, local agencies of government could accept the cost of operation and maintenance for many counties and cities now recognize the economic value of recreation so provided for their respective areas They appreciate that the recreational resources have a high value in their economy

Some local governments do not have the funds to make the initial investment in necessary and adequate facilities If these facilities are first provided, these local governments could then operate and maintain the project and if permitted to make reasonable charges for services and use of facilities, they could defray not only the cost of operation and maintenance, but also secure funds for further development

Any desired degree of modification of the Wildlife Conservation Board program, and no doubt other programs, could be applied to development of the recreational features of the State Water Plan Initial development costs could be provided from state funds on a long-term, low-interest loan basis, providing the operating agency has the right and authority to collect reasonable fees for use of the facilities provided, and are required to use such revenues for operation, maintenance, further development and retirement of the loan Perhaps a deferment of loan payments for the first five years of operation would assist the local operating agency in providing additional development out of income and thus place the agency in a far better position to pay back the loan.

Whatever opinions there may be regarding the program and policy of the Wildlife Board in the development of waters for public recreational use, one thing appears true at this time The program works, it is acceptable to local agencies of government, it dedicates certain waters and adjacent lands to public fishing and other recreational uses at a reasonable fee to the users of such facilities

There are many examples of the desirability of master planning water development projects If such master plans include recreational development, and both land acquisition, recreational development, and provisions for future operations of recreational facilities can be incorporated in the project *from its inception to completion*, many difficulties and additional costs can be avoided

(Transcript of July 8, 1958, page 61)

STATEMENT OF DALLAS M. HERING
Division of Small Craft Harbors

The Division of Small Craft Harbors was created to provide a program of waterway development throughout the State of California and to be of direct benefit to the boating public wherever possible

The main purposes of this division are to assist cities, counties or districts in the creation of boating facilities both inland and along the coast, provide expert engineering and economic consulting services for these local agencies, act as the state agency in negotiating with the Federal Government on waterway development prob-

lems of the State of California, and to construct and operate harbors and other boating facilities when there is the need and no local agency can provide such facilities.

While this division cannot, under the Small Craft Harbors Law, make outright grants of funds for waterway development, loans may be made to cities, counties or districts for planning, acquisition, construction, improvement, maintenance or operation of small craft harbors and facilities in connection with said harbors and connecting waterways These loans are repayable to the State of California with interest over a maximum period of 20 years on construction loans and 10 years on planning loans

This division certainly is very interested in the use of reservoirs for boating However, our activities in connection with these water areas have been very limited, due to present regulations concerning their use

Inasmuch as the Division of Small Craft Harbors is concerned with the boating phase of recreation, I shall apply my statements to this type of water recreation There appears to be no real problem involved in this type of recreation as regards repayment methods Boating and needed facilities in connection with this activity have been on a paying basis for many years

These projects as I have previously stated, are self-supporting They can be operated by local agencies or by the State with almost the same degree of reimbursability The projects can be completed in a phased plan whereby each phase as completed will become a source of financial assistance to the next projected phase Restaurants, sporting goods stores, bait shops shopping centers and motels, we call them hotels, operated by private enterprise under control of the state or local agency on a percentage basis would very conceivably support the project and pay off loans whereas the dockage and launching facilities would more than handle operation expenses These are proven facts of income and revenue from private enterprise and there is no reason to believe that state or local operation would change the picture

It would, therefore, seem feasible that other types of waterway recreation could be placed in the hands of the state or local agencies for operation with the various facilities leased out to concessionaires for the purpose of securing a definite source of revenue and income In this way, the various projects would supply the local agencies with funds to pay as they go and allow the state to give financial assistance with a guaranteed plan of repayment

(Transcript of July 8, 1958 page 85)

STATEMENT OF ROBERT B HATCH

Division of Beaches and Parks

The recreation potential of proposed and existing reservoirs has caused extreme interest from the public as well as governmental agencies, of all levels dealing in recreation The public demand is unmistakable

In order to meet this demand the Legislature and the California State Park Commission has entered into a positive program to examine the recreation possibilities, problems, costs and benefits of reservoirs proposed under the State Water Plan, Federal Reclamation Projects, Army Corps of Engineers projects and those projects proposed by utility companies and private enterprise

At the present time the planning staff of the Division of Beaches and Parks Project Investigation Section has completed studies on many of the major reservoir projects existing or pending throughout the State This consisted of completed studies of 28 reservoirs and of the nearly 300 considered to be of recreation importance on more than a strictly local level; also, those not being entirely devoted to domestic water supply and having an area of reasonable significance A great deal of information has been accumulated on reservoirs not yet completely studied

As a result of these studies and staff recommendations, the State Park Commission has obtained jurisdiction of the following reservoir projects

a For acquisition and development and operation Folsom Lake State Park, including Lake Natomas, Millerton Lake State Park

b For acquisition, to be administered by local entities Anderson Reservoir in Santa Clara County, and Puddingstone Reservoir in Los Angeles County

c And has given authorization to proceed upon acquisition at Monticello (U S Bureau of Reclamation), Napa and Solano Counties, Frenchman Reservoir and Grizzly Valley Reservoir, Upper Feather River, Plumas County

d The Commission has approved, in principle: Antelope Valley, Abbey Bridge, Nelson Point, Dixie Refuge, Sheep Camp, the Upper Feather River Project in Plumas County; and the Oroville Reservoir and Oroville Afterbay No 1 in Butte County.

Established state park criteria does not always readily apply to reservoir projects, as new considerations are present which have not been encountered elsewhere

Reservoir development and operation have posed new problems which are more costly than those of other public areas developed as state parks Among these are the:

1 Need for duplicating installations, such as boat launching ramps and parking surfaces because of fluctuating water surface
2 Water surface activity, such as motorboat operation, water skiing, boat launching, integration of swimming areas and rescue operations
3. Perimeter cleanup, controlled use, fire protection, most of which must be undertaken by boat

These factors increase the cost of development, maintenance and operation, especially to accommodate boaters who represent about 20 percent of the users according to attendance figures from Folsom Lake and Millerton Lake state parks

Acquisition of sufficient lands above those required by the operating and constructing agency are a major problem. The integration of total purpose acquisition programs is imperative to avoid the situation encountered at Folsom Lake where the federal agency paid an average of $160 per acre and under legislative direction the Division of Beaches and Parks several years later has been paying over $1,000 per acre as an average

No significant information is as yet available as to cost of operation or revenue from operation, as sufficient operating time has not yet elapsed with any degree of reasonable development.

There is a growing interest among counties to assume jurisdiction, development and operation of reservoirs Notable among these are the following:

Cachuma, Santa Barbara County,
Isabella, Kern County,
Sly Park, El Dorado County;
Monticello, Napa and Solano Counties,
Whiskeytown, Shasta County;
Coyote, Mendocino County,
Nacimiento, San Luis Obispo and Monterey Counties;
Casitas, Ventura County.

A tendency to lower rates to the most frequent users has been noted in these operations The wisdom of this is questionable as attendance figures indicate that boating use is only 20 percent of total use, but boating facilities are by far the most costly type of development

Other reservoirs in which the State Park Commission has participated in acquisition with the county to assume development and operational responsibilities are

Anderson Reservoir, Santa Clara County;
Puddingstone Reservoir, Los Angeles County

In order to realize the full potential of recreation possibilities offered by the extensive proposed reservoir program in the State, all possible agencies and levels of responsibilities must be utilized There is a large field in which local park and recreation, park and parkway and recreation districts should properly function Reservoir development and operational costs are too extensive for any single agency to absorb in reasonable economic balance. Responsibility should be assumed under an orderly program of recognition of magnitude based upon the over-all picture and geographical distribution of reservoirs.

Some new source of funds should be developed for this purpose Perhaps consideration of a percentage of revenues from water and power sales is an answer Gasoline taxes from power boats might be another source and statewide boat registration fees might offer possibilities All possibilities should be explored as the combined efforts of all agencies and all possible resources will be required to adequately and properly administer the rapidly growing demand for recreation on reservoirs throughout this State

(Transcript of July 8, 1958, page 96)

STATEMENT OF JAMES K. CARR
Sacramento Municipal Utility District

The district's Upper American River Project, a multimillion dollar hydroelectric project, is under construction in El Dorado County on the South Fork of the American River and some of its tributaries The project will include nine dams and four power plants. It is anticipated that construction will require seven or eight years.

Three of the reservoirs to be created by the nine dams will be of significant size as far as recreation is concerned About the middle of August, the district will start construction of the Ice House Dam and Reservoir on the South Fork of Silver Creek approximately eight miles northeast of Pollock Pines This reservoir will have a capacity of about 45,000 acre-feet and when full will have a surface area of over 600 acres It will be slightly larger than Sly Park Reservoir near Pollock Pines It has some very good recreational possibilities The other two reservoirs that are of significance from a recreational standpoint will be Union Valley Reservoir on Big Silver Creek which will cover about 2,200 acres when full, and Loon Lake Reservoir on a tributary of the South Fork of the Rubicon River which will, when full, cover about 1,200 acres

The utility district has become involved in the recreation problem for two reasons· (1) the Federal Power Commission license requires it, and (2) as a matter of general policy, the utility district management and board of directors feel it is an important part of water projects in California

As a matter of policy, we think the recreational planning should proceed concurrently with the planning for other purposes as far as water development projects are concerned We think it fair and desirable for the proposed developer of water to bear the cost of recreation planning, as the utility district has done Planning for recreation, as you know, is in accordance with the policy set by the State Legislature on the study of water development projects

It is the district's viewpoint that the recreation construction program, as distinguished from the recreation plan, should proceed concurrently with the rest of the construction program insofar as possible This is almost a more important thing than planning concurrently for recreation with planning for other uses because sometimes the planning gets done but that is as far as it goes Let me give you an example where construction might be co-ordinated to serve more than one purpose if it proves feasible The district will soon start construction on Ice House Dam and Reservoir It will be necessary to build a road on the west side and north side of the proposed reservoir If properly located, these roads can serve the recreation needs of the areas after the dam is completed and the reservoir is filled We are hopeful that the roads can be so located without undue expense to the power project Another example is the need for constructing boat ramps when other construction is going on in the area It is reasonable to assume the cost of paving a boat ramp would be less if there are already contractor's facilities in the area for other concrete work. If properly co-ordinated, a saving can be made A further example is the water supply If properly planned, it may be possible for it to serve construction needs and be made usable for recreation purposes later on At least these things should be explored to see if they are financially feasible

Some of these recreation facilities should be built concurrently with the main structures The question arises, who should pay for them Therefore, it is necessary that the agency which will administer the area be determined before or soon after construction starts Many of our recreation problems in Northern California around lakes result from the fact that the reservoirs have been constructed, filled and are operating long before anyone decides what agency should administer the recreation facilities We hope to avoid that as far as the district's Upper American River Project is concerned If the agency is designated prior to construction or during the early part of construction, then that agency is in a position to get these things done while they can be done more cheaply If concessionaires are to be named and they can receive their contracts, then they can contract with other contractors in the area and get the recreation facilities constructed more cheaply than would otherwise be possible I wish to emphasize these savings require two things—planning concurrently with other planning and a recreation construction program concurrent with construction for, say, power and water or other purposes.

One other general viewpoint of the district is that the recreation facilities should pay for themselves as far as possible We believe, as most people do, that the recreation users should pay the cost In some cases this is very difficult because the use comes from widely separated areas and, therefore, it is fair that the State, the

Federal Government, or other public agency make a proper financial contribution However, there are ways in which picnic areas, camping areas, boat docking facilities and boat ramps can carry charges which will make the project as self-supporting as possible We believe, for instance, that the utility district customers should not be required to pay for recreational use in El Dorado County simply because we are developing the water resources in that area

SMUD has already committed itself to a substantial contribution towards recreation in the agreements on releases of water for maintenance and improvement of fishing in the area These releases constitute a definite loss of power and revenue for the district We voluntarily suggested amounts of releases for fish water very close to those finally adopted and agreed to by the California Department of Fish and Game, the U S Fish and Wildlife Service and the U S Forest Service

(Transcript of July 8, 1958, page 110)

STATEMENT OF GEORGE D. DIFANI
California Wildlife Federation

Our organization and its 12 member councils, statewide, are keenly interested in the preservation and enhancement of our fish and wildlife resources, and in the provision of adequate recreational opportunities for all of our people This applies particularly to planning and development of our state water plan

We believe that from an economic point of view, the development of full recreational facilities in and around our reservoirs, is as important to some areas as water developed for irrigation or municipal use for other areas

We believe that integrated studies and planning must be done by the responsible agencies and co-ordinated by the agency responsible for construction and administration of the project The final plans should also take into account the status of land ownership, management, and administration of the area to be developed

When funds are appropriated for an authorized project, lands for the complete project should be acquired at the initial stage of land acquisition These experiences have shown that this recommendation is very important

We have a strong conviction that costs of providing full facilities for recreation, protection and enhancement of fish and wildlife should be on a nonreimbursable basis We make this recommendation because we are convinced that the majority of the users of the installed recreational facilities come from all parts of the State

We support the principle of the payment of fees by the user to pay the operation and maintenance costs of the recreational facilities

We would also like to recommend that the Legislature clearly define the responsibility of the state agencies in the planning and development of recreational facilities on the state water projects This could be accomplished by the enactment of a co-ordination act patterned after the Federal Co-ordination Act, or Public Law 732 passed by the Seventy-ninth Congress in 1946

We don't feel that the capital investment to provide the recreational facilities can be recovered by charges But we think that we are going to be fortunate enough, if we can cover the maintenance and operation by charges and fees, and considering the fact that 90 percent of the people who use Isabella in Kern County are from Los Angeles County, and about 80 percent of the people using Monticello are from the Bay area, and a large percentage of the people coming to Folsom are not local people On that basis, the development of recreational facilities in the water plan must be on a nonreimbursable basis.

There are certain fees for launching boats that are prohibitive, but, again, I want to say that those are private enterprise groups, and the state-operated unit at Folsom is doing a job that has public acceptance for a fee that is reasonable and can be paid for by the average person—average wage earner

(*Transcript of July 8, 1958, page 124*)

STATEMENT OF GRANT A. MORSE
United States Forest Service

There are almost 20,000,000 acres of national forest land in California, nearly one-fifth of the total area of the State For the most part, these are the wild mountain lands—the watersheds which are the backbone of the State's water supply Over half the State's water originates from the precipitation of rain and snow on these lands Because the national forests are the "snow" areas of the State, much more than half of the summer surface water yield may be attributed to national forest watersheds.

It is the responsibility of the Forest Service to manage these properties for the greatest public benefit and return from all of the resources The concept of management for maximum total use is called multiple use, a concept which calls for an awareness of resource values and a high degree of planning ahead to achieve their benefits

Among the benefits most associated with water and water development are recreation and wildlife Last year, 11,000,000 visitors used California's national forests for recreation purposes, including fishing and hunting This is a use which is growing at even a faster rate, proportionately, than California's population Meeting the demands of this use, under the concept of multiple use management, requires that we take advantage of every means to maintain or enhance recreation and wildlife values and opportunities More often than not, these are dominant values in the locations where water development opportunities exist

It is clearly the responsibility of the project agency in the development of water resources to maintain the existing recreation and wildlife values Where it is practicable and reasonable to enhance recreation and wildlife values in the development of the project, the agency should include such measures Stabilization of downstream waterflow in streams is an example of such a measure

In view of this background, the Forest Service will consider the corollary values for recreation and wildlife development in every application for use of national forest land for water storage We believe it is in the public interest that these values be given full consideration in the plans for any water development project Such consideration should include not only preserving existing recreation and wildlife values but should also include enhancing them, if possible

The Forest Service considers the development of water facilities for irrigation, power, or other purposes a proper responsibility of the developing agency, including such features as will protect and, to the degree practicable, enhance the recreation and wildlife values affected Permits for such projects by governmental agencies carry no charge for use of public lands They anticipate and require free public use of the facility for such recreation and other purposes as will not unduly interfere with the primary purpose of the project facilities.

The Forest Service accepts as its responsibility on national forest land the development, operation and maintenance of recreation facilities including service roads, camp and picnic ground facilities, fire protection, water supply, and sanitation service as a part of its multiple use management responsibilities

Similarly, the Forest Service accepts certain responsibilities for the manipulation of wildlife habitat as a part of the multiple use program of national forest lands These responsibilities have been agreed upon with game and fish commissioners, administrators, and other organizations These understandings provide for some flexibility and adjustment to meet local situations, but reflect these principles

1 Manipulation of habitat—since it deals with the vegetative cover and with water—has such an important bearing on other multiple use values that improvement programs for this resource are clearly Forest Service responsibilities

2 Development of streamflow maintenance dams, fish screens, and other structural type projects are clearly related to control of fish and game populations and are a proper responsibility of the State

3 State hunting and angling license fees, Wildlife Conservation Board moneys and federal aid funds are available for engineering works and for co-operative habitat improvement projects to benefit wildlife Co-operative arrangements for optimum development of the wildlife resource consistent with other multiple use responsibilities will be worked out with the State Department of Fish and Game and the U S Fish and Wildlife Service

We anticipate that appropriation action by Congress will be sufficient to implement these responsibilities since they are covered by existing authorization and established policy At the same time, we do not need to advise you gentlemen that no one is authorized to incur expenses in advance of appropriation by Congress

(Mr Morse made the following statement regarding access roads)

We are interested Any roads constructed in the national forests would help us in the administration of the forest We have road moneys appropriated to us primarily for the development and administration and protection of the national forest The federal gas tax moneys are generally expected to cover the public, the Federal Government's share of the Interstate Highway System, and the United States Highway System, and it is expected that the gas tax moneys collected by the State and the counties will provide the normal intercity type of traffic There is a partnership

arrangement which must be in effect, for the most part, for building higher standard roads than are needed for the forest areas

I think it would be primarily in the field of recreation and improvements We do have some road projects under way for the harvesting of timber and for the development of recreation areas, but for the most part, what we have is required on high priority projects already ahead of us, and I am sure we couldn't make any commitments, whether we would be in the roadbuilding business and in a position to help in the development of the water companies

(*Transcript of July 8, 1958, page 131*)

STATEMENT OF JOSEPH PATTEN AND JAMES HERBERT

Shasta County

Shasta County is extremely interested in the development of basic policy relative to recreation and fish and wildlife aspects of the state water resources program. The California Water Plan as outlined in Bulletin No 3 proposes to make Redding and vicinity the hub of future water development in Northern California. Our county alone contributes about 7,000,000 acre-feet annually, or roughly 10 percent of the State's total water supply In addition to this, there is a multitude of projects planned in adjacent counties, some of which will import substantial new supplies of water from the north coastal area Shasta County is the gateway to the Shasta-Cascade Wonderland, containing the finest potential recreational areas in the State of California At the present time recreation is considered at least the second most important industry in the area

Recreation and development of fish and wildlife is an industry, it is a beneficial use of water, and in most cases a nonconsumptive one incidental to the development of water for other purposes In addition, they [sic] bring new money to California, provide employment and increase the use of resources

The people in Shasta County are not without experience in the matter of recreation development as related to water resources development As you know, the key structure of the Central Valley Project, Shasta Dam, is in the heart of the county Federal policies to date have not permitted the expenditure of funds necessary to keep pace with the demands for recreational facilities on Shasta Lake The lake has created a new and extremely diversified fishery which is enjoyed by everyone from the kids catching perch to the experts who fish deep for the wary kamloop trout Its popularity, not only for fishing, but water skiing and just plain picnicking, boating and camping, has created a tremendous demand for access, boat ramps and picnic and camping areas Additional substantial hydroelectric developments have been constructed in Shasta County by private utilities which in some cases have created excellent new trout fisheries, but in some cases because of the very nature of the development (Pit River) the trout fishery has been materially reduced

The State of California, as we understand it, is at the threshold of a vast water resources development program, namely an orderly development of the succeeding units of the California Water Plan It is hoped that in this stage of planning full recognition of the problems relating to recreation are given their proper import by state authorities.

It will interest you gentlemen to know that the Shasta County Board of Supervisors recognizing the deficiencies in federal and state participation as well as private enterprise in their attempts to meet the growing needs of recreationists, has directed our planning commission to develop a master recreation plan for the county More specifically included in this directive was the development of a master plan called Unit No 1 for the proposed Whiskeytown recreation area. As you may know, Whiskeytown Lake is the third in a series of lakes which will be developed by the Trinity River Project, and is located on Clear Creek in Shasta County We are taking the initiative in attempting to develop a recreation program which may be administered by the county for the greatest utilization of this lake as a recreation resource and to provide a place for capital investment, the broadening of the county tax base, and the opening up of an area for those who want outdoor recreation

The county's thinking at the present moment on recreational development is taking form and interest is great We are not suggesting that counties get into and take over this type development but there is a place for county government to assist in the planning and to co-ordinate planning by all agencies undertaking water resources development. Along with this must come financial aid by the agency constructing the water development projects

As to basic policy for investment of funds for recreation facilities, including access thereto, historically there is insufficient precedent to indicate a method of procedure The Federal Government presently provides for minimum basic facilities which include access roads, sanitary facilities, water supply, parking, camping and picnic areas and launching ramps These improvements are included in the overall cost of the project and are considered nonreimbursable because of their use by the general public and the indirect benefits which result from them

(Transcript of July 8, 1958, page 145)

QUESTIONNAIRE ON RECREATION REPAYMENT

The Subcommittee on Economic and Financial Policy for State Water Projects was organized pursuant to Assembly Concurrent Resolution No 198 during last summer Its work during the past year has been devoted to the problems confronting the State in raising capital to construct water resources projects The subcommittee is presently studying the broad field of cost allocation, repayment methods and the degree of reimbursability of all the various purposes of water projects Statements were received at the subcommittee's June hearings from the Corps of Engineers, the Bureau of Reclamation and the Department of Water Resources which described their policies and practices in these matters

With this background, the subcommittee is scheduling hearings during the summer and fall months on the problems of repayment methods and degrees of reimbursability for each project purpose, starting first with fish and wildlife and recreational features of projects and then progressing in turn to irrigation, municipal and industrial water and other project purposes The subcommittee has scheduled a hearing on July 8 in Sacramento which will lead off the subject of recreation and fish and wildlife The Department of Fish and Game, the Division of Beaches and Parks, the California Public Outdoor Recreation Planning Commission and the Division of Small Craft Harbors will present their views on recreational development of water resources projects Statewide agencies such as the chamber of commerce, the California Wildlife Association, the Pacific Inter-Club Yacht Association, and similar interested statewide representatives of the recreational users of water projects will be requested to present their general attitudes

The Sacramento hearing will be followed by field hearings, the first of which will be in Eureka on July 10, to secure the views of local interests directly involved in recreational project areas Pending the completion of a local study of recreational programs and policies for certain areas of the northeastern part of the State, the subcommittee is beginning its field hearings on fish, wildlife and recreation in the northwestern part of the State at Eureka on July 10 The questions reproduced below have been prepared for use of local interests in appearing before the subcommittee It lists some of the fundamental questions which the subcommittee will have to consider in arriving at solutions to the problems before it The northern areas outside of the Upper Feather River Service area may not be too conversant with some of these problems and less able to formulate very specific and detailed statements and recommendations for the subcommittee However, since all northern areas are equally interested in the recreational problem, the subcommittee feels that all views and contributions are most important even though the initial focus of project interest is in the Upper Feather River area

In undertaking field hearings on the problems of recreational development the subcommittee wishes to hear from the county supervisors, local chambers of commerce, recreation associations, etc The subcommittee seeks to understand the problems of local areas and counties and to gain knowledge of their limitations and capabilities For example, the subcommittee has already received some testimony concerning the Russian River project which describes how Sonoma County raised some of the capital to pay for the construction of the recreational and water conservation features of a Corps of Engineers water project Likewise the Bureau of Reclamation has described its experiences at the Cachuma, Santa Maria and the Solano projects where a countywide tax was levied to assist in the repayment of project costs

The subcommittee has already found that the raising of sufficient capital by the State to construct the Feather River project and other state projects will be difficult and that careful study must be given to securing repayment of as much of these capital costs by project beneficiaries as is possible As a result, the subcommittee is now studying formulation of a fair, equitable and sound policy the State can follow in financing the construction and securing repayment of construction costs of state

projects Essentially this means exploring the desirability of, and possible ways and means by which local interests can assist, to the extent they are able, in financing recreational and other features of a project In the same way the subcommittee must explore the extent local interests are able and willing to assume some degree of responsibility for repayment of project costs Of course one of the principal matters involved in answering these problems is determining whether the State, local districts, counties, etc, shall operate and maintain the recreational features of the project

The use of special districts, counties and municipalities to operate and maintain recreational features of water resources projects appears to offer unusual opportunities for co-operation with the State In addition such local governmental units are well suited to collect fees for use of the recreational features or to secure tax revenues from the recreational industries related to the project to pay for operation and maintenance costs of the project and perhaps repay some of the allocated costs In this way it may be possible to secure some revenues directly from beneficiaries of the recreational features

Later in the summer the subcommittee will undertake similar hearings in other parts of the State relating to other project purposes It is felt desirable to explore the problems of reimbursability and repayment for all project purposes before drawing any conclusions on each project purpose

The questions the subcommittee would appreciate having answered are reproduced below

1 What is your view on recreation as an industry upon which your locality can base a growing economy?

2 What role do you feel water resources projects with recreational features will play in the economic growth of your locality?

3 What companion or other recreational development is possible in your locality upon which a complementary recreational expansion can be based such as skiing, development of existing lakes or reservoirs, unique geographical features, existing resorts and fishing resources, etc?

4 Do you have any opinions or data on the ability of a recreational industry to repay any of the costs involved in the state construction of water projects which store water especially for recreation or for fish and wildlife? If you feel that any repayment of these costs is feasible to what extent should they be repaid? Over how long a period and by what means?

5 Do you feel that operation by a local district or county of recreational features of state projects is feasible or desirable? Could such a district or agency be organized? Would it facilitate repayment? Is there any possibility that such a district could assist in financing a part of the project construction costs, or only operation and maintenance?

6 Would it be feasible for a district or county to collect admission fees for use of the recreational features, to levy taxes against resort property, cabins, etc, or to lease land for private development in such a manner as to raise funds to help repay project construction costs?

June 12, 1958

STATEMENT OF WILLIAM FAIRBANK, JR.
Department of Water Resources

The California Water Plan consists of two major categories of works The first category embraces local development works designed to meet present and future water needs in each area of the State The second category comprises a major system of works for conservation, both for local needs and to export surplus waters from the north coastal area and the Sacramento River Basin, and to transfer these waters to areas of deficiency elsewhere in the State This vast system of works would reach from the Oregon border on the north to the Mexican border on the south and has been designated the "California Aqueduct System"

In the north coastal area the plan points out the possibility of constructing some 50 dams and reservoirs to provide the necessary water to meet ultimate local requirements for agricultural, municipal, industrial and recreational use In addition it outlines the development of 15 large dams and reservoirs that could make available more than 11,000,000 acre-feet of water for export through the California Aqueduct System

Fisheries, wildlife and recreation matters began to receive attention in the very early stages of the statewide water resources investigation In the beginning the attention consisted largely of the collection of basic data and evaluation of problems with the co-operation of agencies and groups concerned with recreation throughout the State About midway in the investigation, we obtained the services of specialists from the Department of Fish and Game to assist us in the technical aspects of our problems

Recreation can involve the use of the very simplest of resources or facilities, and can also involve resources or facilities that are highly specialized and complex In the north coastal area one of the resources presently supporting major recreational use is of the specialized and complex type—the salmon and steelhead fishery Salmon and steelhead have complex life cycles which make them entirely dependent upon each of a series of events extending from their beginnings in streams, through their period of major growth in the ocean, to their return for spawning in fresh water Unfortunately, by their very nature, engineering works designed to capture and store water interfere with the life cycles of salmon and steelhead in most instances

We found in the early stages of preparing the California Water Plan that a major concern of recreation agencies in the north coastal area was the perpetuation of the salmon and steelhead resources Three other factors were also stressed as being of major concern to recreation They were (1) preservation of major scenic attractions such as the redwood groves now in the State Park System, (2) maintenance of year-round flow in all streams, not only for fisheries, but for other recreational and esthetic considerations as well; and (3) full utilization of all water areas and adjacent lands by providing the necessary access and facilities These three major recreation factors were kept before us throughout the investigation and have materially influenced the plan.

The factor presenting the most serious problem is that of preserving salmon and steelhead fisheries Some of the dams, particularly the larger ones which would provide water for export, would prevent salmon and steelhead from reaching many of their natural spawning areas In order to compensate for lost spawning grounds, and to preserve these resources to the greatest possible degree, the plan contemplates full use of fish protective measures where feasible Salmon and steelhead hatcheries would be provided below dams and artificial spawning channels and, if proved successful, would be installed at critical locations Releases from storage would be made so that natural spawning areas remaining below dams would be usable by these fish

Those factors mentioned above are the methods that might normally be used to prevent losses to existing fisheries resources, but we felt that they would not provide all that we might hope to accomplish Since our legislative direction called for full consideration of fish, wildlife and recreation as beneficial uses of water, we considered the development of water specifically or primarily for recreational purposes

These studies led us to streams where low summer flows seriously handicap the production of fisheries and inhibit general recreational use as well Such rivers as the Navarro, the Big, and the Mattole produce salmon and steelhead now The major limiting factor on their production, however, is low flow in the summer and fall Flows on these and similar streams are frequently so low that portions of them dry up entirely, water often reaches excessively high temperatures, and they frequently become clogged by growths of algae Streams of this type are not considered as potential sources of water for export for various reasons Since they have only relatively minor local requirements to meet, ample opportunities exist for increasing recreation capacities by regulating water supplies In a sense, one might consider several of these streams as largely dedicated to fisheries and recreation under the California Water Plan

Augmenting low flows by water developed in headwater storage is considered the most feasible means of enhancing conditions for salmon and steelhead in many California streams We adopted this concept in the development of the California Water Plan in the north coastal area In stream flow maintenance projects, benefits accrue not only to fish populations and anglers, but to practically all other recreational uses involving the stream or adjacent lands

In planning stream flow maintenance projects, a dam site near or above the upstream limits of fish migration was selected, if possible The size of the dam and reservoir took into consideration the quantity of flow desired in downstream areas and the amount of holdover storage required to retain the recreational characteristics of the reservoir.

Altogether 15 such projects were included in the California Water Plan for the north coastal area They are located on the Gualala, Garcia, Navarro, Big, Bear and Mattole Rivers, Redwood Creek, and on tributaries of the Eel River They would directly benefit the recreation potential of 416 miles of streams by adding from 10 to 55 second-feet to naturally occurring summer flows One nonrecreational industry that would likewise be benefited is the commercial fishing industry since some of the increased salmon population would no doubt be taken by commercial trollers off the coast

Branscomb Reservoir, located well upstream on the South Fork Eel River, about five miles northwest of the community of Branscomb, is one of these stream flow maintenance projects which may be found feasible for early construction This project would substantially benefit the already established recreation areas along the South Fork Eel River A 170-foot dam at this site would impound a 980-acre reservoir with a capacity of 56,000 acre-feet This water could provide a 100 second-foot minimum flow in the river as measured at the mouth of Rattlesnake Creek a short distance downstream This project would greatly increase the quality of fisheries' habitat in the South Fork Eel River and benefit all recreation along the stream The reservoir itself would also provide an attractive recreation area The department, with funds appropriated in the last legislative session, is just undertaking detailed studies of this project to determine the specific kinds and amounts of recreation benefits and other factors necessary to determine its feasibility

Included also are 25 reservoirs planned primarily for development of water supplies to meet increased consumptive use in the north coastal area In almost all instances these dams were located so as not to interfere with recreational resources or uses but, in fact, enhance them In addition, 10 reservoirs would provide water for both consumptive use and stream flow maintenance as well The majority of the projects planned to meet increased consumptive use and all of them that would contribute to maintaining stream flow would provide reservoir recreational opportunities This same situation is true for the major export projects as well for each of their reservoirs would support resident game fish populations and would be suitable for a wide variety of aquatic recreation activities

What is the significance of the projects and operations that have been incorporated into the California Water Plan for the purpose of preserving or enhancing recreation? And, how well would they do the job?

Considering the overall field of recreation, substantial benefits would result under the California Water Plan in the north coastal area Some of its segments, however, might be harmed We would have to wait and see if stream flow maintenance, hatcheries, and artificial spawning channels can offset the loss of some of the main salmon and steelhead spawning areas. We feel that by these methods, plus advances in fisheries technology, anadramous fish losses would be held to a minimum and might not occur

The types of recreation that would benefit most substantially would be those involving the use of reservoirs and adjoining lands Large reservoirs in California and elsewhere have proven to be well suited to mass recreation such as boating, water skiing, fishing and swimming

An average weekend crowd at some of the larger reservoirs in the Central Valley area is on the order of 20,000 to 30,000 people. There is every reason to believe that such use will occur here in the north coastal area in the future This will be facilitated by better roads and other transportation facilities and the desire and economic ability of our urban population to enjoy the recreational opportunities that are associated with water development

We feel that the Legislature had accepted a substantial part of public outdoor recreational development as an obligation of the State There has been, however, no clear determination made of the roles and responsibilities of the various agencies, both public and private, in planning, construction, operation and financing of public recreational facilities The principal purpose of the Public Outdoor Recreation Plan study is to provide the Legislature with information, facts and recommendations that will lead to the establishment of more specific policy and plans for orderly development of the State's outdoor recreational resources

Insofar as implementing recreational development of state-constructed water projects is concerned, there are likewise a number of questions to be answered The department has recommended that costs of state water projects allocated to fish and wildlife protection and enhancement should be nonreimbursable as should the costs allocated to public recreational facilities associated with these projects In addition, the question of responsibility for operation and maintenance of the devel-

oped recreation facilities must be further clarified The department recommends that the operation and maintenance costs be borne by the agency designated to operate the facilities and believes that the agency should be allowed and even encouraged to recover all or part of the expenses by charging fees of the recreational users.

Insofar as state agencies are concerned, the department feels that it would be highly desirable for a single agency to be held responsible for co-ordinating the efforts of all, not only in planning and land acquisition, but in the development of recreational facilities at state-constructed projects The Legislature has placed the responsibility on the department for integrating recreation with water development planning work Through Assembly Bill No 86 (now Chapter 101, Statutes of 1958) enacted at the 1958 Session of the Legislature, it further clarified the department's recreation planning responsibilities and gave the department authority to acquire land for recreational purposes as authorized by the Legislature The department will have the responsibility for constructing state projects and administering the reservoir and other water control features Our recent experience now leads us to the conclusion that the department is also the logical agency to co-ordinate the recreational development phases.

To insure the co-ordinated development of these facilities and provide some practical means for their operation, we would recommend that the department be given two additional responsibilities These would include (1) the authority for implementing recreational development plans, including construction work after the projects are authorized for construction and funds have been approved therefore, and (2) insuring that these recreation developments and facilities are properly administered, managed and maintained after construction. In exercising this authority and fulfilling these responsibilities, we believe the department must co-operate with other concerned federal, state and local agencies such as counties, cities and public districts

As we see this responsibility for executing recreational development at a state project, the role of the department would be that of a co-ordinating and facilitating agency, not an operating agency. We reiterate that at a single large reservoir, it may be appropriate for public facilities to be operated by the Federal Government, the State Division of Beaches and Parks, the counties, or perhaps by public districts.

STATEMENT BY HARRY W. GRAHAM, JR.
North Coast Timber Association and Assistant Secretary, Humboldt Citizens Public Expenditure Committee

The kinds of recreational development resulting after construction of state water projects, which the timber industry and other taxpayers of this area would most like to see developed, is that based on investment of private capital and the use of private initiative in the development of local recreational projects

The fact that Humboldt and Del Norte Counties have a difficult time in financing local government activities, because of extraordinary large amounts of public lands being off of the tax rolls has been substantiated by action of the Legislature in approving the "In Lieu Tax Bill" which in 1957 established a hardship basis for Humboldt, Del Norte, and two other counties With large amounts of valuable land being off the tax rolls, this area has an extremely difficult time in financing presently needed governmental services It is thus hoped that no effort will be made in this area to place any additional land on public ownership for recreational purposes as a result of possible state water project developments

In the event that there should be demonstrated and justified need for providing certain recreational services or facilities adjacent to state water project developments where private capital or initiative appear unwilling or unable to meet these needs, it is then felt that such needs should be taken care of through one of the several local government jurisdictions who presently have legal authority to perform such functions Consistent with the recognized government principal of those who receive benefits should pay for them, it is recommended that rather than the general county taking on such a function with cost burden being spread over the entire county, that either local recreation districts, school districts, or cities should be the means to provide specialized recreational services in one area where only a small portion of the county's population might benefit As much as possible of the expenses of such programs should be paid by fees charged to users.

The need for constructing major state water projects should be solely justified on the basis of the water and related economic benefits that might accrue from such a

project The concept that local jurisdictions and taxpayers should contemplate contributing to the capital cost of such projects because of some recreational benefit is one to which we are firmly opposed The needs for water and proper and just solutions of the ways of solving these needs are a statewide problem and should be financed solely by state funds If there is any recreational benefit for local areas from the construction of state water projects, it probably would only replace the value lost from the tax rolls by the acquiring by the State of lands for state water projects.

If there is statewide need for development of major recreational facilities, then this need should be met by expenditure of state funds By far the largest number of people in California live in a few metropolitan areas If the recreational needs of these metropolitan areas are to be solved by facilities in rural areas, such as Humboldt and Del Norte, then it should be paid for by state funds the bulk of which come from the metropolitan areas.

(Transcript of July 10, 1958, page 59)

STATEMENT BY R. F. DENBO

Eureka Chamber of Commerce and Humboldt County Board of Trade

Humboldt County has 3,634 square miles or 2,286,720 acres There are over 800 miles of fishing streams in the county, and the coastline is more than 145 miles in length Therefore, recreation plays a very dominant part in our economy.

Our basic economy consists of

(1) Lumber—73 25 percent	$120,000,000
(2) Recreation—13 42 percent	22,000,000
(3) Agriculture—7 22 percent	11,810,093
(4) Commercial fishing—4 21 percent	7,000,000
(5) Sports fishing—1 22 percent (from people outside the area)	2,000,000
68 percent (from people within the county)	1,000,000
Total sports fishing	3,000,000

Therefore, as recreation is our second base economy, we view it with a great deal of concern The Humboldt County Board of Trade and the Eureka Chamber of Commerce spend approximately $30,000 per year promoting and advertising recreation and tourist visitor travel

We doubt very much if any particular lake, stream or water project, where there is a great deal of cost involved, has been, or ever will be, paid off by recreation alone Sportsmen of California and of the Nation should pay their own way All of us are sportsmen in one way or another. Because we like to catch a fish or shoot a bird or a deer does not give us the right to ask every other citizen to see that the deer, bird, duck, or fish are there to shoot or catch at our convenience but at the other citizens' expense We should always take into consideration the fact that before a man is a sportsman he either must have a job or he must have inherited the money to buy his license for fishing, hunting, skiing, or boating. In this State we do not consider that there is economic or moral justification for building dams which are costly to impound water for only fish, wildlife and recreation Southern California and the Valley are thirsting for water, and in another 25 to 50 years it could be that America may need more of its arid lands developed. We should remember that recreation comes as a by-product of commerce and industry. The same as one does not go out in the morning and say "Today I will be happy," one does not say "I am born for recreation" First there must come a job When an area develops a lake by impounding waters, the area becomes more valuable and should bear more of the tax burden The recreational facilities that automatically grow up around impounded waters become more valuable and should bear more of the tax burden Multipurpose dams for agriculture, domestic, commerce, industry, flood control, and recreational activities, can be made to pay off over a period of 20 to 50 years

We question whether a local district, or county recreational features of state projects, is feasible or desirable. However, there are many states that do operate under this way of paying, and properly worked out and managed are being made to pay The possibility that the district could assist in financing a part of production cost is doubtful

Whoever establishes a recreational district should certainly charge admission fees, and charge for the use of certain recreational type of features that are a part of the park facilities. We further believe that taxes should be levied against resort property whether publicly or privately owned If the State or the Federal Government owns too much of the area in any county or state, there certainly needs to be some type of compensation such as in-lieu taxes

Recreation is becoming more and more a major factor in the economy, the living and the daily life of all America Each year the standard of living becomes higher. With this higher standard of living comes more leisure time for individuals to devote to some type of avocation

However, we believe that the people of America and the State of California should be, and are, willing to pay for their own recreation Recreation, we must remember, is big business, but it comes as a by-product of stable employment and higher standards of living These are the blessings of America and the blessings which we must keep.

(Transcript of July 10, 1958, page 80)

STATEMENT OF NORMAN H. CALDWELL
Santa Barbara County

Following master planning, which was done jointly by the county and the National Park Service, a presentation to the State Board of Health, and a series of public hearings by the County Planning Commission and Board of Supervisors, a 50-year agreement was negotiated between the Bureau of Reclamation and the County of Santa Barbara under which the county agreed to develop and operate the Cachuma Recreation Area for use by the general public The county assumed control of the area in June, 1953, and opened it for public use on April 28, 1954

Attendance at the recreation area has increased steadily since its opening, except for a dip in 1956-57 caused by poor fishing during the changeover from trout to a combination trout and warm water fishery, and by the low water level in the reservoir. The high attendance during the current season is mostly attributable to the fact that the lake filled this past winter

The following attendance estimates for the fiscal years shown are based on the number of camps and entrance tickets sold and are in person-days No actual count of park users is available

Fiscal Year	*Attendance*
1954 (April 28-June 30)	50,000
1954-55	200,000
1955-56	250,000
1956-57	230,000
1957-58	300,000
1958-59 (July and August only)	150,000

A complete financial report by years of operation, as reported to the board of supervisors by the county auditor, is included as Appendix I attached hereto. This shows a steady increase in revenues except for the one year 1956-57 mentioned previously. This increase is caused both by the increased development at the recreation area and by the increasing popularity of the area with the public

Appendix II shows a breakdown of receipts by source for the Fiscal Year 1957-58 This indicates a total annual income of $93,615 02 from all sources The current season of 1958 is showing very much better receipts than the first six months of the fiscal period, $48,621 55 having been taken in exclusive of concessions and leases during the first six months of calendar 1958.

The total operating cost since control of the area was assumed by the county in June of 1953 to July 1. 1958, has been $275,777 97 as indicated in Appendix I. This figure is exclusive of administrative costs outside the park and maintenance not charged to the park budget. Operating costs have increased with the use of the park and are relatively heavy for salaries because of the continuous patrol on land and water to promote safety and avoid pollution of the waters of the lake. Although technically a multipurpose reservoir, Cachuma Lake water is used for domestic purposes with dual chlorination, making the strict control exercised at the recreation area necessary The maintenance and operation budget for 1958-59 is $95,767

As shown in Appendix I, the total capital investment for recreation at Cachuma totals $304,720.40 from the beginning of the development through June, 1958

Capital expenditures are now proceeding at a much slower rate than previously, a total of $5,200 being budgeted for capital outlays during the current fiscal year As shown in the Appendix I, the county has been partially reimbursed for capital outlays and can be further reimbursed to the amount of $260,761 81 from one-half the net income when available Under the agreement with the Bureau of Reclamation the other half of the net income can be used for further recreational development in the area

The following charges are in effect at the Cachuma Recreation Area

Entrance parking fee per day per carload	$0 75
or	
Annual pass for a car and occupants	3 50
Camping per night per camp	1 00
Youth groups camping per person per night	20
Annual boat licenses, outboards 14 feet and under	4 00
Annual boat licenses, outboards over 14 feet	6 00
Annual inboard motor boat licenses	8 00
Trailer dead storage, 50 cents per day or per month	10 00

Charges for services and commodities by the various concessioners are approved by the board of supervisors and must be comparable to charges for like services in the general area.

With the experience obtained during the 1958 season, it is believed that the current charge schedule is sufficient to pay for the total cost of operation and maintenance of the area and to make a small annual repayment on the capital investment It is the policy of the board of supervisors to keep the charges for recreational use at Cachuma as low as possible while taking a small profit from current operations for amortization of capital costs.

The Cachuma Recreational Area is operated by the superintendent of Cachuma Park, an office manager, a park foreman and eleven (11) park rangers Extra help are employed during the summer season up to approximately 10 persons

It is my opinion that recreation areas at water project reservoirs can be developed and operated by local governmental agencies, providing a consistent and relatively heavy demand for recreation from the people of a metropolitan area within a reasonable driving distance exists. It is necessary, however, to either write off the initial capital investment or to amortize it over a long period

(Mr Caldwell, in later testimony, added the following information on project revenues:)

The area was opened with very little facilities and with the county having no experience and not knowing too much what to expect It did not do particularly well the first year It did very well the second year Then it lost money the third year and it is in the black as far as operation costs are concerned this year Our total income today from the beginning exceeds our total operating and maintenance and salary costs We have, according to the auditor's statement, recouped from the reserve fund from $304,000 down to $260,000 It is my opinion that with the population of the State increasing as it is, that the county can eventually recover the entire capital costs.

APPENDIX I

August 28, 1958

Mr. William N Hollister, Chairman
Board of Supervisors
Court House, Santa Barbara, California

Dear Mr Hollister: The following statements and exhibits are presented to establish a basis of accountability, and to comply with the provisions contained in Contract No 14-06-200-600, dated January 12, 1953, between the United States Department of the Interior, Bureau of Reclamation, and the County of Santa Barbara, pertaining to the Cachuma Recreational Area

Reserve Funds

By mutual agreement with the bureau, it was not necessary to establish a reserve fund for the first five years under the contract inasmuch as the county is entitled to utilize all net income, including reserved funds, for development of the park

As of January 12, 1958, the disposition of net income is more restrictive as the following contract provisions became effective

(a) Fifty percent of net income may be set aside for amortization and repayment of prior capital expenditures by the county.

(b) The remaining 50 percent of net income may be wholly or partially established in a reserve fund which may be used by the county for further development

By official action on December 2, 1957, the board of supervisors chose to effectuate the provisions contained in (a) and (b).

Net Income

Shall mean income derived from the operation of the recreational area, including net income from licenses, leases, and concession agreements, after deducting all expenditures paid or obligated by the county for operation and maintenance

Exhibit I

The data contained in this exhibit has been compiled from the published "Annual Financial Report" of the county As shown, receipts and disbursements have been recorded in a manner consistent with the terms of the contract In these recordings, we have established that amount of revenue, exclusive of any reserve fund, which the county is entitled to utilize during the first five year period for development of the park Also, we have established that amount of revenue to be apportioned to reserve funds in accordance with provisions of the contract. Disbursements have been recorded in the same manner. In this, we have established expenditures by the county for the first five-year period, of which an amount, which is shown in Exhibit II, is repayable to the county by means of the reserve fund

Exhibit II

In this exhibit, is shown the amount which is repayable to the county through the reserve fund and net income to be apportioned and the apportionment of same

General

In the preparation of this basis for accountability for the Cachuma Recreational Area, consideration was given to the fact that a debit and credit type of accounting is not maintained by this office Therefore, we will maintain a different form of accounting, not only for the benefit of the bureau auditors, but for edification and clarity of those concerned Furthermore, by virtue of certain provisions of the contract we are compelled to maintain certain records and facts, which are not presented in the "Annual Financial Report" In the maintenance of these certain records, we are able to bring out the following vital points

(a) The county does not maintain a depreciation schedule for any particular phase of operation within the county government If such a schedule were maintained, it would *not* be in favor of the county by virtue of provision (a) in the contract, whereby the county is to be repaid for capital expenditures prior to January 12, 1958 As the contract is restrictive in the disposition of net income, for accountability the reserve funds should be maintained, as well as separate accounting records, in order to reflect the credits, to which the county is entitled, against capital expenditures As the reserve fund for repayment is established and accounts maintained reflecting the credits, the county has complied with the requirements set forth in the contract Having complied with these requirements, disposition of these moneys is now up to the discretion of the board of supervisors Therefore, a transfer can be made to the reserve fund covered by provision (b) whereby the annual operation of the area can be reduced further, and annual budgets reduced accordingly.

(b) As shown in Exhibit II, net loss for the period July 1, 1952, to June 30, 1958, is $13,598 86 While this amount is exceedingly small in comparison to the amount invested, that portion of capital expenditures which is to be repaid from net income should not be considered as a loss.

Very truly yours,

A T. EAVES, JR.,
County Auditor-Controller

Exhibit I

Summary of Receipts and Disbursements—Cachuma Recreational Area

Receipts

June 1, 1953, to May 31, 1954	$10,432 12
June 1, 1954, to May 31, 1955	45,502 49
June 1, 1955, to May 31, 1956	74,981 84
June 1, 1956, to May 31, 1957	63,970 02
June 1, 1957, to January 12, 1958	44,925 42
Applicable to expenditures as of January 12, 1958	$248,811 89
January 12, 1958, to May 31, 1958	$41,056 00
June, 1958, receipts recorded in July, 1958	16,270 31
Total to be apportioned in accordance with provisions of Contract No 14-06-200-600	$57,326 31

Disbursements

Salaries and Maintenance of Operation

July 1, 1953, to June 30, 1954	$19,523 37
July 1, 1954, to June 30, 1955	40,993 71
July 1, 1955, to June 30, 1956	48,954 57
July 1, 1956, to June 30, 1957	74,019 10
July 1, 1957, to January 12, 1958	48,856 78
	$232,347 53
January 12, 1958, to June 30, 1958	$43,430 44

Capital Outlay

July 1, 1952, to June 30, 1953	$894 60
July 1, 1953, to June 30, 1954	101,606 27
July 1, 1954, to June 30, 1955	88,499.53
July 1, 1955, to June 30, 1956	37,819 19
July 1, 1956, to January 12, 1957	49,841 76
July 1, 1957, to January 12, 1958	5,512 25
	$284,173 60
January 12, 1958, to June 30, 1958	$20,546 80

Exhibit II

Accountability of Cachuma Recreational Area
In accordance with provisions in Contract No. 14-06-200-600

Salaries, maintenance and operation disbursements as of January 12, 1958	$232,347 53
Capital outlay disbursements as of January 12, 1958	284,173 60
Total cost for period July 1, 1952, to January 12, 1958	$516,521 13
Less: Receipts for period applicable to total cost as of January 12, 1958	248,811 89
Balance to be repaid to county in accordance with provision (a)	$267,709 24
Receipts for period January 12, 1958, to June 30, 1958	$57,326 31
Salaries, maintenance and operation for period January 12, 1958, to June 30, 1958	43,430 44
Net income to be apportioned in accordance with provisions (a) and (b)	$13,895 87
Capital outlay for period January 12, 1958, to June 30, 1958	$20,546 80
50 percent of net income ($13,895.87) provision (b)	6,947.94
Net loss on Cachuma Recreational Area for period July 1, 1952, to June 30, 1958	$13,598 86
Balance to be repaid to county in accordance with provision (a)	$267,709 24
50 percent of net income ($13,895 87) provision (a)	6,947 93
Balance to be repaid to county	$260,761.31

APPENDIX II

Lake Cachuma Receipts July 1, 1957-June 30, 1958

	Entrance	*Season pass*	*Boats*	*Camping*	*Total*
July	$3,230 00	$2,023 00	$879 00	$3,137 95	$9,269 95
August	5,286 75	2,499 00	1,264 00	5,143 05	14,192 80
September	2,390 25	381 50	465 00	1,504 35	4,741 10
October	667 55	21 00	118 00	437.90	1,244 45
November	683 67	7.00	106 00	306 80	1,103 47
December	368 25	220.50	162 00	135 10	885 85
January	481 00	994 00	604 00	363 80	2,442 80
February	644 50	1,466 50	498 00	318.40	2,927 40
March	1,023 00	1,526 00	668 00	402 40	3,619 40
April	2,511 60	3,066 00	1,800 00	1,834 60	9,212 20
May	3,931 15	4,025 00	2,670 00	5,475.75	16,101 90
June	3,441 95	2,450.00	1,507 00	6,918 90	14,317 85
Totals	$24,659.67	$18,679 50	$10,741 00	$25,979 00	$80,059.17
Concessions, leases and grazing					13,555 85
Total					$93,615 02
Estimated expenditures (salaries, maintenance and operation)					$93,600 00
Balance over operation cost					$15 02

(Transcript of September 18, 1958, page 8)

STATEMENT OF WILLIAM N. HOLLISTER
Santa Barbara County

I believe one of your questions on the statement that was sent out to the various boards of supervisors was "What would be our recommendations as to recreation on the 260 lakes that will be created in the California Water Plan?" Our board has discussed that matter and you have seen from Mr Caldwell's statement that our project is apparently going to repay its entire cost of the recreation facilities. So our board's recommendation would be that your committee seriously consider making the status of the State Park Commission so that their projects, if they are to handle the 260 odd lakes, will be made to conform and made to repay the entire operational costs of those projects Therefore, it won't make any difference to any county as to whether or not that county operated its own recreational project on some of these 260 lakes or whether the State operated them But if the State is going to operate them and only recover say 18 percent or 20 percent of the cost of operation, then that would be of vital importance to other counties who are not participating or who do not have a lake in their county So, our board of supervisors is making that as a statement to you, that we believe that would be sound procedure if all of the lakes were operated by the State Park Commission on a pay-as-you-go basis so that they will repay the cost of their recreation projects

(Transcript of September 18, 1958, page 28)

STATEMENT OF WM. P. PRICE, JR.
United Water Conservation District of Ventura County

In 1956 the United Water Conservation District completed a construction program financed by a $10,939,000 bond issue No state or federal assistance was received for this program Repayment of the bond moneys, with interest, in a period of 40 years is based on an ad valorem tax on all lands and improvements in the district

United's board had recognized from the beginning of its program that there would be a demand for recreation use of its facilities It was and is the policy of the board to encourage and permit this use to whatever extent is compatible with the basic water conservation purpose of the project

In investigating the administration of various recreation activities of different organizations, we found that many of them were not on a self-sustaining basis Specifically, our inquiries to the Department of Beaches and Parks indicated that

use fees met only about 50 percent of the cost of running facilities such as beach campgrounds It was apparent to United's board that such an arrangement would impose an unfair and unwarranted burden on the taxpayers of the United District. It was recognized that the majority of the users of the facilities would be from outside of the district and would not contribute to the program through taxes Operating records have since shown that well over 90 percent of the use of the facilities comes from Los Angeles County alone.

As a result of these investigations the board of directors of the United Water Conservation District established a "pay as you go" policy for the recreation use of Lake Piru behind Santa Felicia Dam The board made available an initial fund of $25,000 from general tax moneys to start development This money was made available for the construction of access roads, picnic grounds and minimum sanitary facilities with the understanding that revenues secured from recreation charges would ultimately repay to the general fund the amount so advanced

Santa Felicia Dam was completed in December of 1955 From that date until March 4, 1958, United operated the recreation activities with its own employees The operation of these recreation facilities was reasonably satisfactory However, the administrative details required a disproportionate amount of staff time and there was not adequate incentive for the United employees in direct charge of the work to economize in the use of personnel and materials Financially, the activity was barely breaking even

With this in mind, on March 5, 1958, United executed a management agreement with a private individual, Mr A W Douglas This agreement makes Mr Douglas the agent of the district for all matters pertaining to administration of the recreation area, subject to determination of recreation policies by United's board and with ownership of capital improvements remaining with the United district Under the terms of this lease management with Mr Douglas, United receives a total of 27 percent of the gross revenues Ten percent of this is earmarked for the purpose of constructing additional capital improvements for recreation purposes The remaining 17 percent accrues to the general fund of the district and will be applied to offsetting the initial $25,000 advance of tax moneys After this advance is repaid, the recreation receipts will be budgeted in the district's general funds, thus assuring participation of the recreation activities in the costs of constructing and operating the conservation works

To date, United is very well satisfied with this "private enterprise" arrangement Instead of barely meeting expenses it appears that United will net approximately $20,000 this year to apply to capital improvements and to the general budget It is planned to negotiate a long-term extension of this contract with Mr Douglas to provide for continued "pay as you go" participation of "recreation" in United's program

The record of United's recreation program demonstrates that it is possible for recreationists to contribute to overall water projects at least to the extent of making the recreation activity self-sustaining We believe this is fair and equitable to all concerned I feel that this policy of United's board, carried out in the manner in which it has been, is not only good business but is good government

(Transcript of September 18, 1958, page 37)

STATEMENT BY HUGO W. WILDE
San Bernardino Valley Municipal Water District

The San Bernardino Valley Water Conservation District has discussed the needs for supplemental water from the Feather River Project of the California Water Plan, and the questions of what policy should be used as to the financing and repayment of the project We have not reached final conclusions on this complicated subject, but we do have interim statements as follows, which we have asked Mr Hugo Wilde to present at your hearing in Santa Barbara on September 18, 1958

We believe that as much of the financing as possible should be done by use of the tidelands oil revenues These oil revenues should be safeguarded for the development of our water resources, and thus create new wealth which will help support this great State after the oil is depleted

Additional financing above that available from oil revenue and appropriations from the General Fund should come from a state bond issue earmarked for the

specific project. The fund established for financing water projects should be held sacred for that purpose only, and should be protected against being raided for other purposes

We believe that repayment should be made for all costs except those which are deemed to be nonreimbursable Items such as flood control, recreation, cost of land for dams and canals and rights-of-way, etc, should be considered nonreimbursable because they are of permanent value, and because the benefit inures to all of the people of the State in a way which is difficult to apportion for purposes of making repayment

In the case of flood control and other items which have historically been financed by the Federal Government, we believe that grants should be made by the Federal Government for these items.

We believe that the water users should essentially repay that portion of the project apportioned to water use. However, we also feel that a great deal of thought and study should be given to allocation of costs so that the water user does not some day find that he really is subsidizing recreation and other such uses These other uses of a project, such as recreation, must bear their fair share of the costs of the projects This last is a most important aspect of the repayment problem.

(Transcript of September 18, 1958, page 60)

STATEMENT OF E. F. DIBBLE
Mojave River County Water District

You are aware of the rapid growth in California, and especially in some of the southern counties In San Bernardino County, an analysis of the building licenses in the last year shows that by far the greatest growth in unincorporated areas in this county has been in the Mojave Desert area. This building has been in several substantial residential developments, as well as commercial and industrial developments Studies indicate that future growth will be of this same nature but at an accelerated pace

The Mojave Desert area in San Bernardino, Los Angeles, and Kern Counties is an area to which people and industry are moving. We do not anticipate serving irrigation projects with this proposed high-cost water This water will be used primarily for domestic, commercial and industrial uses

We believe that reimbursement should be obtained from various benefits or uses of a project to the extent practical. However we realize that certain benefits such as flood control are difficult to assess and those costs historically have been nonreimbursable

If a feasible way could be found to obtain repayment for recreation aspects, then reimbursement should be expected. Otherwise this too should be nonreimbursable

Also, of course, repayment must be made by water users from a project, who should be expected to reimburse their fair share

However, careful study should be made as to what is the proper allocation of cost to the various components such as flood control and recreation, otherwise the water user would unjustly be made to pay for more than his share of the project.

Of course it would be best if local agencies could initially finance the construction of water projects However, for a major project, such as the Feather River Project, this is not in the cards. However, we believe that, after having been built, repayment should be made to the fullest extent practicable of the project costs.

Local water districts or similar agencies should contract with the State to receive water from the project with payment to consist of two components, one representing payment of the construction component, and the second representing the operation and maintenance component The local agency should work out its own arrangements for local distribution and for the way in which the costs shall be collected locally

The State would then only construct, operate, and maintain the "mainstem" aqueduct, pumping plants, reservoirs, power recovery plants, and such transmission lines as necessary, but not the system for local distribution The water rights allocations should eventually rest in local hands

We visualize that repayment should be feasible of at least some of the recreation benefits such as boating, fishing, and camping especially at developed sites. This might be by either a per-day charge for use, or by sale of licenses, or

a combination thereof. The increasing pressure from sporting interests to be allowed to use all bodies of water indicates that the growth of this component will be great, and so should the repayment potential.

We do not believe that beneficiaries of state water projects should be subsidized We realize that some of the indirect beneficiaries also should pay in some way so as to compensate for their indirect benefit In local areas this can be handled by the local agency which is contracting with the State for participation in the project

Some people have tried to imply that the desert area would want big subsidies for service to that area. This is not true At the present time it appears that construction repayment should be based on that length or portion of the aqueduct and project which is utilized for a specific area. Operation and maintenance repayment should represent a proportionate share of the cost for the portion of the system utilized up to that specific area

There are certain costs of the project which are considered as nonreimbursable which have not been mentioned herein. These include items such as cost of rights-of-way, navigation, flood control, etc, which probably are best handled as nonreimbursable in state projects.

(Transcript of September 18, 1958, page 74.)

STATEMENT BY HARVEY O. BANKS
Director of Water Resources

I think we have to differentiate in our thinking on recreation as to its importance from the standpoint of particular areas We have to differentiate between what is the situation here in Santa Barbara County, for instance, as contrasted to Humboldt or Del Norte Counties Here recreation, while important and everybody is in favor of it and enjoys it, nonetheless, from the standpoint of the economy of this area, it is not a major factor Contrasted to that, though, I think that it is important in the northern counties with the decline in lumber production and with the declining situation in mining that recreation as an industry becomes of great importance in those areas. And again, I think this illustrates the fact it is extremely difficult to generalize on a statewide basis on these things It has to be looked at from the standpoint of the particular circumstances, economics, social and otherwise, pertaining to specific situations There has been a great deal of discussion about recreation being nonreimbursable or being reimbursable, as you wish. We have recommended that for the purposes of project financing that those costs allocated to recreation of broad statewide interest be considered as nonreimbursable That does not preclude attempts to recoup as much of that as we possibly can through such things as the lease of recreational or resort areas, commercial establishments, the lease of summer home tracts and so forth, but I would question whether we could consider that entirely reimbursable for the purposes of setting up initial project financing plans Certainly we should make every attempt we can to get as much of the investment that may be made back into the State Treasury, but I am not prepared frankly, as I mentioned Monday, to say that we can get all of it back

I think we should perhaps look at the use of water for recreational purposes in some of the areas of the State as an industry very largely to the same extent that we look on aircraft production as an industry in other parts of the State.

(Transcript of September 18, 1958, page 80.)

STATEMENT BY GEORGE M. PURVIS
Ventura River Municipal Water District

The people of the Ventura River area organized under the Municipal Water District Act of 1911 because this particular statute provided the broad authority believed desirable and necessary to effect the financing, construction and amortization of the cost of water conservation works required to meet the needs of the area The local water situation was such that all irrigable and habitable areas, consisting of acreage devoted to agricultural, urban, suburban, commercial and industrial uses, required a supplemental water supply In these circumstances all areas were potential direct beneficiaries of the proposed conservation works.

The district was formed after attempts to solve the area's water problem under the existing Ventura County Flood Control District Act organization proved ineffective. In organizing the Ventura River Municipal Water District the people of this

area followed the lead of another section of the county which had previously organized its own district

The Ventura River Project was conceived with a view not only to overcoming the existing deficiency in water supply but also to provide a future supplemental water supply for presently undeveloped lands This will permit the eventual full development of all irrigable and habitable areas of the district Because the initial demand for water will be small in relation to the capabilities of the project to meet full development requirements, it appears impractical to attempt to establish water rates which initially will cover operation and maintenance costs plus project amortization Effect of this initial large capacity-small demand situation has been overcome in some measure by incorporation in the repayment contract of an annual payment schedule geared to expected buildup in demand. Despite this arrangement of small payments in early years, our analyses of annual costs versus expected water sales indicate that we cannot reasonably expect to sell water at high enough rates to pay all costs It is therefore our plan to charge rates at which the water will be vendible for the several types of use and make up the deficiency between water revenue and annual total cost through the levy of an ad valorem tax on all property in the district It is not expected that the tax rate will be large, a maximum levy of 35 to 40 cents per $100 of assessed valuation being indicated Accelerated increase of water demand over that estimated in the repayment analyses could result in a requirement for a considerably smaller maximum levy Because all property in the district stands to benefit directly from the project there has been little objection to this proposed arrangement

As indicated above, the Ventura River Municipal Water District was organized by the people of the Ventura River area to provide a locally governed organization with ample authority to effect the financing and construction of needed water conservation works A few months after the district was organized, arrangements were completed with the United States Bureau of Reclamation for a matched fund comprehensive investigation of the area's water resources, water needs, and possibilities for the development of local supplies This study resulted in a recommendation by the bureau that the works comprising the Ventura River Project, now under construction, be provided to meet the long-term-supplemental water needs of the area through the development of the local supply They estimated that the cost of these works, including distribution laterals, would cost about $31,000,000 Analyses were made to compare the cost of amortizing the cost of the proposed project through bond financing and with Federal Reclamation Act financing. Because Federal Reclamation Act financing provides for repayment of the cost allocated to irrigation without interest and as approximately 60 percent of the cost was allocated to such use, the amortization analyses showed a wide difference in cost in favor of federal financing The district therefore decided to seek federal financing and asked the bureau to process the project feasibility report with a view to congressional authorization of the work as a federal reclamation project. Because of the critical need for additional water, unusual steps were taken to expedite actions and work prerequisite to construction of the project. The project was authorized on March 1, 1956, the repayment contract executed March 7, 1956, construction of the dam advertised for bids almost immediately and a contract for the dam's construction awarded July 2, 1956, just 24 hours after construction funds became available.

Under our repayment contract, the district acquires perpetual rights to the use of all water developed by the project and all project works will be operated by the district. Water right permits for the water to operate the project were obtained by the district in its name. Federally financed works consist of storage and diversion facilities and a backbone main conveyance pipeline system The district is presently engaged in the design and construction of approximately 15 miles of main conveyance system extensions An additional 25 miles of small diameter lateral pipelines will be required to complete the distribution system.

(Transcript of September 18, 1958, page 102)

STATEMENT OF BOARD OF SUPERVISORS, SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

San Luis Obispo County comprises some 2,100,000 acres of land in the Central Coastal Area of California About 333,000 acres, or 16 percent of the gross area, have been determined by the State Department of Water Resources to be irrigable. At the present time, some 34,000 acres of land within the county are receiving

water service, of which about 82 percent are devoted to irrigation It should be noted that the area presently under irrigation represents about 10 percent of that area which could be irrigated, providing an adequate supply of water were made available at a cost low enough to provide a reasonable return to the irrigator on his overall investment.

It has been estimated that approximately 50 percent of the area under irrigation in San Luis Obispo County at the present time has been developed since the end of World War II. Current studies by the San Luis Obispo County Flood Control and Water Conservation District indicate that this growth will continue into the future for some indefinite period at an ever-increasing rate

Population-wise, until recent years, San Luis Obispo County has lagged behind the general statewide average growth. With the development of new industries in the county, introducing the factor of diversification to its economy, and the establishment of new permanent military installations in the area, the population of the county has begun to mushroom. School enrollments, for example, are this month at an all-time high, varying in some cases from 10 to 30 percent higher than enrollments at this time last year. Both the California Taxpayers' Association and the State Department of Finance estimate that San Luis Obispo County has increased in population this past year at a greater rate than its three neighboring counties, Monterey, Kern and Santa Barbara.

In order to overcome existing and imminent water shortages, San Luis Obispo County has embarked upon a program of full development of its local water supplies Surface water developments have not been constructed in some areas due to a temporary excess of ground water supplies In order to avoid the imposition of overdraft conditions on its ground water basins in the near and distant future, this district is presently planning for the orderly development of its local surface water supplies to the maximum possible extent. Imported supplies, through facilities of the Feather River Project or some other unit of the aqueduct system comprising the California Water Plan, will be required at such time as local water supplies have been developed to the maximum possible extent The problem of matching the costs of these projects with the payment ability of local water users is a problem faced throughout California and, certainly, in San Luis Obispo County as well

The San Luis Obispo County Flood Control and Water Conservation District recommends that irrigation water users should repay in full those project construction costs which can properly be allocated to irrigation, wherever possible, for both local and statewide projects Certain conditions may exist, however, where this requirement may be waived, as will be discussed subsequently

This district feels that no economic unit of the State should be deprived of water from a water supply development, whether it be local or statewide, if a need for water from the project within the area develops within the repayment period of the project, and that area, taken as a unit, is both willing and able to finance its fair share of the cost of that project.

In order to avert the permanent deterioration of local ground water supplies, supplemental water developments are needed in many areas of California for a variable period of time prior to the time that local irrigation water users can afford to pay for their share of the water supply development In those cases, the portion of the debt services which cannot be borne by irrigation should be subsidized by other entities sharing in the economy of, and the total water supply available to, the area through assessments and/or revenue derived from water sales based on rate differentials Any limitation on the extent of subsidy required should be based, in part, on the repayment capacity of the other water users, and would therefore be a variable quantity depending on many factors These repayment capacities can perhaps be more easily defined for commercial and industrial water users than for domestic or recreational users.

This district feels that the practice of requiring some irrigation repayment from indirect beneficiaries is both justified and desirable This principle could be applied in San Luis Obispo County for both local and statewide projects

It is both the hope and intention of the board of supervisors that all areas served by the San Luis Obispo County Flood Control and Water Conservation District will finance their fair share of water supply projects designed to serve those areas The decision of whether or not the irrigation water users in any area would share in a statewide project should, in the opinion of this district, depend, in large part,

on the willingness of the properly constituted local water agency to enter into contractual agreements for said water service

This district has no comment at this time on the subject of whether the State's repayment policies should vary if the project provides a new, replacement or supplemental water supply A variation in the extent of state participation in local projects would, however, in effect, be considered as a modification of the present state repayment policy.

In the case of a federally authorized flood control project having a favorable benefit-cost ratio, the State Legislature has felt there is sufficient statewide interest to justify full reimbursement to the local agency for the costs of necessary lands, easements and rights-of-way Could this interest not also extend to water conservation projects as well?

For consideration of the subcommittee, this district proposes that the State would reimburse a local agency for the full costs of necessary lands, easements and rights-of-way for any project authorized as a unit of the California Water Plan contemplating water service for irrigation purposes

The foregoing proposal is based on the assumption that the Legislature will adopt the California Water Plan as proposed in the May, 1957, report on the Department of Water Resources This district supports the California Water Plan and earnestly recommends approval thereof by the State Legislature before further water development planning is undertaken on a statewide basis

This district has no particular comment at this time on the possible variation of irrigation water tolls, depending on the quality of lands receiving project water, other than suggesting that this may be a matter of only local concern Knowledge of the system of classifying lands as to their quality, as contemplated by the subcommittee, would enable this district to perhaps more fully understand the question

(Submitted to subcommittee by letter of September 24, 1958)

QUESTIONNAIRE ON IRRIGATION REPAYMENT

(The following questionnaire was the basis for hearings in Sacramento, Fresno, Bakersfield and Santa Barbara on September 15 to 18, 1958)

Since the subcommittee's September hearings are devoted primarily to repayment problems of irrigation water users, the following questions have been drafted to assist persons wishing to appear before the subcommittee to understand the problems being studied The subcommittee is interested in securing reactions of local and state-wide interests to the following questions

1 Do you feel that irrigation water users should repay in full those project construction costs which are properly allocated to irrigation? Should this include interest at the State's average long-term rate? Should areas that cannot pay the full irrigation water costs be excluded from service by state projects?

2 If you feel that irrigation water users should not repay in full all allocated construction costs plus interest, how should the repayment deficiency be met? Would you accept limitations on the amount of subsidy to irrigation water users from power users, the State's General Fund or other sources such as urban and industrial water users if full repayment is not required? What should be the form of this limitation?

3 Providing repayment assistance by assessments on urban and municipal areas adjacent to irrigated acreages which indirectly benefit by increased sales and commerce resulting from irrigation rather than providing subsidy to irrigation water users from the national taxpayers is being successfully employed by the Bureau of Reclamation in the use of conservancy districts Do you feel that this practice of requiring some irrigation repayment from indirect beneficiaries is justified or desirable? Could it be applied in your area?

4 Can your area assist the State in financing project construction by advancing any portion of the construction of a project or facility which serves your area? Do you have sufficient assessed valuation to advance this money before the project is in operation?

5 Do you think that the State's repayment policies should vary if the project provides a new, replacement or supplemental water supply? What variation would you propose and why?

6 What policy do you feel the State should follow in providing irrigation water to lower quality lands? Can tolls for project water be varied within an irrigation district according to the quality of the lands receiving the water?

The subcommittee recognizes that not all agencies wishing to appear before it will be able to answer all these questions The questions are merely guides to assist you in understanding the problems before the subcommittee and in preparing your testimony.

August 8, 1958

STATEMENT OF HARVEY O. BANKS
Department of Water Resources

As late as the 1870's about 85 percent of the population of the United States lived on farms Today, about 85 percent of the population live in urban areas. In California this relationship is even more pronounced In spite of this reversal of rural and urban population proportions, the American farmer, because of relatively ideal political, economic, and social climate, is able to produce more than our effective needs even though the Nation's population has quadrupled since the 1870's. However, this does not deny that the farmer has his production problems They are more unique to him than to industrial producers in the city. These are such things as wide and erratic price fluctuations for most of his crops, and the fact that there are millions of producing farm units, whereas there may be only a handful of other producers as in the fields of auto, aluminum, and steel production Be that as it may, for the United States, as well as for a few fortunate other countries in the world, production of farm crops is no longer a critical problem

Agricultural producers sell in highly competitive national markets These producers are also influenced directly in varying degree by federal policy in the fields of import and export regulations and tariffs, price supports and acreage controls, marketing agreements, etc Therefore, in view of the agricultural industry being highly sensitive to national policy, one should not view California agriculture as something that can be analyzed and treated separate and apart from the national agricultural industry. Federal policy is inextricably involved in California agriculture and, therefore, with irrigation in California since the bulk of California's agricultural output stems from irrigated lands

In general, the Nation's farmers produce an abundance of food, and the opinion of several of the Nation's leading economists is that for the next 15 to 20 years at least, the problems of abundance will still be greater than possible deficits in food production.

I believe it desirable to mention that the underlying concern or objective of the State's activities in water development must be the maximization of benefits to the people of California resulting from the use of capital. Should funds be spent for this purpose or for that purpose? Should a portion of the flow of money to some people be diverted and transferred to other groups of people? Capital seems to be the scarce resource, for we have the land, the manpower, the knowledges, and the water But it takes capital and management to combine all these into a meaningful and producing activity

An irrigation water reimbursement and ensuing repayment policy can be directed toward one of three objectives over a given period of time These are.

1 *Recapture of only a portion of the costs allocated to irrigation What would be some of the impacts or effects of such a policy in the more extreme cases?* It might mean that water costs would be so low as to result in the State's pre-empting the entire field of water development and precluding the Federal Government from that field in California, thus losing the $100,000,000 dollars more or less annually appropriated by the Congress for reclamation and flood control projects in California It might result in local interests pitting the Federal Government against the State in order to get the best "deal" It would increase the demand for capital to be raised by the State, and therefore place water resource development into serious conflict and competition with the State's need for capital for schools, veterans' programs and other state purposes. It would hasten the development of new lands in the State and aggravate our seemingly omnipresent growth problems It would result in the creation of new towns and in the growth of older towns at a faster rate and make more possible the dispersion of industry from large cities to smaller communities Land speculation would be stimulated More lands of inferior quality would be brought into production. Unfortunately, such lands generally produce

crops that require the greatest quantities of water, yet have the lowest ability to pay for water

2 *Full recapture of the total costs allocated to irrigation What would be some of the effects or impacts of such a policy?* The Federal Government could continue to construct projects in California, thus reducing the capital requirement needs made on the State Government Land development and agricultural opportunity would be reduced A lesser number of urban communities dependent on serving agriculture would be formed Individual project costs would be reduced but per-unit water costs might increase in some instances Land values would be less than otherwise Lands of inferior quality would not be irrigated to any appreciable degree for some years to come at least Assistance from the taxpayers and from municipal and industrial and power users would not be required

3 *Recapture of more than the costs allocated to irrigation.* This alternative is obviously theoretical and from a political standpoint only, not to mention other reasons, stands no chance of being implemented, therefore, no further comments will be made on this point

We also wish to call your attention to policies heretofore adopted in connection with state projects authorized by the Legislature As you know, Section 11260 of the Water Code expresses the Legislature's authorization of the Feather River Project and the Sacramento-San Joaquin Delta Diversion Projects Section 11270 authorizes construction of the North Bay Aqueduct. In view of these "commitments," water districts have been and are being formed, e g in the Kern County area, for the purpose of negotiating water service contracts to obtain badly needed imported supplies

It is considered almost inevitable that by far the larger portion of the funds needed for state water development must be raised by the issuance and sale of bonds, and more particularly general obligation bonds This method of financing becomes a dominant factor in determining proper pricing policy in negotiating contracts for water service We believe that to the maximum extent possible, bond payments should be made from the revenue received from the sale of water and power.

The cost of water to be made available by future projects will be high as compared to historical costs. Most of the cheap sources of water have already been developed and are being put to beneficial use, and the cheap, easily developable dam and reservoir sites have already been built upon, to a large extent Unit construction costs have greatly increased in recent years and are expected to continue their upward climb The cost will be particularly high in those areas far removed from the current sources of surplus water; the cost of construction and operation of the necessary conveyance facilities will comprise a major proportion of the total cost of water for such areas

It must be recognized that the ability of irrigated agriculture to pay for water is much more strictly limited than is that of municipal and industrial users This fact must be fully recognized in project formulation and policy decisions

Another point that must be given proper consideration is optimization in the use of facilities, particularly with respect to the works needed to convey water southerly and westerly from the Delta It seems obvious that it would be unwise to build an extensive aqueduct system to deliver water from Northern California to Southern California for municipal and industrial use there without at the same time providing the capacity necessary for agriculture and other uses in the areas which can be reasonably served from the aqueduct along its route, even though some of the agricultural areas might not have quite sufficient repayment capacity to enable the State to fully recover the capital costs allocated to irrigation with interest for that particular area through sale of irrigation water

In the formulation of projects and in establishing the price for agricultural water to be supplied by state water projects, we must guard against unwarranted and uneconomic expansion of agriculture, particularly where such expansion would entail an undue economic burden on other segments of our economy Full consideration must be given to land quality and capability to avoid uneconomic commitment of a large proportion of our available water resources to lands of marginal productivity Land speculation must not be encouraged

At the same time we believe that it is important to California that a healthy agricultural economy be maintained and that provision be made for a reasonable rate of expansion thereof

1 What should be the policies insofar as concerns the recapture of capital funds expended for construction of state water projects with specific attention to irrigation water service? We have previously recommended, and now reaffirm, that those costs of state projects properly allocable to the preservation and enhancement of fish and wildlife resources and to the provision of recreational facilities of statewide interest be nonreimbursable Such costs should be borne by the people of the State as a whole It is believed that the Federal Government will bear the costs allocated to flood control and navigation where these benefits are significant As far as salinity control in the Delta is concerned, the State may have to pay, on a nonreimbursable basis, for certain features in order to achieve a solution equitable to all We also believe that there is an additional general benefit from water development which extends far beyond the direct project beneficiaries or users of project goods and services, and that such indirect beneficiaries should share equitably with the direct beneficiaries in bearing project costs The nature, scope and extent of these indirect benefits and the beneficiaries thereof are being studied pursuant to A C. R 14 and further recommendations will be forthcoming as a result of such studies In the interim, in order to achieve the objective of spreading project costs to include indirect beneficiaries, we have made and now reiterate, the recommendation that the State as a whole contribute, on a nonreimbursable basis, the costs of lands, easements, rights-of-way, and relocation of utilities, at least for water control and conservation features This concept is somewhat the same as that of the present state policy reimbursing local interests for such costs incurred by them in connection with federal flood control projects

For convenience, we will term the residual capital cost remaining after deducting the above-described project costs from the total, the "reimbursable capital costs" These reimbursable costs would generally be apportioned among the project functions of power generation, irrigation water supply, and municipal and industrial water supplies In certain instances, other project functions such as pollution abatement may enter the picture but a discussion of such matters does not appear pertinent to this hearing The same general principles will apply in any event

The allocated reimbursable costs should be recovered in full with interest from the direct project beneficiaries through payments for the delivery of water and power, *except* to the extent that it is found necessary and justified in the public interest to provide agricultural water at a price below the value which would be necessary to recover the full capital cost allocated to irrigation, with interest Where such action is justified, the price to be set for irrigation water should be dictated by the ability to pay or repayment capacity of the lands involved At the same time, however, we believe that in no event should financial assistance to irrigation exceed the interest costs on allocated irrigation reimbursable capital costs plus a proportionate share of excess power revenues as hereinafter discussed But where the ability to pay is clearly evident, there appears to be no logical reason why the price to be charged for irrigation water should not be sufficient to provide for full recovery of reimbursable capital costs with interest plus the other necessary charges The charge for water between these two extremes would be equal to the ability to pay

The price to be charged for municipal and industrial water should be only the amount necessary to recover these allocated costs with interest plus operation, maintenance and replacement costs

Application of available power revenues in excess of the amounts required to meet the costs of power generation including amortization of allocated capital costs with interest, to reduce the cost of water will be necessary in most state projects, particularly where transportation of the water for long distances involving heavy pumping costs is required In such cases, excess power revenues should be used to reduce the cost of water to *all* users on the same basis In the case of the projects involved in the future transfer of water from the principal areas of surplus to the major areas of deficiency, it would be recognized that the power generation plants will produce appreciably less energy than will be required for pumping Therefore, revenues obtained from sale of generated power will serve only as partial offsets to the costs for pumping

The capital recovery period for any single independent project or facility, or for any one unit of a continuing series of works as envisioned under the Delta Pool Concept to provide an adequate supply for the Delta Pool, should be set at 50 years from date of completion, particularly where bond financing is involved, including a development period up to a maximum of 10 years Payment should include interest on any moneys advanced out of the General Fund or other current sources of revenue during the early years of a project when income from water deliveries may be too low to meet bond payment obligations.

However, even with the application of excess power revenues to reduce the total costs to be paid by the water users, the residual cost allocable to irrigation water will in some cases be greater than the agriculturists ability to pay In those instances where it is found necessary and justified in the public interest to deliver agricultural water at a price less than this cost, the amount of the price differential could be made up by increasing the price to be charged for municipal and industrial water *or* it could be borne by the people of the State as a whole It may well be that it is more equitable to assess the cost of any price differential granted agriculture against the State in its entirety than against the other water users from a particular project. The public interest and benefit which might result from granting such a price differential would extend beyond the limits of any particular entity contracting with the State for water

2 Should areas that cannot pay the full allocated costs be excluded from receiving project water? A categorical answer cannot be given to this question We do not believe that it is possible to generalize by *areas* but rather the problem must be considered in terms of *uses* and the situation prevailing within the limits of an agency proposing to contract with the State for a water supply In the case of such an agency, where agricultural use constitutes a significant proportion of total water use and where it is determined to be in the public interest to grant a price differential to agricultural water served by the agency, these factors must be taken into account in determining water rates to be charged the agency It would be up to the contracting agency to determine how the funds to pay the State for the water would be raised and its own internal pricing policy

3 What policies should the State follow in providing irrigation water to low quality land? If water were to be delivered under a pricing policy based solely on ability to pay, then extremely poor land would receive water free Under present water laws, it is difficult to take the water away from such an area once the use has been established Therefore, it is possible that under liberal application of such an ability-to-pay policy, nonproductive land could obtain a full and free water supply, while more productive land which might be developed at a later time and which could pay its costs, would not have a full supply available Furthermore, as heretofore stated, low-quality lands tend to be used for crops having high water requirements This is why we recommend that as a *minimum*, allocated capital costs without interest should be recovered from the water users Within local districts, the land owners may decide to vary the price of water according to land quality or crops grown in order to make the most effective use of the land facilities The local district could vary the charges by using a combination water toll and tax method of collection

A policy which does not to some extent at least reflect the economic value of water will encourage uneconomical allocation of our resources and waste A marketing policy which reflects costs insofar as possible will favorably influence the use of water toward its most optimum use

For these reasons, in the formulation of projects which may provide irrigation water, land quality and capabilities must be given prime consideration The State should avoid proposing irrigation water service to poor quality, marginal lands with big water requirements and low payment capacity

4 Should indirect beneficiaries be assessed to help pay for irrigation water? If *all* of the water users are expected to contribute their share of the project costs, it seems only reasonable that those indirectly benefiting from the project should also share the burden of repayment as discussed under Question 1 However, it must be recognized that indirect project benefits result from other project purposes than irrigation alone This is a matter that needs further study, which is now in progress Attempts have been made to carry out this policy by placing a tax on all land in a district whether water is used or not However this method is not successful if farm-dependent urban communities are not included within the district

Assuming a conservative point of view for the moment financial aid to irrigation is not necessarily horrendous if the indirect beneficiaries of irrigation are made to share in a portion of the project cost One of the main arguments advanced for lowering the rates on irrigation water below what they would be otherwise is that the urban communities within and adjacent to the irrigation project service area generally pay nothing toward the project costs Yet their livelihood, their very existence, depends upon their selling to the farmer his materials and equipment, as well as purchasing his crop, processing and packaging it, and storing and transporting it to the consumer markets Therefore, unless the foregoing described urban commun

ties are contributing to total project costs in other ways, such as paying for municipal and industrial water from the state project concerned at rates that produce revenue surpluses, then equity would seem to require that they be brought into the repayment structure along with the irrigation area in order to obviate the otherwise inequity.

In summary, while indirect benefits are not generally included in benefit-cost ratios for project justification, to be on the conservative side, indirect beneficiaries should be included in the project repayment base

5. Should the State's repayment policy vary if the project provides a new, replacement, or supplemental water supply? In a theoretical sense, rational logic could be advanced to distinguish reimbursability and pricing policies between water users that would be furnished a supplemental or replacement supply and those that would be furnished a new supply under some circumstances The rationale of this concept is that inasmuch as the State has so far not attempted in any way to restrict the use of ground water basins, resulting in the buildup of economies based on overdraft and not on safe yield of ground water basins, the State has a responsibility to assist in rescuing such areas by furnishing water rather than allowing eventual disinvestment and social readjustment to take place In contrast, there is no investment as yet in new areas Consequently, the freedom for decision making is much greater Furthermore, there is some doubt concerning the necessity to bring in new lands for the next few years at least Some have argued that water used for a supplemental supply can obtain a higher price than water for a new project, the theory being that this is a rescue-type operation, that capital expenditures have already been made; therefore, the price of water can go as high as the difference between added revenues and variable costs On the other hand, it could be argued that the price for supplemental water should not exceed the cost of the present supply, because the value of the land has been capitalized, taking the existing price of water into consideration Our belief on this matter is that while there is recognized merit to these points, a policy of such differentiation for new, replacement, and supplemental water would be very difficult to implement Likewise, it would be operationally and administratively difficult to carry out in many instances and additional decisions as to whether the land should or should not be developed that go beyond the standards indicated above are restrictive to an excessive extent on the prerogatives of the private entrepreneur in deciding whether to invest or not to invest In addition, it undoubtedly would be difficult to arrive at definitions of these terms that would be acceptable to all interests, since on a total areal basis, most agencies which will contract with the State for a water supply already have a water supply available at least for some water users within the agency Therefore we believe that new supplemental and replacement water supplies should have the same price Again, this brings us back to the proposal of capital recovery for water based insofar as feasible, on costs rather than on only ability to pay

In reference to timing of repayment there might properly be a difference between new, supplemental or replacement water supplies, depending upon the relative magnitudes of each The Federal Government has followed the practice of allowing a development period during the first years of a new project During this period, repayment is either very low or none at all This appears to be justifiable in that it allows the water users a chance to get established before making large payments Where new development is involved to a large extent and water demand will build up slowly, the local agency contracting for the water should be allowed to defer some of the capital recovery payment for a few years, if it so elects

In the case where replacement or supplemental water is the major consideration, the capital expenditures have probably already been made; therefore, the users should be in a position where they are able to make full equal annual payments commencing at the time of delivery of project water

6 What general policy will serve as the basis for provisions in contracts with water users organizations for service from state-constructed projects? At the outset of our response to this question we want to call your attention to one aspect that will be reflected in contracts with agencies in the areas of deficiency lying westerly and southerly of the Delta to be supplied by diversions from the Delta We believe that the so-called Delta Pool Concept must be adopted and implemented if firm water supplies are to be made available for the areas of deficiency, at the same time allowing for future development in the areas of surplus

and adequately providing for the water demands of the Delta lands and water users, all at minimum overall total cost

Under the Delta Pool Concept, the works involved may be grouped in two distinct categories, those contributing to the Delta Pool supply and those diverting from the Delta and transporting the water to places of use.

A continuing program of progressive construction of facilities to supply the Delta Pool will be necessary Under this concept, all contracting agencies would have a continuing responsibility to pay for such works as may be necessary from time to time to provide an adequate water supply to the Delta Pool as demand grows, both in the areas of surplus and in the areas of deficiency These supply facilities would be fully integrated, both operationally and financially insofar as recovery of capital costs is concerned, in a manner analogous to the operation of a municipal water department

When it becomes necessary to add a new unit to supply the Delta Pool, it must be demonstrated that the capital to be invested in that particular unit can be amortized over the capital recovery period, probably fifty years, as above mentioned All agencies supplied from the Delta Pool, however, will have a continuing responsibility to continue necessary capital recovery payments until the reimbursable capital costs of the last unit have been fully amortized Thus, the price to be charged for water in the Pool will vary from time to time and the contract provisions must so provide

Repayment of conveyance facilities should not be accomplished in the same manner It would appear that recovery of capital costs of conveyance facilities may be made over a fixed period, say 50 years, after which the charges to agencies from which repayment has been recovered no longer will include a construction component for the conveyance facility

It should be emphasized that with respect to most of the areas of deficiency westerly and southerly of the Delta, the costs of conveyance will be the major factor involved in the total cost of water delivered to the contracting agencies

Depending upon the circumstances of each case, contracts covering capital recovery of conveyance facilities may provide for a deferred payment plan or a variable rate may be established to permit development during the early years of the contract and at the same time provide for full repayment over the specified fixed period In addition to a charge necessary to recover the reimbursable allocated costs, a charge must be made to recover actual operation, maintenance and replacement costs Payment of these latter costs may be accomplished on an annual basis An additional feature of this type of contract might be that, under proper circumstances, responsibility for operation and maintenance of the conveyance works may be transferred to a legally constituted agency representing the water users organizations being served from it or to these organizations jointly As stated above in connection with conveyance facilities, after recovery of capital costs is achieved and if responsibility for operation and maintenance has not been transferred, the rate to be charged will include operation, maintenance and replacement costs but no longer will reflect a construction component

With reference to provisions in contracts with public agencies for water from the Delta Pool, it appears desirable that a two-part rate be established. Actual operation, maintenance and replacement costs should be shared equitably on an annual basis by all organizations having so contracted As indicated above, these agencies will have a continuing responsibility to return the reimbursable allocated costs of these water producing facilities until such costs of all units have been repaid. This procedure, of course, necessitates an adjustment of rates as each new unit is added so that bonds will be amortized and repayment of the total cost will be recovered within the prescribed fixed period after the addition of the new unit It should be noted in this connection that new units will be added upon the authorization of the Legislature and the making of funds available

The foregoing discussion covers generally our recommendations for a basic policy concerning repayment contracts Contracts with water users organizations for water from the Delta Pool will recognize a permanent right to project water service and will provide for renewal of the contract after expiration of its term The contracts, of course, also will include provisions of an operational nature, provisions protecting the interests of the water users organizations and the state, and provisions concerning the specific rights and responsibilities of the parties

The present statutory policy with respect to sale of water and power under state water project is found in Section 11455, Division 6, Chapter 3 of the Water Code, which was enacted in 1933 and reads as follows:

"11455 The department shall enter into such contracts and fix and establish such prices, rates and charges so as at all times to provide revenue which will afford sufficient funds to pay all costs of operation and maintenance of the works authorized by this part, together with necessary repairs and replacements thereto, and which will provide at all times sufficient funds for redemption of all bonds and payment of interest thereon, as and when such costs and charges become due and payable."

We believe that your committee may be interested in our report on "Proposed Semi-Tropic Water Storage District, Kern County," dated June 1958, since this report pertains specifically to an agricultural area in the southern San Joaquin Valley for which a district has been formed as the legal entity to contract for and distribute water to be made available by the Feather River Project and Sacramento San Joaquin Delta Diversion Projects

(Transcript of September 15, 1958, page 25)

STATEMENT BY P. H. McGAUHEY AND HARRY ERLICH
University of California

Introduction

It has been determined that California's water resources, if properly controlled and distributed are adequate to meet all of the state's needs While the state's potential water supply may be adequate some localities are approaching maximum utilization of available sources, and as increasing quantities are needed for expanding urban, industrial, recreational, and agricultural uses, competition for undeveloped sources is intensified The concern of water-deficient areas over rapidly depleting supplies and an equally grave concern of water-surplus areas that exportation of fixed amounts may render them water-deficient and hinder their economic development, have thus given rise to a host of physical, economic, financial, legal, and public policy problems of almost unfathomable complexity

Objectives of Resource Development

A water resources development program of the unprecedented scope envisioned in the California Water Plan requires the formulation of public policies which establish the objectives of the state as a whole in this function It is therefore extremely important to California that legislative committees study and recommend appropriate state policies for evaluating the economic and financial feasibility of units of the California Water Plan, and set forth the economic goals underlying water development, control, and utilization

One of the major limitations of many studies of California's problems is that they begin with the assumption that qualitative concepts *i e*, public policies, are already well established, and hence concern themselves only with the quantitative techniques by which policy goals may be achieved In distinguishing between quantitative and qualitative criteria, it should be stressed that some of the major matters under consideration today (rate determination, method of economic evaluation) are among several forms of applied quantitative criteria to facilitate reasoned choice on whether state policy objectives are being implemented

A state development program involves a continuing series of judgments reached by considering proposals in the light of public objectives set forth by the legislative process These objectives represent qualitative criteria which establish the elements to be analyzed and the end value to be achieved Then through the application of quantitative measurement, the design, location and cost of projects, and perhaps incidentally, the extent of accompanying economic growth, are determined

As it assumes the task of storing, transporting, and marketing water for a variety of uses over a large area, the designation of one kind of policy by the State of California may result in the evaluation of impounding, channeling, allocation, and pricing alternatives along one line, while other qualitative guides may lead to an entirely different evaluation. It should be stressed that if, in the absence of explicit policy expressions, it becomes necessary to prepare or implement a plan, the burden of value decisions, which should be openly arrived at in the democratic process, may necessarily be delegated to those responsible for technical decisions

From the studies pursued by the authors it is apparent that California is faced with a number of policy decisions, without which no amount of concern for quantitative matters can lead to resolution of its most difficult water problems. It is also apparent that neither the qualitative concepts nor the quantitative measuring techniques of the federal government are suited to the requirements of California, and there is evidence that present state policies in these matters are often nonexistent, vague, or outmoded

The limitations of federal policy as a guide to state policy have been set forth at length in a report on the economic evaluation of water with which the subcommittee is already familiar. Therefore it is sufficient at this time to recall that these limitations emerge from a premise that water is primarily an agent for stimulating agricultural output. Federal policy thus presents a qualitative criterion too limited in concept to be well adapted to the changing pattern of western economic development in which industrial and urban water needs assume increasing importance. It is significant that although the Federal Government has financed, built, and presently operates the massive Central Valley Project, the Hoover Commission in its 1949 report to Congress found that there is no effective federal agency with responsibility for determining the economic or social worth of water development projects.

There are indications that a policy directed toward the maximum use of land rather than the optimum use of both land and water is less suited to California than to any other western state Since California is the fastest growing, and one of the most highly urbanized states in the Nation, it is conceivable that perpetuation of water policies oriented primarily toward extractive producers may result in commitment of much of the State's land and water resources, and a great portion of its financial resources, to an enlargement of irrigation that is unlikely to further economic development and sustain full employment. It is this possibility that has led the authors to conclude that further policy decisions are a necessary part of the solution of California's water problems.

Implementing Water Resource Development Objectives

Publicly sponsored resource development resting on the justification of promoting the general welfare requires that the consequences of alternative policies be weighed in relation to the good of the widest range of citizens. Since what constitutes the maximum good changes with time, public policies must be continuously adapted to changed conditions. Failure to make such adaptations has perhaps been the most glaring defect of federal water development policy

When the qualitative goals represented in public policy become too constricted as a result of changed economic and social conditions, two different courses of action have been suggested as means of resolving the dilemma One is to alter public policy; the other is to seek to overcome the limitations of policy by greater refinement of the quantitative tools by which that policy is implemented. The first of these is a tremendously complex undertaking involving interference with vested interests, changing of time-honored practices, and similar upheavals which may well be politically impossible until the reasons for policy change become so compelling that the majority of citizens are actively aware of them. This generally means that a prolonged turbulent period is inevitable. The second procedure is one which we may follow without delay but which holds little prospect of positive results It seems improbable that a study of quantitative factors in whatever detail can ever overcome the limitations imposed by inadequate qualitative, or policy, concepts. For example, if maximum occupancy of land for agricultural pursuits is the objective established by public policy on water resources development, no amount of study of pricing policies by which this objective has been attained in the past can solve the problems which arise from the emergence of other strong elements of the economy.

It seems worth while then at this time to consider some of the limitations inherent in several of the quantitative factors as instruments of policy. Some of these factors are inherent in traditional federal policy; others are established by existing state law.

Concept of Beneficial Use, and Allocation Priorities The legal concepts underlying water use may not seem germane to the subcommittee's field of inquiry, but they bear heavily on the economic evaluation of water. Since 1914 California has had a systematic method for acquiring water rights through the issuance of permits and licenses. A guiding principle in issuing water rights in California is that the water shall be put to "beneficial use," a term which seems to have been an integral part of the appropriation doctrine since its beginning, but for which there is no legislative or judicial definition.

This concept has its roots in the last century, when the water supply was seemingly limitless and virtually any use might be considered productive It lends itself to broad interpretation, but is construed mainly to prevent excessively wasteful practices rather than to measure comparative returns resulting from alternate water uses

Although the comparative economic yield of competing uses is not an explicit criterion for determining the allocation of water in California, a priority scale, tightly woven into the Water Code in 1918, may have a profound impact on the ultimate pattern of the State's economic development Only five years before this amendment was adopted, the thinking of that day regarding resource utilization was illuminated when the State Conservation Commission issued an extensive report to the Governor and the Legislature proclaiming:

"It is not at all a wild statement to say that there is irrigable land enough in this State to accommodate in plenty and prosperity a population of 30,000,000 rural people Nor is it at all beyond the certainties of the future that millions of American families will be raised, in comfort and luxury, on irrigated California farms of five or even less acres In this manner, the Conservation Commission believes, will be solved, as well as it may be solved, the problem of the drift to the cities of the country population, upon which depends the conservation of human life, comfort, prosperity and happiness" [1]

Understandably then, the 1918 amendment, now embodied in Section 106 of the Water Code, declares public policy on preferences between uses of water by stipulating that "domestic use is the highest and irrigation the next highest." While domestic and irrigation uses are taken into account in assigning priorities to appropriative rights, the Water Code does not specifically mention industrial use, and the Chairman of the State Water Rights Board (a quasi-administrative-legislative and judicial water allocation agency created in 1956) holds that "there is no judicial precedent or statutory authority for interpreting domestic use as including industrial use" [2] Until a conflict occurs which brings this matter to adjudication, it is thus to be assumed that industrial water use ranks last in California's priority scale.

In contrast, as supplemental irrigation is more widely practiced in eastern states and comes into competition with other uses, the riparian doctrine is giving way to newer appropriation statutes which emphasize the relative economic value of optional uses by assigning priorities on the basis of "productive use," "economic use," and "optimum use"

In a rapidly growing state contemplating maximum development of its water resources, it would seem that the somewhat nebulous beneficial use concept has little relevance to contemporary problems and that protection of the public interest in water use requires the formulation of broader objectives than prevention of wasteful practices

Benefit-Cost Analysis. The magnitude of expenditures and the pressure of competing demands on available funds requires that the State adopt a systematic evaluation method for determining the statewide benefit to be derived from individual projects There is, however, no generally accepted formula that is universally used.

Although nonmonetary social criteria have been traditionally prominent in federal policy determinations on water resource development, in its need to make budgetary decisions on alternative expenditures, Congress has insisted that projects be weighed in monetary terms The benefit-cost technique of reducing the benefits and costs of a given project to a monetary ratio dates back to 1866, when Congress instructed the Secretary of War to indicate what benefits would derive from river improvements made by the Corps of Engineers While it has also become the chief evaluation technique of the Bureau of Reclamation, and the Department of Agriculture, there is considerable criticism of benefit-cost analysis In its report on the organization of the Executive Branch, for example, the Hoover Commission concluded that no scheme has yet been devised for obtaining even a reasonable idea of the extent of general or local benefits from water resources development and that these determinations are largely a matter of opinion rather than the result of scientific evaluations

Some of the criticisms which have been made of the benefit-cost analysis are that:

1. The technique is applied to individual federal programs on an individual project basis Even though there is evidence of an evolving basinwide approach, the

[1] State of California, *Report of the Conservation Commission of the State of California*, January 1, 1913, p 84

[2] Letter, May 17, 1957

Bureau of Reclamation is mainly concerned with irrigation on the valley floors and it has no responsibility for urban needs or for the development of foothill or mountain areas Similarly, the Corps of Engineers is concerned with flood control and navigation, while the Department of Agriculture is primarily concerned with soil and water conservation as they relate to agricultural production

2 The technique isolates water use and separates it from other physical and economic considerations in a project area

3. It does not relate use of financial or physical resources to economic return from alternate producers. The benefits resulting from water use may involve other forms of production than irrigation, but federal agencies are ill-adapted to comprehensive regional planning which encompasses both urban and rural areas

4 It does not evaluate public works relative to each other The general standard of living is lowered when taxation is used to meet the costs of relatively unproductive enterprises because financial and physical resources are diverted away from more desirable public services or more productive private activities Subsidization of low value water users, for example, places a burden on other economic activities which are taxed to offset costs, and the burden is ultimately thrown on consumers In general, public investment should stimulate forms of economic activity which will induce secondary investment and employment Subsidies to low value water users often fail to meet this criterion because although they may convert an unprofitable undertaking into a profitable one for the operator directly benefiting from the works, they may be a liability to the State As a matter of fact, the greater the proportion of funds and resources, either public or private, engaged in comparatively unproductive enterprises, the lower the per capita standard of living When the vendor of a commodity or service is a public jurisdiction it is often possible for ratepayers effectively to oppose any upward revision of charges to meet altered conditions or production costs As a result, in irrigation for instance, there is an increasing disparity between charges and maintenance costs, causing deficits which must be made up from other sources Since any state can have only as much non-revenue-producing public works and services as productive works enable it to afford, it is necessary that standards be devised so that the relative merits of proposals can be compared and the area of discretion in authorizing funds can be limited by law

5 It gives inadequate consideration to how benefits are distributed Objectives of state expenditures should be to distribute benefits as widely as possible The main advantage from the development and distribution of public water supplies goes to the owner of land, not necessarily in the form of crop value but often in increased land values If a rising standard of living, reflected in rising per capita income, is a proper objective of public policy, this factor must be taken into account

Conservancy District. As the State inaugurates a program of public improvements having both statewide and local benefits, consideration should be given to the possibility of entering the field of land taxation, now strictly the province of local jurisdictions, or delegating the power to some local entity Sizable gains are to be realized by primary and secondary beneficiaries of water resource development, and if costs are to be borne in proportion to benefits, some mechanism is needed to assign and allocate benefits and costs.

In this connection the subcommittee has under consideration the use of conservancy districts, a method used by the Bureau of Reclamation to determine the distribution of benefits. These are county-wide taxing districts which spread the cost of irrigation development by levying an ad valorem tax on all property within the district.

Two main premises underlie formation of conservancy districts

1. It is unjust for irrigators to pay the full cost of water development because increased commerce and employment in nearby towns inevitably lead to an enhancement of business and land values. The conservancy district is thus intended to tap secondary beneficiaries by requiring those who gain indirectly from irrigation to share in the cost of development.

2 Equitable cost-sharing should be achieved between local areas and the State as a whole, as well as between irrigators and the urban areas they surround. The intent here is to tax the local indirect beneficiary rather than the statewide taxpayer However, if indirect beneficiaries in urban areas are to be taxed in the interests of fair distribution of costs, it is equally just to weigh the deleterious effects and attendant costs created by irrigation development Irrigation development generates wealth but it also causes financial burdens on the communities which serve as the labor market for adjacent farm lands. For some years there

has been a tendency to shift the responsibility and cost of housing and caring for migrant labor from farms to urban areas As a result, local police protection, hospital service, and public welfare costs, which are borne by urban dwellers, have risen considerably.

The primary beneficiary of irrigation development, as previously noted, is the irrigator, whose profits lie not so much in the sale of agricultural products as in the increase in land values which is incidental to public improvements These values may far overshadow those emanating from the products of the soil, permitting sizable unearned gains unless taxed It may be argued that if irrigation development is extended to only those lands which are truly productive of new wealth, rising land values will offer the opportunity for revenue from a development tax on the land Such revenue would automatically expand to provide additional improvements, thus enabling the area to achieve optimum development In addition to placing a more just portion of the tax burden on the beneficiary, this device would presumably reduce detrimental land speculation

The principal limitation of the conservancy district seems to be that its scope and jurisdiction are inadequate Basically it is a taxing device, using its revenues solely to pay costs of irrigation development It is formed of other jurisdictions originally created on geographic lines bearing no relation to watersheds as hydrologic units Matters of land use planning, regulation of ground water withdrawals, and similar related factors are normally outside its scope

If a maximum distribution assumption is untenable and optimum distribution of water is to be a guiding criterion, and if regions or watersheds are to have a voice in measuring the overall gains or losses accruing from local resource development, perhaps the most logical jurisdictional base is not a limited purpose district organized in selected counties, but rather a statewide network of multipurpose watershed planning and development agencies established according to the hydrographic units delineated in the California Water Plan and operating under an overall state agency Such locally based watershed jurisdictions might accomplish a number of objectives Of especial importance would be their function in multipurpose planning of a nature which envisions the integration of the physical, economic, and human resources of rural and urban areas in an optimum combination Planning of this nature goes beyond the limited purposes of land reclamation or flood control programs and measures the practicality of an undertaking in terms of optimum urban and agricultural land use, as well as surface and underground water use, on a regional or watershed basis A fundamental premise of such an approach is that the benefits of specific projects can be judged validly only within the framework of an overall plan for the long-term physical and economic development of the entire project area, and that if regions or watersheds are to share in the cost of development, they should participate in the determination of how the physical and financial resources of their locality will produce the most social and economic gains

Watershed jurisdictions might serve as a means for reconciling conflicts between surplus and deficient areas by establishing a medium for negotiating mutuality of interest On the basis of uniform state standards for determining water needs, jurisdictions which are deemed to have a surplus might then negotiate with deficient watersheds

Additional objectives which might be accomplished include: serving as an equitable base for underwriting capital investment on improvements of local benefit; co-operating with the State in the location and operation of local distribution facilities, and evaluating area potential by estimating the outer limits of the income-generating capacity which might result from economic growth generated by water use

Aqueduct Routing Of the various quantitative criteria none seems less subject to consideration outside the framework of established public policy than does the routing of aqueducts Yet because such routing may have a profound effect on the economic development of an area, the policy it is designed to implement assumes major importance If maximum geographical distribution of water is the objective, or if the delivery of water to water-deficient land without particular reference to its ability to produce agricultural wealth is the goal, the route and cost of distribution works will be one thing It will be something quite different, however, if the policy is to distribute water in such a fashion as to achieve the maximum combined economic benefit from agriculture, industry, and commerce

Methods of Financing The method of financing best suited to state development of water resources depends upon what kind of economic development the State wishes to promote As previously noted, the historical policy assumption of the Federal Government has been that maximum reclamation of land for agriculture is the goal of water resource development The natural outgrowth of this qualitative criterion is the federal practice of subsidizing irrigation water users through the diversion of power revenues, and through the tapping of general tax revenues by extending capital cost repayment periods under interest-free provisions, as well as assigning costs somewhat arbitrarily to other benefits in multiple-purpose developments

To what extent can these federal financing methods be followed by the State in financing its water resources development? The answer must necessarily be, only to the extent that the federal goal of maximum land reclamation is the qualitative criterion to be satisfied In a state in which virtually all irrigable land is now in private ownership, the extent of contributions from California's rapidly depleting general fund, and the payment schedules established for power and for municipal and industrial water users, will determine the degree to which historic objectives can be achieved through subsidies

On the other hand there are signs that the financial path followed by the Federal Government is not compatible with the changing character of California's economy and with the condition of the State's treasury For one thing, subsidy of irrigation at current levels is extremely costly For instance, it has been estimated that the total subsidy to an irrigator owning 1,000 acres of land in the Central Valley Project approximates $11,500 per year over a 50-year period This presumably indicates the cost to the public of bringing water to California's best land How much greater the cost may be when water is delivered to poorer land at a price it can afford to pay is a matter of the utmost concern A further element of uncertainty rests in the unknown economic effect of an eventual increase of California's irrigated acreage by an amount equal to 35 percent of the Nation's present total

Recognition of the increasing predominance of urban activities in the economic structure of California is vital in judging the adequacy of qualitative criteria. The fact that 85 percent of the tax moneys of the State comes from sources concentrated in urban areas makes such areas restive when methods of financing water resources development are under discussion in the absence of lucid policy objectives on the end economic results to be achieved

Final determination of appropriate methods of financing then seems to depend upon definition of the policy goals they are to serve If the economic welfare of the State is the end to be sought and industrialization is deemed to further this goal, inducements to industry through cheaper power may be appropriate In such a case the contribution to the irrigation subsidy from that source would be decreased and it might be necessary to limit development of new irrigated land to areas with a higher production potential than would be the case under a policy of maximum land reclamation On the other hand, if the narrower policy framework of federal precedent is followed, it is conceivable that the problem of financing could become insurmountable for the lack of factors in that policy which act with certainty to screen out projects at some marginal point

The question of methods of financing seems incapable of resolution outside the framework of firmly established policy statements concerning the pattern of economic growth to be promoted through water resource development

That California should establish broader policy goals than are to be found in federal policy is evident from the transitional nature of California's economy

Economic Implications of Water Use

As sections of the State having a limited natural water supply are confronted with increasing demands, industry, municipalities, agriculture, and recreation begin to compete for the available supply This competition is heightened as the amount of unappropriated water decreases and there is a polarization of opposing forces which manifests itself on a geographical basis rather than along functional water use lines To a considerable extent sectional dissension over water rights reflects fears on the parts of residents of individual watersheds that exportation of a fixed amount of water might prevent the optimum economic development of their locality

Public development of water resources is closely linked to the growth of private economic activities, and because a steady flow of cheap water is a vital ingredient in actuating latent economic growth, public development, distribution, pricing, and rationing policies become a vital influence on the extent, character, and location of

economic activities. Furthermore, since the employment opportunities generated by economic activity are a key factor in attracting population, water distribution may well be a determining force in California's ultimate population distribution and, in turn, the location of the physical facilities required to serve new growth. Thus, policies and practices accentuating one form of water use or the expansion of one geographical area as against another may tend to enhance or retard statewide economic development.

With this in mind, let us briefly examine the pattern of water usage in California, note the changes in the magnitude of use, and discuss the competition for limited supplies from an economic standpoint

The California Water Plan indicates that urban areas accounted for only 8 percent of the total water used in 1950, while irrigated lands took 92 percent Despite the overwhelming preponderance of irrigation in the total water use of the State, an enormous industrial expansion is taking place in California—one which is having a profound impact on the mode of physical and economic growth, and is making heavy demands on available water supplies Figure 12 depicts the rising importance of

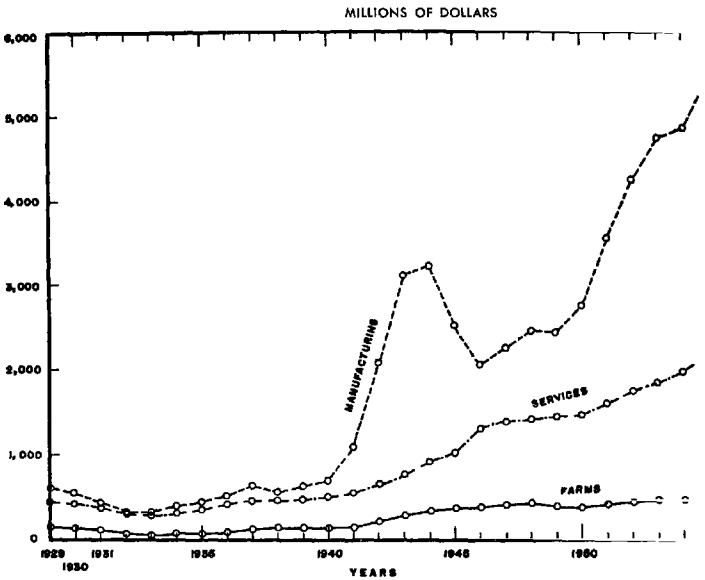


FIG. 12 - CALIFORNIA: PERSONAL INCOME FROM MANUFACTURING, SERVICES, FARMS, 1929

SOURCE U S DEPARTMENT OF COMMERCE, PERSONAL INCOME BY STATES SINCE 1929, TABLE 61, pp 202-203

manufacturing in the State's economy during the past 25 years It shows how the industrialization of California arose during World War II when the Federal Government financed the cost of nearly $1 5 billion in manufacturing facilities to accelerate military production During the past ten years this growth has reached extraordinary heights, the capital investment in new plants and expansions being estimated at $4 billion. The upswing in California's manufacturing output is clearly apparent in value added by manufacture, which rose from approximately $4 billion to $10 billion between 1947 and 1957.

In 1950 and again in 1955 the U. S. Geological Survey undertook the first estimates of total water use for the 48 states. These data reveal the extent to which rising industrial water requirements are a counterpart of California's industrialization. During this five-year period industrial and agricultural withdrawals for the nation as a whole both underwent an approximate 30 percent increase. However, in California, although irrigation withdrawals increased 12 6 percent and remained predominant in aggregate volume, fresh and brackish industrial withdrawals rose from 295 million gallons per day to 6,280 million gallons per day, an increase of 2,050 percent. Even more striking is the fact that, while the ratio between irrigation and industrial use in 1950 was 68 5 1, in 1955 the rise in industrial use reduced it to but 3.7 :1 In terms of the percentage distribution of uses, it is noteworthy that, whereas self-supplied industrial withdrawals accounted for only 1 3 percent of the State's total in 1950, in 1955 they represented 20.5 percent As shown in the accompanying chart, increased industrial withdrawals caused the proportion of total state withdrawals for irrigation to decline from 91 7 percent in 1950, to 74 9 percent in 1955 Thus the percentage of withdrawals used in irrigation is already 7 percent below the 82 percent estimated as the ultimate in the projections of the California Water Plan.

These changes in the pattern of water withdrawals, together with trends in such economic indices as personal income and employment, reflect a marked transition in the economic structure of California With the rise in trade and services, they indicate that the state is moving from an agriculturally oriented economy to a more diversified economic base in which farming is undergoing a relative decline in importance, and in which industrial development and attendant population increases assume greater significance

Economic development is predicated upon the availability of raw materials from which goods may be produced, and upon the existence of customers to buy them. While much of California's early development was dependent upon its raw materials, some economists contend that the key stimulants to California's current economic growth are the expanding consumer and producer markets resulting from population increases

Population increases are essentially accretions to the State's working force, for migrants are mainly drawn to California by employment opportunities In-migration tends to set off a self-generating cycle of economic development by shifting the consumer market westward, attracting industry, providing jobs, increasing purchasing power, and facilitating the disposal of manufacturing output Because expansion of the State's market and its working force are so closely related, it might be said that economic development flows from, as well as creates, employment and personal income.

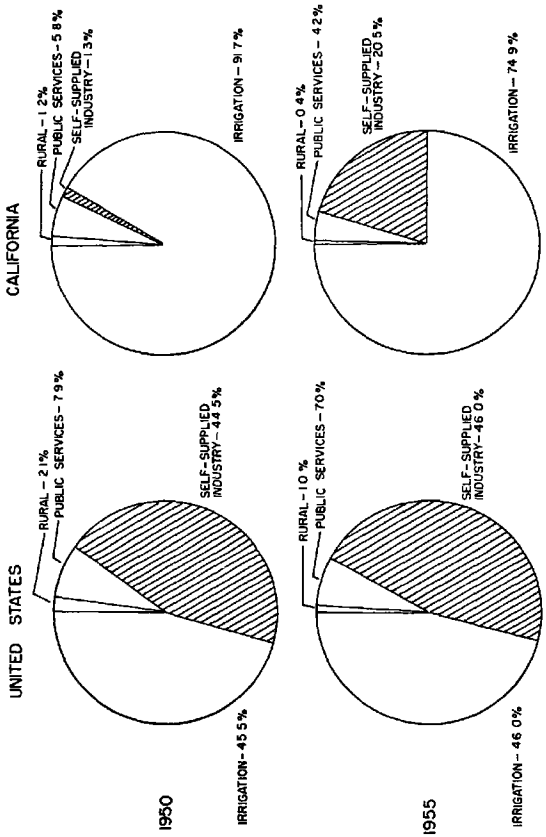
Since purchasing power is a key factor in stimulating economic development, all signs stress that California's continued economic well-being hinges on maintaining levels of employment and personal income exceeding population growth Inasmuch as California's aggregate growth is unparalleled among states, this is a formidable objective There has been no decade since 1900 in which California did not grow almost three times as fast as the total population of the United States The current population of over 14,000,000 is increasing at a rate of about 500,000 annually and is expected to reach 17,000,000 by 1965

As industrial growth accelerates, water policies founded exclusively on a concept of maximum land reclamation appear to have been rendered ill-adapted to the changing pattern of California's economic development Industrialization has stimulated a trend toward urbanization and a shift of population from farms to cities Consequently, population gains are concentrated in the State's highly urbanized areas, and California has become one of the most urbanized states in the Nation The 1950 census revealed that an overwhelming 80 7 percent of California's population was urban while only 19 3 percent was rural By contrast, only 64 percent of the Nation's total population was urban That urban areas are the focal point of the search for economic opportunity is indicated by the fact that between 1920

and 1950 California's farm population dropped from 15 2 percent to 6 3 percent of the State's total

The aggregate income received by the residents of California from all sources determines their ability to buy the goods which induce the growth-begetting-growth process Personal income is therefore a good indicator of the capacity of the State as a market for the sale of goods and services, the production of which provides employment

Amounting to approximately 30 billion dollars in 1955, aggregate personal income in California ranked second only to New York, which had 36 billion dollars Between 1950 and 1955, the period in which USGS data indicate the phenomenal rise in



PERCENT DISTRIBUTION OF WATER WITHDRAWALS, UNITED STATES & CALIFORNIA, 1950 & 1955

industrial water withdrawals previously cited, the State's personal income rose approximately 50 percent During that period the pattern of growth differed markedly from that of the Nation as a whole While the percentage of total income from manufacturing in the United States increased only 1 4 percent, California's income from this source increased 7 4 percent From a longer range standpoint, during the period 1933 to 1955 the increase in personal income in California from manufacturing was 3 5 times that of farms and 2 5 times that of services.

Despite a substantial rise in aggregate personal income in California (5 5 billion dollars in 1929 to 30 billion dollars in 1955), the State's per capita income has not kept pace with the increase in the national average, and the long-run trend indicates that the State's economic advantage relative to other parts of the Nation is declining (see Table 1)

TABLE 1

CHANGE IN CALIFORNIA'S PER CAPITA INCOME AS A PERCENTAGE OF NATIONAL AVERAGE, SELECTED YEARS, 1929-1955

	1929	*1940*	*1946*	*1950*	*1953*	*1955*
Percent national average	142	141	132	124	123	123

Since the volume of movement to California occurs primarily in response to job opportunities providing higher incomes, the decline of per capita income in California in relation to the national average may have an effect upon the State's standard of living

In terms of employment, less than 10 percent of those employed in California are engaged directly in agricultural work The Census of Agriculture reports that during the harvest season in 1954 a total of 277,753 workers were hired but only 22,277 were employed 150 days or more Expenditures for hired farm labor in 1954 amounted to $410,711,854 By comparison, the Census of Manufacturers reports that 771,796 manufacturing workers were employed in California in 1954 and their wages amounted to $3,143,793,000. It is noteworthy that although the food-processing industry provided 24 5 percent of California's total wages and salaries in 1939, it dropped to 11 4 percent in 1955 The new leadership manufacturing has attained in providing employment is shown in Figure 14 which indicates that manufacturing employment underwent a 56 percent increase from 1950 to 1956, making it the State's chief source of employment.

An apparent assumption of water development designed to implement irrigation expansion is that farming is a prime mover in a sequence of economic activities which lead to increased economic values If a rising standard of living, reflected in a rising per capita income, is the underlying qualitative objective, there are indications that an expansion of agriculture may not be the best means toward this end Two problematical matters arise in connection with the extension of irrigation to enhance the general standard of living. One of these relates to the distribution of farm income and the other to the productivity of land.

The accompanying table from the Census of Agriculture indicates that in 1954 only about 15 percent of California farms had gross incomes of $25,000 or more With the net income for California farms averaging about one-third of gross income,

TABLE 2

CALIFORNIA FARMS BY ECONOMIC CLASS—1950 AND 1954

Farm class	*1950*	*1954*
Commercial farms	99,133	89,418
Class I $25,000 or more *	14,299	18,241
Class II 10,000 to $24,999	18,985	20,190
Class III 5,000 to 9,999	21,730	18,829
Class IV 2,500 to 4,999	20,526	15,727
Class V 1,200 to 2,499	17,229	12,948
Class VI 250 to 1,199	6,364	3,483
Other farms	38,035	33,585
Part time	16,382	14,121
Residential	21,316	19,309
Abnormal	336	155
Estimated number of farms	137,168	123,003

* Value of farm products sold.

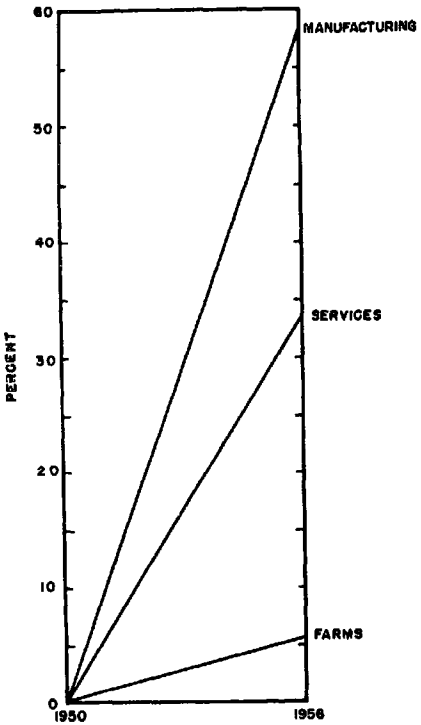


FIG. 14 - INCREASE IN CALIFORNIA EMPLOYMENT IN MANUFACTURING, SERVICES AND FARMS FROM 1950 TO 1956

SOURCES DEPARTMENT OF INDUSTRIAL RELATIONS, CALIFORNIA LABOR STATISTICS BULLETIN, No. 389, DECEMBER 1956

DEPARTMENT OF INDUSTRIAL RELATIONS and DEPARTMENT OF EMPLOYMENT, EMPLOYMENT AND UNEMPLOYMENT IN CALIFORNIA, No 49, DECEMBER 1956

it is clear that there are only a few farms with large earning capacities and a great number (53 percent) with net incomes of less than $2,000. In 1954, when 73 percent of farms were in the commercial category, 69 percent of all farms were irrigated, leaving only 4 percent of the total number unirrigated. Yet about a third (22 percent) of the number irrigated sold less than $5,000 worth of products

A tendency for marginal or part-time farm operators to supplement their income from nonfarm sources is evident from information in the 1950 census, which showed that 50 percent of all farm operators had an outside income exceeding agricultural sales and the number working off farms had increased 40 percent over that of 1945

A further problem which occurs in connection with the ability of irrigation to induce other economic activities—and one which is assuming critical proportions—involves the rapid disappearance of productive farmland as a result of the urbanization brought on by population growth Unlike manufacturing, in which mass use of several factors of production is based on a law of increasing returns, the use of water by agriculture to increase crop value is peculiarly subject to a law of diminishing returns dictated by one essentially fixed factor of production the natural productivity of the soil Beyond that point of diminishing returns, increased use of water as a factor of production is not reflected in a proportionate increase in production. Fertile land may produce two or three times as much crop value as poor land with the same quantity of water Extension of irrigation to less productive land may then require a higher cost per acre and result in less production per acre-foot of water.

The need for interrelating land and water policies is evident from the fact that during the past 16 years, according to Soil Conservation Service estimates, urban expansion has resulted in the conversion to other uses of more than three million farm acres—about half the amount considered suitable for cultivation in the entire State The spectacle of productive farmland giving way to subdivisions and factories while water, a mobile component of the productive process, is pushed out into inherently less productive areas gives rise to the question. When does the law of diminishing returns begin to operate? And, further, can it be invoked to justify a restriction in subsidized water distribution for low value uses? If the State's water and financial resources were unlimited it might be permissible to spread them thinly. But since they are not, it would seem that the only justifiable goal of public policy must be to distribute water and cash outlays in a manner most likely to result in the greatest economic returns

If augmentation of deficient supplies is to be approached with relative economic productivity as the qualitative criterion, redistribution must be weighed in relation to a possible decline in some economic activity or area of use It has been indicated that the magnitude of industrial withdrawals in California has undergone a phenomenal increase between 1950 and 1955 The following comparisons in the economic values resulting from utilizing a given amount of water on land and in manufacturing demonstrate that it may be possible to put important amounts of water to uses yielding a higher return and creating wider economic benefits than irrigation

1 In 1954 the net value of production per 1,000 gallons of water withdrawn per day for farming was $0 024 as against $1.37 for manufacturing In other words, manufacturing produced 68 times as much product value as farming per 1,000 gallons of water withdrawn per day.

2 In 1954 the personal income per 1,000 gallons of water withdrawn per day for farming was $0 55 as against $2 38 for manufacturing In other words, manufacturing provided 4 33 times as much personal income per 1,000 gallons of water withdrawn per day as farming

3. In terms of employment, the annual average employment per 1,000 gallons of water withdrawn for farming was one employee per 16,978 as against one employee per 1,970 for manufacturing. In other words, farming used 8 6 times as much water per employee as manufacturing.

These contrasts are not meant to imply that it is desirable or even possible to convert agricultural lands to industrial uses just because the economic returns per unit of water are so much greater But in watersheds where upstream mountain and foothill lands, and urban and agricultural lands on the valley floor compete for a water supply already nearing complete utilization, and where steady growth enlarges the needs of other watersheds, there is much to be said for reconsidering the economic wisdom of consigning limited water supplies to irrigation of land without a thorough study of the quality of the land and without carefully weighing the possibility that a greater economic good might come from assigning water to another use

(Transcript of September 15, 1958, page 72)

STATEMENT OF WILLIAM REICH

California Farm Research and Legislative Committee

The California Farm Research and Legislative Committee is a nonpartisan, nonprofit, educational, research, legislative and service agency whose main purpose is to protect ownership and operation of commercial family farms in California

Committee membership averages around 1,000 farmers and farm groups in addition to that of religious, civic and labor organizations who co-operate in programs relating to water, hydroelectric power and soil conservation, consumer buying power and measures to assist farm owners to attain parity for their investment, managerial skills and labor.

As an affiliate of the California Water and Power Users Association, we concur with the policies of this organization

In testifying before this committee regarding "principles and practical aspects involved in policy to be adopted on state water projects," we wish to make clear that we do not favor the State Feather River Project as presently planned

We believe this project, as planned, is financially and economically infeasible. It has falsely raised hopes of Southern Californians that they will get Feather River water when actually every drop of runoff is needed in the water-deficient Central Valley, as planned in the comprehensive Central Valley Basinwide Report of the U. S. Bureau of Reclamation

Those interests which press for construction of the State Feather River Project, with no provisions for acreage limitation or power preference, have created confusion and prevented a constructive solution of our water problems with consequent deadlock and inaction For example, inclusion of the San Luis Project in the state Feather River plan has developed heated controversy which has prevented congressional action on the project.

With these prefacing remarks, I will attempt to give our position on the specific questions put forward for these hearings·

Users of agricultural water should not be required to repay in full project construction costs which are properly allocated to irrigation In this we agree with federal policy which gives farmers the benefit of interest-free money for construction of facilities allocated to irrigation, and an additional increment from the sale of publicly generated electricity. To justify this subsidy in the public interest, limits are placed on the amount of subsidized water going to a single ownership—known as the 160-acre limitation.

Obviously farmers will not purchase irrigation water if the cost exceeds the benefit they can obtain from it. The average net farm benefits per acre-foot of water (distribution costs taken into account), as estimated in the "Report on the Engineering Feasibility, the Total Estimated Costs, and the Allocation and Probable Repayment of These Costs, of the Central Valley Project, California," approved by the U S Department of Interior, December 3, 1946, were $3 to $3 10 in the Sacramento Valley, $4 05 to $8 10 in the Delta-Mendota Canal service area, $4 35 to $7 80 in the service area of the Friant and Madera Canals, and $20 in the Contra Costa Canal service area (a suburban area with intensive agricultural cultivation)

Rates for irrigation water provided by state projects should be determined in accordance with benefits derived from this water and the ability to pay In most cases this will involve a subsidy since agriculture in few, if any, areas will be able to pay the full irrigation water costs Therefore, there can be no justification for permitting unlimited amounts to be used by a single individual or corporation

All agricultural areas of the State should be eligible for publicly developed water supplies

Any repayment deficiency (subsidy) to provide full cost of irrigation water could be met by state payment of interest costs on funds allocated for irrigation facilities, as is the policy in federal reclamation projects; by use of a portion of tidelands oil royalties; and by assessments all taxpayers in public districts indirectly benefited by increased agricultural production due to irrigation This means that water development bonds would be secured in part by taxing the benefited land rather than being wholly dependent on water revenues.

Individuals, local business and industry in communities benefited by state-financed irrigation projects should not have a "free ride" as property values rise and business and industry thrive because of these projects Therefore, the practice of requiring a portion of irrigation repayment from indirect beneficiaries is justified and desirable. This is possible through the organization of irrigation or water districts

The unearned increment accruing to land as a result of public improvements such as water projects in an expanding economy would be enormous, and therefore the resulting rise in land values should be taxed to help pay off project bonds.

Such a land tax would tend to prevent land value inflation and discourage speculation since idle land must bear the same tax levy as improved land of the same quality in the same area, as required by the State Constitution (Article XIII, Section 2).

We are unalterably opposed to bus-bar sale of electricity from state projects to privately owned utilities Such electricity should be publicly developed for project pumping and transportation of project water. Any surplus should be sold to public agencies at a rate not greater than is required for operating costs and to amortize state investment in power installations and transmission lines

Many areas can pay their own way by advancing a portion of construction costs of a project or facility which serves their area, or by construction and operation of all or part of the facilities needed to serve the particular area. For example, a public body such as the Metropolitan Water District of Southern California has greater resources, know-how and facilities to finance and construct installations needed to serve it with state project water than do many smaller and less prosperous areas. Our committee is of the opinion, however, that every such construction should conform to an accepted statewide overall plan and be integrated with it.

There should be no variation in repayment policies according to whether the project provides a new, replacement or supplemental water supply Consideration should be given, however, to a cheaper rate for surplus water which can be used for replacement of underground supplies by percolation, or for bringing low-quality land into production

When water is scarce, high-yielding agricultural lands should be given priority on available irrigation water.

(Transcript of September 15, 1958, page 188)

RESOLUTION NO. 44
California Water Commission

WHEREAS, The California Water Commission has been asked by the Director of Water Resources, in accordance with Chapter 52 of the Statutes of 1956, to advise him specifically on recommendations to be made to the Joint Legislative Committee on Water Problems, Subcommittee on Financial and Economic Policy, concerning the pricing of agricultural water from state projects; and

WHEREAS, The Commission has considered this matter at an adjourned meeting in Susanville, California, on September 5, 1958; now, therefore, be it

Resolved, That it is the policy of this commission that the price of agricultural water provided by state projects should be based on capacity of the land to pay; if such capacity is insufficient to pay project costs allocated to irrigation, then the difference should be paid, in the general interest of the State, by project power revenues, other sales of project water, by the general taxpayers of the State, or other sources of funds; provided further that no excessive subsidy be provided to lands of low repayment capacity.

The foregoing resolution was adopted by the California Water Commission, State of California, at Susanville, California, on September 5, 1958.

CLAIR A. HILL
Chairman

(Transcript of September 15, 1958, page 199)

STATEMENT OF ELMER B. WOOD
Irrigation Districts Association of California

First, and perhaps most important, it should be emphasized that there appears to be a tendency to approach our first state projects in reverse of the traditional method for the construction of financially feasible projects Instead of starting with the determination that there is an existing demand for the water and power and incidental benefits which would create a group of financial underwriters for the project, there seems to be an attitude that the Feather River Project is necessary and beneficial and must be built—so now we have to find out who will pay for it

We will admit that it is difficult, if not impossible, to indicate the exact service area and every beneficiary of a project of such great scope as the Feather River Project, but every effort should be made to determine the service area with, perhaps, alternate service areas which could indicate their need for the project or willingness to pay a share of the costs on a basis similar to bidding After the service area is at least tentatively outlined (or at some stage in planning the project), the benefits attributable to flood control, recreation, fish and wildlife must be considered; and if a value is to be placed on them, the method of repayment by the beneficiaries must be determined. It has been proposed that certain recreation aspects, fish and wildlife benefits, reservoir sites, main canal rights-of-way and utility relocations be paid for by the State as a state contribution to the general welfare While we do not oppose such proposals at this time, we firmly believe that every such benefit should have its costs to the State fully determined and funds must be made available by the State to cover such costs We would like to reserve the privilege of objecting to assignments of water to some of these uses if it is indicated that such uses will seriously affect the availability of project water for the higher uses of domestic supply or irrigation

Next, the policy of the State on hydroelectric power produced by state water projects must be made clear, so that some determination can be made of the expected income, if any, from this resource It has been our recommendation that power produced by a state project be sold at the greatest advantage possible to the project, on the theory that water development is the prime function of these projects and that water within the foreseeable future cannot be developed in quantity by any other means, whereas electric power can be and is being produced by other means than water projects. This is not suggesting that high power prices subsidize water development, but simply that *all* the products of the project be sold, or compensated for, at their greatest worth, as it seems obvious that our water plan developments will require all the income that can be obtained

With the service area of the project roughly determined, there should be a reasonable indication of the areas which will be served industrial or domestic water from the project; and if the project is properly planned, the State should be able to negotiate long term contracts for the sale of water, with provision for increased supplies of water as areas grow into full development Price of water in these contracts should reflect the costs of the project facilities used to get the water to the contract delivery point It is then possible that the contract price may need to be adjusted downward to meet the cost of water from competitive projects or other sources

Irrigation water users in the service area of a state water project should be offered a contract for water supply that would repay the allocated costs of the project to the extent that the water users are able and willing to pay for them The price in the contract must of necessity, as a practical matter, consider, in addition to ability to pay, the price at which the local area could develop its own supply and the competitive price of water from other projects in the area Interest on money advanced by the State is considered by us to be one of the project costs which would be included as chargeable to irrigation water In areas not able or not willing to pay all costs allocated to it, continued inclusion of that area in the state project should depend upon what kind of a contract can be arranged with that service area If a contract can be negotiated which is all that the area can reasonably be expected to pay, and that contract will be helpful to the overall project, it would seem that the area might well be kept in the project for such support as it can give If, on the other hand, the area would become a liability to the entire project under the best contract which could be negotiated, it would appear that only in the case of extraordinary consideration—perhaps action of the Legislature—should that service area be retained in the present service area of the project

As I think we have indicated, but perhaps have not stated in so many words, we reject the theory that water for irrigation must be subsidized in any state project We believe that in any completely and properly planned water project all the direct beneficiaries should pay allocated costs up to their full worth. If payment of the full worth by all such beneficiaries shows that the project can be constructed and that income will exceed costs, then will be the proper time to determine whether all contributors shall have their costs reduced proportionately or on some other basis.

If the payment of full cost by all beneficiaries indicates that the project cannot be built on that basis, then in our judgment the project should not be built at this time. However, all potential beneficiaries of the project should be given an opportunity to reconsider their contribution to the project, and if any one or more of them considers the benefits sufficiently great to cause them to underwrite the deficiency, the project may be undertaken It is our position that the investment fund or the general fund of the State should not be used to make up such a deficiency, nor should a general bond issue be voted which could not be paid out of project revenues.

We would quarrel with the definition of an indirect beneficiary of irrigation as being the urban and municipal areas adjacent to irrigated acreages In the Irrigation District Law, there is the fundamental concept that all of the land in an irrigation district benefits from the irrigation of the area Urban and municipal areas which develop within the boundaries of a district are *direct* beneficiaries, and their land is assessed to help pay for the irrigation project We would approve of an extension of this basic irrigation district principle to the service area of a state water project, and believe that it would assist in clarifying state policy on this point Our policy calls for repayment of the costs of the project by the direct beneficiaries, so, to the extent that areas outside of the service area of the project are benefited, we would only point out that perhaps the service area was not properly indicated

Tolls for water in an irrigation district *can* be varied according to the quality of the land by assessing all lands for the cost of water to the district The assessment is prorated to all landowners within the district on the basis of the value of the lands The lower quality lands will have a lower cash value and will be assessed proportionately less, and will therefore pay less for their share of the project water Technically, it might be held that, since they are entitled to water in proportion to the assessment paid, the poorer lands would receive less water; but in actual practice, this rule has seldom been enforced unless the district was critically short of water.

(Transcript of September 16, 1958, page 14)

STATEMENT OF KENNETH R. McSWAIN
Merced Irrigation District

The Merced Irrigation District comprises 164,000 acres of rich farmland in eastern Merced County. A few of the crops raised are vineyard, deciduous orchards, rice, corn, cotton, alfalfa, tomatoes, sweet potatoes, and irrigated pasture The cities of Merced, Atwater and Livingston and the towns of Winton, Planada and Le Grand are within the district boundaries, as is Castle Air Force Base

The district obtains its water from the Merced River where it owns and operates a dam, reservoir and hydroelectric plant at Exchequer in Mariposa County The reservoir impounds 281,200 acre-feet of water and we can generate 35,000 kilowatts of power which is sold at the plant to the Pacific Gas and Electric Company under a long-term contract

The existing storage capacity is sufficient in years of normal or above-normal runoff but anywhere from 10 percent to 50 percent short in seasons of low winter precipitation. The possibility of the disastrous crop losses that would occur with a 40 percent or 50 percent water shortage in any one season prompted us to study methods of protecting our district against such an eventuality

While the existence of Exchequer Dam has been of considerable value from the standpoint of flood control on the Merced and San Joaquin Rivers, reservoir capacity does not presently provide enough storage to operate for flood control without seriously impairing the irrigation and power functions for which the project was constructed Our development plan involves the raising of Exchequer Dam from its present height of 330 feet to 488 feet Storage will thus be increased from 281,200 acre-feet to 1,000,000 acre-feet A second dam is planned for a location about one-half mile downstream from the community of Bagby. It will be an earth and rock fill structure 418 feet high and will impound 415,000 acre-feet The third dam will be constructed three and one-half miles upstream from Snelling It will be a relatively low, but long, rock fill structure which will impound 190,000 acre-feet of water. Altogether we will have 1,605,000 acre-feet of storage capacity and in-

stalled power generating facilities of 166,000 kilowatts, 100,000 kilowatts of which will be "firm," or dependable The total cost will be $82,500,000

This development will provide a firm supply of water to the land in the district and allow us to expand by about 10,000 acres It will also provide the flood control required by the Corps of Engineers, which has been actively conducting studies on the Merced River for the last three years

The project will also have the important effect of firming up the water supplies of areas to the west of our district which receive water under agreement or simply by virtue of their location. The quantity of return water into the Merced River, which is of excellent quality, will be increased by the use of irrigation water by the district until the middle of October each year.

I believe that this committee will be particularly interested in our proposal to finance the development through the sale of revenue bonds based on power production and a federal allocation for flood control The security for the bonds will be a long-term contract for the sale of power and energy and no additional taxes on the land in the district are contemplated. In other words, the project will be self-liquidating and landowners will have no fear of tax liens, as they may have when financing is based on general obligation bonds

(Transcript of September 16, 1958, page 80)

STATEMENT OF J. F. SORENSEN
Friant Water Users Association

Our association has as members 16 public districts which have long-term contracts for service from the Friant-Kern and Madera Canals of the Central Valley Project These districts serve approximately 650 thousand acres of highly productive agricultural land in Madera, Fresno, Tulare and Kern Counties.

Friant Water Users Association represents water users who have 40-year contracts for water and who are generally able under these contracts to meet their immediate water needs However, as citizens and taxpayers of California, we feel that additional water development projects are needed

As we see the water pricing picture, there are two basic premises of prime importance:

First A sound, continuing agricultural economy is necessary in California

Second: There can be no more cheap water development projects in California

California depends on agriculture for its products and for the business which it generates The man who sells tractors is truly just as vitally interested in the price of water as the farmer who uses the water

To maintain a sound agricultural picture, we must know that water users can pay their bills, maintain and operate their farms and enjoy a reasonable standard of living.

There can be little question that the marketing and pricing policies for which you search will determine whether or not California will be able to maintain her agricultural economy or not We may wake up to discover parts destroyed with resultant social as well as economic loss

Concerning the second premise regarding low cost water development projects, additional projects become increasingly expensive.

In the past, the cheapest projects were constructed first. It is obvious that many projects of recent construction would not have been built except to meet urgent demands

Sooner or later we reach the point where agricultural users cannot afford to pay for water from these costlier projects If we determine that our agricultural economy is not to be diminished, we then must decide how to make water available at a price which the agricultural users can pay.

Ways to reduce water prices must include, among others, defraying a portion of the capital expense through overall state participation or charging other classes of water users more for water service.

With water playing such an important part in agricultural production, it is essential to realize that increasing the cost of water to an alfalfa grower by 25 percent might cut his net income 10 percent, whereas such an increase to a domestic user might amount to less than 20 cents per month

The Friant Water Users Association feels that water supplies and transfer facilities must be allocated to each area of the State so that areas not ready to use water at present are not forever thwarted from development

In our water and irrigation districts, we make these arrangements and we know that such can be done on a larger scale also

(Transcript of September 16, 1958, page 99.)

STATEMENT OF GLENN BULTMAN
Greater Bakersfield Chamber of Commerce

Our organization represents 1,100 industrialists, agriculturalists, wholesalers, retailers, professional and service firms in the metropolitan Bakersfield area, all of whom recognize that the economic foundation of their individual businesses, the welfare of their employees and, indeed, the margin between the present high standard of living enjoyed by all citizens in this area and a possible lower and weakened one in the not too distant future lies to a very great extent in whether or not the State of California takes immediate action in solving the water problems of this and other water deficient areas in the State To put it bluntly, the standard of living of Bakersfield and Kern County citizens, regardless of their business affiliation, hangs in uneasy balance and can be tipped upward or downward, depending upon whether or not we get supplemental water soon

In order to fully appreciate the economic impact of agriculture on metropolitan Bakersfield, we should first realize that last year (1957) the total cash farm income in Kern County amounted to $232,301,078 During this same year, metropolitan Bakersfield accounted for 66 percent of all Kern County bank debits, 63 percent of Kern County's postal receipts, 72 percent of total telephones, 51 percent of total Kern County population and 56 percent of all Kern County retail sales You can readily see by these general business indicators that roughly 60 percent of the total Kern County economy as such is reflected in the business transactions of metropolitan Bakersfield. Using this yardstick, we can, therefore assume that agriculture in 1957 directly contributed more than $139 million to the economy of metropolitan Bakersfield alone, not to mention the economic benefits derived from local firms in an allied or agricultural service field

Carrying on with this thinking, we can refer to statements and literature developed by local agricultural and water authorities wherein it has been estimated that unless supplemental agricultural water is delivered to Kern County within the near future, a total of one-third of the present farmland may be forced out of production If this is allowed to happen, it means that the economy of metropolitan Bakersfield would suffer an estimated $46 million annually

Delivery of supplemental water for agricultural use is by far the most urgent need at the moment in this area Not only for agricultural producers but also for our highly developed business economy This flourishing economy provides employment for thousands, largely as a result of continued agricultural production Supplemental water for industrial use may also become a need in the future and should receive consideration in studies such as those now being made by your subcommittee.

(Transcript of September 17, 1958, page 64.)

RESOLUTION
Board of Supervisors, County of Kern

SECTION 1 WHEREAS

(a) The Assembly Subcommittee on Economic and Financial Policies for State Water Projects is conducting hearings on irrigation repayment problems of state water projects, and

(b) Said subcommittee has requested the expression of public opinion with regard to the propriety of a policy requiring partial repayment of the costs of irrigation projects by indirect beneficiaries of such projects, and

(c) The adoption of this resolution has been recommended by the Kern County Water Commission,

SECTION 2 *Now, therefore, it is hereby resolved by the Board of Supervisors of the County of Kern, State of California,* As follows.

1 That the indirect beneficiaries of irrigation projects shall share with the direct beneficiaries of such projects in the repayment of the costs thereof in such proportion as shall be determined by the Legislature of the State of California

2 That the clerk of this board of supervisors shall forthwith prepare certified copies of this resolution and forward the same as follows

Twenty (20) copies to the Assembly Subcommittee on Economic and Financial Policies for State Water Projects meeting at Bakersfield on September 17, 1958,

Harvey O Banks, Director, State Department of Water Resources;

Jess R Dorsey, Senator, 34th District;

Dorothy M Donahoe, Assemblywoman, 38th District,

H. W Kelly, Assemblyman, 39th District, and

Kern County Water Commission

(Transcript of September 17, 1958, page 75)

STATEMENT OF ALLEN BOTTORFF
Kern County Farm Bureau

With respect to certain of the questions before you, I believe that all water users receiving water from a state project must accept their fair share of responsibility for the financial success of the project, and this includes agricultural water users

There is, however, a very broad statewide interest and responsibility which exists largely through the fact that the total and ultimate economy of our state may be so seriously affected by any failure to properly and adequately develop the water resources of California *on a timely basis*

The State can accept this responsibility by advancing the capital funds required for construction of projects authorized for state construction There may well be a period of time during which the project is under construction and until water deliveries are made in volume that it will be proper and fair for the State as a whole to absorb the cost of financing—that is, the basic interest costs This may be particularly true as related to allocation of costs to irrigation features

As and when this period expires, the reimbursable capital costs, including interest at the long term state cost, should be recovered through charges for project services This could be accomplished with respect to a specific state project over an extended period of time, the actual duration to depend on the facts and circumstances involved Basically, however, the idea should be to recover the capital invested and its cost By this means, a reasonably firm businesslike basis is established for state water development By this policy, support for state project development will come from people of the State who may not at the moment, or ever, directly receive water from a state project Through this procedure, funds representing repayment of reimbursable capital costs will return to the State and, if held within a water development fund, may again be appropriated by the Legislature to assist in financing the construction of future needed water projects

Recently an item appeared in Donnc's Agricultural Digest (a special advisory service used widely by farmers today) which used a new term for the direct agricultural *economy and pointed out that* 'any successful government farm policy must deal with the whole of 'agribusiness,' not just farming" To paraphrase this reasonable statement, we believe that any successful policy with respect to the financial aspects of state water projects serving irrigation water users must also take into consideration "agribusiness" as a whole, rather than the farmer using irrigation water alone And by "agribusiness" is meant all those businesses and industries which are clearly connected with and to a greater or lesser degree dependent on agriculture including, of course, the farming itself

Kern County is one of California's foremost agricultural regions and ranks as third county in farm products value in the nation Its farmers produce annually more than $230 million worth of agricultural products This farm production comes largely from irrigated farms Water for irrigation may well be described as the life blood of all "agribusiness"; and of tremendous additional indirect economic value to the State as a whole, and the Nation

Generally speaking, regardless of other water supply sources every farmer in Kern County depends to some extent on pumping for irrigation—more so under certain conditions, in some sections, or in some seasons, than others Many farmers depend entirely on a pumped water supply In fact, large and productive farm areas in Kern County have no water source other than the underground at this time

One quite important development now under way in Kern County is the formation of new water districts as provided by state law At Sacramento this committee was informed of this movement Quite recently the Semitropic Water Storage District

completed its organization This district embraces about 225,000 acres located in the north central section of our valley area Other large areas are rapidly approaching completion of water district formation

All of this shows the great interest in development of state water projects in this area The problem of securing an adequate supply of supplemental water *on a timely, as well as fair and equitable basis*, has been uppermost in the minds of those who have most actively expressed this interest

Many farmers in Kern County, and others affected by these considerations have made serious studies of proposals for development of the State Water Plan, and in particular the State Feather River Project Categorically we would say that Kern County's strong support for the State Feather River Project, with full knowledge of these reports and of these cost factors, is indicative of water user willingness here to pay properly assigned costs

In our statement at Sacramento we spoke of the importance of considering benefits derived when allocating project costs Farmers use water as a necessary raw material in the production of crops Any policy on cost allocations and pricing project water for irrigation which fails to take into consideration the need to maintain reasonable incentive for the farmer to use water could react in a manner harmful or destructive to our basic economy

We believe those using water for irrigation from the state project will be willing and can afford to pay their proper share of fairly allocated costs We believe, also, as previously said, there should come a day when the costs so allocated will be "paid in full," at which time charges for water should be reduced accordingly

(Transcript of September 17, 1958, page 93)

STATEMENT OF GORDON GARLAND
California Water Development Council

I appear today as the executive director of the California Water Development Council I believe our position is now quite well known throughout the State We believe that if there is to be statewide development of the water resources of this State on the scope that has been envisioned and has been discussed, we must get down to hard, cold facts and realities and it will avail us nothing to continue to deal in fantasy and imagination

There cannot be a statewide water plan in this State as it has been envisioned except and unless subsidies of the category or type that are afforded the farmer through the Central Valley Project, a federal construction, are afforded to him through state construction, if indeed there is state construction Even though a farmer might be willing, no matter where he resides, and might indicate that he would sign a contract to pay a price for water necessary to get it to his land, that is not in the final analysis the determining factor that will bring together the agency having this water to sell and the district which will be the purchaser I know of my own experience in helping to organize the Stone-Corral Irrigation District and in helping to sponsor the Central Valley Project that before a contract can be consummated there must be demonstrated on the part of the district or the purchasing entity the ability to pay for the water Otherwise, economic feasibility cannot be found and I am sure Harvey Banks would be the first one to tell you that unless economic feasibility can be found which will indicate the ability of the purchasing entity to pay out the cost of the projects, whatever they are, allocated to him, then there is not going to be a contract

I am impressed tremendously by the presentation made by Mr Peterson this morning and I am sure if you propounded the questions to him to ascertain what the average per capita daily consumption of water is in the metropolitan Los Angeles area, he would come up with the figures of somewhere around 265 to 300 gallons I hasten to point out to you that you could allocate to the citizens of metropolitan Los Angeles the 300 gallons per day, but isolate them from a supply of food and fiber and those people would perish from the want of food and fiber, because that 300 gallons per capita consumption will not produce the food and fiber necessary to sustain them Of necessity then, if there is any truth or fact in that statement, somebody must consume in their behalf the remaining part of their necessary daily per capita use or they cannot continue to exist Fortunately for me, I do not have to use my own figures For the balance of that I take figures that were developed

by Yale University and I have never seen their statement questioned They concluded that 1,500 gallons a day is necessary on a per capita basis to sustain the population of the United States

If that be true, then who are we talking about subsidizing (with) agricultural water except the people in the city for whom we are producing the food and fiber If we are forced to pay an exorbitant price as farmers for this water that is used to produce that food and fiber, then the city dweller of necessity must pay a higher price for his food and fiber

The California Water Development Council believes that it is possible to develop the water resources of this State so that every segment of our economy and every geographical area that is presently in need of such a supplemental water supply can be afforded that supply and at a price that their economy can well tolerate

But obviously if that is to be accomplished, it must be accomplished in the original concept that is adopted for a solution to this problem Everybody now agrees that progressively each and every water project as it is developed will become more and more expensive Obviously then, if we take the cheapest sources of supply and either dedicate those supplies to, or allow them to be taken by the user who can well afford to pay a higher price, and not protect those cheap sources of supply for agriculture, we will be forever cutting agriculture off from any further expansion beyond what their present water supplies will accommodate

As far as financing whatever part of this undertaking the State undertakes by bonds, appropriations from the General Fund, income from oil revenues or what not, it must be apparent now to the members of this committee that even though that might provide an ideal means of financing this undertaking, the final resolution of this problem will of necessity be determined politically I do not envision the agricultural interests of this State going along with any kind of arrangement that will limit the agricultural possibilities to those presently available water supplies, and if they would be so shortsighted as to do so, I hasten to state that that would not be in the interest of the city dweller

I believe that it will be necessary to go into the north coastal area at an early date and start construction of projects and make that water available to the segments of our economy that can afford it, and second, I think it would be just as necessary and essential to go forward with maximum federal participation in these projects in order that agriculture can continue to look forward to an additional supply of water

How can that be done? Again, theoretically it would not be too difficult Politically it may be most difficult But I am thoroughly convinced that it would be possible, that it is possible, for the masses of people who happen to reside south of the Tehachapis to lend their assistance to the agricultural interests of this State in the halls of Congress so that the California delegation in Congress can stand together as a unit and plead for their fair share of the tax dollar that is being expended by the Federal Government, particularly in the 17 western states

I believe if the people of the south arrive at the point where they show that consideration and care for the future well-being of agriculture in this State, that you will find the people of the north who are essentially agriculture quite willing to go along with the program to finance those water development projects which are not cloaked with a suitable degree or ratio of benefit-to-cost to qualify for federal construction, and I believe on that basis of understanding and only after we have reached that degree of mutual concern for each other, will we have statewide water development, if we have it at all

(Transcript of September 17, 1958, page 116)

STATEMENT OF KENNETH A. KUNEY
Tulare Chamber of Commerce

Our area is presently receiving water from the Central Valley Project We are not within what would be considered the contracting area of the Feather River Project There is still a need for additional supplemental water in our area and we envisage that in the future, we will, we hope, participate in other projects We believe that the development of the entire water resources of our State are necessarily going to require the co-operation of federal, state, and local interests, and construction by all

We do not believe in our area that ownership or acreage limitation provisions of the Federal Reclamation Law should be any controlling consideration in choosing the proper agency for the construction of any particular future project And I am not aware of any reasoning in the world that would recommend the adoption of acreage limitation by California

We believe generally in the principle of a general state water development fund financed at least in part by general obligation bonds We believe that there is a very general interest of the State and throughout the State in developing its entire water resources, that it is not realistic or equitable to divide California water development into separate distinct projects with separate feasibility studies and costs; that it is not in the best public interest to reduce water development in California to a matter of competitive bidding between areas or projects The job is a big one and a job that must be approached as a whole

Feasibility studies do not mean very much really as to a particular project You can make it show what you want it to show Benefit-cost ratios are just as meaningless I think that we have one big job and we should approach it as one big job and no one segment of it can be considered and isolated and the advisability of it determined all by itself

I would like to address myself more or less directly to your question three, because we have had a little experience in our area that may be of some assistance there, and that is this matter of direct or indirect benefit received by an urban municipal area from an irrigation project

First of all, I believe that there will be, of course, an indirect benefit to the entire State of California by the development of the water resources and quite possibly that is an element to be taken into consideration in making what is very freely referred to as a fair allocation of costs

But there are areas undoubtedly that are more directly benefited, urban areas, more directly benefited by an irrigation project I believe that that should be taken into consideration, but I would suggest that it can best be taken into consideration on a local level

I do not know how many other examples of this there are in the State, if there are any, but in my own area we have the Tulare Irrigation District completely surrounding but not including the City of Tulare The City of Tulare obtains its entire water supply by pumping The City of Tulare and the surrounding Tulare Irrigation District several years ago recognized that there was both a very real direct benefit to the City of Tulare as well as an indirect benefit to the City of Tulare, but, by reason of the existence of the Tulare Irrigation District around it and by reason of the Tulare Irrigation District purchasing Bureau of Reclamation water and importing it into that area maintaining pumping levels, the general farm economy around it was improved.

There was a definite recognition of that benefit after negotiation that was carried on for some 14 to 16 months We were able to come to terms on the subject and now the City of Tulare annually pays to the Tulare Irrigation District a lump sum of money in recognition of the fact that the irrigation district is directly benefiting it by maintaining pumping levels and by maintaining a good sound farming economy

We originally arrived at the agreement for payment on an acreage basis and, as a matter of fact, the agreement provides that, as the city grows, the irrigation district will at the same time exclude any land, when the city includes that land, and the payment will increase on a per acre basis I know of no other city and irrigation district that have reached that state of agreement It is an agreement with which both parties today—after several years of operation—are completely happy

(Transcript of September 17, 1958, page 131)

The following material is extracted from the memorandum of the Senate Subcommittee on Irrigation and Reclamation to the members of the United States Senate Committee on Interior and Insular Affairs dated April 25, 1958 The chairman of the subcommittee requested the views of the Department of Agriculture on acreage limitation provisions of reclamation law Also reproduced is a section of the table supplied by the Department of Agriculture indicating net farm income by size of acreage in California and material submitted by the Bureau of Reclamation on the

status of excess lands on reclamation projects in the Central Valley Project This material was reproduced by the Subcommittee on Economic and Financial Policies for State Water Projects for study by subcommittee members

Department of Agriculture
Washington, D C, December 19, 1957

HON CLINTON P ANDERSON,
United States Senate

Dear SENATOR ANDERSON. In accordance with the suggestion made in our reply to your letter of September 10 requesting our views with respect to acreage limitation provisions of reclamation law, we are enclosing a statement prepared by economists in this department This statement concludes that the present 160-acre limitation, or any other fixed acreage, is not equally appropriate for all irrigated areas

The statement suggests that principles be adopted which could be used in determining the size of farms on each reclamation project which would be reasonably efficient in the use of labor, capital, and land resources, and which would provide *farm families with income opportunities comparable to those they might obtain for* similar effort and skill in other occupations. Such a policy would require that studies be made for each project under consideration to determine the size of farm most appropriate for the project and for each major land type within a project Studies of this kind were made in connection with development of the Columbia Basin project, but the objectives in that study were a maximum number of settlement opportunities consistent with an acceptable level of living

The implementation by the Congress of such a policy could be either in terms of general guides to be used by administering agencies in establishing maximum size farm units, or in terms of a project-by-project approval of such varying acreage limitations after study and recommendation on each proposed project

We trust that the enclosed statement will be of some assistance in your consideration of this important question.

Sincerely yours,

TRUE D MORSE, *Under Secretary*

SIZE OF FARMS ON FEDERAL RECLAMATION PROJECTS

The Problem

The matter of establishing limitations on size of farms on federal reclamation projects has been of concern to the Congress, to administrative agencies, to agricultural and community leaders, and to farmers on reclamation projects, for many years A great many hearings and discussions have been held and studies made on this question by the Congress, by administrative agencies, and by a wide range of other groups and individuals. It would be impossible quickly to summarize the great volume of literature bearing on this question However, a brief review of the major actions by the Congress may be helpful for purposes of this statement

Two major restrictions were contained in the original Reclamation Act of 1902 (1) public lands on reclamation projects could be homesteaded in tracts of 40 acres, but not more than 160 acres, and (2) rights to the use of water from federal reclamation projects on land in private ownership was limited to tracts not exceeding 160 acres in any one ownership

Almost as soon as the reclamation law was passed these provisions occasioned difficulty The original limitation on acreage in the 1902 Reclamation Act was modified by the Warren Act of 1911, which provided that water could not be delivered to landowners outside the reclamation project boundaries in excess of that amount needed to irrigate 160 acres

In 1922 the Secretary of the Interior appointed a special committee to study some of the economic problems of federal reclamation projects This committee, known as the Fact Finders, reported to the Congress in Senate Document 92, Sixty-Eighth Congress, First Session. The Fact Finders staff emphasized that a major reason for delinquencies in payments on federal reclamation projects was that speculation in land made it difficult for the landowner to pay both the speculative price and the construction charges required of the project. As a means of protecting the federal investment in reclamation projects, the Department of Interior Appropriation Acts

for 1925 and 1927 provided that repayment contracts with water users on certain projects contain provisions prohibiting the sale of land on these projects at a price in excess of that approved by the Secretary of the Interior.

The Omnibus Adjustment Act of 1926 amended these provisions to apply to the sale of land only in excess of 160 irrigable acres per individual These acts had the effect of limiting unwarranted increases in land prices on reclamation projects and of reaffirming the notion of 160 acres as a limit on the size of farms

During recent decades a number of exemptions have been made by the Congress to the 160-acre limitation provisions of the original Reclamation Act Administrative decisions have been made to the effect that the 160-acre limitation applies to an individual rather than to a family group In 1933 the Colorado-Big Thompson and Truckee storage projects were exempted from the provisions of legislation and administrative rulings In 1952 the 160-acre limitation was further modified by the San Luis Valley project authorization, which permitted an owner to receive water sufficient to irrigate 480 acres In 1956 limitations were lifted on parts of the proposed East Bench project in Montana and throughout recent years other exemptions have been made

Any examination of the question of size of farm on reclamation projects should clearly set forth the fact that current provisions in reclamation law relate to ownership limitation rather than to limitations of size of operating units The policy has been that water could not be delivered to land in excess of 160 irrigable acres in any one ownership (320 acres for husband and wife) To the extent that this reflects on limitation of acreage, it applies to landownership rather than to size of operating farms. On the Columbia Basin project, for example, present farm operating units average a little more than two ownership units Farm operators have gained control of more land through leasing than they are permitted to own to achieve efficiency in scale of operations and to increase total incomes

In congressional debates on the original reclamation law and in a great many congressional hearings since that time, the objectives of federal reclamation have been made abundantly clear There is a wide area of agreement to the effect that federal reclamation should provide opportunities for ownership of farms by families who settle on them A second broad objective which is widely accepted is that the benefits to accrue from federal reclamation should be distributed widely among farm families

Thus the idea has been generally accepted that a primary purpose of federal reclamation is to provide opportunity for the establishment of owner operator farm homes, with enough land to provide an adequate level of living for the farm family

The 160-acre tract of land as a farm unit is deeply embedded in the customs, legislation, and administrative policies of this Country More than a century ago preemption claims to public lands were set at this figure The Homestead Act of 1862 originally established 160 acres as the size of a farm This figure was further affirmed by the Reclamation Act of 1902, which has since been reestablished by legislation, administrative decisions, and public policies, generally

Even though there is a wide area of agreement that the objective of federal reclamation is to establish family-size farms and that the benefits should be widely distributed, there is considerable question whether 160 acres, or any fixed acreage, fairly implements this policy For instance, a 160-acre irrigated farm in western Montana is quite different from a farm of the same acreage in the San Joaquin Valley of California A 160-acre farm in the one area may be quite inadequate to provide a farm family with an acceptable income, whereas in the other the same acreage may be a large business if intensively operated Furthermore, the needs of different farm families vary considerably. A farm that would support one family adequately might be quite inadequate for others The adequacy of a farm changes with changing technology At the time when many of the early reclamation projects were established, when farmers irrigated with a shovel and farmed with horses, 160 acres or even a smaller acreage might have been an efficient sized farm Today, however, with tractor operation, with siphon tube irrigation, with better land leveling, and with many other technological advances, one farm operator and the farm family can efficiently operate a much larger acreage than formerly

It is apparent that wide variations of climate, soils, crop adaptability, and other factors occur among irrigation projects This variation leads to the conclusion that federal legislation regarding farm size should be oriented largely to setting up basic guides and objectives That is, each project must be considered separately in terms of size of farm that would be most appropriate, considering the basic legislation for the project and its particular economic and physical characteristics.

Present federal reclamation legislation permits partial operation in the above manner However, two of these guides have long been questioned (1) the upper limit set on ownership acreage, and (2) the maximization of farm numbers as reflected in establishment of minimum rates of return on farm resources, especially operator and family management and labor These two guides have led to establishment of farm units that in some instances resulted in inefficiency, low levels of income, and financial difficulties for farm families

Closely tied to considerations of size of farm on reclamation projects is the question of costs of reclamation development and the extent to which costs are recaptured through the charges allocated to irrigation and the repayment of those charges by landowners In most reclamation projects, and particularly on the better lands in such projects, there is a substantial increment in land values as the result of federal reclamation over and above that which is recaptured through charges made to landowners for repayment of construction costs The incidence of this irrigation incremental value varies widely among projects and among types and qualities of land within the same project For example, data from the Columbia Basin project indicate that on the better lands the irrigation increment in land value approximates $100 an acre On the poorer lands this increment is zero, or in a few instances may be a negative value

Where substantial increments in land values accrue as a result of reclamation there is strong demand on the part of landowners to so arrange their landholdings as to capture for themselves as much of this incremental value as possible As a matter of public policy, however, the principle is well established that this increment in value should be widely distributed

One other fact should be kept in mind in connection with size-of-unit limitations on reclamation projects The size and number of farm units has a direct bearing on the cost of the project water distribution system Project construction costs are higher with more and smaller farms because water must be delivered to each farm. These higher construction costs generally are not passed on to project farmers because repayment charges are based on ability to pay rather than costs of the project

Another factor should be kept in mind in considering acreage limitations on reclamation projects That is the fact that on most current projects the primary purpose is to provide supplemental water to lands already irrigated and that most of these lands are in private ownership The original reclamation law was designed primarily to develop irrigation projects for areas largely in public ownership At present, however, relatively little public land remains to be developed under irrigation Most of the new irrigation has been, and will be, for lands already in private ownership and already partially irrigated

Examination of the history of reclamation projects and of the needs for future reclamation leads to the conclusion that the primary problem is to find ways of establishing efficient family farms on projects and at the same time to distribute widely the incremental values created by reclamation An arbitrary acreage limitation may not be the most effective way to accomplish these objectives An arbitrarily established limitation on acreage is not applicable to all irrigated areas and to all soil and climatic situations To achieve the objective of establishing efficient and prosperous family farms and to prevent monopoly in capturing the incremental values from irrigation will require that principles be established which can be used on each project to set the size of farm A number of study groups and hearings have reached the conclusion that acreage limitations be set project by project in line with established objectives, so that the intent of Congress could be accomplished more equitably

Principles in Establishing Farm Size

A number of different principles might be used singly or in combination, to guide the determination of size of farms, project by project They are (1) a size of farm that, with average management, would provide a minimum acceptable level of living for the farm family, (2) a size of farm that would make reasonably efficient use of the labor supply of the average farm family, (3) a size of farm that would provide a labor income to the farm family comparable to nonfarm work, (4) a size of farm that would provide optimum efficiency in the use of all of the farm resources—land, labor, and capital, (5) a size of farm that would permit the maximum repayment ability on construction costs, and (6) a size of farm that would minimize the costs of the project water distribution system

In line with the general objective of providing maximum settlement opportunities on federal reclamation projects, many projects have been planned with a view to creating as many settlement opportunities as possible consistent with a farm organization that would provide minimum acceptable levels of living for farm people In pursuit of this general policy, the Congress passed special legislation for the Columbia River Basin reclamation development which authorized the establishment of sizes of farms varying with the qualities of land found in the areas to be irrigated These sizes were established by application of the principle of farm budgeting which projected the types of farm organization and farming practices with an allowance for a minimum acceptable level of income for the farm family This general approach has been used to test income expectancy from farm units in the planning and administration of most other federal reclamation projects, although the authority to establish farms of a size comparable to that in the Columbia Basin does not exist for other projects

The general principle that has been followed generally in the past in appraising the question of farm size on reclamation projects is that of providing the maximum number of settlement opportunities consistent with the ability of the farm to produce a minimum acceptable income Other principles, however, might be used that would be more meaningful in terms of public welfare and more generally acceptable by operators on reclamation projects and by potential settlers on new projects

Some combination of several of the principles listed above might lead to the most rational development of reclamation projects Certainly so long as incremental values are created at public expense through reclamation development there are strong reasons for limiting the extent to which they accrue to any one individual Moreover, the policy of encouraging family farms remains as a basic guiding principle The question then becomes one of establishing guides for reclamation development that will lead to development of farms that will conform to the general objectives of the Congress in appropriating funds for reclamation

A combination of the principles Nos 3 and 4 listed above would appear to be most rational in terms of economic use of the resources available to farm families on reclamation projects. This would require the establishment of a policy that would lead to the development of farms on each reclamation project and on each type of land within a project that would provide the opportunity for reasonable acceptable efficiency in the use of the resources involved Other factors, such as effect of farm size on project costs and on repayment ability of farmers on a project cannot, of course, be ignored completely

An insufficient number of studies have been made on the economies of scale or size of farms in irrigation farming to establish precisely at this time the size of farm by type and by soil characteristics that would be consistent with this principle We know, however, that economies of scale do exist in all types of farming, that with present levels of technology reasonable efficiency in returns to farm resources is achieved at that scale which might be described as a *medium-size commercial*, family-operated farm In wheat farming, for example, we know that relatively little economies of scale are realized on farms larger than approximately 1,200 acres in size However, appreciable economies of scale are observed between farms of 400 and 600 acres in size The same general principle applies to irrigated farms, although the size in terms of acreage would be much smaller Some evidence is available that can be used to estimate the size of farms that would give reasonable efficiency for selected irrigated areas in the West and to compare net farm incomes with incomes obtainable in other segments of the economy

The attached table reports net farm incomes for a wide variety of types, sizes, and locations of irrigated farms These data were assembled from a number of economic studies made in irrigated areas over the last several years These studies have been made for different purposes and by different methods, moreover, the time and price levels prevailing differ among them Therefore, these data are not necessarily comparable as among projects Nevertheless, two general observations may be made about these data: (1) a wide range of net incomes may be observed among farms on different projects and between types and sizes of farm on the same project, and (2) in many instances better than average farm incomes are reported for farms of 160 irrigable acres or less in size A close examination of these data in comparison with census data from irrigated areas leads to the conclusion that economies of scale are achieved at a point somewhat larger than the average size of farm now

found in most irrigated areas However, for many of the more intensively farmed irrigated areas reasonable economies of scale and at the same time quite acceptable levels of living can be achieved with a farm somewhat less in size than 160 acres of cropland, which is provided under present ownership limitations of one person

The most efficient size of farm in terms of acreage varies project by project with the length of growing season, the soil capabilities, the quantity and quality of water available, accessibility to market, and the state of technology All of these factors must be taken into consideration in establishing an efficient farm business They determine the crops that are adaptable and profitable in each farming situation. For example, in high mountain areas with an extremely short growing season, where only hay and small grains can be grown successfully, a much larger acreage is required for an efficient operation than in more southerly locations or lower elevations, where intensive crops can be grown

However, where a single crop is common over a wide range of irrigated situations, yields obtainable on this crop may give a guide to the appropriate size of farm in each situation For example, studies in the intermountain region indicate that the yield of alfalfa is a good index to the productivity of the irrigated area generally In areas suitable for alfalfa, small grains, and rotation pasture, the yield of alfalfa is a reasonably good guide of income expectations Of course, markets and types of farms are important also. A grade A dairy will yield a net income as large or larger than beef cattle or farm flocks of sheep on about 80 percent as much irrigated land. Thus, with a yield of 4 2 to 4 4 tons of alfalfa per acre, a reasonably efficient farm would contain from 80 to 100 acres of irrigated cropland, depending on the type of farm These farms in most instances would allow about $3,100 return to family management and labor at the USDA projected prices and leave some residual for repayment of water costs At 3 8 to 4 0 tons of alfalfa per acre, farm size increases to a range of 100 to 120 acres of cropland to yield approximately the same net income At a yield level of 2.8 to 3 0 tons of alfalfa, approximately 120 to 160 acres would be required With alfalfa yields at 2.1 to 2 5 tons per acre, a cropland acreage of 200 to 220 acres would be required for an efficient operation

Any consideration of size of farm on reclamation projects must recognize that efficient size of farm operations can be achieved by means other than through ownership of the land operated. Limitations may be placed on landownership without necessarily jeopardizing the organization of efficient farm units. While limitations on acreage owned may achieve an acceptable distribution of increases in land values resulting from reclamation, the mechanism of land renting may achieve desirable flexibility in size of farm operating units Some flexibility in size of farm operating units is necessary over time and between individual farms at the same time

Establishment of limitations on acreage of irrigable land owned consistent with a principle of optimum economic efficiency and comparability of income for farmers would require that studies be made for each reclamation project and for each major soil type within projects. Investigators making such studies would need to visualize the type of farming likely to be most successful under each situation Furthermore, they must recognize that the goal of efficiency in the use of resources and that of comparibility of income for farm families does not mean necessarily that all farms must be the same size even where similar conditions prevail High efficiency may be obtained in many instances on small farms where custom work by specialized machines is used or where co-operative ownership of certain equipment leads to reasonable costs Comparability of income for the family on a small farm often is achieved by combining farming with other occupations

Not enough economic studies have been made in irrigated areas to be able to establish the acreage required for efficient farming under all climatic, soil, and type-of-farming situations Such studies could be made, however, as required to implement project planning. Precedent for them may be found in the Columbia Basin project planning In the case of the Columbia Basin, the objective was to establish a size of farm that would provide a maximum number of settlement opportunities consistent with a minimum acceptable level of living for the farm family The suggestion here is to establish a principle that would lead to development of a farm that would provide optimum operating efficiency and would provide a farm income expectation reasonably comparable to other income opportunities that might be available to farmers on reclamation projects

	Enterprise combinations	Total acreage	Irrigated acreage	Gross income	Net farm income	Water costs	Net per acre*
CALIFORNIA							
Southern San Joaquin Valley (Lee, J Karl, Economics of Scale of Farming in the Southern San Joaquin Valley, California U S Department of Agriculture, Berkeley, California, April 1946, pp 106 and 114)	Specialized fruit						
	Medium	44	44		$1,868	$403	$42
	Medium large	92	92		5,856	476	64
	Large	344	344		14,965	1,214	44
	Major fruit						
	Medium	44	44		1,172	403	27
	Medium large	81	81		3,708	491	46
	Large	288	288		10,082	1,305	35
	Summer field crop						
	Medium	52	52		2,790	443	54
	Medium large	179	179		6,506	797	36
	Large	1,894	1,894		61,822	7,993	33
	Dairy						
	Medium	45	45		1,452	545	32
	Medium large	180	180		5,404	975	30
	Large	1,375	1,375		29,392	6,160	21
San Joaquin Valley (McCorkle, Chester O, Jr, Kern County Cotton-Potato Farms—Costs, Returns, and Scale of Operations Mimeographed Report No 143, California Agricultural Experiment Station, Davis, California, pp 32 and 20)	Cotton-potato	80	80	$28,338	7,862	2,033	98
	Alfalfa 1/3–1/3–1/3	160	160	56,675	17,194	3,692	107
		320	320	113,350	35,705	6,977	116
	Cotton-potato	80	80	27,238	8,083	1,982	101
	Alfalfa 2/3–1/6–1/6	160	160	54,475	17,724	3,601	111
		320	320	108,951	36,711	6,812	115
	Cotton-potato	80	80	33,013	9,909	1,879	124
	Alfalfa 2/3–1/3	160	160	66,026	21,286	3,418	133
		320	320	132,051	43,748	6,475	137

	Enterprise combinations	Total acreage	Irrigated acreage	Gross income	Net farm income	Water costs	Net per acre*
CALIFORNIA							
East Side San Joaquin (Caton, Hedges, and Schaller, Farm Adjustments and Earnings under 1955 Cotton Acreage Allotments California Agricultural Experiment Station, Davis, California, and U S Department of Agriculture (to be published in 1958), pp 47, 48, and 52, 65, 66, and 70, 87, 88, and 93)	Cotton, alfalfa, corn	80	80	13,271	2,405	1,130	30
	Cotton, alfalfa, corn	160	160	27,444	9,298	2 213	58
	Cotton, alfalfa, corn	320	270	48,140	16,740	3,466	52
	Cotton, alfalfa, barley	320	290	45,389	16,660	3,466	57
East Side San Joaquin (Athanassatos and Hedges, Farm Adjustments and Earnings Under 1955 Cotton Acreage Allotments California Agricultural Experiment Station, Davis, California, and Agricultural Research Service U S Department of Agriculture, May 1957, p 43)	Small grape and cotton	30	27	10,398	3,130	461	116

* Net farm income divided by irrigated acreage

1957 STATUS OF EXCESS LAND IN CENTRAL VALLEY PROJECT

Total irrigable area		Total excess land		Status of excess land: Under recordable contract		Status of excess land: Not under recordable contract and not receiving water		Status of excess land: In violation	
Ownerships	Acreage	Ownerships	Acreage	Ownerships	Acreage	Ownerships	Acreage	Ownerships	Acreage
11,144	864,020	393	184,538	76	41,441	336	143,097	0	0

United States Department of Agriculture
Agricultural Stabilization and Conservation Committee
California State Office, 2020 Milvia Street
Berkeley, October 27, 1958

MR CARLEY V PORTER, *Chairman*
Joint Subcommittee on Economic and Financial
Policies for State Water Projects
State Capitol
Sacramento 14, California

Dear MR PORTER: This is in reply to your letter of October 17, 1958, in which you request certain information regarding participation of California farms and commodities in federal farm programs

The following information is set forth in the same order in which the questions are asked in your letter

1 Attached is a table showing price support activities during the past three years in California Information with respect to acreages involved is not available

2 Attached is a table showing acreages placed in the Soil Bank in California during the years 1956, 1957, and 1958 and the amount of Soil Bank payments made for such acreages

3 We do not have any information on the amount of accumulated commodities from California farms now held as surplus by the federal government

4 and 5 The subjects in these questions fall outside the scope of our operations as an administrative agency We regret that we are unable to be of any assistance in answering them However, I feel sure that you may gain advice on these subjects from the Agricultural Extension Service at the University of California

6 We do not have any information on the ultimate disposition of California surplus crops I doubt that there is any segregation of the production origin of commodities other than those, of course, for which California may be the primary producer

7 We do not have any information on production costs Again I'm sure that the Agricultural Extension Service of the University of California can be of help to you in this connection.

Very truly yours,

WILLIAM J PAGE
Administrative Officer
California ASC Committee

attachments

CALIFORNIA FARM LANDS PLACED IN SOIL BANK ACREAGE RESERVE

Commodity	1956 Acres	1956 Amount paid	1957 Acres	1957 Amount paid	1958 Acres	1958 Amount paid
Wheat	10,678	$66,502 00	120,900	$2,895,670 00	45,181 3	$1,032,802 55
Cotton	11,294	722,357 00	72,077	7,306,458 00	51,597 6	5,206,819 86
Rice	3,003	141,964 00	63,640	4,649,594 00	37,568 4	2,505,054 95

CALIFORNIA FARM COMMODITIES PLACED UNDER FEDERAL FARM PRICE SUPPORT

Commodity	Loans [1] 1956 Crop Quantity	Loans [1] 1956 Crop Value	Loans [1] 1957 Crop Quantity	Loans [1] 1957 Crop Value	Loans [1] 1958 Crop (thru 9/30/58) Quantity	Loans [1] 1958 Crop (thru 9/30/58) Value	Purchase Agreements [2] 1956 Crop Quantity	Purchase Agreements [2] 1957 Crop Quantity	Purchase Agreements [2] 1958 Crop[3] Quantity
Barley (bu)	6,518,022	$7,030,715	19,953,366	$20,820,585	6,195,088	$6,467,063	0	2,071,147	
Beans (cwt)	392,262	2,366,141	211,938	1,029,801	622	4,019	146,488	6,597	
Flaxseed (bu)	3,640	11,826	139,840	447,460	584,863	1,974,774	0	0	
Oats (bu)	71,311	54,519	695,047	489,039	26,075	19,803	37,187	138,355	
Rice (cwt)	1,631,232	7,260,646	65,980	304,318	----	----	1,324,189	2,419,060	
Wheat (bu)	1,573,904	3,166,237	216,645	430,097	892,087	1,741,290	2,784	29,833	
Corn (bu)	144,635	194,830	1,426,359	2,064,978	0	0	23,725	0	
Rye (bu)	5,000	5,800	8,745	9,502	0	0	1,200	0	
GR Sorghums (cwt)	21,532	50,717	1,597,509	4,138,156	0	0	0	9,009	

[1] Loans made
[2] Quantities delivered under purchase agreements Information on value not available
[3] Information on 1958 purchase agreements not available at this time

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION
REGIONAL OFFICE, REGION 2, P. O. BOX 2511
SACRAMENTO, September 12, 1958

MR. CARLEY V. PORTER, *Chairman*
Subcommittee on Financial and Economic Policies
Assembly, California Legislature
1701 East Compton Boulevard
Compton, California

DEAR MR PORTER: We are in receipt of your letter of September 2, 1958, relative to policies followed by the Bureau of Reclamation in planning and developing water resource projects in California We hope the information will aid you in your considerations

For clarity, your questions are quoted prior to the discussion of the subject matter.

"1 California lands subject to irrigation vary considerably in quality with consequent variation in their productivity and profitableness Please state the bureau's policy on including low-quality lands within either project service areas or irrigation districts which contract with the bureau for project water In general, how does land quality affect the repayment capacity of irrigation water users? Does the bureau establish its water rates at a point sufficiently low to permit all lands within the project service area to pay for project water or at an average based on all qualities of land?"

Districts are organized by local interested parties following procedures required by state law Decisions on the district boundaries and the areas to be included are made by those local people concerned. The Bureau of Reclamation may participate in that it may make available technical information relative to potential project design, soils, water supply, or related subjects In making feasibility studies of potential service areas, or in negotiating with water districts toward contracts for project water, the land is classified as to its irrigability, and it is Bureau of Reclamation policy to supply amounts of water sufficient only for the aggregate acreage of such irrigable land.

In general, the effect of land quality is reflected in the yields and production costs used in benefit-cost and payment capacity computations If all other factors are the same, higher-quality land will, of course, show higher payment capacity However, physical classification of lands is not the only factor considered since variations in the economics of enterprises, management practices, air drainage, and types of crops are also very important to the determination of the payment capacity of a district

Where project repayment is accomplished by revenues from water service, rates are established after broad consideration of payment capacity and the requirements to repay project costs Generally, the economic process is based on a consideration of the average repayment capacity of a district or service area Charges made to individual water users by the contracting districts vary depending on decisions of district governing bodies and state laws

"2 Please describe in detail the present administration of the 160-acre limitation and antispeculation provisions of reclamation law How are these provisions interpreted in relationship to corporations and partnerships? We would appreciate a copy of the provisions of a typical recordable contract What are the bureau's methods of establishing the value of excess lands to be sold under a recordable contract, particularly with reference to the difficulties of establishing the value of land without project water at the end of the 10-year period? Has the 10-year term on any recordable contracts in California expired? If so, what has the experience of the bureau been in the sale of the excess lands?"

We are attaching a question and answer sheet regarding the 160-acre limitation and antispeculation provisions of the Reclamation law and their application The answers cover in detail your major questions Also attached is a copy of a typical recordable contract form Changes are made under some conditions to take care of local circumstances There are no recordable contracts in the portion of California lying in Region 2 that have been in effect 10 years We do not have in Sacramento records for Region 3, which administers Bureau of Reclamation projects in southern California If you are interested in information on southern California Reclamation projects, I suggest you write to Regional Director Wade H Taylor, Boulder City, Nevada

"3 Please advise the subcommittee on the bureau's views and policies for controlling percolation of project water into underground water basins and the

subsequent pumping of the water by excess land owners or others Under what circumstances does the bureau claim this ground water?"

The Bureau of Reclamation does not attempt to control the pumping of ground water In some areas served by the Central Valley Project nonfirm project water occurring in the spring is furnished at reduced rates for the purpose of recharging underground aquifers, either through percolation or through surface use in lieu of pumping to allow natural recharge The bureau does not agree to furnish surface water supplies in excess of the amounts necessary to supplement economically usable ground-water supplies available to a district, thus assuring in some degree that ground water will be utilized

"4 How does the bureau propose to secure repayment of the cost of drainage facilities included in a project such as San Luis?"

It is anticipated that both the drainage and distribution systems needed in the San Luis service area will be constructed by the bureau, if requested to do so by the water users, or by the water users themselves If the authorizing legislation does not change existing law, repayment of the cost of these systems probably will be secured under the provisions of SEC 9 (d) of the Reclamation Project Act of 1939 or pursuant to Public Law 130, as amended, unless the water users choose to finance the systems privately

You are referred to the feasibility report entitled, "San Luis Unit, Central Valley Project, California," issued in May 1955, a copy of which is attached for your ready reference, for details of the project plan. (See pages 9, 77, and 125)

"5 Does the Bureau of Reclamation have any limitations, statutory or in policy, on its authority to supply industrial and municipal water supplies through its projects? Is there any special reason for lumping industrial and domestic water users under the same wholesale rate since frequently these two classes of water users have substantially different repayment capacities?"

The basic authority for the sale of water for municipal and industrial purposes is SEC 9(c) of the Reclamation Project Act of August 4, 1939, 43 U S. C 485, which provides

"SEC 9(c) (Sales or leases of water or power—Appropriate share of cost to be repaid in not to exceed 40 years—Preference to municipalities and other public corporations and agencies)—The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes Provided, That any such contract either (1) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for the use of the contracting party, with interest not exceeding the rate of 3½ percentum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes, or (2) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 percentum per annum, and such other fixed charges as the Secretary deems proper Provided further, That in said sales or leases preference shall be given to municipalities and other public corporations or agencies, and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project The provisions of this subsection respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes"

The principal reason for lumping domestic and industrial water uses under the same wholesale rate for a particular service area relates directly to the requirement of Reclamation law that the costs of a project allocated to these uses is repayable with interest To differentiate between the two types of use within a particular service area would interpose an unnecessary refinement beyond the requirement of the Bureau to recover the repayable costs and interest The matter of differentiation in water rates to users by a contracting district is a matter for internal consideration by the district Where a water service contract limits the use of water to a specified function, i.e., municipal or industrial, the rate might vary from what it would have been for combined use, dependent, of course, on the circumstances of that particular service

"6 The United States Congress recently passed legislation authorizing the Bureau of Reclamation to establish flexible repayment schedules for project irrigation water Can you describe the basis the bureau may choose to establish the *flexibility* of repayment and what policies the bureau will follow in the administration of this statute? Any information on this legislation or on escalator clauses based on crop price levels would be appreciated"

It is interesting to note that variable repayments in one form or another have been used for many years Some examples may be found on the Gila Project in Arizona, the Milk River Project in Montana, the Okanogan Project in Washington, and the Riverton Project in Wyoming These projects are all using farm parity and relationship of current to average prices as a basis for varying annual payments Other projects, which use the normal return variable authorized in the Reclamation Act of 1939, are the Deschutes and Owyhee Projects in Oregon, the Yakima Project in Washington, Bitter Root Project in Montana, Michaud Flats and Minido a Projects in Idaho, Hyrum Project in Utah, and Uncompahgre Project in Colorado

We are at present considering the possible use of variable payments for water user organizations of the Folsom South Unit of the Central Valley Project

A copy of the Act to which you refer, Public Law 85-611, 85th Congress, is attached This Act "permits variance in the required annual payments in the light of economic factors pertinent to the ability of the organization to pay" Total repayment calculations are to be based on a maximum 40-year repayment period, or a longer repayment period, if authorized by Congress As you know, Public Law 85-611 is quite new and specific criteria for its use have not as yet been developed for general application

"7 Has the bureau in California or elsewhere made any studies of the relationship between the cost of water and the market value of the land on which the water is applied? If no studies are available, has the bureau's experience indicated any relationship between low-cost water and high value lands or vice versa?"

This region has not made any studies of the relationship between market values of land and the cost of water, and we do not know of any studies having been made elsewhere by the Bureau of Reclamation It is however, a generally accepted theory that the market value of land tends to reflect the capitalized net earning capacity of the land Water costs, being one element of production costs, should influence earning capacity and, therefore, should reflect in the market value of the land in inverse ratio

Sincerely yours,

B P BELIPORT
Regional Director

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION
REGIONAL OFFICE, REGION 2, P O BOX 2511
SACRAMENTO, December 20, 1957

Directors of Water Districts Participating in the Central Valley Project, California

GENTLEMEN From time to time questions are directed to me, or to other employees of the Bureau of Reclamation, regarding the excess-land provisions of the federal reclamation laws The frequency and character of these questions make it apparent that after several years of widespread discussion, there still remain a great many farmers who do not completely understand these provisions In view of this I have prepared answers to a number of selected questions to assist you, as district directors in discussing the excess-land provisions with members of your districts

Before proceeding with the questions, I should like to stress one important point The excess-land provisions of the federal reclamation laws do not limit the amount

of land which may be owned by an individual They do, however, limit the amount of water furnished by a federal reclamation project to an individual landowner, and thereby may influence the amount of land which he chooses to own

Additional copies of this letter may be made available if you can use them to advantage in discussing the excess-land provisions with your members

Very truly yours,

B P BELLPORT
Regional Director

1 Q What is "excess" land?
A When an irrigation or other water district enters into a reclamation contract with the United States Government, any irrigable land held in private ownerships of more than 160 acres per individual is known as "excess" land

2 Q What are the excess-land provisions of the federal reclamation laws?
A The federal reclamation laws require that when the United States enters into a contract with a district to furnish water, the district must agree
(1) Water made available by the government project will not be delivered to excess land unless the landowner signs a recordable contract agreeing that if he does not dispose of his excess land at a price within its appraised value within a certain period of time, the United States will be empowered to sell it for him, and;
(2) That even if excess land is sold into smaller ownerships, whether the owner signs a recordable contract or not, project water will not be delivered to it unless the price is within its appraised value

3 Q. What procedure is established for appraising excess land?
A Ordinarily, appraisals of excess land will be made only when the land is to be sold However, appraisals can be made earlier, either at the request of the landowner or the government Water service and recordable contracts, now being executed in the Central Valley Project, provide that at the option of the landowner the appraised value of the excess land may be determined by a board of three appraisers. However, in the interest of economy and time, the contracts also authorize the bureau to appraise and reappraise excess land and fix approved sale prices without resorting to the three-man board, if the value so determined is acceptable to the owner *Note*· In the event of an appraisal by a three-man board the appraisers will be selected as follows One of the appraisers is selected by the irrigation district, one is selected by the United States (he is usually an employee of the Bureau of Reclamation), and the two appraisers so selected name the third

4 Q What is a recordable contract?
A A recordable contract, as used here, is a contract, or agreement, between the individual excess landowner and the United States It is prepared in a form which will allow it to be recorded in county land records This contract provides that project water may be delivered to the individual's excess land, and for this privilege, the owner agrees to sell his excess land within a designated time, however, if he has not sold it himself, he gives to the United States the power of attorney to sell the excess land for him The sale price must not be more than the bona fide current market value of the land as determined by an appraisal of the property, without including any increase in value brought about by the availability of water from a project constructed by the United States.

5 Q If the excess landowner signs a recordable contract so he can receive water on his excess land, how long will he be permitted to farm it himself before selling and before the United States will have the authority to find a buyer?
A In the districts now contracting in the Central Valley Project, the excess landowner agrees that if he has not sold the land during a 10-year period, the United States may sell it for him in the manner provided in the contract

6 Q May the United States dispose of the excess land at any price after the period of the recordable contract has expired?
A No Any sale of excess lands arranged by the United States must be at the appraised value of the land and improvements and, if for credit, upon terms satisfactory to the owner

7 Q. Suppose the United States fails to find a buyer for the property?
A From the time the recordable contract is signed, and until the property is sold either by the owner or the United States, no matter how long it takes, the landowner will be entitled to receive project water for the excess land

8 Q If after an appraisal is made land values undergo a general change, must the land be sold at the original appraised value?
A Not necessarily The contract signed by the district will provide that reappraisals may be made at the request of either the landowner or the United States Reappraisals will always take into consideration improvements or other added values except those due to the construction of the project

9 Q Who pays for the appraisals?
A The United States bears the cost of the appraisal and the first reappraisal The landowner may request one reappraisal at government expense, but must pay for any additional reappraisals made at his request All reappraisals made at the government's request will be at government expense.

10 Q Do the excess-land provisions of the federal reclamation laws mean that a man and wife can receive project water for only 160 irrigable acres of land?
A No, they do not. The provisions apply to water for 160 irrigable acres of land owned by any one person Most land owned by husband and wife in California is held as community property, each owning a one-half interest Therefore, a husband and wife who own the property as community property, or if they hold title as joint tenants, or as tenants in common, may receive project water for 320 irrigable acres

11 Q Is a landowner entitled to project water for 320 acres of land simply by virtue of the fact that he is married?
A No The fact that a landowner is married does not make him eligible to receive project water for 320 acres of land If he is the sole owner of the land, he is eligible to receive project water for only 160 acres If, however, he and his wife own the land as community property, joint tenants, or tenants in common, each will be eligible to receive project water for the 160 acres which represents his or her ownership, assuming, of course, that neither owns any other land in the district receiving project water

12 Q Mr Doe and Mr. Roe are equal partners of a partnership owning 320 acres of irrigable land in a single district in the Central Valley Project Are they excess landowners?
A Not if that is all the land they own in that district Partners in a partnership are each entitled to water for 160 acres If both Mr Doe and Mr Roe are married and if the property of each is community property with his wife, the partnership might own and obtain water for 640 acres, because both men and their wives would be entitled to water for 160 acres each

13 Q Suppose Mr. Doe and Mr. Roe (neither being married) are unequal partners in a partnership owning 320 acres of land In this case, Mr Doe is two-thirds owner, and Mr Roe one-third owner May they still obtain project water for the 320 acres?
A Since Mr Doe owns two-thirds of the partnership, he really is the beneficial owner of two-thirds of the land, or 214 acres He is entitled to water for only 160 acres, and Mr Roe, by being one-third owner, is really the beneficial owner of only 106 acres of land Thus, the partnership may obtain project water for 266 acres; 160 of that owned by Mr Doe and the 106 owned by Mr Roe

14 Q A corporation with 800 acres of land is owned by five shareholders Is the corporation entitled to 160 acres for each shareholder?
A No. The corporation is entitled to project water for 160 acres because legally it is an individual. However, the fact that the corporation owns and obtains project water for 160 acres does not affect the rights of the stockholders to own individual farms and obtain project water for them Each stockholder would be entitled to project water for 160 acres of irrigable land which he owned separately, regardless of whether he owned 2 percent or 80 percent of the stock of the corporation.

15 Q Can a farmer correct his excess-land condition merely by passing title to other members of his family?

A The excess-land provisions require that project water may not be furnished to more than 160 acres in the beneficial ownership of any individual Distribution of land by title only with the benefits being retained in a single holding would be a circumvention of the intent of the provisions However, if there is a bona fide transfer of property to the children or other persons, and they actually receive the benefits of the property, the transfer would be considered the same as a sale to any other individual

16 Q May an owner of excess land, by transferring to a wholly or almost wholly owned corporation 160 acres of his excess land, receive a project water supply for this excess land?

A Generally, a corporation, since it is legally an individual, may receive water for 160 acres of land Where, however, excess land is transferred by an owner of excess land to a corporation in which he owns substantially all of the stock, the transaction will be regarded as an attempt to obtain a project water supply in circumvention of the excess-land provisions of the federal reclamation laws Unless sufficient evidence to the contrary is supplied, the corporate entity will be disregarded for the purpose of computing excess land, with the result that the land of the corporation will be deemed owned individually by its stockholders

17 Q Suppose a landowner owns more than 160 irrigable acres of land and does not execute a contract agreeing to dispose of his excess holdings. Does that mean that he cannot receive any project water for his land?

A No, it does not He may receive a quantity of water sufficient to irrigate 160 acres of irrigable land, but he must designate the 160 acres upon which he plans to use the project water and must use the water exclusively upon that land That land shall be known as nonexcess land

18 Q Suppose after designating his nonexcess land the landowner changes his mind and desires to redesignate the location of the 160 acres to receive project water. May he do so?

A The contracts which are being signed in the Central Valley Project provide that the landowner may change, or redesignate, his nonexcess land with the concurrence of the Bureau of Reclamation When a redesignation is made, the land which was nonexcess becomes excess land and subject to the excess-land provisions.

19 Q Mr Doe is a single man and owns 260 acres of land He has an existing water right sufficient for 100 acres of his land He wants to get an additional supply of water, but does not want to execute a recordable contract to sell the land owned by him in excess of 160 acres What are his rights?

A He will be able to get and use where he sees fit his existing water supply As to the additional water he desires, he may get enough project water to irrigate 160 acres, but he must designate the acreage upon which he intends to use it

20 Q Suppose this Mr Doe who owns 260 acres of land and has an existing water right for 100 acres receives his water to which he has an established right through a distribution system constructed by the United States Does this affect his rights?

A Yes, it does He will be entitled to water for only 160 acres of land unless he signs a recordable contract, because any water conveyed through a federally constructed system is subject to the excess-land provisions of the federal reclamation laws If the distribution system is not constructed by the Government, his water right will not be affected and he may receive project water for 160 acres in addition to the water he owns

21 Q Mr Roe owns 600 acres of land The land is appraised but he does not sign a recordable contract agreeing to dispose of his excess He sells 80 acres of his excess land at more than the appraised value May the district deliver water to this 80 acres?

A No, it may not, because the excess land provisions require that the sale of excess land will not carry with it the right to receive water unless the purchase price involved in such sale is within the appraised value of the land.

22 Q If the new owner unknowingly buys excess land at more than its appraised value and may not receive water because the price he pays for the land is above the appraised value, isn't he being penalized for an act committed by the original owner?

A The excess-land provisions, as applied in contracts with the irrigation districts, place the responsibility on the districts to avoid illegal delivery of water. The districts have an important responsibility to see that their own solvency and the operations of the district farmers are safeguarded by a widespread knowledge of the conditions under which water may be delivered. The intent of the Congress in passing excess-land provisions has been to protect the district and the individual landowner and to safeguard the investment made by the United States. It also intended to distribute any advantages made available by Government construction to as many families as possible.

23 Q Will the effect of the excess-land provisions be that eventually all the land will be cut up into 160 or 320-acre farms?

A No, it will not, because the excess-land provisions will not affect established water rights on ground water pumping where those supplies are not distributed through federally constructed distribution systems.

24 Q Will the establishment of the appraised values by the three-man appraisal board constitute a recommendation by the Government that prospective purchasers buy the land at that price?

A No. The prospective purchaser should consult his own appraiser or credit agency to determine the value of the property to him.

(Transcript of September 15, 1958, page 22.)

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION
REGIONAL OFFICE, REGION 2, P. O. BOX 2511
SACRAMENTO, October 30, 1958

HON. CARLEY V. PORTER, *Chairman*
Subcommittee on Financial and Economic
Policies for State Water Projects
Assembly, California Legislature
State Capitol
Sacramento 14, California

DEAR MR. PORTER: Reference is made to your letter of September 24, 1958, relative to various statements and terms used in our letter of September 12, 1958.

For ease of reference, your questions are quoted prior to our answers.

"1. Please explain the use on page 2 of the phrase 'air drainage.'"

"Air drainage" is a term employed to describe the movement of air currents resulting from the land being located on slopes where cold air will move downhill away from it into lower-lying areas. Where this possibility for "air drainage" exists, such as in the case of citrus producing areas, it reduces the requirement for air circulating fans, smudge pots, etc., thus enhancing the regularity and yield of the citrus crops and thereby increasing net returns of the citrus producers so favored.

"2. Page 3 states 'changes are made under some conditions to take care of local circumstances' . . ."

The only "changes" that are made in this recordable contract form in Region 2 are those needed to:

1. Differentiate between type of ownership such as partnership or a corporation.
2. Necessary variations in the section of the contract setting forth the legal description to clearly identify particular property involved and its location.

The terms and conditions of the contract are the same in all recordable contracts used by the Bureau of Reclamation in Region 2, California.

"3. The answer to question 6 on page 7 prompted a member of the subcommittee to inquire whether the operation of variable irrigation repayment contracts tended, in fact, to have a direct relationship with the federal farm policies and parity prices or soil bank payments. In other words, is it the federal farm policy which will provide the additional income which may pay off irrigation costs?"

Any federal policy which will provide additional farm income will be reflected in formulae used to vary payments for water in line with the farmer's income. We intended, in our letter, that "use of farm parity and a relationship of current to average prices as a basis for varying annual payments" would indicate that the

projects referred to were using farm parity (relationship between farm costs and farm product prices) and current prices as indicators of economic factors pertinent to the ability of the farmers or their representative organizations to pay

"4. We would appreciate citations to the provisions of various portions of the Reclamation Act which authorize the variable repayments on the projects listed on page 7."

Variable payments contracts referred to were authorized under Congressional acts as follows

1. The Gila Project in Arizona (Welton-Mohawk Division), Act of July 30, 1947 (61 Stat 628).
2. The Milk River Project in Montana (Glasgow Irrigation District), Reclamation Project Act of 1939, Section 7 (53 Stat 1187).
3. The Okanogan Project in Washington (Okanogan Irrigation District), Act of May 6, 1949 (63 Stat 62)
4. The Riverton Project in Wyoming (Midvale Irrigation District), Act of June 23, 1952 (66 Stat. 151)
5. The Deschutes and Owyhee Projects in Oregon, the Yakima Project in Washington, Bitter Root Project in Montana, Michaud Flats and Minidoka Projects in Idaho, Hyrum Project in Utah, and the Uncompahgre Project in Colorado, were all negotiated under the Reclamation Act of 1939, Section 4 (53 Stat 1187).

If you have additional questions, feel free to call on us.

Sincerely yours,

B P. BELLPORT
Regional Director

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION
REGIONAL OFFICE, REGION 7, BUILDING 46, DENVER FEDERAL CENTER
DENVER, July 25, 1958

MR. CARLEY V. PORTER
705 South Long Beach
Compton, California

DEAR MR PORTER In the case of the Colorado-Big Thompson Project, the development to which your inquiry of July 18, 1958 applies, the irrigation and municipal water users pay part of the costs of construction via direct annual water charges, the indirect beneficiaries in the conservancy district pay part of the cost via ad valorem taxes, and the users of project produced electricity in a three-state area pay part of the costs via direct purchase of the power

The Northern Colorado Water Conservancy District currently comprises an area somewhat in excess of 1,500,000 acres of which approximately 720,000 are irrigated and served either directly by water allotments or indirectly by return flows A brochure of the project containing a map of the district is enclosed to assist you in visualizing the scope of the district

The United States has contracted with the district, among other things, for water rental payments totaling about $2,900,000 and for repayment over a 40-year period of a construction obligation of $26,031,000 The District operates the supply canals below the terminal storage reservoirs on the eastern slope and is responsible for the handling and disposition of all project water below that point The District's income is composed primarily of revenues from annual charges for water allotted and revenues from an ad valorem tax As an average it is estimated that water revenues will amount to $480 000 and tax revenues $315,000 annually.

The ad valorem tax is levied at the rate of one mill on the total assessed valuation of all property within the boundaries of the conservancy district The district contains many cities and towns the larger of which are Boulder, Fort Collins, Greeley, Fort Morgan, Sterling and Julesburg

We have attempted here to give you only the broad general picture of the relationship of the conservancy district to the irrigated area, likewise, the general picture with regard to assessments and water charges To the extent we are informed we will be glad to answer any further questions you may have on this subject Should you desire more detailed information, however, we believe you would be better served by communicating directly with Mr J R Barkley, Assistant Manager, Northern Colorado Water Conservancy District, P O Box 117, Loveland, Colorado

In our opinion your interest in a pattern whereby the indirect project beneficiaries share appropriately in the costs is commendable. Another case in point in this region exists in Nebraska where the Sargent and Farwell Irrigation Districts have con-

tracted to repay certain costs of constructing the laterals and drainage works and the Loup Basin Reclamation District, which comprises both irrigation districts, has contracted to repay certain costs of constructing the diversion and carriage works The Loup Basin Reclamation District's sources of income are similar generally to those of the conservancy district in Colorado.

Very truly yours,

J. L OGILVIE
Acting Assistant Director

(Transcript of September 15, 1958, page 205)

QUESTIONNAIRE ON NORTH AND SOUTH BAY AQUEDUCTS

(The following questionnaire was the basis for hearings at Napa and Hayward on August 27 and 28, 1958.)

The purpose of the two hearings in Napa and Hayward is to study the repayment and reimbursement problems of the North and South Bay Aqueducts by themselves and as they relate to the State's overall policies for water projects The subcommittee is interested in securing local reactions to the following questions

1 Do you feel that irrigation water users should repay, in full, their allocated construction costs? If not, what amount should they repay? Should interest be paid?

2. What type of local organization do you plan to use to repay the project construction costs? What method of repayment do you propose? Could you use a conservancy district, such as Solano County has for repaying the Bureau of Reclamation on the Solano Project?

3 If the State constructs the North and South Bay Aqueducts, might a local organization assume responsibility for local, rather than state, operation and maintenance of these aqueducts?

4 Is there any possibility that your locality can raise part of the capital required to construct the aqueduct serving your area? What is your assessed valuation and bonded indebtedness?

5 Bulletin No 60, dated March 1957, Department of Water Resources, shows on page 64, a deficiency in revenue of $17,672,000 during the first 30 years operation of the North Bay Aqueduct Who do you feel should make up this deficiency?

6 The subcommittee, pursuant to special language in its authorizing resolution, would like to hear from the interested parties in the South Bay Area, the reasons for their support for either a state or a Bureau of Reclamation project to serve the South Bay Area

The subcommittee recognizes that not all agencies wishing to appear before it will be able to answer all these questions The questions are merely guides to assist you in understanding the problems before the subcommittee and in preparing your testimony.

July 28, 1958

STATEMENT OF WALTER G. SCHULZ

Department of Water Resources

Studies made by the Department of Water Resources pursuant to the Abshire-Kelly Salinity Control Barrier Acts of 1953 and 1955 were directed by that legislation toward methods of securing a supply of fresh water for the San Francisco Bay area and for developing complete plans for means of accomplishing delivery of this water to the area The North Bay Aqueduct was the resulting proposed method of delivering this supply to the Counties of Solano, Napa, Sonoma, and Marin

The criteria used in developing the plan for the North Bay Aqueduct included the following

1 Facilities should be capable of supplying sufficient quantities of water to meet the demands of the area during the period beginning in 1960 and ending the year 2010

2 Development and conveyance of water for both municipal and agricultural uses would be provided with distribution and treatment of said water being the responsibility of local agencies

3. The water supply provided should supplement rather than supersede existing water resources developments

In order to determine the future requirements of the service area, it was disclosed that the 2010 population of the four North Bay counties would probably reach 1,620,000 as compared to the 1950 population of some 330,000 It was further disclosed that almost 240,000 acres of irrigable, but as yet unirrigated land, lay within the potential service area. Studies indicated that most of the population increase and any additional irrigation would have to be supported by an imported water supply The physical plan for the North Bay Aqueduct was presented in Bulletin No 60, "Interim Report to the California State Legislature on the Salinity Control Barrier Investigation," March, 1957 The estimated capital cost at that time was $27,000,000

At the 1957 Regular Session, the Legislature authorized the North Bay Aqueduct as a unit of the State's Central Valley Project and appropriated $1,340,000 for further engineering studies and to prepare construction plans and specifications Pursuant to this authorization and appropriation of funds, the Department of Water Resources has been, during the past year, and is currently continuing its studies and proceeding with design of the various features.

The North Bay Aqueduct would divert water from Lindsay Slough in the Sacramento-San Joaquin Delta and convey it as far west as Novato, in Marin County, a distance of 59 miles The aqueduct would have an initial capacity of 900 second-feet, and would consist of an intake pumping plant with a lift of 15 feet at Calhoun Cut on Lindsay Slough, an unlined canal extending to Cordelia, a pumping plant at Cordelia with a 120-foot lift, a three and a half mile tunnel through Elkhorn Peak, and a canal and pipeline continuing across Napa, Sonoma, and Petaluma Valleys to a terminal reservoir near the town of Novato

Since authorization, the department has completed major portions of the geologic mapping and exploration and drilling program to finalize the route of the aqueduct The preparation of suitable maps for the route is nearing completion The aerial photography and field controls are being completed and the compilation of maps is in progress

Subsurface drilling of the Elkhorn Peak Tunnel is under way as is a study of the feasibility of pumping the water at Cordelia to an elevation of 300 feet in a pipeline through Jameson Canyon as an alternative to the tunnel route This comparative study is considered desirable until the subsurface exploration of the tunnel indicates that it is the more feasible method of traversing the mountain range

Should the results of our tunnel drilling program and comparative economic studies confirm the feasibility of the tunnel route, it is anticipated that plans and specifications for the tunnel will be completed in the early part of 1959 Design of other aqueduct features and appurtenant structures is in progress and these designs can be completed late next spring for the first half of the route

(By letter of September 15, 1958, Mr Schulz added the following material to his statement)

At the meeting in Napa I stated that the cost of water for the North Bay Aqueduct of $13 per acre-foot included an allowance of $2 50 per acre-foot for water in the Delta at the intake to the aqueduct I also stated that this allowance was based upon quotations from the U S Bureau of Reclamation for firming water from the Central Valley Project This statement was only partially correct Actually, in our most recent analysis of the North Bay Aqueduct, the so-called base cost of water in the Delta of $2 50 per acre-foot was based upon our estimate of the cost of water developed by the Biemond Plan under the assumptions presented in Bulletin No 60, "Salinity Control Barrier Investigation" The quotation from the U S Bureau of Reclamation and the projected requirements of the North Bay Aqueduct from 1960 to 1980 (the period during which the Bureau of Reclamation could provide firming supplies) also gives an average base cost of water in the Delta of about $2 50 per acre-foot

(Transcript of August 27, 1958, page 17)

STATEMENT BY FREDERICK BOLD

Solano County Flood Control and Water Conservation District

As you know, Solano County is the principal beneficiary of the Solano Project of the Bureau of Reclamation We have a contract with the bureau which gives to Solano County the full yield of that great project While the contract calls for some 247,000 acre-feet per year, it is subject to reduction by virtue of upstream development in accordance with particular conditions placed upon the permit to appropriate as granted by the State Water Rights Board Now, in addition to this

supply of water which the county will receive from the Solano Project, and incidentally, the area of use of that water is generally confined to the cities of the county and the agricultural area in the central and northern part of the county, Solano remains a county of acute water deficiency We have substantial further supplemental requirements of water, and the county is looking toward meeting those supplemental requirements in part from the North Bay Aqueduct

Our particular problems relate to the cost of that water Solano County is mindful of the enormity of the cost, the financing problems of the various features of the California Water Plan We recognize that, as far as possible, it is going to be up to the local areas to pay the cost of the facilities that supply them with water Now, with recognition of that general premise, that the local area has to pay its share of the cost as much as possible, we submit these comments and these recommendations

Number one, we feel that a local area, and by local area I am talking about countywide now should be asked to contribute to the extent of its ability to the costs of those facilities that provide water to that county, rather than an arithmetic portion of an entire project In other words, rather than saddling Solano County with a portion of the entire aqueduct, it would be those facilities which are used to bring water to the county In the pricing of water we feel that these common phrases express our position, that we think water should be priced on a railroad ticket basis rather than a postage stamp basis, and I am sure the committee is well aware of the connotation of those phrases

The second limitation is the ability of the agricultural user to pay for water In connection with the Solano Project in 1951 the county engaged Stone and Youngberg, Municipal Consultants, to study this problem, what can the agriculturists in our county afford to pay for water? This is the report that was published in 1951, and we believe the conclusions in this report are still valid The report, summarized, said this The farmer in Solano County can pay $2 25 per acre-foot for water plus the cost of his distribution system The Bureau of Reclamation at that time had planned and ultimately contracted to sell water for agricultural use at a base price of $3 per acre-foot The County of Solano organized a countywide public body known as the Solano County Flood Control and Water Conservation District We think this is an extremely useful organization Rather than creating another level of government, it in effect expands the powers of the county board of supervisors over those which are contained in the general laws, because the territory of this district is the county and its governing body is the board of supervisors, so really they put on another hat and have additional powers to deal countywide with our water problems

This district has the power to levy a general countywide ad valorem tax with a limit of fifteen cents per hundred dollars Now, with this taxing power, the conservation district can by a countywide tax raise the money to, in effect, subsidize agricultural water by collecting the 75 cents per acre-foot which, when added to the $2 25 the farmer can afford to pay, equals the amount we have to pay to the Bureau of Reclamation The Bureau of Reclamation then said "Well, municipal water will be $15 per acre-foot" It is an easy thing to say, we can "subsidize" agricultural use by overcharging municipal and industrial use but there is a very practical limit to the amount that industry can pay, and the amount cities can pay The water needs that we have now, M and I water needs, are for the cities yet to be built and industries yet to come to our county We know they will be there So we suggest to this committee that in the pricing of water, careful attention be given to the ability of the particular lands to pay In the southern and easterly portions of Solano County, which is the area of service of the North Bay Aqueduct, we feel that that ability to pay certainly cannot exceed that which was disclosed in the Stone and Youngberg report in 1951 Actually, the class and grades of the land within the North Bay Aqueduct service area are somewhat lower than they are in the service area of the Solano Project, so we say that this represents a ceiling

Now, there is another ceiling that must be borne in mind and that is what industry and cities can pay, to the extent that it becomes in this project, or other projects, necessary to subsidize agricultural use of water It is the feeling of the County of Solano that such subsidy should come from the general funds of the State of California In the pricing of water we think very careful study should be given to the possibility of an averaged rate of water to the particular unit, in this case, the County of Solano, an average rate and a certain guaranteed quantity of water per year which the county would accept and pay for Let the county itself allocate the

cost to meet this total average rate between its agricultural use and its municipal and industrial use The price that the county would pay would be for a water service irrespective of the ultimate use of the water

The assessed valuation of the County of Solano is in the neighborhood of $160,000,000, but we do not have and cannot state to this committee at this time the assessed valuation of the particular service area, that is, the area of use of the water supply from the North Bay Aqueduct This area is very largely dry farmed today It does not include the water supply of our existing cities which are now looking to existing water supplies or supplies either from the Solano Project, and in the case of Benecia, from the Contra Costa Canal System across the Bay

The unique problem that Solano County has, and perhaps I should say it is an advantage rather than a problem, is the fact that this service area does not require any substantial lift from Lindsay Slough The water can be distributed by a very small lift at the pumping plant at Lindsay Slough Therefore, there is always the possibility of Solano County getting water by direct diversion from the Delta Pool. The only capital construction that the county would be able to contribute because of its low assessed valuation would probably be some help from industry in lifting water out of the Delta Pool at Lindsay Slough, or such other point of diversion, for use in the immediate vicinity The county is, however, able to operate and maintain that portion of the aqueduct which is within its boundaries I say that because the county through its flood control and water conservation district has undertaken the operation of the Putah-South Canal, which is a feature of the Solano Project The county also, of course, is able to finance its own distribution system from the aqueduct

A question has been raised with reference to the estimated $17,000,000 deficit for the first years operation of the North Bay Aqueduct, and I am citing Bulletin 60 in this regard The county has no suggestions to meet that deficit, but it would appear almost inevitable that it must be met by an advance of the general funds of the State, which would ultimately be repaid by water use over a longer period of time

(Transcript of August 27, 1958, page 54)

LETTER FROM DAVID BALMER

County of Solano, Dated October 2, 1958

Basically, the United States established a price of $15 for M & I water and $3 for agricultural water on the basis of surveys which it made. It was the determination of the bureau that each of these prices was within the ability of the respective users to pay and in consideration of the respective quantities of water to be utilized would produce sufficient revenue to pay out the project

It is my understanding that the originally calculated payout period is 48 years, whereas, the United States can only contract for a 40-year period It may be necessary to renew the contract for an additional number of years after the original 40-year period has expired in order to complete the payout

This would seem to support the contention that the bureau gave consideration to the ability to pay in addition to the payout aspects of the situation In the course of the bureau's studies the county tried to secure as modest a price as possible for agricultural water and employed the firm of Stone & Youngberg to prepare an economic study of the project This report recommended the acceptance of the $15 and $3 prices but held that the agricultural lands in Solano County could not support a full $3 per acre-foot charge and that the agricultural users would have to be subsidized in the amount of 75 cents per acre-foot This concept was accepted by the board of supervisors and the legislation forming the district provides for a tax rate not to exceed 15 cents per $100 assessed valuation (all properties). (We do not expect that this tax rate will have to exceed 10 cents under our projected assessed valuation) In preparing this further answer I was aided by Mr Dugald Gillies, Legislative Assistant to Senator Luther Gibson, who served as secretary of the Solano County Water Council, which at an earlier time was instrumental in promoting and achieving the Solano Project

Further, you raised questions with regard to the effect of the allocation of water on the economic growth of the area The quantities allocated for M & I water and agricultural water in the master contract were those quantities which were considered to be required for the respective types of uses in the service area Nevertheless, there is a certain amount of flexibility because the full allotment of agricultural water did not have to be contracted for originally in order to put our contract with the United States into effect The conservation district has an option on this

quantity of water which varies between approximately 25,350 acre-feet and 67,850 acre-feet of water depending upon certain reservations effecting water rights which have been made by the Water Rights Board This water may be used for agricultural purposes or for M & I purposes depending upon the revision of existing contracts or the development of further contracts I am sure that the county will want to see the water used in a manner that will provide the greatest economic benefit to the whole county and would not make an allocation of a disproportionate share to an industry, for example, of little benefit Within this somewhat vague criterion, the question of industry versus agriculture will inevitably be determined by who speaks first Basically there is not enough water presently, despite the Solano Project, to satisfy our desire for agricultural needs We have previously filed a statement before the Joint Interim Committee on Water Problems in connection with its meeting in San Francisco on October 23, 1957, which had reference to supplemental water requirements of Solano County. It is our opinion that the needs of major industrial users which require large quantities of water cannot be satisfied at all by the Solano Project but will have to depend upon the North Bay Aqueduct or water from the Delta Pool Likewise, the development of presently marginal agricultural lands will have to await a time when it is economically feasible to do so assuming also that further water supplies will be made available for such purposes Our long-range point of view has not been one of favoring industry at the expense of agriculture or vice versa by allocation of water because we have assumed that there should be sufficient water to meet all of our eventual requirements Of necessity, this assumes that the California Water Plan will be effectuated in one way or another and takes full advantage of the assumed ability to obtain water from the Delta Pool and/or the North Bay Aqueduct.

STATEMENT BY SENATOR LUTHER E. GIBSON

Personally I have long supported the construction of this project in order to bring needed supplementary water to the four counties of the North Bay I was a coauthor with Senators Abshire, Coombs and John McCarthy of Senate Bill No. 759 of the 1957 Legislature, which made an appropriation for the preparation of detailed plans on this project The views which I express this morning are my own rather than those representing any official body in Solano County, but I have discussed this subject with numbers of people over a period of some years

First it should be recognized that Solano County does not need water from this project as critically as several other of the counties which would be served by it The people of Solano County worked for many years to secure the development of the Solano Project perhaps more commonly known as the Monticello Dam and that project has now been completed and initial water deliveries are expected at the beginning of the irrigation season next year Two hundred forty-seven thousand acre-feet of water annually will be available from this source and it will naturally require a period of some years in order to reach a point where that water is fully utilized.

The proposed water service from the North Bay Aqueduct, it is generally contemplated, would serve a different section of Solano County than that from the Monticello Dam, but it is believed that it is a few years in the future before a great demand for this supplementary water will exist

On the other hand, since the aqueduct must start at the Sacramento River it is impossible to build the aqueduct without constructing that section across Solano County which will provide service to this county and, because there is an immediate demand for the water in the other counties, the project should not be delayed

Officially the Solano County Board of Supervisors, who are also ex officio the directors of the Solano County Flood Control and Water Conservation District, have taken a position that they object to the establishment of one uniform rate for the sale of water to all users from the North Bay Aqueduct It is their contention that since the costs of serving Solano County will be minimum compared with the costs of service to other counties that the rates for sale of water to Solano County users should be proportionately lower

I agree with their position

This differential in the cost of water service does not arise merely because Solano is riparian to the Sacramento River but because expensive pump lifts and other engineering features will be required in order to carry water from the west-

erly most boundaries of Solano County over a portion of the California Coast Range into the other three counties

The committee has asked a number of questions in their notice of hearings which relate to the financing and repayment programs for the North Bay Aqueduct I do not believe that the answers to these questions can be absolute but that they are dependent upon a number of factors some of which are not known, and that so far as Solano County is concerned they are dependent upon a determination of this question of whether a uniform rate for water service will be charged throughout the project area or differential rates based upon the costs of water service will be established

To comment briefly on your questions in order, then:

1 You ask if irrigation water users should repay in full their allocated construction costs. In my opinion this is dependent upon the effect which this would have on the economic feasibility of the project The price charged for irrigation water has always borne a relationship to the ability of agricultural water users to pay that price, and obviously if the costs would be much higher than the ability to pay then the project would not be feasible unless some other method of financing were established Yet the project will be greatly beneficial to the entire economy not only of this region but of the State by producing new income which will be taxed by the State and which will provide jobs and essential food supplies

Obviously if the cost of irrigation water is within the ability of the farmer to pay based upon adequate economic studies then the farmer should pay that cost If not, he should pay that cost which is within his ability to pay and the balance should be made up from profits derived from the sales of industrial and municipal water, or if necessary, from taxation

On that phase of the question relating to whether interest should be paid, in my opinion the same principles would apply In addition, there is a factor, however, that California is today receiving substantial quantities of irrigation water from federal projects It has always been the contention of Californians in appearing before congressional committees that the historical method set forth in reclamation law by which the Federal Government absorbs interest costs on that portion of projects allocated to irrigation use should not be changed Attempts have been made to change it and we have assisted in defeating them If we should establish a different principle in California water law applicable to California water projects financed by the State we might endanger our entire position with the Federal Government

2 You asked what type of local organization would be used to repay the project's construction costs and in Solano County the answer is obvious We have utilized the principle of establishing a countywide flood control and water conservation district, created by state law, to contract with the Bureau of Reclamation for Monticello Dam water and I think that similar agencies are most adaptable to the situation and should contract with the State

The general principle of repayment as contained in federal reclamation law and made applicable to similar projects would seem to be appropriate in the case of the North Bay Aqueduct

3 You have asked that if the State constructs the North Bay Aqueduct should a local organization assume responsibility for operation and maintenance of this aqueduct I believe that it should The ownership of the aqueduct obviously must remain in the hands of the State since the system would be used to jointly meet the needs of more than one county but it would seem logical from an organizational and a cost standpoint for the State to contract with local agencies such as flood control and water conservation districts or irrigation districts for the operation and maintenance of these aqueducts Some such districts would be maintaining the canals and other portions of a distribution system more extensive in nature than the aqueduct itself, and the personnel and equipment of such agency could assume the job of keeping up the aqueduct The payment to the local agency would not necessarily be in cash but could be effected by credit against water service charges

4 You asked further if there is a possibility that Solano County could raise a portion of the capital required to construct the North Bay Aqueduct serving this county In my opinion there is no such possibility Furthermore, I believe that it would be a mistake for the State to ask or require that this be done for if, for example, Solano County voters refused to pass a bond issue to pay costs of the aqueduct through this area but bond issues were successful in the other three counties, the project could not be constructed

5 You also indicate that a deficiency in revenue of over $17,000,000 is anticipated during the first 30 years of operation of the North Bay Aqueduct and ask who should make up this deficiency In my opinion the funds to overcome this deficiency should be provided by the State and incorporated in the initial capital financial plans In actuality the State would receive this money back in future years by the extension of the repayment period to a point when the initial capital costs have been completely amortized and the revenues derived from the project will be more than adequate to meet operation and maintenance thereby supplying a surplus to repay the State for this initial advance of $17,000,000.

Undoubtedly on a number of these points witnesses representing official agencies within Solano County will have additional statements indicating the position which they have taken or their opinion relating to the solution of these problems

I do hope that the committee will be able to recommend to the 1959 Session of the Legislature a means for proceeding with the development of the North Bay Aqueduct as a part of the statewide plan for water development

(Transcript of August 27 1958, page 84)

STATEMENT BY WILLIAM R. SEEGER
Marin Municipal Water District

I might say basically we are interested per se in the North Bay Aqueduct as a source of supplemental supplies of water We have adequate waters within our county from local sources to provide almost to the year 2010 We are developing our own supplies at this particular time, which will take us up to about 1965 Our next development is possibly consideration of Walker Creek which is in the northern part of the county At that time the determination will then be made as to whether our developments will go on our own local waters or whether to rely on the North Bay Aqueduct or other imported waters At that time it will become strictly a matter of dollars and cents The question as to what we in our county can develop water for and as to what water can be delivered to us for from outside sources will be of paramount importance

I may point out at this time, though, that it is (also) a matter of timing We in the county are going to have to continue to plan to bring water to our constituents We have an adequate water supply that can be developed at a cost we know fairly well Unless the North Bay Aqueduct is pushed and pushed hard, so that it can be available at the particular time we need water, it is going to be necessary that it be bypassed So I just want to say that I have worked with the committee on the North Bay Aqueduct, and I know they are doing a tremendous job I personally would like to see them given every advantage financially and otherwise so they can continue their work, so that they can have answers available when we in Marin County need them

Now, as far as this particular meeting is concerned, this matter of financial and economic policy, I would like to dwell on that for just a moment—on the financing method of the North Bay Aqueduct You are dealing with various counties and I think we all realize when you are dealing with individual counties the problems we will have I question whether there shouldn't be some kind of an overall metropolitan district set up that will handle the area that the North Bay Aqueduct is to serve, and then that the district would handle the financing of the project Otherwise, I believe it was pointed out that if one district or one county did not vote it, it might kill the project I think that would be particularly disastrous, and I don't think the State can permit such a thing to go on

As far as the type of financing is concerned in our own district, it can either be financed by a direct allocation of moneys from a bond issue we may have, or from purchasing of water at so much per acre-foot In other words, if we were to pay a certain amount, X millions of dollars for participation in the North Bay, then our cost of water would be just the cost of maintenance and operation In lieu of this, it would be a matter of paying a higher cost for water delivered to us, which would mean that the State would then have to finance the initial installation While we are not in a position to say that at this time we will go into the North Bay Aqueduct and make a firm commitment, we are interested and interested from a point of supplemental water It is just strictly a matter of dollars and cents and financing and timing

Of course, you have to realize, too, there is another potential source of water for Marin County and that is from the Coyote Project of the Sonoma County Flood

Control District, so at the time we need additional water there are (other) places we can go · Number one, to develop our own local sources which has been the policy, I believe, of the State Water Resources Board, that the counties who feasibly and economically can, should develop their own waters first This is on the basis that it is not reasonable to take waters from a county and let it go into the Bay and bring waters from an outside county in if they can develop their own waters economically The second point would be from the North Bay Aqueduct, and the third point from the Sonoma County Flood Control District

The district at this time is developing the Nicasio Project, which is a new water supply for the county Investigation is currently under way with construction anticipated to start within the next year Our research studies are being developed on the Walker Creek, which is the development of the northern part of the watershed The cost of development of the Nicasio Project to bring it into our system is about $25 an acre-foot

(Transcript of August 27 1958, page 92)

STATEMENT BY N. D. CLARK
Supervisor of Napa County

In answer to the questions that you have sent to us, I have compiled some answers which I think might be of some help to you

Question one, I believe we feel that all users of water from the North Bay Aqueduct should pay their equal share of allocated construction cost, providing these costs pertain only to the North Bay Aqueduct itself, and provide a fair and suitable contract for such payments Such a contract should be similar to contracts now being put into effect by the Bureau of Reclamation.

Question two, there have not been any studies made by the county up to the present time in regard to how repayments of the North Bay Aqueduct construction costs could be made There has not been any determination how much water will be immediately used on completion of the project, or 10 or 20 years later I do not believe a conservancy district such as Solano County has in operation now would be advisable for Napa County

Question three, the State should take full responsibility for maintenance and operation of the aqueduct as a part of the State of California Master Water Plan

Question four, I believe the State of California should assume the total cost of construction of the project, the same as the Federal Government does in Bureau of Reclamation projects; that users of water should pay all construction and maintenance costs under a long term payment contract that would make repayment feasible The assessed valuation of Napa County is $75,525,868 We do not have any bonded indebtedness

I would like to make this statement in regard to this project. The construction of the North Bay Aqueduct should be completed as soon as possible to provide an adequate supply of water for the North Bay area for future use as well as supplies for the present The future development of the North Bay area is almost beyond the imagination if a firm supply of water is made available We have land and a cool, damp climate, which with a firm supply of good water, providing the cost is not too high, could produce certain types of crops that would run into an agricultural industry worth many millions of dollars It would be an inducement to industry to locate in the area, and a supply of domestic water for the people that are now flowing north from the Bay area, looking for homes and places to live Further development of domestic water in Napa County is now an expensive problem When we consider water for industry and agriculture, development of such a supply is out of the question, because suitable storage sites are not available and costs of the dams are prohibitive

The North Bay Aqueduct is the answer to our present needs It is my opinion that the amount of water to be supplied by the North Bay Aqueduct will become insufficient sooner than has been estimated, due to the development that will take place It is my opinion that this project should be tied in with the development of the major diversions of water from the northwestern part of the State, as planned by the Water Resources Board in their master plan, so that a firm supply would probably be established for all, and a more accurate cost can be submitted to the people

(Transcript of August 27, 1958, page 106)

STATEMENT BY LOWELL EDINGTON

Chairman, Water Problems Department, Napa County Farm Bureau

The people that seem most interested in the State's venture into the water business are areas of California that need some further deficit financing The question arises as to state policy in the repayment of these projects You have competition Ninety percent of the water that has been developed in California, as it appears to me, has been developed by irrigation districts, private capital, cities and counties, and not by the Federal Government Yet you do have a federal agency, as they say, the Lord has gone before you, that sets further policies and practices I think many people are looking at the State's venture to see whether they are going to deficit finance water to a greater extent than the Federal Government or to an extent that makes water from the State more feasible than the (local) development of water in some local areas

I just have this to point out to you You start this aqueduct through the County of Solano The County of Solano is under a 47-million-dollar obligation to the Federal Government, just commenced, plus the (costs of) distribution facilities They have had to form a district to take on the 47-million-dollar obligation and to tax the general public to start the repayment of this indebtedness The irrigation district on which the water was to be used could not finance it I doubt very much from the testimony this morning and from the practical aspects that (more) water in that area is going to be very badly needed for some period of time

When you come into Napa County, you have competition The county has developed no water, there are three cities that have developed water You have the City of Calistoga with its own water, you have the City of St Helena constructing a new project which it expects to take care of their water needs for 20 years Then you have the City of Napa with two fine projects that take care of the city's water supply, from which water supply a franchise has been issued to the Pacific Utilities Company for the distribution of water to the Solano county line

Now, when you start to transport new water into this area, through this county, even though there are acres of agricultural land available for the repayment, the heart or better portion of that utility market is in the hands of other people When you get to Sonoma County, they have a new project They have the Coyote Project, and you heard Marin County's testimony that there is a possibility water will come from that project

I just point out to this committee that I doubt very much if this county or any other county, taking a look at this wonderful proposal, has sufficient data on distribution from canal side or upon repayment to make a decision at this time So I have this suggestion to make, which is just a suggestion I wonder if the State would look at the water like a bank You pool the water, and when it becomes economically feasible for us to come to you with a proposition for water priced in that pool, then we get together and form our district We make that decision, and yet you don't get the water ahead of the economic ability of the people for repayment In that regard, I just have this one statement to read that I concur with that comes out of the research by the Stanford Institute on a grant from the Randolph Haynes Foundation, which I think is the key to this water problem "Even though some economic demand may exist for project commodities and services, and it may be feasible from an engineering standpoint to construct the physical works, the cost of a program may not be warranted in view of the net expected economic gain Establishment of economic demand does not in itself justify construction of the project, just as a private enterprise must weigh anticipated economic gains against the cost of producing those gains, so should public enterprise similarly evaluate its undertakings"

I sincerely believe that if the State would devote its time and money to being the banker of water, that all these studies (of) localized situations will come by demand and need just as we go to the bank when we have a proposition and say "Here's what I want to do, this is the money I need, and this is the interest I expect to pay," and I just leave that with you, gentlemen, as a thought.

I have felt in my own mind that counties of origin do have a certain credit that should be given them for the fact they are a county of origin, that the water is there Some of these small counties might stand a little specialized treatment, but I think fundamentally that the economics, if we are going to live under a capitalistic system, the economics of the ability to pay for that water have to predominate, if we don't, we will have nothing except a ring around our neck when we try to carry those loads that are not self-financing. I am inclined to think too many of

those things done in California in water by the Federal Government are not an asset when their costs exceed the benefits, no matter who builds them and why I am inclined to think if you stay with economic principle and pool the water, then if the Legislature sees fit to make some adjustment for your counties where that water comes from, that is a place where my conscience might give easily because it is a source of origin, and if anybody needed a little help, (they) might

(Transcript of August 27, 1958, page 140)

STATEMENT BY CARSON MITCHELL
Supervisor, Sonoma County

A statement has been previously made that we can pay anything for water if we haven't got it That is not entirely true with Sonoma Valley, and Petaluma Valley It is our feeling and it is the expressed opinion of the majority of the landowners that we can offer to purchase North Bay Aqueduct water at a reasonable cost, a reasonable cost that we can use for agriculture We have nothing at the moment that we can offer in the way of industrial water It is then feeling that (we) would use water at a reasonable cost, canalside, where we do not have usable water at the present time of close to $10 an acre-foot There are some 30,000 irrigable acres in that area, a great portion of it represented by people here Most all of it could be irrigable land A very small portion of it, some 1,000 acres is now irrigated with wells at considerable expense, and as Mr Dickerson stated, we are getting very close to pumping the San Pablo Bay back through our wells again We are definitely in need of water for irrigation We are exceedingly dry It is our feeling the North Bay Aqueduct water supply would supplement anything that we might bring in from the Coyote Valley

We are now a countywide district We are paying in essence 15 cents towards our flood control district We have floated bond issues to finance our aqueduct and our portion of the conserved water in so-called Coyote Dam Both bonds, of course, are to be revenue bonds in essence, as soon as the project can be self-supporting

Therefore, we look for help from the Sonoma County Flood Control District to finance water in their area as an organization They have gone on formal record supporting the North Bay Aqueduct To my knowledge, that has not been reversed to this day. Therefore, in essence, they support it They, of course, would have to have some answers to some questions they do not have That is, how much would the water cost delivered to Sonoma County, southern Sonoma County

That, gentlemen, is our position I can say irrevocably that we are interested in water We want it at a fair cost that we can use, and these gentlemen out here and others that appeared at different meetings have stated that they were perfectly willing to pay their share of the cost of the North Bay Aqueduct for the right to have that water and the use of that water We assume that the flood control district could perhaps assist in the distribution of the water from the canal side That is a policy matter that has not been discussed, and it would be worth working on, but I could not commit the Sonoma County Flood Control District

(Transcript of August 27, 1958, page 149)

LETTER FROM SENATOR F PRESLEY ABSHIRE
August 27, 1958

The North Bay Aqueduct was conceived for the purpose of supplying Solano, Napa, Sonoma, and Marin Counties with an adequate supply of water to be used for domestic and agricultural purposes I first introduced legislation to authorize the study and planning of the North Bay Aqueduct in the 1955 General Session, and such measure was coauthored by Senators Gibson, Coombs, and John McCarthy, who represent the areas which would be served by the construction of the North Bay Aqueduct

Initially, I would like to point out that the North Bay Aqueduct would serve an area which is greatly deficient in water and which area is in fact drier than San Joaquin, Fresno, and many other or our Central Valley counties during the summer months Although we are considered a North Coast area and do have heavy rainfall at periods of the year, the rainfall does not stay in the area there being a very rapid runoff and no snow packs to hold the water in the mountains, such as is in the high Sierra

In 1957 the Legislature designated the North Bay Aqueduct as a part of the Central Valley Project and indicated the intent to develop the North Bay Aqueduct as a part and parcel of the entire Central Valley Project

The North Bay Aqueduct would provide the named counties with an adequate supply of agricultural and domestic water to fit the needs at the present time, and the availability of water would certainly increase the need so that any additional water developed in Northern California would be subject to participation by the county users on a prorate basis with the other districts served by the Central Valley Project

Water originating in the North Coast area is now being diverted by the Trinity River tunnel to the Central Valley Project, and the proposed California Water Plan contemplates the diversion of additional water from the North Coast watershed through one or more tunnels into the Central Valley for recovery in the Delta area and transportation to areas of need in the various sections of California

It is not my understanding that the users of North Bay Aqueduct water would have any firmer commitment to a fixed quantity of water any more than any other area served by the Central Valley Project Mr Schulz, in his report this morning, points out, "The water supply provided should supplement rather than supersede existing water resources developments" There are substantially no existing water resources developments in the area which is proposed to be served by the North Bay Aqueduct The only water supply now available for agricultural and urban needs in the area to be supplied by the North Bay Aqueduct is a limited quantity of ground water being pumped from wells Domestic needs of Sonoma County can in the near future be served by Coyote Valley water, which dam is under construction at the present time It is questionable, however, whether the cost of such water will limit its use to domestic purposes, and it appears certain that domestic, industrial, and agricultural users could be supplied water far cheaper for many years by the North Bay Aqueduct

Studies of the State Department of Water Resources of the use of the Coyote Valley and Dry Creek waters indicate that all waters developed by these two projects will be needed and used in the northern and central portions of Sonoma County, and little, if any, will be available for southern Sonoma County after complete development Further, if too much reliance is placed upon the development of Coyote and Dry Creek water, pressure from other parts of the State for water which could now be taken through the proposed North Bay Aqueduct will cause such supply to become unavailable

I am sure that each of the counties involved are highly desirous of the construction of the North Bay Aqueduct as a vitally needed project to supply water where water cannot be developed feasibly and economically in any other manner and where the water can be developed at a more economical cost than the development of local water supplies

In conclusion, I would like to request that the subcommittee add to and include in the transcript of the testimony taken today all the information relative to the North Bay Aqueduct contained in Bulletin No 60, an interim report to the California State Legislature on the Salinity Control Barrier Investigation, by the State of California, Department of Water Resources, Division of Resources Planning, dated March, 1957

I want to thank Assemblyman Porter, chairman, and the members of his subcommittee, Senator Williams and all the members of the Legislature not members of this subcommittee, who have made the trip here to Napa for today's North Bay Aqueduct hearing, that they may better understand the needs of the four counties who will be served and benefited by the building of the North Bay Aqueduct

(Transcript of December 3, 1958, page 118)

STATEMENT BY WALTER G. SCHULZ
Department of Water Resources

In 1951 the Legislature, in authorizing the Feather River Project and Sacramento-San Joaquin Delta Diversion Projects as parts of the State's Central Valley Project, included authorization for the Santa Clara-Alameda diversion In 1955 authorization was extended to include a portion of San Benito County in the proposed service area The Budget Act of 1956 provided funds in the amount of $3,550,000 for engineering and exploration work and for acquisition of reservoir

gates for the Alameda-Contra Costa-Santa Clara-San Benito branch aqueduct of the Feather River Project This is now known as the South Bay Aqueduct

During the five-year interval which elapsed between authorization of the South Bay Aqueduct and the first appropriation by the Legislature for design and land acquisition, several important studies were completed which related to the water requirements of the service area The results of these studies are reported in State Water Resources Board Bulletins No 2, "Water Utilization and Requirements of California," and No 7, "Santa Clara Valley Investigation," both dated June, 1955, and the preliminary edition of No 13, "Alameda County Investigation," dated July, 1955 The most significant single disclosure of these studies as they relate to the South Bay Aqueduct was that the local water resources in the portion of Santa Clara County south of Morgan Hill could be developed to meet all the future demands for that area

The population estimates in the area were developed during studies leading to the report of the Water Project Authority entitled "Feasibility of Construction by the State of Barriers in the San Francisco Bay System," dated March, 1955 These studies disclosed that the historical agricultural water demands of southern Alameda and northern Santa Clara Counties would gradually change to predominantly urban demand by the end of the century

Several alternative means of importing water to the South Bay area were proposed at the local level during the 1951-1956 period Among these the City of San Francisco has stated its willingness to serve municipal and industrial water in portions of northern Santa Clara County and southwestern Alameda County There is no desire on the part of the State to duplicate water service which might be provided to the satisfaction of the local interests by some other agency Certain work, however, has been done based on requests of the local representatives to provide supplemental irrigation, municipal and industrial water to the areas within the South Bay The quantities to be so provided were in addition to the quantities which the local water service representatives stated they proposed to obtain from other agencies

At the request of local agencies, the department used funds available for the water development program to study certain alternatives for importing water to San Benito and Santa Clara Counties As a result of these studies, the Department has recommended that a tunnel through Pacheco Pass from the proposed San Luis Reservoir is the best probable method of water delivery to northern San Benito County and that this aqueduct route can also be used to supply water deficient areas in southern Santa Clara and Santa Cruz Counties and northern Monterey County

As the design studies and geologic exploration have continued, there have been some additional modifications to the plan of providing water to the South Bay area The South Bay Aqueduct, as now contemplated, would begin at a pumping plant located on the main San Joaquin Valley-Southern California Aqueduct near its intake at Italian Slough and would lift the water from that canal by two pumping lifts to a tunnel 7,500 feet in length through Brushy Peak at an elevation of 715 feet From the western portal of that tunnel, a concrete lined canal would convey the water around the east and south sides of the Livermore Valley to a tunnel 3,400 feet long located about four miles south of Livermore A reinforced concrete pipe would continue westerly to a 1,300-foot tunnel at Mission Pass The pipe conduit would continue southerly, passing to the east of Mission San Jose and Warm Springs to the proposed Airpoint regulating reservoir on the Arroyo de Los Coches two miles east of Milpitas The major regulating reservoir would be on the Arroyo Del Valle on the south side of Livermore Valley. A branch aqueduct would extend around the northerly side of Livermore Valley from the west portal of the Brushy Peak Tunnel to a terminal reservoir on Doolan Canyon to serve southwestern Contra Costa County and the northern portion of Livermore Valley

As a result of the above mentioned studies, the proposed Evergreen Reservoir southeast of the City of San Jose as originally conceived, is not now considered to be needed The department has proceeded with acquisition of lands in the Airpoint Reservoir site and this acquisition is essentially complete No other land acquisition has been made

At the present time the department is preparing plans for the first stage development of the South Bay Aqueduct, which could receive water from an interim point of diversion on the Delta-Mendota Canal prior to construction of the main aqueduct along the west side of San Joaquin Valley It would consist of the necessary pumping lifts and pipelines including the Brushy Peak Tunnel to deliver water to the

easterly side of the Livermore Valley The water thus delivered could flow down the natural channels tributary to Alameda Creek into the Niles Cone Area where there is an existing serious threat to the ground water basin due to salt water intrusion The estimated cost of the first stage of construction is approximately $7,250,000 This system could deliver approximately 122,000 acre-feet per year When the demand for water in the Santa Clara County is manifested, the South Bay Aqueduct would be extended to that area The estimated cost of the South Bay Aqueduct as far as Milpitas, including Aupoint Reservoir and the North Livermore Branch, is approximately $37,000,000

It is contemplated that plans and specifications for the first stage development works will be completed early in 1959, making possible delivery of water within two years after initiation of construction

(Mr Schulz amended his remarks by letter of September 5, 1958, as follows)

At the hearing in Hayward on August 28, I stated that water from Pacheco Pass Tunnel to San Benito County would have an average cost of $30 per acre-foot over the repayment period This estimate is based upon full repayment of all costs, including interest, an allowance of $1 50 per acre-foot for water in the Delta from Feather River Project facilities, and an average annual use over the development period of 29,000 acre-feet During later testimony, Mr P Creegan stated that this estimate of $30 per acre-foot was based on an average annual use of 17,000 acre-feet Mr Creegan's testimony was incorrect on this latter point However, should service be extended to Monterey and Santa Cruz Counties, as indicated in the testimony of both Mr Creegan and myself, the average cost of water delivered through the Pacheco Pass Tunnel would be considerably less than the $30 per acre-foot as stated However, this office has made no estimates of the quantities which might be delivered to Santa Cruz and Monterey Counties, nor of the cost of water for such an extended service area

(Mr Shelton provided further information on Mr Schulz's remarks by letter of September 10, 1958, as follows:)

During the recent hearing of the subcommittee in Hayward on August 28, Mr W. G Schulz quoted tentative water costs resulting from the first stage of construction of the South Bay Aqueduct These costs and the basis upon which they were made are as follows

Basis of costs

(a) 50-year demand build-up for Livermore Valley and Alameda Bayside service areas to 122,000 acre-feet

(b) 50-year payout period

(c) 3¼ percent interest rate

(d) Brushy Peak Tunnel sized for delivery of additional water supply to Santa Clara County. Pumping plants and discharge lines sized for delivery of 122,000 acre-feet only.

Costs through Brushy Peak Tunnel

Capital cost	$7,250,000
Annual cost of debt service and operation and maintenance (excluding pumping)	340,000
Average cost of pumping	$4 25/acre-foot
Cost of water at intake	3 50/acre-foot
Total cost of water based on year 2,010 delivery of 122,000 acre-feet	11 00/acre-foot
Total cost of water based on annual equivalent amount of 49,500 acre-feet	15 00/acre-foot

(Transcript of August 28, 1958 page 13)

STATEMENT BY HERBERT G. CROWLE
Director of Public Works, County of Alameda

We must all face up to the fact that financing of a state water program will require additional state revenue, which means additional taxes in one form or another The program will require the investment of substantial amounts of capital to develop the projects to the point where project revenues from the sale of water and power will make the program substantially self-sustaining

Use of a major part of the State's tidelands oil money for water development has been proposed and should be accepted, but this is only a small fraction of the funds required

It is interesting to note that $100,000,000 annually is equivalent, for example, to about a ½-cent sales tax, or, as another example, it is equivalent to an ad valorem tax levy of about 30 cents per hundred dollars of assessed valuation on all property in the State (this would be about one dollar per month for the average city homeowner) These are stated only as examples to indicate the magnitude of the revenue requirements, and are not intended as recommendations.

In view of the difficulty in securing the necessary capital for the program, it is mandatory that the State adopt sound policies for allocation of project costs and repayment of those costs by the beneficiaries.

The following would appear to be reasonable components of a sound state policy for allocation and repayment of project costs

a. *Power.* Allocation of cost to power to be determined by the net revenue to be produced by this feature; such allocated cost to be repaid during the repayment period with interest

b *Flood control, navigation, fish and wildlife, and recreation* Costs allocated to flood control, navigation, fish and wildlife and recreation may be nonreimbursable.

c *Lands, easements, and rights-of-way* The costs of lands, easements and rights-of-way could logically be paid by the State, as is done at present on federal flood control projects in California The fact that the State will own and hold title to the projects adds to the logic of this concept.

d *Municipal and industrial water.* Costs allocated to municipal and industrial water supplies to be fully repaid within the period of reimbursement, with interest.

e *Irrigation* Careful consideration must be given to the policies to be adopted for repayment of costs allocated to irrigation, to see that the cost of the water will be within the ability of the farmers to pay Based on the experience to date on federal projects, it is believed that the majority of our people would accept the idea of repayment of costs allocated to irrigation within the period of reimbursement, without interest, provided that this is found by the Legislature to be necessary, and provided that the policy would be applied uniformly throughout all parts of the project areas It is believed that the cost of the interest component, in this event, should be absorbed by general state tax revenues.

f *Period of reimbursement* The period of reimbursement for reimbursable features to be fifty (50) years

g *Interest rate* The interest rate to be charged should be uniform on all project cost allocations and in all geographical areas of the State. The Legislature could fix the interest rate to be charged, based on the average rate being paid by the State on its indebtedness

h *Maintenance and operation* The costs of maintenance and operation, including pumping, to be paid for by the local contracting agencies which are being served. The State should maintain and operate project features which serve more than one contracting agency, but the cost of such maintenance and operation should be fully paid by the contracting agencies

It is believed that the State should offer several types of repayment contracts, all based on full repayment of the allocated reimbursable costs during the reimbursement period, but designed to fit the varying situations of the local contracting agencies

One type of contract would set a fixed price per acre-foot of water delivered, based on a guaranteed annual purchase of water sufficient to repay the State for all project costs during the reimbursement period, with interest

A second type of contract would be in two parts: (1) repayment of all capital and interest charges and other fixed costs by uniform annual payments over the reimbursement period; and (2) payment of operation and maintenance costs, including pumping, required to deliver water to the contracting agency, at the actual cost of delivery

A third type would be similar to the second, but allowing for a 10-year development period during which interest on capital and costs of maintenance and operation would be paid, but during which there would be no repayment of capital. The capital cost would be fully repaid during the remainder of the reimbursement period, together with all remaining interest charges and maintenance and operation costs

It should be emphasized that in all three of these proposed contract forms, the State would be fully repaid for all allocated capital costs, interest charges and maintenance and operation costs within the period of reimbursement The same contract forms could still apply if repayment of costs allocated to irrigation were without interest

The South Bay Aqueduct was originally authorized by the Legislature in 1951 as a unit of the Feather River Project, to serve water to portions of Contra Costa, Alameda and Santa Clara Counties. The latest estimate of cost, made by the State Department of Water Resources for the South Bay Aqueduct from the Delta to Airport Reservoir in Santa Clara County, is $36,768,000. Based on the latest state estimates of water demands, and using a 3 percent interest rate and a 50-year repayment period, the project could be fully repaid, with interest, at an average cost of $19 50 per acre-foot. The gross revenue to the State from sale of water over the 50-year period would be $134,000,000, of which $71,875,000 would be in payment of capital and interest charges During the same period the South Bay Aqueduct area would be paying from 4 percent to 8 percent of the state taxes required to support the state water program. For each $100,000,000 in general state taxes provided for the program, between $4,000,000 and $8,000,000 would come from the South Bay Aqueduct area. These figures are cited merely to show that the cost of the South Bay Aqueduct would be fully repaid, with interest, by revenue from the sale of water, and that state taxes paid by the same area toward the state water program would make this definitely a contributing area to the program and not an area of deficit. The construction of the South Bay Aqueduct by the State would be a good investment from a purely financial standpoint as well as solving some critical water problems The method of repayment assumed in the above computation is not necessarily the one that would be selected by the water-using agencies; in fact, a two-part form of contract might prove more advantageous However, the same point regarding full repayment, with interest, would still be true

It should be noted that the initial phase of construction on the South Bay Aqueduct would probably consist of constructing the Brushy Peak Tunnel and initial pumping facilities and conveyance works to the tunnel Water agencies in Alameda County probably will be expected to enter into contracts for the principal part of the cost of this initial phase The physical and financial situations of these agencies vary, and this initial phase of the South Bay Aqueduct offers a unique opportunity to determine state policies for repayment of project costs The local agencies are giving earnest consideration to their varying situations, which may be typical of many others throughout the State If the State can offer the necessary flexibility in the types of repayment contracts, I am sure that this area will come through with a very strong program which can serve as a model for the State in adopting sound financial policies for its water projects

Some of the questions asked by the subcommittee in its announcement of this hearing have already been discussed. The following answers may be given to the remaining questions:

Type of organization. With regard to the type of organization to be used, it is expected that the local water-using agencies will each contract separately with the State. The Solano County conservation district method could be used here, but the present thinking of the local water agencies appears to indicate a preference for separate contracts

Maintenance and operation. It is believed that the State can best construct, maintain and operate a facility, such as the South Bay Aqueduct, which will serve several agencies. The cost of such construction, maintenance and operation will, of course, be repaid to the State by the local agencies

Assessed valuation. The assessed valuation of the portion of Alameda County within the South Bay Aqueduct service area is approaching 200 million dollars Total overlapping bonded indebtedness varies throughout this area, but is on the order of 20 to 25 percent of assessed valuation. The raising of any substantial amount of capital for the South Bay Aqueduct would be extremely difficult because of the high level of existing indebtedness.

(Transcript of August 28, 1958, page 51)

STATEMENT OF M. P. WHITFIELD
Alameda County Water District

The Alameda County Water District was formed in 1914 pursuant to the County Water District Act of 1913 The district includes within its boundaries nearly 100 square miles in the southern portion of Alameda County adjacent to San Francisco Bay, and generally encompasses the Cities of Fremont and Newark and the communities of Alvarado and Decoto, together with adjacent agricultural areas About 15,000 acres of irrigated lands devoted to the production of high-value crops account for the major portion of the present water usage The district contains a present population in excess of 40,000 persons and is experiencing a rapid population and industrial growth which will accelerate in the years immediately ahead Recent estimates by the Alameda County Planning Commission indicate that a population of over 200,000 persons may be expected within the next 20 years

The district acts as a "caretaker of the underground basin" and one of its major functions is the protection and enhancement of the valuable ground water supplies contained in the Niles Cone basin which underlies the area

In addition, we have a second major function—that of distributing municipal water supplies At the present time, a total of about 4,000 acre-feet of water per year are served to about 35,000 people in the largest portion of the urbanized areas within the district Of course, the rapid population growth expected in the near future will result in a large increase in these municipal water deliveries

The district has constructed facilities to increase percolation of the flow of Alameda Creek into the Niles Cone In addition, the Alameda County Water District, in co-operation with the Pleasanton Township County Water District, is currently making detailed engineering studies looking toward the construction of a 45,000-acre-foot reservoir on Arroyo del Valle, a major tributary of Alameda Creek This reservoir would essentially complete the practicable development of local water supplies and, in addition, would provide a facility which could be utilized for regulation of the flow of the South Bay Aqueduct

The Alameda County Water District vitally needs the South Bay Aqueduct and vitally needs it at the earliest date it can possibly be placed in operation We recognize that our support of the aqueduct must go beyond mere desire, and our board of directors is prepared to take all steps within their power to secure the funds necessary to pay our equitable share of the South Bay Aqueduct costs as soon as the State establishes the requisite financial policies and desires a firm commitment from our district preparatory to starting construction of the aqueduct

We are setting forth herein our recommendations as to what we feel to be a sound, equitable and practicable set of financial and economic policies to be followed by the State

Where existing public local organizations have adequate powers and are willing to contract with the State for repayment of project costs, these organizations should be utilized Existing public agencies in the service area of the South Bay Aqueduct would fall into this category

Facilities, such as the South Bay Aqueduct, serving water to more than one local agency, should be operated by the State

We realize that a high degree of federal participation in water resources development must continue in the future, but the Federal Government alone cannot solve California's water problems The state and local agencies must recognize their basic responsibility in facing water problems and must be willing to play their necessary roles in solving these problems We are entering upon a period when large scale projects must be constructed to benefit many local areas, and the activities of the local agencies in the field of water development must be supplemented by assistance from the State of California

All policies adopted by the State should be uniformly applied on all projects insofar as practicable, and each area should be assured of treatment consistent with the treatment of other areas in the State

Should the Legislature adopt policies which incorporate subsidization in any form, the funds for such subsidization should be provided by the State as a whole, and the source of funds for such subsidization should not be limited to users of water from state projects.

The costs incurred in making adequate water supplies available in the Delta for exportation to areas of deficiency should be repaid with interest by a uniform water charge representing the average cost from the several projects which may be required to develop an adequate Delta water supply

(a) All project costs incurred by the State, properly chargeable to the conveyance of water supplies, should be fully repaid with interest by contracting local agencies which distribute the water

(b) The total capital costs and fixed operation and maintenance costs properly chargeable to water conveyance in a project that conveys water to more than one contracting local agency should be allocated between the various local agencies involved on the basis of the estimated average water use by each agency over the project repayment period, giving proper consideration to the relative times of such use

(c) No agency should have a cost allocation greater than the cost of an alternative single purpose project to meet only the demands of the given agency

(d) Any agency should share in the cost only of that portion of the conveyance facilities of benefit to the agency, and the agency's allocated proportionate share of the cost of each portion of the project should not exceed the benefit accruing to the agency from that portion of the project.

(e) In order to assure full repayment (with interest) to the State, each contracting agency shall be liable for an amount not less than the aforementioned allocated cost regardless of water use

(f) In order to insure against inequities in cost allocation resulting from actual relative amounts of water use by various agencies differing from the estimates upon which the cost allocations were based, some method should be provided whereby the allocations can be later adjusted to reflect the effects of actual water usage One reasonable method of accomplishing this objective would be to require any agency using more water than the estimated amount upon which the original cost allocation was based to pay for such excess usage at a rate per acre-foot equal to that necessary to amortize project cost on the basis of the estimated water demands utilized in making the original cost allocations

(g) If all areas which may reasonably be expected to be served from a given conveyance project do not enter into a repayment contract with the state prior to construction of the project, the portion of the cost properly allocated to such initial noncontracting area shall be borne by the State as a whole, and these costs borne by the State shall be repaid with interest at such time as the area decides to use water

(h) A contracting local agency should provide capital in such amounts as it is capable of raising in order to meet all or a portion of its allocation of the total capital cost of the project, provided that there are other sources of capital available to the given agency at terms comparable to the terms available through state financing

In this regard, it should be noted that the 1958-59 assessed valuation of lands and improvements in the Alameda County Water District is approximately $72,000,000 Bonded indebtedness of the district is approximately $4,000,000, including bonds authorized but not yet sold In addition, there is an overlapping bonded indebtedness of approximately $19,000,000, including bonds authorized but not yet sold In view of this high overlapping debt, and in view of the additional overlapping debt which will undoubtedly have to be incurred in providing adequate services for this rapidly growing urban area, we have been advised by our financial consultants that bonds sold by the district to raise any substantial amount of capital for water development would probably incur an interest rate of about five percent under present market conditions Therefore, we do not feel that the Alameda County Water District has the financial capability to provide any significant amount of capital at this time

(i) The State should allow use of its credit to raise the portion of the project capital costs allocated to agencies which do not presently have adequate financial ability to provide the necessary capital

(j) If possible, a local agency making use of the State's credit for its allocated capital cost should repay its allocation to the State with interest on the basis of uniform annual payments over the project repayment period

(k) When initial water demands of a local agency are very low compared to their average demands over the project repayment period, and when equal annual repayments would be an unduly heavy financial burden during the early years, the State should allow the agency to delay repaying a portion of their allocated costs until such time as water demands have increased sufficiently to allow the agency to fully repay their share of the cost However, when the water demands have increased sufficiently, the local agency should fully reimburse the State for the increased interest costs accruing to the State as a result of the State carrying a portion of the local agency's allocation during the early years.

(l) Upon repayment to the State of the full capital cost of a given conveyance project, the contracting local agencies shall thereafter be relieved of paying that portion of their cost chargeable to recovery of capital by the State

(m) In addition to the aforementioned allocated capital costs and fixed operation and maintenance costs, each contracting agency should pay the incremental operation costs necessary to deliver water to the given agency, such as pumping costs, etc

(Attached to the district's recommendations was a draft allocation of costs for the South Bay Aqueduct and proposed repayment schedules.)

(Transcript of August 28, 1958, page 79.)

STATEMENT OF KARL WENTE

Zone 7, Alameda County Flood Control and Water Conservation District

Zone No 7 of the Alameda County Flood Control and Water Conservation District is an area of some 425 square miles comprising the eastern portion of Alameda County. It includes the cities of Livermore and Pleasanton and the unincorporated communities of Dublin, Sunol, Altamont and Mountainhouse One of the major purposes for which the zone was formed was to provide an agency to co-operate with the State for the importation of water into the zone The board of directors has indicated its willingness to deal with the State for this purpose

Zone No. 7 has an assessed valuation of nearly $35,000,000 The area is primarily agricultural, but in recent years has entered into a period of growth that will ultimately lead to urban development. Included in the area are the University of California Radiation Laboratory, the Vallecitos Atomic Power Laboratory of the General Electric Company and many other growing industries Zone No 7 has a great potential for growth if a firm water supply is available

The principal source of water is presently from the vast underground reservoir. This reservoir, while it has served adequately in the past, cannot support the development that the future holds for this area

The position of the zone board of directors can be stated by the following points.

1 The zone has been established to be the local agency to deal with the State in regard to water importation in its area.

2 Due to low supplemental water requirements in the early years of the project pay-out period, the zone favors a method of repayment where the zone is charged a fixed amount per acre-foot of water delivered according to a predetermined estimated demand schedule The period of reimbursement should be 50 years.

3 The users of water for municipal and industrial purposes should repay their allocated shares of the maintenance and operation costs, the pumping costs, and the project costs with interest

4. The users of water for agricultural purposes should repay their allocated shares of the maintenance and operation costs, the pumping cost, and the project construction costs without interest It is felt that the interest cost on agricultural water should be borne by the State as a whole from general state tax revenues

5 The cost of nonreimbursable items should be borne by the entire state or federal funds

6 Any policies that the State establishes regarding the sale or distribution of water should be uniform throughout the State

7. At present the zone is not financially able to provide a portion of the capital required to construct the South Bay Aqueduct

8 It is felt that the South Bay Aqueduct should be maintained and operated by the State, since a number of local agencies will be contracting with the State

9. The South Bay Aqueduct service area faces the problem of providing a firm water supply for the estimated demands 50 years into the future. The solution is a project of such magnitude that it would be a burden to the local agencies under the financial limitations of these agencies Therefore, the board of directors feels that the State, through its ability to obtain better financial terms, should be the constructing agency.

(Transcript of August 28, 1958, page 106.)

STATEMENT OF PLEASANTON TOWNSHIP COUNTY WATER DISTRICT
Filed With the Subcommittee by Letter of October 10, 1958

Pleasanton Township County Water District was organized as a county water district under state law in 1914 It comprises an area of about 13,000 acres of land around, and including the City of Pleasanton in the Livermore-Amador valleys of southern Alameda County The assessed valuation of the properties in the district is $9,245,000 The district owns and operates two wells which supply part of the water required for domestic and industrial uses in the City of Pleasanton. The district overlies a vast groundwater basin which is the sole source of water to the land within its boundaries The Pleasanton Township County Water District was organized to preserve and protect the water rights of the lands within its boundaries

Land use within the district is still predominantly agricultural, but the economy of the area is beginning to change Residential development with attendant commercial and industrial activities is commencing both within the district and in the surrounding area The district plans to make water available to meet the needs of this changing economy

The underground water basin has in the past been sufficient for the needs of the lands in the district, but this condition is changing and the basin is now being overdrawn To support expected industrial and residential development, a firm supplemental water supply is needed Recognizing this, the district has launched a program for development and conservation of local water supplies and has aggressively supported, and still supports, the development of the South Bay Aqueduct of the Feather River Project

In order to develop the local water supply, the district has entered into a cooperative arrangement with the Alameda County Water District for capturing, preserving and putting to beneficial use the surplus waters of the Arroyo del Valle This project, for which the district has received a permit from the State Water Rights Board, includes the construction of a 45,000-acre-foot reservoir at Sanatorium Dam site on the Arroyo del Valle This reservoir can also serve as an integral and essential part of the South Bay Aqueduct as a regulatory reservoir and it is included in the State's plans for this purpose It is expected that this project will serve to meet the district's water needs only for the next 5 to 10 years. It is apparent that development of local water supplies, although desirable and essential, is not the final answer. The ultimate development of the district and its surrounding service area necessitates importation of water from an outside source

The district presently has no bonded indebtedness, but to develop the Arroyo del Valle project, even with hoped for financial aid from the Federal Government, will require bonding to the district's capacity. The directors of the district, therefore, do not believe that a project for importation of water into the district can be financed, in any part, by direct taxation upon the properties within the district.

In answer to the subcommittee's specific questions regarding state water projects and with particular reference to the South Bay Aqueduct project the directors of the district believe

1 That where, as here, there are existing public agencies having adequate powers and willing to contract with the State for repayment of project costs, no new agency should be created Pleasanton Township County Water District has the power to contract with the State for such purposes and is willing to do so to the extent of its ability and its need for imported waters as such need arises

2 That the South Bay Aqueduct, a facility that will serve water to a number of separate local agencies, should be operated by the State.

3 That the State should be reimbursed in full for those portions of the project cost related to the conveyance of water by the agencies contracting for and receiving water from the project, except that because of the statewide benefits of the program, the State should absorb the initial costs of rights-of-way and site acquisitions on a nonreimbursable basis To the extent that any project has other features that are of general benefit such as for recreation and preservation of wildlife, the cost thereof should be borne on a statewide basis and be not reimbursable by the local agencies contracting for water No local agency should be required to reimburse the State for the costs of any part of a project not related to the servicing of water to that agency

4. That the reimbursable costs of a project be repaid with interest except that the portion of a project devoted to conveying water for agricultural use would be interest free.

5 That the reimbursement period be not less than 50 years and that reimbursement be accomplished by the fixing of a per-acre-foot charge for water delivered, based on a schedule of estimated demand for all the area to be served by a project whether in an organized agency or not at inception of the project Such a policy would be designed to reimburse the State in full within the reimbursement period, but would spare lands not requiring water from the burden of financing a water supply until the need therefore arises

6 That the State adopt principles and policies for financing projects, and for sale and distribution of water that can be applied uniformly throughout the State so that all areas in the State may be equitably treated

(Letter dated October 10, 1958)

STATEMENT OF HOWARD CAMPEN

County of Santa Clara

The Board of Supervisors of Santa Clara County herewith submits its views and answers to the questions contained in the material transmitted with your letter of July 30, 1958

We feel that irrigation water users should repay, in full, their allocated construction costs and interest charges Our reasoning is that water is a commodity which should be sold at a fair but consistent price However, this should not be construed to mean that irrigation water users would be paying for water treatment or distribution lines which would be added to the cost of untreated water when sold to urban users

In Santa Clara County the local organization which would be used to repay the project construction costs would be the Santa Clara County Flood Control and Water Conservation District. This is a countywide district governed by the Board of Supervisors of Santa Clara County

It is the district's intent to act as a purchaser of water from the state or federal agency supplying such water, and to act as wholesaler of such water to local water conservation districts, water distribution districts, city water companies and private water companies wishing to purchase water from the district The method of payment hereby proposed is one whereby the district would pay a fixed number of dollars per acre-foot used

We do not feel that a local organization should assume responsibility for operation and maintenance of the aqueduct No single water agency exists which effectively covers the service area of the South Bay Aqueduct We do not wish to imply, however, that the local agency should be relieved of its fair share of operation and maintenance costs which would be included as part of the water cost

We do not feel that there is a great possibility that our locality or areas to be benefited by imported water could raise a part of the capital required to construct the South Bay Aqueduct We feel that the proper method to repay the cost of the aqueduct maintenance and operation is from the sale of water which should be priced so that over a 50-year period the project has paid for itself We do not feel that, in addition to paying a fair price for water (as well as normal income taxes which would finance either a state or federal project), local taxpayers should also be required to undergo additional property taxes through local bonded indebtedness

We, in Santa Clara County, feel that we should support either a state or a Bureau of Reclamation project to serve the South Bay area We would also support a co-operative program between the State and the Federal Government. We are solidly behind the present state water plan as suggested by the Division of Water Resources, but we also feel that a co-operative state and federal program which accomplishes the same purposes should also be supported Santa Clara County needs water, subject to negotiations with local water distributors and purchasers, Santa Clara County Flood Control and Water Conservation District stands ready to contract with the State of California for the purchase of water at a set schedule of rates for amounts of water, which amounts would be increasing with each passing year and which, at the end of a 50-year period, would repay the State of California for Santa Clara County's fair share of the costs of the South Bay Aqueduct

(Transcript of August 28, 1958, page 120)

STATEMENT OF KEN WILHELM
Santa Clara Farm Bureau

For the last several years our testimony before this overall committee has maintained a constant direction We wish to call your attention to the previous years of testimony as nothing yet has occurred to change our basic stand As I understand the purpose of the two meetings in the Bay area, you are seeking information on financing the North and South Bay Aqueducts

Allow me to place our position clearly before you First off, we have not, nor will we at this time endorse either of the aqueduct propositions from the standpoint of immediate construction As we have told you in past meetings, we are vitally interested in the development of all the available engineering information available through field and even project design study We want accurate cost figures, both construction and financing, but we are afraid of the momentum which the development of such figures often seems to imply Not only do we want these cost figures for the aqueducts, but also for the alternate systems, the Pacheco Pass diversion, and the Reber Plan or modifications thereof which may develop through the operation of the Bay Model by the U S Corps of Engineers

In 1954 we asked the forebearance and co-operation of the committee in allowing the people of Santa Clara County sufficient time to make certain that the Corps of Engineers could develop the information for which we have asked, that our Tri-County Authority and Water Conservation Districts be given time to develop the information we have asked them to develop in co-operation with the Bureau of Reclamation on the Pacheco Pass Diversion We have just received another $750,000 from Congress, which brings the total we have received for the operation of the Bay Model and its studies up to $2,600,000 From Congress we have just received enough money to complete the Pacheco Pass Diversion studies which will cost in the neighborhood of $400,000 In 1954 we estimated that it would be 1960 before we were prepared to place before the people of our area all of the information regarding the alternates of the Reber Plan, the Pacheco Pass Diversion and the aqueducts To our best knowledge, nothing has transpired to change the timetable which we set up in 1954

We understand your interest in seeking information on financing the South Bay Aqueduct We are also interested in this information We are especially interested in that the farmers whom I represent will be the people who pay for most of the water which will be used after it is once imported by one of these systems, or a combination thereof We have waited this long and we are not about to be stampeded We are still waiting for accurate information from the State of California in regard to the exact costs of water which might be available to the aqueducts We hope that this information will be developed by 1960 so that our deliberations will not be delayed

There is another factor on which we will have rather accurate information by 1960 and that is, how much farmland in our county is going to remain farmland as against how much of it will be replaced by subdivision This innocent-sounding statement is the "Achilles heel" of any actions which might be taken now, because without this information no one can accurately estimate how much imported water we are going to need At present we are working in co-operation with the various municipal and private domestic water suppliers in the area and with city governments and others to develop these figures We have also been working with the U S Department of Agriculture and other federal organizations to make certain this information will be available by 1960

At this point I would like to make an aside from our written commentary, and that is the fact that December of 1960 is also the date in which we very informally have agreed with the representatives of the San Francisco Water Department for a deadline date for letting them know what areas in Santa Clara County we wish or feel that they should tool up to service, or whether we will ask them at that time to not consider serving certain areas This is, as I say, an informal discussion which has been held with the leadership and it's going to depend upon the price structure, availability, future bond issues that the City of San Francisco will have to contemplate, participation in contracts, a great number of details which we believe we will be able to very successfully work out Now, this is, of course, given the co-operation of the city and the willingness of all people concerned So I am using 1960 as a target date We started in 1954, and we believe that the information we are trying to prepare on all phases, all fronts, will be available by December of 1960.

Somewhere in the deliberations concerning financing, you must recognize the basic truth, and that is that only those costs of development which can be truthfully ascribed to general good can be written off as nonreimbursable items. Any program which is developed which will have stability must provide for a proper system of repayments We will state this, that we believe the ultimate user must pay his fair share of the costs of development We cannot envisage a system which provides for subsidization without fair consideration of the factors of use By 1960 at the time we have the information developed from all sources we hope to be able to present your committees with what we consider a fair and just approach to such financing problems, and parenthetically, one which we as farmers can live up to and not finish by going broke in trying to live up to it Interest free or extremely low interest money, may be one of the things we suggest at that time and this purely on the basis of conservation of a natural resource When Assemblyman Allen introduced his Tidelands Oil Funds bills we urged that such moneys be earmarked for the development of water projects as these were funds which were coming from the destruction of a natural resource and therefore should be used to help maintain and rebuild other natural resources Just what type of revolving fund and prorating systems of nonreimbursable costs can be developed will remain for serious study for at least the next couple of years

(Transcript of August 28, 1958, page 135)

STATEMENT OF ALBERT HENLEY

Santa Clara-Alameda-San Benito Water Authority

The Santa Clara-Alameda-San Benito Water Authority, herein called "the water authority," represents areas in Santa Clara and San Benito Counties which need imported water These areas are in the Santa Clara Valley Water Conservation District, in Santa Clara County, and in the San Benito County Water Conservation and Flood Control District in San Benito County

The proposed entry of the State of California into the field of water project construction representing, as it does, a complete break with traditional forms in this State of public water production, management and sale, should be studied with great care The pattern of such development, heretofore followed with spectacular success, has been one of local responsibility and local financing by regional agencies created for the purpose. Without minimizing the great role (past, present and future), of the Federal Government, particularly in the Central Valley Project, it is instructive to recall that sums expended from federal sources have been comparatively minor in the grand total of water development and beneficial use in California.

The water authority suggests that the only sound procedure for the State to follow in building a project is to identify and contract with that project's beneficiaries as a prior condition The question of maintenance and operation can be a matter of agreement at that time

This authority has assumed in all of its planning that benefited lands and users will pay the costs of a desired project, whether wholly built by local effort or by state or federal agencies or by any combination of these It is further assumed that as to projects constructed by the State, full recognition will be given to those benefits accruing therefrom which may fairly be characterized as statewide, by the proper use of grants-in-aid and the assignment of nonreimbursable costs In such circumstances the State's contribution could include planning, design, engineering and lands and rights-of-way expenses.

The most practical and equitable means of financing the cost of local water importation is presently under study by the water authority Conclusions are not yet available but the authority will be glad to forward the results to your committee as soon as possible In general, however, the following considerations should be applicable to state-sponsored water projects for the authority area ·

(a) Areas should pay their fair share of the cost of projects from which they receive benefits.

(b) The proven and familiar means of local financing should be adhered to wherever possible; in any event local agencies should be free to choose their own financing methods

(c) The particular local agencies unified under this authority would be responsible for funds for construction or repayment The authority itself is, in the present state of legislation, a representative investigating and negotiating agency only

(d) It seems probable that these member districts will use a combination of general taxation and direct charges for the purpose.

(e) The ability of the districts represented by the water authority to pay allocated construction costs cannot be determined until these costs are known No difficulty is anticipated if costs remain in the order of current estimates

(f) Water pricing should reflect the public policy of securing its beneficial use This means that water cannot be offered at rates which will make its use uneconomic

(g) A project should not be undertaken until it can be anticipated that its reimbursable costs will be recoverable from the project's beneficiaries

(h) Generally, feasibility should be determined on a project-by-project basis

The authority has favored federal-state co-operation in the San Luis project and has supported House Joint Resolution 585 (Engle-Gubser), recently passed by the Second Session of the Eighty-fifth Congress. The resolution directs a bureau study of a Pacheco Tunnel aqueduct. Much work on this investigation has already been done by the authority, to the extent that probable feasibility is indicated The results of this study and of all other authority investigations have been shared with and subjected to the review of the State The authority has furnished to the State Department of Water Resources a comprehensive report on the supplemental water needs of its constituent agencies and neighboring areas Recently the department issued a report on the South Bay Aqueduct in which it was recommended that the conduit end near Milpitas and that a distribution system be designed to serve the lands and municipalities of northern Santa Clara County over the pressure zone. The authority is presently proceeding with such a design and will soon have cost estimates and a feasibility report available Data on the cost and feasibility of water distribution to the same areas from the Pacheco Alternate route is being simultaneously gathered for firm and practical comparison

The $10 million budget item requested by the State Department of Water Resources for the initial portion of the South Bay Aqueduct was supported by formal resolution of the authority's board. It was recognized that the need of Contra Costa and Alameda Counties is great and that the first part of this project will be necessary in any event The water authority also urged that a like sum be appropriated for a beginning of the Pacheco Alternate if closer study should confirm feasibility. However, no funds for either purpose were voted by the Legislature

The present position of the water authority is that the feasibility study of the Pacheco Tunnel Aqueduct should be completed as rapidly as possible If it is demonstrated that this is the means by which Santa Clara, San Benito, Santa Cruz and Monterey areas of need can be best and soonest served the aqueduct should be built at once by the agency which can do it to the greatest public advantage, considering both cost and time The initial source of water for such a conduit would be surplus now available in the Delta-Mendota Canal But this is assumed to be an interim supply and the authority is relying on the Feather River Aqueduct for the firm permanent source our member agencies will ultimately require

(Mr. Henley, by letter of September 15, 1958, supplied the subcommittee with the following additional material on ground water overdraft in Santa Clara County)

Since completion of the water conservation district's two most recent storage projects (Anderson and Lexington in 1950 and 1952 respectively) the ground water level has been relatively stable In periods of average rainfall there is no overdraft at all This year, for example, the average water level is 18 feet above last year at the same date, which represents a recharge of 90,000 acre-feet

This is not to say we do not need to import water, we do But the reasons are that we must (a) refill the underground reservoir and (b) serve growing municipal needs which the underground will not be able to support

(Transcript of August 28, 1958, page 150)

STATEMENT BY J. H. TURNER

San Francisco Water Department

In 1913 the Raker Act was passed, enabling us to occupy public lands in Yosemite National Park, by 1916 serious work was gotten under way, and the Hetch-Hetchy water was brought into the Bay area in 1934. It was the policy of the city fathers to offer to any agency along the line of its aqueduct within the Bay area such supplemental domestic and commercial water as they desired Over the years San

Francisco has been tapping their transmission lines on request from local agencies and delivering water to suit their needs.

We have supported, very definitely supported, the construction of a South Bay aqueduct to bring Feather River water into this area, because our own analysis and study of the water needs of the area indicate that additional water over and above local sources, over and above Hetch-Hetchy sources, over and above Mokelumne sources for the East Bay, will be required in the area that you are considering today We fully support, policywise, the construction of a South Bay aqueduct We have been accused of qualifying that, so I will explain the qualification We, of course, cannot support highly subsidized water being brought to each and every one of San Francisco's consumers in competition with San Francisco It is perfectly possible that the State may conceivably build pipelines and distributing reservoirs and other facilities to the ultimate consumer on a state-subsidized basis and run direct competition to San Francisco, thus depreciating substantially our current investment in the water supply

On the financial side, San Francisco has financed totally its project without assistance from any source We have, of course, entered into an agreement with the United States Army Engineers to furnish them flood control, for which they have purchased and paid us for the space we provide in our reservoirs We are furnishing water to all of our consumers at cost to the City and County of San Francisco There is another important feature San Francisco has not taken one dollar of profit from the operation of its water system It has operated on a full "pay as you go" basis, luckily without tax support, but certainly without profit to the people of San Francisco.

(Transcript of August 28, 1958, page 166)

STATEMENT OF JACK PORT
Contra Costa County Water Agency

To date the county has been fortunate in obtaining water necessary for reaching its present state of development, from the East Bay Municipal Utility District, California Water Service Company, the East Contra Costa Irrigation District, Byron-Bethany Irrigation District, the Contra Costa County Water District, the San Joaquin River and Suisun Bay and nominal development of underground supplies

The southerly and southeasterly portions of the county now need water in order to develop The southeasterly portion of the county can develop through orderly expansion of existing districts, provided these districts can obtain additional water from Old River The southern portion is in need of a new source of water in order to begin and support suburban residential developments, for which it is well suited

The Contra Costa County Water Agency submits the following answers to questions asked by the committee

Irrigation water users should pay according to the value of the irrigated crop or land potentiality It is evident that numerous projects proposed for state construction would already have been built if local interests could have financed the whole project cost through normal issuance of interest bearing bonds

Contra Costa County has two alternatives under which project water costs could be payed Firstly, the water agency, which has comparable powers to the Solano County District, could define a zone of benefit to assess costs against that zone and act as the agency to contract with the State of California or the Bureau of Reclamation Secondly, an independent improvement district or zone of benefit encompassing only the actual area receiving service from the South Bay Aqueduct could be formed for the purpose of financing It is recommended that the payments for water be made under a contract, wherein specified and increasing annual quantities of water are to be paid for each year, whether used or not

It would be impractical for a local Contra Costa County organization to operate and maintain the South Bay Aqueduct facilities for two major reasons

(a) The South Bay Aqueduct is a portion of the California Aqueduct Plan over which the State would exercise controls, at the proposed Italian Slough or Delta-Mendota Canal intakes of the South Bay Aqueduct, for the benefit of all the users of the entire California Aqueduct System

(b) The South Bay Aqueduct will serve many counties and experience to date in the Bay area with multicounty agencies has been disappointing

Contra Costa County contends that the area benefited should be the area charged with responsibility pertaining to local participation in financing of water supplies

In this respect, it would not be possible to raise significant capital for construction from the area to be benefited The area which needs service from the South Bay Aqueduct is largely undeveloped and will remain so until an adequate supply of water is available The area to be served consists of approximately 27,800 acres with a present assessed valuation of approximately $1,700,000 and an overlapping bonded indebtedness of $103,000 and needs ultimately 40,000 to 55,000 acre-feet of water per year

The portion of Contra Costa County which would be served from the South Bay Aqueduct is presently largely undeveloped but should be developed for suburban living Therefore, it would be impossible to locally finance construction of that portion of the South Bay Aqueduct needed to serve the area without placing an undue burden on the taxpayers of the entire county, including those who would not directly benefit from such facilities Therefore, it is our position that a state or bureau project is the only feasible means by which the area can be served

A portion of Contra Costa County has a common economic interest with the Livermore Valley and could make good use of water supplies which could be obtained with the construction of the South Bay Aqueduct The Contra Costa County Water Agency heartily endorses and firmly supports construction of the aqueduct

(Transcript of August 28, 1958, page 205)

LETTER FROM A. T. McLAUGHLIN
North Marin County Water District, Dated October 14, 1958

Since the purchase of surplus water from Marin Municipal Water District only temporarily solves the district's supply problem, the district must begin work on a future source of water to be available some time in the mid-1960's If water from the North Bay Aqueduct can be offered at a relatively firm price and at a relatively firm date, the district would be in a position to decide on the extent to which it could finance, operate and maintain the project However, in the absence of firm project plans that can be relied upon, the district must attempt to develop another source of supply in order to provide water to meet the needs of its ever-increasing population.

SOUTHERN CALIFORNIA QUESTIONNAIRE

HEARINGS ON PROJECT REPAYMENT

(The following questionnaire was the basis for hearings in Los Angeles and San Diego on December 3 and 4, 1958.)

Since the subcommittee's previous hearings this year were devoted primarily to repayment problems of irrigation water users and recreation, the following questions have been consolidated from those used for more specialized hearings on these subjects One question on municipal and industrial water has been added The subcommittee is interested in securing reactions of local and statewide interests to the following questions:

1 Do you feel that irrigation water users should repay in full those project construction costs, plus interest, which are properly allocated to irrigation? Should agricultural areas that cannot pay full irrigation water costs be excluded from service by state projects?
2 If you feel that irrigation water users should not repay in full all allocated construction costs plus interest how should the repayment deficiency be met?
3 Providing repayment assistance by assessments on urban and municipal areas adjacent to irrigated acreages which indirectly benefit by increased sales and commerce resulting from irrigation is being successfully employed by the Bureau of Reclamation Do you feel that these "conservancy districts" are desirable for state projects?
4 Can your area assist the State in financing project construction by advancing any portion of the construction costs of a project or facility which serves your area? Do you have sufficient assessed valuation to advance this money before the project is in operation?
5 Do you have any opinions or data on the ability of a recreational industry to repay any of the costs involved in the state construction of water projects which store water especially for recreation or for fish and wildlife? If you feel that any repayment of these costs is feasible, to what extent should they be repaid?

6 Do you feel that operation by a local district or county of recreational features of state projects is feasible or desirable?

7 Would it be feasible for a district or county to collect admission fees for use of the recreational features, to levy taxes against resort property, cabins, etc, or to lease land for private development in such a manner as to raise funds to help repay project construction costs?

8 Do you feel that municipal and industrial water users should assist irrigation repayment by some additional charge for water made specifically to assist irrigation water users?

October 15, 1958

STATEMENT OF WILLIAM S. PETERSON
Department of Water and Power, City of Los Angeles

The Department of Water and Power of the City of Los Angeles has the responsibility of furnishing all of the water and electricity used by the residential, commercial and industrial consumers of Los Angeles With our city's population now estimated to be 2,397,000, and with more people and industries coming here every month, we are deeply concerned with the subject of financing state water projects and we appreciate the opportunity to express our views before your committee We believe our own experience may provide a case history that will be of interest

The financial history of the Department of Water and Power shows what one publicly owned utility in one city of the State has done in building and paying for a large system Our growth over a 56-year period has been financed essentially by a combination of bond funds and revenues from sales of water and electric services

Bonds outstanding as of June 30, 1958, total $383,184,000 These serial bonds are scheduled for complete maturity by 1993 and the current annual maturity is $15,976,000 The value of the utility plant of our Los Angeles Water and Power Systems, less depreciation, on June 30, 1958, was $798,518,409, or approximately one-half of the estimated cost of the Feather River Project

On May 14, 1957, our Board of Water and Power Commissioners adopted a statement of financial policies for state water projects in which we place great emphasis on the need for bond backing for any state water project Even though authorized for a specific amount, sufficient to guarantee the completion of the project by such financing, the bonds would be sold only in the amount needed to carry on a construction project time table If substantial funds become available from state and federal sources, conceivably the required bond sales would be considerably reduced This, of course, would result in interest savings, which, in turn, would mean lower water costs all along the delivery lines

It is a matter of historical record that local agencies—both public and private—in California have for many years financed the full cost of their water and power developments These include domestic and industrial water supply and irrigation projects Because the magnitude of the problem has increased in recent years there has been a trend for local agencies and communities to band together and form larger districts to cope with the larger projects needed today

In considering financing of California state projects, we should keep in mind two possibilities for federal financial assistance One is the recommendation of the advisory committee appointed by President Eisenhower which stated.

> "The federal government should encourage nonfederal initiation and assumption of responsibility for construction of water resources projects This encouragement should include payment in the case of nonfederal projects of the amount that would have been nonreimbursable had the project been federally constructed, and the making or guaranteeing of loans to nonfederal interests for the construction of projects, and other appropriate means"

A second important development along the same line is the bill—H R 11544—introduced by Congressman Clair Engle on March 20, 1958, which would have the effect of implementing the policy recommended by the President's advisory committee Mr Engle's bill was not acted on during the last session of Congress, but its principles would have been applicable to the State Feather River Project Briefly, this bill would enable the federal government to advance on a nonreimbursable basis the amount of money in a project chargeable to flood control and would provide interest-free loans from United States funds for the portion of a project allocated to irrigation

Inasmuch as the State of California, through its official representatives, has studied the various reports on national water policy and is familiar with the practices of the various local water agencies, it has the necessary background of study and research to enable it to draft a sound water policy for its own projects Such a policy we believe, would make provisions for continuing financial support and participation by the federal government and by local agencies within their respective historic spheres of activity At the same time, there should be provision for proper reimbursement of costs to the State It is our firm conviction that a framework for such a policy already has been outlined in the resolution of the Board of Water and Power Commissioners previously referred to and in the financial policy statement adopted by the Board of Directors of the Feather River Project Association on August 9, 1957, and by others

Basically, these policies start with the belief that the State of California should assume overall responsibility for financing the Feather River Project and other authorized state projects Four principal sources of funds to carry out these programs are mentioned

1. Bond Issues

In order to assure completion of any major project it is essential that sufficient bonds be voted to supplement other funds available The interest and redemption payments on such bond issues should be completely reimbursable from project revenues

2. Miscellaneous State Funds

The State General Fund, tidelands oil revenues and funds from any other sources deemed appropriate by the State Legislature should be paid into a Water Projects Construction Revolving Fund Revenues from the sale of project water and power also should go into this fund but payment of both interest and redemption charges should have first priority Expenditures for reimbursable features of projects should be under control of Legislature, by direct appropriation Nonreimbursable payments to be made from the State General Fund include such items as acquisition of reservoir and dam sites, rights-of-way, relocation of highways and utilities and improvements that must be removed or that may be damaged by project construction Recreational features incidental to water or power developments should properly be paid for from the same state funds that pay for the present state beach, park and recreation systems These too are nonreimbursable

3. Federal Funds

Federal funds for flood control, fish and wildlife protection, recreational features of nationwide interest, navigation and similar items under established federal policy should be nonreimbursable Federal funds for irrigation should be reimbursable in accordance with prevailing federal policies, provided no handicaps are placed on state ownership and operation

4. Revenues

Revenues will be derived from the sale of project water and power and, in some cases, from taxes or assessments levied on areas or districts benefitted from the project For convenience and proper accounting, an operating fund with separate accounts for each project should be established

The financial framework outlined above would, I believe, keep the State of California on a sound economic basis in launching the vast undertaking contemplated in the Feather River Project and in other units of the California water plan However, further assurance can be given through a provision that contracts be entered into by the State with water disbursing agencies as soon as practicable A precedent for this recommendation was established by the United States Congress in 1928 when the bill authorizing construction of Hoover Dam and Power Plant was passed This bill, known as the Boulder Canyon Project Act, required the Secretary of the Interior to have firm power purchase contracts guaranteeing repayment in full of the $165,000,000 project before any work could commence

I do not believe we need to make signed contracts a requirement before actual construction is commenced on the Feather River Project, but I do believe serious thought should be given to developing such contracts long before the project is ready to deliver water Local agencies or districts, in addition to signing contracts for specified payments, should make provision to finance their own connections to the project and should provide their own distribution works for delivery of water to the ultimate customer.

In order to give water rights protections to those who would, in effect, be underwriting the major costs of the project, the State should have the power to enjoin any other person from taking project water unless a proper contract was negotiated with the State

Because all major water supply projects are planned to meet expanding water needs over a period of 20 years or longer—the Owens River supply, for example, met Los Angeles City growth from 1913 to approximately 1950 and the Metropolitan Water District Colorado River Aqueduct has been supplying the increasing amounts of water to its service area since 1941 and is expected to have sufficient water to meet demands until about 1970—it is obvious that there will be surplus capacity in the Feather River Project when it is first completed In order to secure additional revenues and to meet, temporarily, water needs of some areas, consideration could be given to interim contracts that would not grant permanent water rights to the temporary users.

There has been some apprehension as to the ability of the State of California to finance the estimated $1,600,000,000 cost of the Feather River Project An analysis of various possible sources of revenue, plus an appraisal of the economic resources of the State, indicates to my satisfaction that the project can be successfully financed without imposing any unreasonable burden on the general taxpayer of the State nor upon water users The following arithmetic shows how the total goal may be achieved:

(a) $100,000,000 may be available in federal appropriations for such recognized federal obligations as the cost of navigation, flood control, fish and wildlife and recreation

(b) A possible $330,000,000 in federal loans for the irrigation features of the project may be had The Bureau of Reclamation already has proposed building the San Luis Dam and Reservoir at a cost of $230,000,000 for the primary purpose of serving lands in West Fresno County Inasmuch as Kern County includes areas almost as great as those in Fresno County, a portion of the cost of storing water for irrigation purposes at San Luis could be properly allocated as a federal charge Other features could bring the federal participation up to the $330,000,000 figure quoted In using this figure I am fully aware of the opposition in some parts of the West San Joaquin Valley to the 160-acre limitation that customarily is attached to federal irrigation projects, but I also am aware that a serious attempt has been made in Congress and no doubt will be made again to meet that opposition by waiving the acreage limitation where irrigators are willing to pay the interest charge on their share of the project

(c) Another $100,000,000 might be appropriated by the State of California for purchase of lands and rights-of-way and for relocation of roads and railroads and similar nonreimbursable items

(d) Another $100,000,000 or more conceivably could be transferred from the State's tidelands oil fund during the construction period It seems eminently fair to use a portion of the funds that the State receives through the depletion of one of its natural resources to help develop another and even more basic resource—water

(e) This would leave a balance of approximately $1,000,000,000 to be guaranteed by general obligation bonds of the State of California These would be sold only as needed throughout the minimum 10-year construction period for the Feather River Project

The mention of $1,000,000,000 in bonds causes some persons to doubt the ability of the people of California to handle that large an issue A recent development in the East Bay Municipal Utility District should reassure any "doubting Thomas" On June 3, 1958, the voters of that district approved a $252,000,000 bond issue for water system expansion over a 10-year period The population of the district is 1 100,000 That means a per capita bond debt of $230 has been assumed by those citizens On the same basis, a one billion dollar statewide bond issue, with a present population more than 14,000,000, amounts to only $71 per capita If we take the estimated 7,000 000 persons living in the Feather River Project service areas—only those who would directly benefit from the project—the per capita bond obligation still is only $142 compared to the $250 obligation of the East Bay Municipal Utility District

Up to this point my discussion has pertained to the bases for financing and repayment that have been formally considered and put forth by our Board of Water and Power Commissioners and in harmony with the principles advanced by other organizations which have been mentioned

In anticipation of today's meeting your subcommittee has expressed its interest in securing reactions of local and statewide interests to six questions Due to lack of time I have not had the benefit of consultation with other public bodies or groups and I wish to emphasize that my statements with respect to the subcommittee's questions express only my own personal ideas and beliefs

1 With respect to your subcommittee's question No 1, I believe that irrigation water users should repay in full those construction project costs which are properly allocated to irrigation With respect to the matter of interest payments it would appear that if federal financial investment aid is given to particular areas, capital cost payments could be without interest, in accordance with federal policy If the lands would fall under state development in financing it would appear more desirable for the repayments of allocated costs to be with interest This division of policy would simplify the 160-acre limitation question

2 It should be the State's obligation to provide and maintain a sufficient, regulated quantity of water in the "Delta Pool" to assist in delta flood control and maintenance of water quality and to supply all of the State's water export contract requirements under the California Water Plan at a uniform rate, adjustable periodically, sufficient to pay to the State the reimbursable costs for such water development and delivery to the Delta Pool In the event the State delivers said "Delta Pool" water to a contracting agency, the cost to the State for such delivery, including operation and maintenance, should be added to the rate established for water at the Delta

3 Agricultural water has generally been sold at lower rates than domestic or industrial This differential, however, should be taken care of in the local service areas as such areas may provide

4 With respect to subcommittee question No 4, it would appear that in accordance with our previous statements and resolutions our community would find it most desirable to have the project construction financed largely by bonds on which our community could assume its just share

5 I favor a uniform repayment policy

6 With respect to subcommittee question No 6, my discussion again goes back to the manner in which I believe subsidies, if necessary, should be provided If water is delivered to an area it should be paid for by that area The problem of subsidies is, as stated before, a separate subject, to be handled locally by the area served

One further point relating to financing and economics seems to be called for to insure financial integrity of the Feather River Project and future projects That would be a provision whereby the Legislature would be guided by standards of feasibility in making appropriations for projects Without such a "yard stick" there is no limit to the number of projects that could be started, but inevitably many of them would fall by the wayside because of their inability to pay out California has tremendous areas of unused land, but it is economically impossible to provide water everywhere First, we don't have that much water and second, we can't afford to pay for an unlimited series of water projects A set of feasibility standards will keep us on a sound basis in the future development of California's water resources

(Transcript of December 3, 1958, p 21)

STATEMENT OF THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

1 (a) Should irrigation water users repay in full those project construction costs, plus interest, which are properly allocated to irrigation?

Yes, particularly because unprecedented relatively high water costs are involved in all projects proposed under the California Water Plan, so that irrigation (or other) subsidies would be prohibitive on either the project's water users or the State's taxpayers Also, the irrigation of proposed new lands in California is in general a commercial, profit-seeking activity (frequently corporate and large-scale) with no apparent justification for water subsidies

(b) Should agricultural areas that cannot pay full irrigation water costs be excluded from service by state projects?

Yes, generally They should be included only if inclusion would benefit and add to the feasibility under the circumstances peculiar to the particular project, and further only where approval is had from the other participating contractors in the same project.

2 If you feel that irrigation water users should not repay in full all allocated construction costs, plus interest, how should the repayment deficiency be met?

See answer to (1) Such economically infeasible projects or units may best be postponed until federal construction, interest-free, can be secured.

3 Providing repayment assistance by assessments on urban and municipal areas adjacent to irrigated acreages which indirectly benefit by increased sales and commerce resulting from irrigation is being successfully employed by the U S Bureau of Reclamation Do you feel that these "conservancy districts" are desirable for state projects?

Yes, subject to local acceptance and voting of formal approval of contracts particularly where supplemental water is chiefly needed The same objective is more commonly reached in California by the successful operation of irrigation districts and municipal water districts

4 (a) Can your area assist the State in financing project construction by advancing any portion of the construction costs of a project or facility which serves your area?

Yes We have the financial capacity and could advance such money for the construction cost if such a proposal were approved by this district's voters, and assuming all other conditions as favorable for the completion of the contemplated development

(b) Do you have sufficient assessed valuation to advance this money before the project is in operation?

Yes In the case of the Metropolitan Water District of Southern California, the preferred alternate method may be by this district constructing on its own account, substantial portions of the proposed project which are planned for the sole use of members of this district, including a distribution system within the district boundaries

5, 6, 7 Repayment methods for recreational costs

As recreational features of the California Water Plan are largely limited to the northern portion of the State, and each item needs individual consideration, comments responsive to the actual questions do not now seem practicable In general, however, for multiple-use state water projects, the U S Bureau of Reclamation pattern or policy for incidental recreational benefits and costs is considered desirable and proper, with recreation resulting in no increase in costs to other water users, but added direct costs solely for recreation purposes being financed from user fees or otherwise treated as nonreimbursable

8 Do you feel that municipal and industrial water users should assist irrigation repayment by some additional charge for water made specifically to assist irrigation water users?

In general, the answer is most emphatically no! This is particularly the case as between separate contracting agencies such as water districts However, within a given contracting agency, such a policy can best be left to local determination, within the limitations of its governing act The Metropolitan Water District Act, for example, requires (Section 6(8)) that water rates "shall be uniform for like classes of service throughout the district"

(Transmitted by letter of December 19, 1958)

STATEMENT OF WALTER T. SHANNON
Department of Fish and Game

We welcome this opportunity to convey to your subcommittee some thoughts and viewpoints of the Department of Fish and Game regarding the State's fish and wildlife resources in relation to economic policies of water development projects We regret that the press of other work has prevented us from making as detailed and as comprehensive a presentation as the subject deserves, but we shall attempt to bring out some of the most essential points.

In discussing fish and wildlife in relation to water development we believe it is essential to make a distinction between the terms, "fish and wildlife" on the one hand and "recreation" on the other These terms are frequently used synonomously, which sometimes results in confusion or misunderstanding

To clarify this presentation let us define "fish and wildlife" as referring to the State's renewable natural resources—the wild animal life—which survives in, or whose existence depends upon water. The term "recreation" means the use of these fish and game resources, the use of the water, or the use of facilities that may be created as a direct result of the presence of water for recreational use and enjoyment of man.

Although this definition of "recreation" is tied to the word "enjoyment" it should not be interpreted as a limitation or reflection on the importance of recreation to our economy and general well being of our people

The State's fish and wildlife resources support or make major contributions to commercial fishing industries, food supplies, recreation, and many other businesses, industries, activities, and factors important to the economy and general welfare of California.

We have little difficulty in measuring the commercial values of fish and wildlife We know, for example, that commercial fishermen caught more than 11 million pounds of salmon in California in 1956 valued at nearly 4 million dollars based on the price paid to the fishermen.

At the same time this resource is being harvested recreationally, and we believe that its recreational value is worth many times that of the commercial value But specifically, how much is a sport caught salmon, or a day of salmon fishing, or for that matter a day of fishing or hunting for any particular kind of fish or game, worth in dollars and cents? There is general agreement that it far exceeds the meat value of the fish caught or the game bagged, but further refinement to a specific figure for use in cost-benefit ratios in water project developments has been difficult, to say the least.

The Department of Water Resources and the Department of Fish and Game are currently engaged in a co-operative effort designed to come up with a dollar value assignment for recreation. At the present time these efforts have produced a possible method which seems to hold promise and which is being explored more thoroughly. It involves consideration and use of three factors, (1) the value of a visitor day of recreation based on an individual's contribution to the gross national product, (2) additional benefits to the local economy of the project area, and (3) recognition of the inherent, intangible values in all forms of recreation.

Dams create barriers to migratory species of fish, preventing access to their ancestral spawning grounds Diversion of water in excessive amounts can leave the stream without sufficient water to provide for fish food production, spawning, migrations, etc The fish may not be killed immediately but the population gradually declines and the end result is the same

On the other hand, a water project can result in improved water supplies or water quality for fish and wildlife In some cases they have provided better conditions than existed prior to the development Creation of other types of water, associated recreation and improved access to recreation areas are other beneficial effects of some projects.

The prevention of damage to the fish and wildlife resources involves the maintenance of adequate stream flows, construction of fish ladders, fish screens, fish hatcheries, project facility changes and many other special provisions, all of which are costly and sometimes have a major effect on the economies or feasibility of a project.

Federal legislation has also recognized the importance of fish and wildlife and has provided specific mechanics for the evaluation of the effects on fish and game resources of federal water developments and other water projects coming under federal permit.

Under the terms of the Public Law 85-624, the "Fish and Wildlife Coordination Act" every water development project being developed by a federal agency or under federal permit must be submitted to the U. S Fish and Wildlife Service and to the state agency having jurisdiction over the fish and wildlife resources of the state in which the project lies for review for the purpose of conserving, and where possible, enhancing these resources

Under the provision of this law we review all Bureau of Reclamation and Corps of Engineers projects and applications for Federal Power Commission licenses, and we have been able to prevent many of the kinds of losses to fish and wildlife that frequently occurred in single purpose water development projects prior to its enactment.

There is need for similar legislation on the state level so that the Legislature may have the advantage of an evaluation of the effects of a project on fish and wildlife and a designation of the means for their protection and improvement when

it is considering a water development project for appropriation of funds This is particularly important if the State is to embark on a program of financing water development construction

Much confusion has existed concerning the place of protection and enhancement of fish and game in water developments and the responsibility of the project sponsor to bear the costs involved Such confusion usually results from a misunderstanding of the types of protection or improvement applied to water development

This can best be clarified by the use and definition of three terms, (1) maintenance, (2) mitigation and (3) enhancement

Maintenance refers to the necessary measures to protect the existing resource, including its potential, at its present or natural level of productivity in so far as is possible Maintenance measures include such features as stream flow maintenance below dams and diversions, fish ladders, fish screens, etc

Mitigation measures are those taken to compensate for an unavoidable loss to the resource Provisions for a fish hatchery to compensate for lost spawning areas, for a larger minimum pool in a reservoir to compensate for an important stream fishery inundated by the reservoir, or for improved stream flows in some other stream to compensate for reduced flows in the project stream can be considered as mitigation measures

Enhancement means the improvement of conditions for fish and wildlife resources, making the habitat better than it was under natural or pre-project conditions Improved stream flow maintenance below a project dam would be a typical enhancement feature The terms "preservation" and "protection" which are frequently used are somewhat synonomous with the combined scope of maintenance and mitigation as I have previously defined them

We generally adhere to the policy that a nongovernmental water development project sponsor is responsible for the costs of maintenance and mitigation measures, but should not be held responsible for enhancement features A project sponsor can hardly be held responsible for improving conditions for fish and game over and above their existing or natural level, or present potential The costs of enhancement are rightfully the responsibility of local, state, or federal governments and should be provided through nonreimbursable grants, or appropriations of funds

The general trend nationwide on state and federally constructed projects is to consider maintenance, mitigation and enhancement as nonreimbursable features We recommend that such a policy be adopted in California in relation to projects *constructed and financed solely by the State* or by the State in joint state and federal projects

Chapter 2052 Statutes of 1957

A brief comment on Chapter 2052, State Financial Assistance for Local Projects Under the provisions of this statute state grants in furtherance of a project may be made for several purposes, and the first one listed is "For the part of the construction cost properly allocated to the preservation and enhancement of fish and wildlife incidental to the primary functions of the project"

If the term "preservation" in this provision is to be considered as meaning the same as maintenance in our terminology it raises a question As we have indicated previously, we consider a project sponsor responsible for the costs of maintenance features but if he is to receive a state grant for maintenance it may in effect constitute a subsidization of a private development (in the case of a non-state project) for the preservation of a state-owned resource

In closing, may I call your attention to a weakness in our water laws in relation to stream flow maintenance and recreation water At the present time stream flow maintenance releases are required below numerous dams and diversions throughout California by permit and license conditions, and by written agreement between the operator and the State We can fully anticipate the construction of numerous dams in the future which will have stream flow maintenance for fish and wildlife and recreation as one of, if not the primary, purpose

It is essential that such water have some means of protection and have some status in the form of a reservation from diversion downstream in the area intended to be benefited by such water. Unfortunately, such protection is in considerable question at the present time

(Transcript of December 3, 1958, page 47)

STATEMENT OF WILLIAM ROSECRANS
Southern California Water Co-ordinating Conference

Question No 1 Yes They should be included only if inclusion would benefit and add to the feasibility under the circumstances peculiar to the particular project and, further, only where approval is had from the other participating contractors in the same project More specifically, it should be the responsibility of the State to recover all costs except those designated by Legislative action as nonreimbursable

Question No 3 It seems to us that this is a matter to be determined by the water users and other citizens in the local entity The State's responsibility is to assist local units in their quest for water It is the responsibility of the local unit to develop ways and means for meeting the costs necessary to getting the needed water supply The principles long established with respect to Irrigation Districts indicate the soundness of the concept that all parts of a community within the service area of a water distributing entity benefit directly The degree of benefit, of course, differs with each parcel of property within the entity Therefore, the principle of a moderate tax to cover the minimum or basic benefits, plus a direct charge for water used, is sound policy If there are cases where the Irrigation District approach is not practical the conservancy district type of approach might well be used

Question No 4 Generally speaking, the urban areas in Southern California needing additional supplemental water have sufficient assessed valuation and economic capacity to pay their portion of costs of a state water development such as the Feather River Project, or alternately by constructing such portion on their own account, or advancing moneys in contract with the State We believe this is sound policy to be applied throughout the State.

Question No 8 Between contracting entities, our answer is "no" Within contracting entities, determination should be left to local option

(Transcript of December 3, 1958, page 78)

LETTER FROM M. A. NICHOLAS
Dated November 26, 1958
San Bernardino County Board of Supervisors

Concerning particular points posed in questionnaire, we respectfully present the following

> First of all, it must be recognized that many varying circumstances revolve about particular areas with conditions, in many cases, peculiar to individual locale Thus, to establish policies concerning charges, repayment or related procedures, and to obtain the greatest benefits and returns area-wide, flexibility with alternatives incorporated with policies would presumably attain the best end result.
>
> Secondly, it would appear that study is warranted to ascertain the merits of local payment or repayment with state contribution by virtue of the widest possible tax base for portions above local abilities where it can be ascertained that the undertaking is feasible and justifiable on a basis of widespread indirect benefits or long range feasibility

In direct response to questions afforded and with qualification and reservation made pending more particular knowledge of specific projects envisioned, the following comments are made

> Basically, irrigation water users should repay in full costs properly allotted to irrigation purposes where the charges are such as to be economically feasible on the part of the user If rates are reasonably within their limitations, it would be inequitable for them not to so pay
>
> Agricultural areas that cannot pay full costs should be excluded from service only if it is reasonably ascertained that a liability is to be incurred which cannot be justified on area or statewide basis or not justified by long range trends or changes In other words, a perpetual liability is not in the best public interest, however, the determination of such perpetual liability is a matter for close scrutiny

Where use areas are encountered involving repayment deficiency and projects considered desirable in the best overall interests, repayment should be obtained from that area reasonably determined to be the zone of direct and indirect benefit if such course is economically feasible If not, state contribution should be brought into play The area or zone of direct and indirect benefit might well include urban and municipal regions adjoining in a distribution of assessment In this respect, it may be well to consider the advisability or feasibility of assessment predicated on benefits and economic feasibility.

In order for the County of San Bernardino at this time to render opinion on ability to advance funds toward a project, considerably more information would be presently required Basically, it may be stated that the county operates under a policy of minimum taxation to meet the requirements of the agency and without surpluses other than for contingency purposes Under such circumstances, advances under present status is unlikely It would also seem unlikely that the county itself would become a contributor as this would more likely fall within the cognizance of a special-purpose district Depending upon the nature, extent and circumstances of a particular project and such district as may be involved together with time elements and amounts required, it might be possible to establish funds in some amount before a project were placed in operation

As to repayment of costs attributable to recreation or for fish and wildlife, we have a considerably more clouded array of circumstances and any opinions would apply only to a specific circumstance if unveiled It is doubtful that local assessments for fish or wildlife features is practical or acceptable if such a project were to be proposed License or fee revenue would probably be the most to be hoped for. As to the recreational side, as might be envisioned by a very substantial dam and reservoir if such were to be propounded, a better possibility might exist as to a park district and fee collection However, amounts of money raised which might be tolerated on the part of a district assessment would be expected to be minor as would be the case of fees, generally considered of token nature in keeping with public opinion.

STATEMENT OF ROBERT HANLEY
California Farm Bureau Federation

Contracts for the delivery of water from state projects should include but not be limited to.

1 Short-term contracts for interim deliveries which confer no rights
2 Permanent contracts providing permanent rights to the use of water.

The State's water export contract requirements under the California Water Plan should be at uniform rates, for similar use classes, adjustable sufficiently to pay to the State the reimbursable costs for such water development and delivery to the Delta

When the State delivers said Delta water to a contracting agency, the cost to the State for such delivery, including operation and maintenance, should be added to the rate established for water at the Delta.

Every encouragement should be given to water project development by local districts Through local district development, maximum use of private funds can be realized Nonreimbursable grants should be made by the state and federal governments to such local project developments for flood control, navigation, salinity control, fish and game, and recreational values

Reimbursable costs of any state project should not include the costs of acquisition of sites, rights-of-way, relocation of highways and utilities The federal government should provide funds on a loan basis at appropriate interest rates to the State and local districts to assist with initial construction of water projects, such loans to be repaid over a specific contractual period with the State or local district maintaining title and full control of the project.

In order that the State may meet its financial responsibility in a continuing program of co-ordinated statewide development, the Legislature should establish a "Water Development Fund," as a special fund in the State Treasury. This fund should be made up of, but not necessarily limited to:

1 All money in the Investment Fund,
2 All future tideland oil and gas revenues to the State, above the cost of administration of such land and any authorized refunds, in excess of an amount not to exceed that presently committed in each calendar year,

3. Net revenues from the operation of state water projects and joint water projects from which the State is entitled to a portion of the revenues;
4. Proceeds from the sale of state bonds issued to provide funds for water resource development, and
5. Any other funds made available solely for the Water Development Fund by appropriation from the General Fund or otherwise

We must recognize that, as the population grows and the State develops further, much greater values should be placed on such nonrepayment features of multipurpose water projects as flood control, recreation, fish and wildlife, etc A more realistic allocation of costs to these features will, in turn, reduce the costs allocated to the water conservation program

Certain features of these water projects, such as the production of hydroelectric power, must be developed and used so as to help finance the water conservation and distribution features if we are to have maximum beneficial development of our water resources for the ultimate economic growth of the State of California

(Transcript of December 3, 1958, page 103)

STATEMENT OF HOWARD W. CROOKE
Orange County Water District

I am Howard W Crooke, secretary and manager of the Orange County Water District. We are the district which is operating a basin-wide water management program I believe all members of the Legislature are quite familiar with what we are doing because it is our duty

I appeared before you in 1953 for the adoption of some amendments to our act under which we could levy what is commonly called a pump tax on the extraction of ground water in our area We have now had about five years' experience in the operation of this new program in Orange County During the lifetime of our district, there has been brought into the district some 725,000 acre-feet of Colorado River water of which about 450,000 acre-feet has been used for ground water replenishment We have now collected some two and a half million dollars under our replenishment assessment plan and to give you a case of how all this has been accepted by our people, a recent check of our records indicates that the delinquent accounts are not in excess of about $2,000 There are meters on all water wells in the county where required with the exception of probably seven or eight, and those particular cases are now in the hands of the district attorney In each instance they are very small producing water wells. There are meters on all the major water wells

We have recently completed a study of the costs of producing ground water The result of that study indicated that when you take in all costs, amortization of the total expenditures on a recognized length of years, cost of power, interest on the investment, et cetera, that the average cost of producing agricultural water in Orange County in the areas of our district is approximately $9 30 per acre-foot The current replenishment assessment rate is now $3 90 per acre-foot So if you add those two figures together, you can see that the agriculturalist now is paying about $13 an acre-foot for water in Orange County

We have had some very unique experiences in operation of this program in relation to the cost of water and the use of water Many of our farm people are beginning to tell us that now, for the first time in their farm operations, they are given full consideration and it is part of their planning the utilization of water for irrigation where heretofore it was just one of those things, they went out and irrigated With meters on their wells, and forced to apply this replenishment payment in order that we can get water to pump from their wells and, incidentally, we are importing half of our water at this time, they are now using water very wisely In other words, many, many of our farm people are telling us that they are not using as much water to produce their crops under the type of a plan as they were using before and they are now producing better crops because they are giving much more consideration to the application of their water It is a very unique situation

We are running the same thing in the field of industry A few years ago, many of the industrial plants in Orange County were using their water once and letting it go down the sewer Now since the water costs have gone up, many of these plants have gone into a complete re-engineering program and they are now using their water several times over In fact, some time ago, in talking with one of our large industrial users of water, they indicated their willingness to put in spreading ponds so that it could be added back to the ground water body We carried on some investigation analysis of their used water by taking samples during each four-hour period, the

plant operating on a 24-hour basis, for several days and found the water on a borderline That program has been held up temporarily and until they can again re-engineer their plant and see if they may not be able to use the water a few times more

Now the reason that brings this to our attention is that in the building of these large transmission systems to take these waters from one area to the other, I think we should give careful consideration to how far we can go in the field of subsidizing use of water Because if we are not awfully careful and make water too cheap, we are going to have to build much more plant capacity to deliver the water that is going to be used unwisely or wastefully, whatever term you like to apply Our program has worked extremely successfully in our county We are very pleased at the attitude of the people We are also pleased, too So we can take them around and show them what we are doing We are at this time carrying on some experimental projects of ground water replenishment in areas where we have not spread water heretofore, trying to get ourselves in a position so that we can acquire additional spreading sites so that as our area grows and water requirements increase, we will have adequate capacity to add to the ground water body larger volumes of water than we have been called upon heretofore Now, to give you a case of the magnitude of the ground water spreading program we have just committed the acquisition of a 2,100 acre site located in the area the Santa Ana River used to go and we paid $4 150 per acre for this replenishment site

Now, in order to cut down on the acreage required, we are excavating this site 30 feet deep so that we can put more water in and have the pressure of the water to help increase the rate of percolation Now, when you get into a program of that magnitude, and when you realize that we already own somewhere in excess of 800 acres of spreading grounds, you can see what we are talking about in preparing ourselves to have adequate areas upon which to spread waters from whatever source they are available to attain economy in our area

(Transcript of December 3, 1958, page 108)

STATEMENT OF SAN DIEGO COUNTY WATER AUTHORITY

Ideally, projects impinging so seriously upon the state financial resources should be limited to the construction of those facilities essential and adequate to supply only those uses having sufficient values to the users to repay their costs Projects should be tailored to those functions able to pay their participating costs and not expanded to include services for which the ability to pay is less than cost

If additional intangible benefits warrant an expansion of the project to enhance the general welfare, the design and scope of the project has escaped the limitations of economic laws and has entered the field of politics In this field no yardstick applies, except political expediency and philosophic speculation

Our original concept of development under the California Water Plan was that projects would be designed and constructed to supply their products to contracting agencies who together would be ready, willing and able to repay in full all construction costs Under this concept the products of any authorized project would be offered to contracting agencies of the State agreeing to repay the full costs of the benefits received. If such contracting agencies then desired to provide differential ability-to-pay rates for different classes of services, they could do so The agencies could also levy a tax upon property within their boundaries to make up deficiencies, if any, resulting from insufficient revenues from water sales This process is one familiar to all water distributing agencies, from irrigation districts supplying the major portion of their water to irrigators, to municipalities supplying the major portion of their water to industrial and domestic users Nearly all such agencies have rates adjusted to the class of use and pay the capital cost of the construction of their water supply systems in part through revenue from water users and in part through tax levies upon landowners who receive secondary benefits whether or not they are water users

Under this approach to what might be called agricultural subsidies, there is a local control because the users who must pay a portion of the costs of the project through capital levies have influence upon the establishment of the policy through control of the rate-making and tax-levying body, thus assuring the fairness of the apportionment within the contracting agency of the burden of the repayment of costs

At the same time the local people within the contracting agency can offer encouragement to the development of agriculture within the agency by reduced water rates to the extent that the improvements in the economy from a highly developed agriculture react to the improvement of general business conditions and property values within the agency and therefore appear to warrant some subsidy in water cost Any nonreimbursable capital available for the project should reflect to the benefit of all contracting agencies of the project pro rata, and if there are revenues from the project other than that from water sales, those revenues should reduce the cost, again pro rata, to all agencies

The construction of recreation facilities and the policy to be adopted in reference to charges for their use present a somewhat different problem It is doubtful that recreation in any area of the State will stand a charge which will return a substantial portion of the cost of the construction of water storage facilities It can, however, be expected that it should return sufficient revenues to pay the costs of operation and maintenance and repay the cost of construction of those facilities needed solely to provide for recreational uses, as for example campsites and roadways, boat ramps, piers, etc.

It would appear that the development of recreation by the State would better be left a function of the Division of Beaches and Parks than imposed upon water conservation projects Development and operation, if by the division or by local counties or districts, should be subject to restrictive supervision by the Department of Water Resources to insure that the main project purpose of water conservation is not completely submerged in their operation for recreation

There may be statewide public benefits in the use of project water for both recreation and for irrigation which are greater than the dollar value to the users thereof, and which therefore justify contribution in some form by the general public If this be true there still appears to be no logical method by which to calculate the actual dollar value of such benefit over and beyond that which the user or participant is willing to pay and, therefore, to arrive at the required contribution to subsidize such uses and benefits on any established formula In this lies the danger of departing from the known formula of a complete recovery of the costs from the users of the project water whether they be purchasers of water within a contracting agency or participants in the recreational developments constructed as part of the project

If, on the other hand, it is politically impossible to build a project on the basis of full repayment of its costs by those benefited, there may be sufficient advantages to the project to warrant some concessions from a purely political viewpoint If so, it does not appear that the deficits so incurred should be chargeable to contracting participants who are already paying their full share of the cost of the project The deficit should be made up from the State's Treasury, in which case the contracting participants will pay their pro rata share of the deficit as state taxpayers

Perhaps the fairest approach to the solution of the problem is to conclude that if subsidies with state funds for irrigation and recreation are necessary in order to construct a project, such subsidies should be limited to an arbitrary percentage of the cost of each project It would have the virtue of at least specifying the amount of the subsidies If included in the cost of each project when proposed for construction it would make less likely the continual expansion of the amount of the subsidies through political pressure or otherwise and provide some sort of yardstick upon which could be gauged the limitation to which any project could be expanded to include these features and the actual feasibility of such expanded projects when proposed for development

In the San Diego County area, and particularly that portion thereof served by the San Diego County Water Authority, it is believed possible to recover the entire applicable costs of the direct benefits from the Feather River-Delta Diversion Project considered as the first unit of the proposed California Water Plan This area is also able to contribute to the costs of works necessary for delivery of the water before the water would be available Actually, the San Diego County Water Authority has already done so in its financing of the current construction of the Second San Diego Aqueduct along the route recommended by the Department of Water Resources as being the route through which state project water would be delivered into San Diego County.

(Transcript of December 4, 1958, page 12)

STATEMENT OF R. E. GRAHAM
City of San Diego

Before the proper answer can be given to the problem as to whether agricultural uses should be subsidized, basic information is needed as to the acreage now under irrigation, the surplus crops now being raised, the types of crops which could be raised if water were available and quantity thereof, the amount of the purchase price of water which could be paid by irrigators if best use of farming lands were made

Determination as to whether projects are rescue projects or new developments would have a major influence in determining whether subsidies to irrigation are justified It would seem that there might be justification in rescue projects from an overall state subsidy but that new lands should be able to repay the cost of water in their entirety to the State less, of course, contributions when there is a federal obligation in line with past federal policies

In determining what subsidies, if any, are justified for irrigation, the detailed information indicated above, including the totals in dollars, is required and until this be known the price allocation of water and decision as to any subsidies should be held in abeyance

If subsidies are indicated such subsidies should be on a statewide basis and not charged to other water users because the benefit would accrue to the State as a whole and not to competitive water users.

With respect to conservancy districts, each area will have its own problem and they may be desirable in some areas and not in others

In general, areas that cannot pay full irrigation water costs should be excluded from service by state projects However, there may be areas for which service may be provided at minimum cost until they can pay their full share plus make-up This would probably result in certain areas being unable to pay such costs initially

The economic ability to pay should be reviewed for all classes of agriculture and also studies should be made as to the desirability of placing under irrigation large areas of land not presently irrigated It may develop that the economy of the State does not require full agricultural development of all such lands

The San Diego area can assist in financing project construction of portions which serve this area through the issuance of bonds The present construction program of the San Diego County Water Authority is essentially engaged in such state assistance since the facilities now under construction can be made an integral part of the state system The assessed valuation of the area is sufficient to support further projects of this nature

The experience of the City of San Diego in the field of reservoir recreation indicates that such recreation can normally repay only the direct costs of maintenance and operation, and small capital outlays involved directly such as boats, minor concession buildings, floats and station installations

Limited repayment of capital facilities may be possible for those recreation projects which would afford a high rate of use by the public We do not feel that any repayment of capital costs by recreation users should be considered for the state projects

(Transcript of December 4, 1958, p 26)

STATEMENT OF ED CLAPP
San Diego Chamber of Commerce

Question 1 Yes They should be excluded unless agricultural water users in such areas, in combination with other users, form a contracting agency to enter into an agreement with the State to pay the full amount of the costs allocated to such agency This will permit the fixing of a special rate by the agency for agricultural water if the users within the agency could justify such a rate

Question 2 Providing repayment assistance by assessments on urban and municipal areas adjacent to irrigated acreages which indirectly benefit by increased sales and commerce resulting from irrigation is being successfully employed by the Bureau of Reclamation Do you feel that these "conservancy districts" are desirable for state projects?

Question 3 This problem may be resolved in a different manner in various parts of the State For some areas conservancy districts may be most desirable In other areas contracting agencies may find it more equitable to use the well established irrigation district principle of having a basic tax for all property within the district, plus a charge for the water used by volume

Question 4 Yes And we believe other areas will be willing to do so

Yes San Diego County has been doing this for many years in connection with the importation of water from the Colorado River We met the cost of the second aqueduct by a 35 million dollar bond issue, built to specifications laid down by the State

Question 5 Capital outlay for recreational projects in California has historically been developed on a statewide basis by bond issue, and to a lesser degree by legislative appropriation The State should continue to develop recreational areas for fish and wildlife as it does small craft harbors, state parks, beach parks, mountain parks and snow sport areas, and capital outlay for these should not be included in water development costs

Question 6 Yes, subject to restrictive supervision by the Department of Water Resources or the contracting water agencies to insure that the primary purpose of water conservation and distribution is not subordinated to the recreational uses

Question 7 It is doubtful that such types of income could raise funds in excess of the cost of operation and maintenance of the recreational facilities and of providing the roads, campsites, boats, ramps, piers, etc, which would be needed Expenditure of considerable sums may be necessary to protect against pollution There might develop dangerous demands to turn project facilities constructed for water development into recreational resorts operated in a manner damaging to their primary purpose.

Question 8 All contractors for water from the State should receive like treatment and pay their proportionate shares Each entity should be privileged to determine within its own operating areas a means of taxing and levying water rates to pay all state allocated costs

(Transcript of December 4, 1958, p 34)

STATEMENT OF LOWELL O. WEEKS
Coachella Valley County Water District

The Coachella Valley County Water District encompasses 267,000 acres of land in central Riverside County, extending from the Whitewater River Canyon north of Palm Springs, south to the Salton Sea The entire area, similar to Southern California, in general, is experiencing explosive growth in population with agricultural development, recreational and resort uses and activities and home construction keeping pace with the expanding population

The Coachella Valley County Water District was formed in 1918, under the County Water District Act, for the purpose of protecting and furthering the water rights of the people in the area, to invoke and maintain water conservation principles and practices and to seek additional sources of water for the region This the district has constantly continued to do from the date of its formation to the present time as manifested by the construction works of the district, its water retarding and spreading operations, and its contracts with the United States of America The district has two repayment contracts with the United States, one of which was executed in 1934 for the construction of the All-American Canal Project and the other executed in 1947 for the construction of a distribution system to certain lands in the Coachella Valley

Any California State Water Plan not making provision for bringing supplemental water to this area of the State would be woefully defective The only source of water available to the Coachella Valley at the present time is pumping from the underground basin, which is in a condition of overdraft, and bringing water into the area from the Colorado River through the All-American Canal Project Overdrafts on the Coachella ground water basin annually exceed the safe annual yield, and we are actually mining water in the area

The Coachella Valley County Water District believes that all construction costs and the cost of maintenance and operation of works so built to transport water from one part of the State to another should be paid for by all of the beneficiaries There is a fundamental concept in this State that all of the land in an irrigation district benefits from the irrigation carried on in the area Urban and municipal areas which develop within the boundaries of a district are direct beneficiaries, and these lands are taxed or assessed to help pay for the irrigation project We approve of an extension of this basic principle to the service area benefited by any state water project

With the water sources presently available to the Coachella Valley being uncertain and inadequate and continually diminishing, it is imperative that additional water be made available or the economic expansion in this portion of the State will

be brought to a standstill The question, therefore, rises, "Can additional water be made available and if so, at what cost, and how will the cost be paid?" The current assessed valuation in the Whitewater River-Coachella Valley is in excess of two hundred million dollars For the year 1957 the Bureau of Reclamation operating in the 17 western states of the nation reported the average per acre crop value on all reclamation projects in those states to be $141 55, while in the Coachella Valley, that area constituting one of those projects, the per acre crop value was $700 79, being the highest crop value per acre returned from any project in the 17 western states The Coachella Valley area is willing and able to pay its fair and equitable proportion of a State Water Project which will deliver the additional water needed in the area The Coachella Valley County Water District believes that any facilities constructed leading into the Coachella Valley from any main transmission line in any state project, should be operated and maintained by the Coachella Valley County Water District, which district as a public agency of the State is able and willing to act as the local distribution agency of such water in that area

(Transcript of December 4, 1958, p 49)

STATEMENT OF DOYLE F. BOEN
Riverside County Water Association

Although the association proposes to continue its study of (the) questions and problems (in your questionnaire), the board of directors of the association resolved their current studies by unanimous action to support, in principle, the answers prepared by the co-ordinating conference, with the exception of answer number four

You will recall that question number four reads "Can your area assist the State in financing project construction by advancing any portion of the construction costs of a project or facility which serves your area? Do you have sufficient assessed valuation to advance this money before the project is in operation?" It was felt that inasmuch as the Riverside County Water Association represents several areas which vary with respect to present development and immediate financial resources, no general answer can be made without further study Preliminary studies by the association indicate that some Riverside County areas have strong financing capacity which might be immediately available, while other areas of this county will be required to draw heavily on their financing capacity to provide local water distribution facilities during early construction and early development periods of state water projects However, this does not mean that these same areas with less high value development will escape the explosive growth and development which is close at hand and which will, in turn, groom them to be ready, willing and able to carry their fair share of cost

(Transcript of December 4, 1958, p 53)

STATEMENT OF EDWIN PRESSEY
San Diego County Farm Bureau

WHY AGRICULTURE SHOULD HAVE PREFERENTIAL RATES

1. It is the largest user, 90 percent of developed water.
2. This use builds up underground supplies
3. Much water that was available for agriculture is now being used by cities—from dams and wells, so this water should be replaced
4. It has been proven that prosperity in a city depends on the prosperity of the agriculture of the countryside bordering the city, largely agriculture
5. Water costs must be reasonable to support agriculture and these costs are reflected in better food at reasonable prices to city dwellers
6. The city—for domestic use has priority on the water, therefore, agriculture is receiving only the surplus water available and should receive it at a price that reflects the cost of such surplus delivery Should receive a lower price for interrupted service
   a Total City of San Diego water consumption during the fiscal year 1956-57 was 23,216,880,000 gallons

b Establishing agriculture as a class of customer apart from industry for rate-making purposes should be a primary objective

c In the situation where large areas of farming land are being valued below that of adjoining industrial land for tax purposes, the agriculturist is hard pressed to justify rate treatment different from other land users (Such as within the City of San Diego)

7 Agriculture does not require the same type and quality of service We want water of the lowest salt content, but chlorination and sodium salts are detrimental

(Transcript of December 4, 1958, p 56)

LETTER FROM W. E. SILVERWOOD
Dated November 10, 1958
San Bernardino County Supplemental Water Association

Within the next 30 years there will be a much greater swing from agriculture to urban and industrial development on both the coastal and desert areas of our county as will be borne out by the forthcoming State Department of Water Resources study There are tremendous military establishments and reservations on the desert side of our county as well as some of the fastest growing desert development areas in the State that are entirely dependent upon their lowering underground water reserves for their existences

Regarding the pricing of agricultural water at a lower price than that of industrial or domestic water, your committee's recommendations might well follow the historic pattern that has been used in California for these many years by which agricultural water has been less costly than domestic and industrial water This pattern has been followed not only by the Central Valley Project, Irrigation Districts but also by the City of Los Angeles and the Metropolitan Water District

The important thing your committee should bear in mind is that where supplemental water is made available to any county, a gradual evolutionary change takes place from irrigated agriculture to urban and industrial development The farmers who set up, underwrite, and pay for the original water distribution system in any area are laying the foundation for certain industrial and urban development to follow, and the State could well afford to assist in this basic development of California by keeping the rates for water as low as possible to the original agricultural developers

The City of Los Angeles made water available at very reasonable rates to the largely unirrigated San Fernando Valley some 40 years ago The agricultural people of the valley did not have to first possess tremendous assessed valuations or to possess excess capital reserves to pay their proportionate share of the Owens Valley aqueduct as it was built However, look at the transformation that has taken place in 40 years from a parched desert valley made up largely of dry farming and range operations to the present tremendous development with millions and millions of dollars worth of assessed valuation The San Fernando Valley is now a very important economic factor in California's over-all economy Its amazing, rapid growth would never have been possible without an adequate supply of supplemental water Contrast this development with that of the neighboring Simi Valley where no supply of supplemental water has yet been made available This is an example of what can and will happen to many portions of California with the timely development of the California Water Plan

Supplemental water was made available to the barren desert of Imperial Valley where there was *no assessed valuation whatsoever* some 50 years ago Today this valley annually produces over 150 million dollars worth of agricultural crops Much of this money is spent for services and merchandise from metropolitan areas However, economic studies show that this 150 million dollars worth of agricultural crops is worth over one billion dollars in the final market place This means that the many utility companies, transportation firms, manufactures, wholesalers, jobbers, retailers, and their many employees and stockholders, most of whom live in metropolitan areas, *all* benefit from the billion dollar economy cerated by supplying supplemental water to a barren desert area devoid of *any* assessed valuation Bank of America economist William M Burke stated recently, "California generates $35 billion annually in income and will increase to $50 billion within ten years"

Your committee should recommend that the Investment Fund and all future uncommitted Tidelands Oil Revenues be used exclusively for the development of the California Water Plan It is *economic* and *sound planning* to use funds from a nonrenewable natural resource to put to beneficial use the average 40,000,000 acre-feet of water, California's most valuable annual natural resource, that runs to waste in the Pacific Ocean every year

(Letter of December 8, 1958, addressed to Chairman)

ASSEMBLY
CALIFORNIA LEGISLATURE
SACRAMENTO, October 10, 1958

MR HARVEY O BANKS, *Director*
Department of Water Resources
1120 N Street
Sacramento, California

DEAR HARVEY As a result of the hearings conducted by my subcommittee during the week of September 15th and the conference with your consulting board in Santa Barbara, one particular problem area seems to stand out in a manner worthy of special consideration by your consulting board This letter is to advise your department and consulting board of this problem area, as well as to serve as a progress report to members of the subcommittee who were unable to attend the Santa Barbara hearing and the meeting with the Assembly Concurrent Resolution No 14 consulting board

I have been interested in the similarities between the subject matter discussed at the conference with the consulting board and many of the problems presented to the subcommittee during our hearing of the same week These similarities seem to show that the basic problem of the nonapplicability of economic principles in pricing water keeps recurring Thus, Professor Boulding stated that he had just finished writing a textbook on economics Water pricing problems of state and federal projects do not appear in his textbook because they are not economic problems in the sense that the traditional concept of the market in establishing the price of water does not apply due to various forms of subsidies A few moments later Professor McKinley stated the problem from the point of view of a political scientist when he suggested that it would be helpful if the subcommittee members could sketch for the consulting board the political limits involved in water repayment problems These statements from two different disciplines seem to imply the same thing, that is, pricing of water developed by state and federal projects is apt to be controlled by noneconomic factors

In thinking back over the hearings on irrigation repayment, the validity of these two comments from the consulting board becomes rather apparent Basically, the testimony on irrigation repayment presented to the subcommittee involved three approaches (1) although allowing certain limited exceptions, one statement advocated establishing the price of water according to the cost of producing it and recommended that the State build only those projects which could be fully repaid by beneficiaries, (2) a second approach, expressed in varying forms by different witnesses, advocated cheap, subsidized water from state projects although the degree of subsidy and the pricing system to be used by the State were not specified; (3) the third approach was that presented by the Department of Water Resources As you know it was basically an intermediate approach requiring substantial repayment but still permitting some subsidy This subsidy was qualified by such expressions as "public interest," "ability to pay," etc

It is not my purpose here to question your middle-of-the-road approach or the request for subsidy but I cannot help but observe that whenever we leave the traditional concepts of economics, we have no objective standards upon which to base water prices Statutory and administrative efforts to limit subsidy by such qualifying language would not seem to be effective. Thus, any reference to the "public interest" can be used as a justification for cheap water just as much as a direct request for cheap water. No witnesses at our irrigation repayment hearings presented any basis upon which subsidy could logically be limited nor has our study of federal policies shown any specific basis by which federal subsidies are limited Only a modicum of pressure is required to change a little subsidy into a major subsidy This may be the lesson to be learned from the experience of the Bureau of Reclamation In fairness it must be observed that no witness before the subcommittee has advanced a more logical suggestion than the approach taken by the Department of Water Resources in recommending a small or moderate amount

of subsidy. In fact, this approach might well be acceptable to the major political elements of the State

This, however, is not my point. *My point is that there appears to be no reasonable or logical basis upon which to determine the amount of subsidy once either the Federal Government or the State departs from the concept of marketing water at its true cost.*

One possible guide to irrigation pricing and repayment here in California which might limit subsidies has been suggested based upon the cost of alternative supplies of water which may be competitive with a state project. However, we find the Merced Irrigation District furnishes water at a cost to its users of approximately $1 10 per acre-foot, Friant water users pay $3 50 per acre-foot for Central Valley Project water, the San Luis Project proposes to charge $7 50 per acre-foot and, according to the testimony from the Kern County Farm Bureau, the semitropic area probably can afford to pay $13 to $14 per acre-foot for Feather River water. Thus, we can see that any effort to price irrigation water on the basis of competitive water developed by nearby projects presents the State with a substantial range of water prices which do not reflect the conditions pertaining to the financing and construction of a state project, are not related to ability to pay or else reflect conditions peculiar to a limited service area.

Likewise, the concept of ability to pay has deficiencies in limiting subsidy We find that the Bureau of Reclamation proposes that San Luis water users should pay $17 50 per acre for project water with the remaining repayment to be made from M & I and power revenues. The repayment capacity of San Luis lands is computed to be $37 per acre. This leaves a difference of $20 per acre which is the incentive to use project water. In the case of your department's report on the Palo Verde Irrigation District, the water users in that district are anxious to pay approximately $40 per acre for water even though no subsidy from M & I or power users is available Their computed ability to pay is $45 per acre for a farm unit of 40 acres which results in an incentive to use water of $5 per acre How can we objectively determine the correct amount of incentive required to assure a market for project water? Is it $5, $20, or some other amount? From the illustration above it appears that the desire for water determines the proper incentive to use project water and that repayment capacity actually is a ceiling on water pricing and not a floor which can constitute a limitation on subsidy.

The problems of water pricing and negotiating a repayment contract for project water are, however, even more difficult for those projects where a substantial but unfixed portion of project irrigation costs are to be charged to power users, M & I water users or the General Fund We know of no federal policy which establishes any consistent basis for a minimum or fixed irrigation repayment controlled by known variables nor do we know of any basis upon which such percentages could be objectively determined For example, statements before this subcommittee have expressed the view that the higher the net revenue from power, the more subsidy will be available for irrigation. This may or may not be desirable but, once again, it indicates that there is no known objective basis for limiting subsidy.

The adverse position of the State in negotiating a repayment contract for irrigation water is apt to encourage "one-sided" results when there is no logical, predetermined point beyond which the State will not go in resisting pressures for downward pricing of irrigation water We may liken these negotiations to a situation in which "A" (the negotiating state agency) proposes to sell a building to "B" (the irrigation water users) at a price which reflects something less than its fair market value because "C" will make up the difference between the agreed-upon price and the fair value of the property The party labeled "C" may be power users, M & I water users, taxpayers, or some other group whose identity and costs will be determined within the discretion of "A," but beyond the control of "C" The difficulties of negotiating a contract equitable to "C" are apparent when viewed in this manner and it should not be surprising to discover that "B" under such circumstances can hold out for and receive quite favorable treatment at the expense of "C." This favorable treatment in the form of a subsidy to "B" may be to the advantage of all (in the public interest) under certain circumstances. Even so, there ultimately will be discrimination among different "B" parties as similar negotiations for sale of other project water are carried out and the "B" parties secure more or less favorable terms according to their political strengths or individual bargaining positions

In view of the foregoing, I wonder if we should not now ask ourselves whether there actually is any objective economic basis upon which the State can establish a pricing policy for water if the traditional economic concepts of prices determined by costs are ignored I do not suggest that this is necessarily the policy the State should follow, but I feel we should give careful consideration to the feasibility of administering a program which deviates from such economic concepts *for there is serious doubt in my mind whether we can ever administer a pricing policy for irrigation water on other than a political basis unless we seek to secure full repayment of reimbursable allocated project costs*

Although our major problem in establishing repayment policy is with irrigation, it would be unfair to single out irrigation and it is not intended to do so in this letter As I see it, the problem with recreation is much the same No one has yet presented to this subcommittee any objective economic basis for establishing or limiting subsidy for recreation in state projects While justifications have been presented for subsidy, these justifications do not rest upon any objective economic criteria and are not shown to be subject to quantitative analysis You may recall several subcommittee members have already questioned the validity of distinguishing the recreation industry from the agricultural industry for repayment purposes

I have set down these observations in this letter because I feel they are basic to the repayment work of this subcommittee After all of the hearings our subcommittee has had, I wonder if we have only succeeded in confirming what several members of the panel of consultants readily stated after only a brief association with our problems here in California I think we should establish whether there is a logical economic basis for limiting subsidies If there is not, we should recognize this fact fully in further consideration of our problems Then we would at least be able to handle our difficulties more intelligently

I hope that at the next meeting of your consulting board, the board might be able to provide the subcommittee with some further advice on these matters of subsidy, pricing and repayment.

Sincerely,

CARLEY V PORTER, *Chairman*
Subcommittee on Economic and Financial
Policies for State Water Projects

BLYTH & CO, INC, RUSS BUILDING
SAN FRANCISCO, October 29, 1958

HONORABLE CARLEY V PORTER, *Chairman*
Joint Subcommittee on Economic and Financial
Policies for State Water Projects
State Capitol
Sacramento 14, California

DEAR SIR I have been giving considerable thought to your letter of October 17th and the question posed therein

I can appreciate the necessity for allocating costs as far as some phases of the Feather River Project are concerned However, I believe that a revenue bond issue could be marketed without this being in any way a drawback

Naturally, I am assuming either adequate legislation would be drafted authorizing the issuance of such revenue bonds by the State or state agency The legislation would also provide that all or certain power revenues would be the security for the revenue bonds and, naturally, it would be essential that the revenues be assured and adequate

While I am no engineer, it would always seem feasible to me to proceed as rapidly as possible with the financing and construction of the Feather River Dam and Power Plant As you well know, substantial power revenues were estimated in the report dated February, 1955, done by the Department of Public Works, Division of Water Resources and then, of course, the Bechtel report reconfirmed this also

In today's bond market, I would say that $250,000,000 revenue bonds of approximately 50 years in maturity could be financed if a tight enough contract with a reliable purchaser or purchasers for the sale of such power were executed, and the amount of net power revenues available for debt service on the bond issue were in the neighborhood of $13,000,000 or $14,000,000

It seems to me essential that the construction of the initial unit of the Feather River Project be accelerated in view of the many years that such construction will take During that period, it should be possible to work up a fair plan for the distribution of the water

I guess what we really need in this State is a "water master," whose word will be final, as far as the ultimate distribution of the State's water resources.

I hope that my few comments have been of some value to you.

Sincerely yours,

BLYTH & CO, INC
JOHN INGLIS
Vice President

Bank of America, San Francisco Headquarters
SAN FRANCISCO, October 23, 1958

MR CARLEY V. PORTER, *Chairman*
Joint Subcommittee on Economic and Financial Policies for State Water Projects
1701 East Compton Boulevard, Compton, California

DEAR MR PORTER: Thank you for your letter of October 17th exploring various phases of the State Water Projects

I can see no objections to the issuance of revenue bonds on any particular phase of the development program wherein the pledge of revenues and other assurances to protect the bondholder would indicate feasibility In other words, if there is sufficient revenue to satisfy the debt requirements, there should be no financing problem In establishing a revenue bond, it would be appropriate to have it refundable by either state general obligation bonds and/or other revenue bonds. This would assure flexibility and the potentiality of the lowest interest costs desirable and possible

I have just completed a recommendation to the State Treasurer, A Ronald Button, on veterans' aid financing, which is the biggest financing job the State will face Even though veterans' bonds have been serviced without cost to taxpayers, as there have been adequate funds from veterans' repayments, still the use of state credit to the extent desired will raise the cost of borrowing on all other state projects

A great many people believe that the State's veterans' aid program would be much wiser to pattern itself after the federal VA program This would permit the use of normal lending agencies with a state guarantee Obviously, this would require little or no bond financing and would leave the field clear to other necessary state projects, such as the water development program

Please feel free to call on me at any time that I can be helpful.

Kindest regards

Sincerely,

ALAN K. BROWNE
Vice President

State of California, Office of Legislative Counsel
SACRAMENTO, September 30, 1958

HON CARLEY V. PORTER
1701 East Compton Boulevard, Compton, California

DEAR MR PORTER You have requested an opinion interpreting Section 11626 of the Water Code, relating to the preference granted to public agencies and nonprofit organizations in the sale of water or power made available under the state-authorized Central Valley Project

Section 11626 provides as follows

> In entering into and awarding contracts, in case of equal or equivalent offers, including consideration of the cost of construction, operation, and maintenance of the necessary lines, plants, and other works to deliver the commodity or service which is to be delivered under the contracts, the department shall grant preference to state agencies or other organizations not organized or doing business for profit but primarily for the purpose of supplying water or electric power to their own citizens or members

The key phrase in this section is "equal or equivalent offers" In other words, under Section 11626 preference is to be given to state agencies * and the nonprofit

* This term is defined by Section 11102 of the Water Code to include any irrigation district, reclamation district, municipal utility district, public utility district, water district, water storage district, and any public or municipal corporation, political subdivision, district, state agency or authority

organizations mentioned only if such agencies or organizations make offers to purchase or use water or power which are equal or equivalent to offers made by private companies or corporations organized for profit.

Further, in determining whether such offers are "equal or equivalent," the Department of Water Resources is required to take into consideration, among other things, the cost of construction, operation, and maintenance of the necessary lines, plants, and other works to deliver the water or power to the state agency or nonprofit organization

It follows, therefore, that in order to determine whether offers are "equal or equivalent" under any particular circumstances, the department would be required to consider all of the factors involved in each offer, including those mentioned in the preceding paragraph.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By RAY H. WHITAKER
Deputy Legislative Counsel

STATE OF CALIFORNIA, DEPARTMENT OF AGRICULTURE
SACRAMENTO, January 30, 1959

HONORABLE CARLEY V PORTER
Subcommittee on Economic and Financial Policies for State Water Projects, State Capitol, Sacramento 14, California

DEAR MR PORTER As Chairman of the Subcommittee on Economic and Financial Policies for State Water Projects you have requested from us certain information which might be of assistance to the committee in evaluating repayment policies for irrigation water delivered from state projects

Your letter indicates that your subcommittee has been reviewing the status of agriculture and irrigated agriculture in California, and consequently would realize that the gradually growing absorption of fine farmland due to urban and industrial expansion already requires some redistribution of farming activities, such as citrus and walnuts from Southern California into the central valley. The necessity to seek irrigation water to operate the transposed ventures means an additional use, since a water demand at the original situs continues

Because of favorable soil types and suitable climatic conditions, there will always be certain types of crops that can be produced better in California than anywhere else Diversification plus this variance in soil and climatic conditions has kept California in the No 1 position among the states for 23 out of the past 28 years, having reached a value in terms of cash receipts from farm marketings of $2,835,000,000 in 1956. The adaptability of our growers to change will certainly not lessen, and while there may be a reduction in available acreage for some of our specialty crops, modern technical developments may keep the production up to virtually the same volume Then, too, continuing research will develop new kinds and varieties of products of the soil which may have equally ready acceptance as those now being produced

Specialists indicate that our good agricultural land is disappearing at the rate of 100,000 acres each year into urban and industrial developments, and for use by federal and other public agencies Our population increase in time will also be a potent factor to efface some of the surpluses in our specialty crop production Such factors as these complicate one's thinking in terms of potential production within the next two decades Of course, no one can foretell how the vagaries of nature will trick us, as happened in 1958 when important shortages appeared in cherries, apricots, almonds, plums, prunes, and, in some sections, Bartlett pears In such situations we may only hope that differences in blossoming time by area may give us good productivity in other crops to help as substitutes for those in short supply For example, the shortage in almonds to some extent was offset by an abundance of walnuts Such abnormal seasons should not bring about a demand to increase plantings of such seasonally shorted crops

You also invite general comments rather than detailed information; therefore, in the interest of clarity, we repeat your questions, and give our response in the order in which you have set them forth

1 What crops grown on irrigated land in California are now in short supply, with respect to local, national and international markets, to such an extent that production of these crops should be increased in the immediate future?

We are not aware of any crops grown in California on irrigated land now normally in short supply either locally or nationally In fact, many of our fruit, nut and vegetable crops are ordinarily in good supply by comparison with market requirements Peaches are being produced in overabundance Potatoes, lettuce and melons, too, are being produced in overabundance Also, such crops as cotton and rice are in ample supply California cotton is in a relatively favorable position, however, because our cotton is of a staple which normally brings market price premiums Furthermore, in California cotton is produced more generally with machine methods than in the older cotton-producing areas of the United States

We are not aware of any agricultural crop grown in California on irrigated land for which increased acreage should be developed in the immediate future, with the possible exception of alfalfa This is because of its soil-improvement characteristics, and its importance as a feed for livestock and poultry California extensively imports field corn and grain sorghums from other states. Competitive prices currently on these crops keep us from indicating them in short supply, but changes in transportation rates, improved hybrid seed, and mechanized harvesting methods could give incentive for increased production

2 What is the market situation with respect to surpluses or deficiencies for the principal commodities grown in the San Joaquin Valley area, i.e, grapes, citrus, cotton, alfalfa and potatoes?

Grapes The production of grapes generally is in balance with the reasonable market requirements considering the combined utilization of grapes for raisin, wine and table purposes

Other Deciduous Fruits Average annual production of deciduous fruits, including berries, is sufficient to meet market requirements in fresh, canned, frozen, and dried form

Citrus The production of citrus fruits, with the possible exception of lemons, is in reasonable balance with market requirements Lemons are at times in oversupply Market demand for lemon products is, however, increasing rapidly

Cotton In general terms, cotton is in substantial supply California cotton is in a less unfavorable market situation because it tends to be premium cotton.

Alfalfa Because of retarded range pasture, the market situation for alfalfa is favorable Normally, supplies of alfalfa in California are adequate

Potatoes The normal production of potatoes, both early and late potatoes, is more than adequate, considering availability of adaptable acreage Climatic variations and national production influence this crop appreciably

3 In general, what is your view of the need for expansion of irrigated agriculture in California within the immediate future, within the period of 1970 and 1980?

With improved technology, yields per acre have increased beyond previous expectations Such progress is still taking place The additional irrigated agricultural acreage needed for California in the *immediate* future is more particularly to offset that which is being diverted to nonfarm uses Otherwise, the need is for only gradual expansion In terms of water use, however, many underground sources of water have been drawn down to uneconomic levels, and need to be augmented by surface water sources

The need for expansion in irrigated agriculture for the period 1970 to 1980 will depend in a large measure upon population trends in California specifically, and in the nation generally By 1975, population in California may reach approximately 25,000,000 persons, or something approaching an increase of about seventy-five percent (75%) over recent numbers Nationally, the increase is likely to be approximately thirty percent (30%), which is less dramatic, but nevertheless very substantial Furthermore, diets are likely to continue a recent and present trend toward more fruits, leafy vegetables, poultry and eggs, red meats and dairy products, with fewer potatoes and cereal grains, including rice. California will need a substantial increase in the use of land suitable for the production of fruits and leafy vegetables, and a more intensive use of land for feeds for animal products Acreage increases for cotton, potatoes, and rice need not be substantial

Through the decade indicated (1970-1980), acreage increases in California need not parallel increases in population An increasing percentage of our production will be marketed within the State, and a lesser percentage of our production will be marketed in out-of-state markets because our rising costs of transportation and

marketing are making the movement of our products to midwestern and eastern markets increasingly difficult Furthermore, advancement in technology very likely will continue, a development which will make it possible to produce more products from the acreages available than has been the case in the past, although irrigated land acreage of necessity will be increased gradually, this rate of increase may not prove so rapid in California as population increases would tend to indicate

We hope that the above comments and observations may be helpful to the committee

Very sincerely yours

C J Carey,
Deputy Director

1959 HEARINGS

QUESTIONNAIRE FOR NORTHEASTERN COUNTIES

The Assembly Water Committee is holding hearings at the Plumas County Fairgrounds, Quincy, at 9:30 a.m. on September 9 and at Bridge Bay Resort in Shasta County at 10 a.m. on September 10. Assemblywoman Davis has already contacted you regarding the five general subject matters which are before the Assembly Water Committee. In line with her previous discussions with you, this letter outlines in more detail the subjects of interest to the committee with regard to the forthcoming hearings on September 9 and 10.

The following questions have been prepared to assist you or others who wish to appear before the committee in understanding the information sought. Although you may be unable to answer or comment on all questions, any answers you can furnish will be appreciated. Any other information or comments will also be in order. Please do not feel that it is necessary for you to comment on all of the questions below. The committee will be receiving information on many of these matters from other persons also. You will be of greatest help to the committee if you present any information and attitudes you have on the questions below.

1. What role do you feel water resources projects with recreation features will play in the economic growth of your area?
2. Do you feel that operation and maintenance of the recreational features of state projects by a local district or public agency is feasible or desirable?
3. To what extent do you feel that such a local district or public agency could collect admission fees, levy taxes against resort property, cabins, etc., or lease land for private development in such a manner as to raise funds for the repayment of any or all parts of recreation construction costs?
4. What provision do you feel should be included in contracts signed by the State with local agencies covering the sale or use of project services?
5. Is any public agency or co-operative in your area interested in purchasing hydroelectric power from a state project? If so, what quantities and under what circumstances?
6. What are your views regarding the applicability of an acreage limitation?

STATEMENT OF WILLIAM L. BERRY
Department of Water Resources

The initial units of the Upper Feather River Division of the Feather River Project, as authorized for construction by the Department of Water Resources by Section 11260 of the Water Code, consist of five reservoirs; two of these, Frenchman and Grizzly, are multiple-purpose facilities in that they will be used for recreational, agricultural, and possibly other purposes The remainder will serve the single purpose of recreation, including the enhancement of fishery resources downstream The capital cost of the three single-purpose reservoirs, estimated to be approximately $2,000,000, is therefore considered as nonreimbursable, as provided in the legislative directive embodied in Chapter 2047, Statutes of 1959 (A B 140) Funds are currently available to the Department of Water Resources for the purchase of such privately owned lands as are necessary for rights-of-way for these three single-purpose reservoirs, most of the lands involved are in the national forest These three reservoirs are expected to become operational in 1962, assuming approval of the bond issue set forth in Senate Bill No 1106 by the voters at the general election in November of 1960.

The receipt of bids for the construction of Frenchman Dam has enabled us to allocate the costs of this facility on a reasonably firm basis Using the (the separable costs-remaining benefits method) results in about 55 percent of an indicated cost of approximately $2,500,000 being allocated to the irrigation function The sum of $405,000 had been expended up to July 1, 1959, for right-of-way acquisition and engineering costs The department's current budget includes $2,060,000 for construction of the dam and appurtenances and for relocation of the roads involved A contract for construction of Frenchman Dam and Reservoir was awarded to Isbell Construction Company on September 1, 1959

Applying the separable costs-remaining benefits method to our present cost estimates of $2,300,000 for Grizzly Reservoir results in approximately two-thirds of the cost being allocated to the conservation function and one-third to recreation

Revenue will be forthcoming from the sale of water from Frenchman and Grizzly Reservoirs Discussions have been held with the Board of Directors of the East Chance Creek Water District regarding the sale of water from Frenchman Reservoir to that district There appears to be no doubt but that the district will be in a position to utilize fully the entire yield from Frenchman within a few years after it becomes available in 1962 We have determined that the water users are fully capable of paying $2 50 per acre-foot for this water, measured at the reservoir outlet Our hydrologic studies show an average annual irrigation yield of about 12,000 acre-feet of new water attributable to the project At the foregoing price, sale of this quantity would return $30,000 annually to the State However, it should be pointed out that pricing policies for the sale of water from state projects are under study by the Department and the Governor's Office at this time The decisions resulting from these studies could affect the price of water from Frenchman Reservoir.

Our present schedule calls for the acquisition of necessary rights-of-way for Grizzly Reservoir in the near future, with the reservoir becoming operational in 1964, assuming again that the bond issue passes It is envisioned that a portion of the water made available by this facility will be utilized for irrigation in Sierra Valley, with the remainder serving to augment existing supplies of the City of Portola and adjacent areas Studies under way to determine the probable magnitude of urban water requirement will constitute the basis for distribution of the estimated yield of 12,000 acre-feet from Grizzly Reservoir between these two uses Determination of the revenue to be realized from water sales will rest upon this distribution

With respect to recreation, the Department has virtually completed a plan for the development and operation of recreation facilities at Frenchman Reservoir The plan envisions that the surface of Frenchman Reservoir and its shorelands will be used for fishing, boating, water skiing, swimming, picknicking, camping, and related recreational activities The initial facilities to be provided include 52 camp units, 25 picnic units, a boat launching ramp, sanitary facilities (including a sewage disposal

system), a water supply system, roads and parking facilities, and facilities required for operation and maintenance. The estimated cost of the initial recreation development at Frenchman Reservoir is $196,000. Additional facilities will be provided as the demand develops.

Detailed planning for recreation development at Antelope Valley, Abbey Bridge and Dixie Refuge Reservoirs is under way. Similar planning at Grizzly Valley Reservoir will soon be initiated. The scope of planning for recreation at these projects will be similar to that at Frenchman Reservoir, that is, facilities and opportunities will be provided for a wide variety of water-associated recreation activities.

In the case of Frenchman and Grizzly Valley Reservoirs, sufficient land will remain in private ownership near the reservoirs for commercial and private recreation development. Plumas County has agreed to zone these lands to protect their highest use—recreation.

The other three reservoirs, Antelope Valley, Abbey Bridge, and Dixie Refuge, will be largely surrounded by land owned by the federal government and managed by the United States Forest Service. Any commercial or private development on these lands would necessarily be accomplished under permit from the Forest Service.

Some of the factors influencing irrigators' ability to pay for water are:

1. Availability of irrigable land. If such lands are noncontiguous, or if the quantity of irrigable land in relation to the total land area is small, the rate of development of the area is retarded. In these respects the situation in Sierra Valley is favorable. The total gross irrigable area is 118,200 acres, and the net irrigable is 97,500 acres. Of these lands, about 80 percent are valley floor and the remainder hill lands. The irrigable lands are largely contiguous.

2. Quality of the soils. Poor soils restrict the variety of crops that can be grown, generally require more frequent irrigation, and/or require more capital to make them productive, resulting in a lower per acre net farm income and ability to pay for water.

The quality of the soils in Sierra Valley is generally very good. Of the total irrigable lands, about 25 percent have soils with medium to deep effective root zones, are permeable throughout, and free of salinity, rock, or other limiting conditions. These lands are suitable for all climatically adapted crops. An additional 25 percent of the irrigable lands are similar in all respects to the foregoing, except for the condition of a high water table, which, in effect, limits the crop adaptability to pasture crops. Drainage and a change in irrigation practice would be required to affect the crop adaptability. The remaining 50 percent of the irrigable lands are limited in crop adaptability by soil textures, shallow depths, an excess of soluble salts or exchangeable sodium, or by adverse topographic conditions.

3. Climate. As the length of the frost-free season decreases, the variety of crops that can be grown also decreases. In Sierra Valley, killing frosts can occur during any month of the year, and the average growing season for tender-leaf vegetation is only 29 days. For climatically adapted crops, the growing season is approximately 90 days. However, the generally cool summer nights result in relatively low yields.

The predominate feature of the climate of Sierra Valley is its aridity. The average seasonal depth of precipitation on the valley floor is about 15 inches. Other major climatic characteristics are an abundance of sunshine, wide range of temperature, low humidity, and rapid evaporation. More than 90 percent of the total precipitation normally occurs between the first of October and the last of May, about one-half being in the form of snow.

4. Elevation. Most of the remarks pertaining to climate relate also to elevation. In addition, lands at higher elevations are usually located in relatively isolated areas away from markets, and may have topographic limitations that retard their development or reduce their yield. The valley floor of Sierra Valley approaches 5,000 feet in elevation.

5. Markets for farm products. This includes consideration of such factors as whether the product is subject to an elastic or inelastic demand, the direction of per capita consumption trends, and the location of the consumer market.

The agricultural economy of Sierra Valley is devoted to beef production, and as a result the income accruing is dominated by general market conditions for beef feeder-cattle and calves. It is recognized that the valley is suitable to the production of hardy varieties of low and truck crops, which might conceivably be quite profitable. However, marketing facilities would have to be developed for such crops.

6 Nearness to processing and wholesale produce facilities An area may be ideally suited otherwise for producing a perishable crop but if there is a long haul to the nearest buyer, the existence of areas better situated may preclude or at least retard development

While Sierra Valley is somewhat distant from potential markets, an excellent transportation system traverses the area A major east-west highway, U S Highway 40 Alternate, and the main line of the Western Pacific Railroad, extend across northern Sierra Valley Several secondary roads of varying capacity and conditions provide access to the surrounding areas

7 Cost of water As the cost of water, which can be regarded as just another factor of crop production, increases, the rate of development tends to decrease, and the excess of benefits over costs also tends to decrease

Approximately one-half the total net irrigable acreage in Sierra Valley is presently irrigated Cost of water in Sierra Valley at present is relatively small However, the valley has no firm irrigation water supply, and during the latter part of the irrigation season, in many years, little or no water is available for diversion Under project operation, the cost of irrigation water would exceed present costs However, the new irrigation supply would supplement existing supplies to make water available during the latter part of the irrigation season, thereby permitting effective pasture use over a longer period, as well as a wider variety of crops

8 Existence of public water organizations If there is no such organization, and water is obtained through individual effort only, the risks of farming are usually greater and may result in retarded development On the other hand, a district with its powers of taxation, eminent domain, debt incurrence, and construction and operation of works, facilitates the development of the area It is a tool by which things are accomplished Sierra Valley is fortunate in having an adequate public water organization comprising the service area of the Frenchman Project, in the Last Chance Creek Water District

9 Payment capacity or ability to pay for water As ability to pay for water decreases, the rate of development tends to decrease Payment capacity may be regarded as an end resultant, for it reflects monetarily the effects of nearly all of the foregoing influences As the size of the farm operation increases, the ability to pay for water per acre increases because of the economies of scale

All of these factors are taken into account in connection with estimating the ability to pay for water and the rate and character of development of the area. Field investigations are made, of course, and follow-up interviews are conducted after we have made our analyses The department has been making such studies for years, and its methods are essentially similar with those used by the principal federal agencies engaged in water resource development

Irrigation is of importance in the maturing and successful production of crops in Sierra Valley Natural meadows are located in proximity to the small creeks flowing out onto and across the valley floor In accordance with available natural runoff, these meadow lands are irrigated by wild flooding, and are used to produce a relatively high-quality hay for winter feeding, with an estimated average yield of about one ton per acre In the more sheltered portions of the valley, alfalfa and domestic grasses have replaced the native grasses as a source of hay and green forage Some dry grain and grain-hay are produced in the valley, but the lack of moisture during the growing season results in generally poor yields

With respect to Sierra Valley, justification for project irrigation water service stems from the increase in net farm income which would accrue from project water service The valley is one of the most important of the high mountain livestock-producing areas in the State, and no change in the present emphasis on livestock production is anticipated when project water becomes available However, better regulation of available water supply is urgently needed Runoff from the streams entering onto the valley floor, formed largely from melting snows, comes as torrential floods in the spring, but drops sharply soon thereafter The high spring flows run unused and spread out over the valley floor, causing considerable flood damage Yet, because of late-season water shortage, thousands of acres of farm land can produce only part of their potential Other lands capable of sustained crop production are still in sagebrush for lack of water.

Through a supplemental water supply, ranchers will be able to increase their beef production without corresponding increase in land area under their control This will result from anticipated use of project water to convert some of the

existing meadow land to improved pasture, as well as to increase yields upon land that is used to produce hay

Consideration of the physical and climatic characteristics of Sierra Valley as they affect agricultural land use, together with economic factors applicable to livestock production in the valley, results in the determination that the area can pay at least $2 50 per acre-foot for all project-developed irrigation water measured at point of release to the entity contracting for water service This price reflects allowance for all costs associated with the use of project water by the rancher, and provides for the element of profit necessary to induce individual ranchers to undertake expansion in their operations based on such use

The potential area for irrigation water service from project development in the Upper Feather River Basin comprises some 31,600 acres The combined conservation yield of Frenchman and Grizzly Reservoirs will be sufficient to provide supplemental irrigation water for approximately 25,000 acres of land in Sierra Valley However, there is a possibility that a portion of the conservation yield from Grizzly Reservoir will be devoted to urban use Should this prove to be the case, the irrigation accomplishments would be reduced accordingly.

The only existing water users' organization within the potential project service area referred to above is the Last Chance Creek Water District, organized under Sections 34000-35501, Division 13, California Water Code This district encompasses about 23,500 acres, representing 17 separate ownerships and a lesser number of operationships Two of the owner-operated ranches exceed 4,500 acres in size, another exceeds 2,600 acres, and a total of nine exceed 1,000 acres in size. At the other extreme, five of the ownerships do not appear to meet the test of minimum economic size by themselves, considering the nature of the agricultural economy prevailing in the area A number of operators utilize additional land lying outside the district in their livestock enterprises Some of this owned and/or leased land is located close by, in other cases it is located as far away as Nevada or the Central Valley of California Higher mountain ranges are also utilized, for the most part, this land is operated under Forest Service grazing permits

Under present conditions, the minimum economic size which could be considered appropriate for the area would be represented by a beef enterprise of 125-150 head, supported on not less than 1,200 acres of partially irrigated valley land supplemented by 600 to 800 acres of mountain grazing land With a full water supply and a balanced program of land use, the 1,200 acres of valley land should be able to support a 175-head enterprise The minimum economic size for the area, assuming a full water supply and no outside feed production, is considered to be 1,000 acres of valley land. However, consideration of size must reflect the fact that only a few favorably situated livestock enterprises will actually have a full water supply, even with complete utilization of all project-produced water

Characteristics of the multiple-purpose Frenchman and Grizzly Reservoirs are such as to justify separation of the responsibilities for reservoir operation and maintenance In both cases it is envisioned that the State will bear the responsibility of reservoir maintenance

Irrigation operation of Frenchman Reservoir will be a simple process, involving release of water into the natural stream channel for rediversion downstream, in accordance with general operating principles laid down by the Department of Water Resources Water purchased by the irrigators will be available as they desire it, subject to drawdown limitations which reflect the carryover aspect of the reservoir made necessary by the variable nature of stream runoff. Because of this relatively uncomplicated situation, the department believes that operation of Frenchman Reservoir for irrigation should be handled in its entirety by the water users The State is also to be held harmless from claims of damage originating from within or outside the body of water users

Irrigation operations associated with Grizzly Reservoir will be somewhat more complicated, in that a canal approximately 17 miles in length will be required to convey water through the northwestern portion of Sierra Valley to the Middle Fork of the Feather River This canal would be provided with a number of turnouts requiring both operation and maintenance in addition to similar requirements for the diversion facility on Grizzly Creek Since Grizzly Reservoir is not planned for completion until 1964, the matter of operation and maintenance of these irrigation facilities has not been discussed with local water users and the department's views thereon have not yet been finalized From the State's viewpoint it would be desirable to have maximum possible participation on the part of water users in both the operation and maintenance of these facilities, as well as in the operation of the reservoir as far as irrigation water releases are concerned Likewise, if urban water

service to the City of Portola should materialize, it would be desirable to have responsibility for the operation of water release and conveyance facilities rest with the municipality Water could be sold at Grizzly Dam in the case of urban water, and at a diversion structure on Grizzly Creek in the case of irrigation water

It is the department's position that the operation and maintenance of recreation facilities at state-constructed water projects should be performed by agencies other than the Department of Water Resources The department does not have the authority to operate and maintain such facilities, nor do we feel it appropriate that we should

Operation and maintenance of recreation might be performed by federal, state, or local agencies, depending upon conditions at each project. Generally, local government is interested in, and capable of handling, the responsibility of operation at recreation areas around reservoirs

There is much to be said in favor of operation and maintenance by a local agency. Often, reservoir recreation areas lack the significance—from the standpoint of magnitude of operation, or uniqueness of scenery or attractiveness—to interest federal or state recreation agencies (Of course, some reservoirs might have such significance) *Local agencies also have a strong incentive to provide a high quality of* operation and maintenance in view of the economic value to local communities of a good recreation area When recreation areas are situated on land managed by the United States Forest Service that agency, because of federal laws and regulations, must maintain a strong and active interest in the operation and maintenance of the area

In the case of Frenchman Reservoir, the department has discussed the operation and maintenance of recreation facilities at the reservoir with the Forest Service and Plumas County Both agencies are interested, and have expressed their willingness to co-operate We expect very soon to meet with these agencies and reach a final understanding of the role that each agency, the Forest Service, Plumas County, and the Department of Water Resources, will play in the operation and maintenance of recreation facilities at Frenchman Reservoir This final understanding will be formalized by contracts and agreements between the three agencies before operation of the recreation facilities begin

Stream flow in California shows a wide range between years of low and high runoff This condition prevails in the mountainous regions as well as in the valleys By the provision of carryover storage in reservoirs it is possible to provide much more assurance of continuity of water supply than would otherwise be the case However, economic considerations of the sizing of reservoirs generally make it desirable for an occasional deficiency to be taken in agricultural water delivery The tolerable economic limit of such deficiency is not readily definable However it is unreasonable to expect water users to tolerate a condition where they would not receive sufficient water to keep perennial crops alive or to return at least the cost of production from annual crops In the determination of average reservoir yields, the department assumed the limit of tolerance for the Upper Feather River Basin to be a 50 percent deficiency in one year, 1934, of the 45-year period, 1911-1956 With acceptance of such a deficiency, water users are otherwise assured continuity of a water supply within contractual provisions, except in case of an unprecedented drought more severe than has occurred during the period of historical record

While it is to be expected that all water service contracts will have a specified termination date, it is equally certain that they will provide for renewal Thus, water users will be assured of a water supply within economic limits

Under the presently accepted concept of project operation for Frenchman and Grizzly Reservoirs, no credit is to be taken for secondary or class two water, as it appears that the market for such water would be very small, and that the bulk of secondary water would occur during the nongrowing season However, in addition to "new" water made available by project development, which also constitutes the firm supply which the State would obligate itself to deliver, project operation may result in a regulatory service to water users of considerable benefit For example, Frenchman Reservoir could store some water to which ranchers in Sierra Valley now have an adjudicated right but which they now must use in accordance with natural spring runoff, and make it available for application at a later and more beneficial time when stream flow would not otherwise occur In such cases, a benefit would presumably arise from this temporary storage function of the reservoir If so, it seems reasonable to expect some payment for this service which would be separate and distinct from the new water supply function of the reservoir

The existing agencies in the service area of the Upper Feather River units are the Last Chance Creek Water District, a California water district, which constitutes the service area of the Frenchman Unit, and the Plumas County Flood Control and Water Conservation District, formed by Chapter 2114, California Statutes of 1959

A California water district can levy an ad valorem assessment on land to meet expenses in excess of revenues (Water Code, Sections 36507, 36550-36728) This type of district has the power to issue revenue bonds, general obligation bonds, and warrants However, issuance of general obligation bonds or warrants by the district requires prior authorization by the California Districts Securities Commission

The assessed value of lands in the Last Chance Creek Water District as of 1956-57 was $189,670 In line with a general increase in the market value of farmland elsewhere in the State since that date, it is to be expected that reassessment would show an increase in the foregoing value

Irrigation water from Grizzly Reservoir presumably would be used on some lands lying outside the present boundaries of the Last Chance Creek Water District However, since the Grizzly service area boundaries are still undefined, it is impossible to determine the assessed value represented The individual values which will enter into determination of the assessed value of this service area will be approximately as follows

Sagebrush land, poor grass cover	$10 per acre
Sagebrush land, good grass cover	50 per acre
Good dry pasture	125 per acre
Improved irrigated pasture	250 per acre

The Plumas County Flood Control and Water Conservation District has authorization to levy assessments not to exceed ten cents per one hundred dollars on all property within the district (Cal Stats 1959, Ch 2114, Sec 18) The district's boundaries coincide with those of Plumas County The latest assessment figures available for Plumas County are those for 1956-57 in the "Annual Report of Financial Transactions Concerning Counties of California for the Fiscal Year 1956-57", page 29. This report shows that the net assessed value of all property within Plumas County is $14,522,825

In addition to the power to raise money for district purposes by levying an assessment on the land within its boundaries, a California water district may raise money by collecting a charge for making water available to the owners or occupants of the land (Water Code, Section 35470) There is no clear provision of law giving the same powers to the Plumas County Flood Control and Water Conservation District

A California water district is authorized to contract with the State for irrigation water service (Water Code, Section 35851) A water service contract between the State and a California water district must be submitted to the California Districts Securities Commission (Water Code, Section 35854), and may be validated in a court action (Water Code, Section 35855). Based on past experience, the approximate time required for submission to, and action by, the California Districts Securities Commission is 60 days, and the minimum time for court validation is 52 days (Water Code, Sections 36051-36052) In case the validity of the contract is challenged, the time required for court validation would be much longer The total time required would be at least approximately four months, if the district elects to seek validation A district election on the contract need not be held

The Plumas County Flood Control and Water Conservation District has general authority to contract with the State, which apparently authorizes it to enter into water service contracts (Cal Stats 1959, Ch 2114, Secs 3m and 3s) It must hold a hearing concerning a proposed "project," which would include a contract for the furnishing of water by the State, requiring two weeks' notice At least four weeks would be required, therefore, before a contract could be executed (Cal Stats 1959, Ch 2114, Secs 6 and 21) The district's contracts need not be submitted to the Districts Securities Commission, and there is no provision for court validation

STATEMENT OF DONALD G. PATTON

Board of Supervisors of Sierra County

There is no doubt that water resources projects with recreational features will play a primary role in the economic growth of Sierra County The firm of Porter, Urquhart, McCreary & O'Brien, of San Francisco, was employed by Sierra County some time ago to make a thorough and extensive survey and study of the water problems and possible future water development in this area A preliminary report of this

firm very definitely indicates that recreation will very likely be one of the major, if not the very greatest, factors in the economic growth of not only Sierra but in all other similar, adjacent counties This board feels that additional study should be made by the Legislature and its various committees regarding the future development of dams and other water resources projects within Sierra County This county is fortunate in having a large number of natural lakes within its area, commonly known as the Lakes Basin Area, and we feel that it is entirely feasible and economical to sponsor recreational developments in and around these lakes

There are a number of excellent arguments in favor of local operation and maintenance of the recreational features of state projects which could be instituted and developed within our county However, as in the several adjoining counties, approximately 70 percent of Sierra County is represented by National Forest lands under the control and subject to the rules and regulations of the federal government Sierra County has been fortunate in obtaining outstanding co-operation from the local officials of the Forest Service in connection with the developing and enlarging of recreational areas in this county, and we are assured of their future continued co-operation Our major argument against local operation and maintenance would be a financial one in that our limited tax income does not allow us anything other than the present basic governmental functions, and Sierra County might not be in a position to furnish any substantial financial support towards such a project We do wish the committee to know and appreciate that Sierra County is more than willing to assure the operation and maintenance of recreational facilities to the greatest extent financially possible

Sierra County sees no reason why local districts or public agencies could not collect admission fees and otherwise manage resort properties and encourage private development of these properties in an economical manner and with resultant financial benefits The demand for private land within Sierra County for recreational development is far greater than can be provided, and this board has no doubt that if additional resort properties were made available they could be promptly leased or even sold for such development and everyone involved receive substantial advantages We feel quite certain that it would not be a difficult matter to raise funds in this manner for the repayment of recreation construction costs

This board feels that a long-range view should be taken and the possibility of ultimate final payment to the State for project construction should be carefully considered in contracts with the State Provision could be made for ultimate financial benefits directly to the counties concerned once full payment has been made for the initial development and construction This is particularly desirable and necessary in the smaller counties such as Sierra

To the best knowledge of this board, there is no public agency or co-operative in this county which is interested in purchasing hydroelectric power from a State project As will also be pointed out by Plumas County, the Plumas-Sierra Rural Electric Co-operative does serve a portion of the eastern end of Sierra County and does use some hydroelectric power

An informal survey by the Sierra County Water Resources Board indicates that the various ranchers engaged in stock raising in eastern Sierra County do not favor the acreage limitation idea, and this board feels there would be considerable opposition in applying acreage limitation to properties concerned with a state-developed project As to the more mountainous western end of the county, this same view would probably not prevail In short, this question could only be fully answered by this board after a thorough investigation and survey among the local residents

STATEMENT OF E. J. HUMPHREY

Plumas County Board of Supervisors

Water projects with recreation features, and the maintenance of stream flow for fish and wild life, would be of great economic importance to Plumas County

A planning study recently made by Pacific Planning and Research and submitted to the Plumas County Planning Commission shows that during the period between 1946 and 1956 there has been a 350 percent increase in the recreation use within the Plumas National Forest under existing conditions

When the five reservoirs, namely Frenchman, Grizzly, Dixie Refuge, Antelope and Abbey Bridge are constructed a large increase in recreation use will be available for all of California

In the future recreation use will be the principal factor in the economic growth of Plumas County This is shown in Bulletin No 59-2, Appendix A, dated July 1959

The Dixie Refuge, Antelope and Abbey Bridge Reservoirs will be surrounded by lands of the Plumas National Forest, the Frenchman Reservoir by both state and national forest land, and the Grizzly Reservoir mostly by state land

The national forest lands will be under National Forest control and subject to their rules and regulations

Where there is both state and national forest lands, there has been some preliminary discussion between Plumas County and Plumas National Forest officials towards joint control of these lands From these preliminary meetings there does not appear to be any difficulty for reaching a tripartly agreement between the U S Forest Service, State of California and Plumas County

On state land the Board of Supervisors of Plumas County will assume the operation and maintenance of recreation facilities

A program such as the National Forest Service has set up under Special Use Permits for commercial and noncommercial uses, could be used This program could call for an annual fee for land use, the local governing body taxing the improvements, but not the land The Special Use Permits remain valid as long as the permittee complies with the rules and regulations under which the permit is issued Also the permits are transferrable

Insofar as possible the fees for use of recreation facilities should pay for maintenance and operation costs of recreation facilities Plumas County's opinion is that recreational facilities should be a nonreimbursable item

Excepting features that are determined to be of statewide benefits, all project services should be paid for by the users in an amount sufficient to amortize the costs, insofar as it is economically feasible

At the present time there are not any public agencies in Plumas County using hydroelectric power

There is one co-operative, the Plumas-Sierra Rural Electric Co-operative, serving parts of Plumas, Sierra and Lassen Counties, which is a small user of hydroelectric power

The principal use of agricultural lands in Plumas County at the present time is that of stock raising As a general rule the farms are of considerable acreage

Plumas County approves acreage limitations Any acreage limitation should be based upon climatic conditions and the length of the growing season

STATEMENT OF ED RYAN
Last Chance Creek Water District

The Last Chance Creek Water District is appreciative of your committee's interest in the water projects in our area There is a great and positive need for further irrigation water in Sierra Valley We believe beyond question that the carrying forward of the water projects is vital to the citizens of our community

As mentioned above further irrigation water is a vital economic necessity to our valley It is important and fortunate that the water resources projects combine recreation and irrigation to permit the accomplishment of that which we as residents could not finance by ourselves This is particularly true of us ranchers who have joined together in our water district We feel certain that the projects with recreational features could play a vital part in the economic growth of our area However, in spite of the great need for water development for irrigation, it is essential to us that such development be on a basis which we will be able to afford As far as we can determine a rate of $2 50 is the very maximum which we in this area could possibly pay

We request your attention to and ask your understanding of the fact that our lands are not such as to permit a large economic recovery per acre We realize that this situation is in contrast to certain other areas in our state but the nature of our economy is an important factor to be considered in determining the very questions you have asked We understand that the Department of Water Resources is furnishing you with full data on this aspect of the problem We mention in passing, however, our short growing season, the types of crops and the typical ranching unit existing here Although we need further water development such as is possible under the projects, it is absolutely essential that such water be made available in sufficient quantity for sufficient acres as will permit economical farming The amount of such acreage in our case must be sufficiently large as to permit reasonable subsistence The combination of recreation and irrigation which is contemplated by these projects is both desirable and, for us economically necessary

Our answer to this important question (on the content of contracts) must necessarily at this time be limited and can not be given the full response which it deserves Such consideration as has been possible, however, indicates the following provisions which should be included in the contracts We should be sure of a continuous year after year water supply from the project This continuity of supply should be as firmly assured as is possible although minor changes and adjustments of rate may well be necessary There should be no major changes of rate during the repayment period such as would adversely affect our ability to pay In other words the rates should have a planned economic feasibility The provisions should expressly recognize and respect the prior water rights of those receiving water from the project for irrigation The matter of adjudicated water rights will no doubt be fully developed by the Department of Water Resources

There should be a definite understanding and arrangement as to who will operate the projects and such operation should be responsive to local irrigation requirements There should be no acreage limitation such as would make our ranches uneconomical to farm

Our views regarding the applicability of an acreage limitation have been suggested above The historic reasons for the federal limitation of 160 acres do not exist here but apart from that such a limitation would be inapplicable and inequitable if applied to our area The simple fact is that any acreage limitation must be sufficiently flexible or on such reasonable basis as to permit us to make a living Any arbitrary limitation which is unrealistic and would prevent a reasonable economy would, we believe, defeat one of the fundamental purposes of the projects

STATEMENT OF CHARLES VEOMETT

Mayor of Portola

We are for acre limitations Unusual circumstances may cause a problem, and we hope the Legislature will take into consideration the short season, altitude and types of crops in Northern California.

I would like to draw your attention to the Grizzly Dam which has the lowest priority, and which we feel should have been first As you know, there are two tentative plans for the dam, one of which is recreation and a steady flow of water in the river for fishing and the possibility of hydroelectric plants, between Portola and Sloat However, no mention has been made of domestic water in any report I have seen And there is a very great need in the district for domestic water

Portola is 50 years old this year and has had 50 years of water problems First, the drinking water was sold by the gallon Then springs were developed on Beck with Mountain and a water system was installed The springs failed and wells were dug The wells went dry, forcing the city to get its water from the Feather River creating other serious problems, which I would rather not mention.

About five years ago, the city voted in a water bond, and a fine water system was installed, and was to take care of the water for years to come, but here again, the springs which feed Willow Creek failed to come up to expectations and two to three months of the year the water use is restricted, and Portola is using every drop of water available at this time

Portola has at present five subdivisions under development outside the city limits, and all are requesting water, which is impossible to guarantee at this time There are approximately 2 500 lots in these subdivisions, and when sold and built on, we will need more than five times the amount of water we now have

Domestic water from the dam would supply all the population from Vinton to Graeagle, all of which are 15 miles from the dam Sierra Valley has also shown interest in domestic water

Graeagle is now developing thousands of acres into subdivisions

The Western Pacific has offered to buy water when the supply is available

You know a community can grow just as big as it can supply water for it

Now on the economic side, 12 years ago, Portola was a thriving and up-coming town and incorporated, making it the only incorporated city in Plumas County It thrived on payrolls of several lumber mills in the surrounding territory One by one they closed and Portola lost the majority of its income The W. P Railroad is practically the only source of income But in spite of the businessman marking time for these last five years, Portola has gone on The city chamber of commerce advertised all over the nation for business Many answers came in, however, they backed away because of the water situation Some business houses doubled up, some failed, some moved on the highway to pick up the tourist trade

During this time while the businessman was waiting for a miracle, Portola has installed a water system (with its inadequate supply) new homes have been built The streets have been paved and improved, with the help of Plumas County

All of this can be justified if the alternative plan of Grizzly Dam can be brought to this area in the near future Portola and this area needs the business of the vacationer to survive

Portola has been considering its own power for years, and the Plumas Sierra Rural Electric Co-operative is ready to purchase power from the state project, priced right and supply adequate

Now to sum this all up The area needs the tourist business The area needs the water desperately Portola needs the power for maintenance (of) income. But, Portola cannot wait for five or six years, and as Mayor of Portola and for the sake of the surrounding areas, I ask that the officials in charge, reconsider and make Grizzly Dam, next in importance. It means everything to us.

STATEMENT OF C. W. BELLAMY
Plumas-Sierra County Farm Bureau

An effort was made during the 1959 Legislative Session to get action on bills to invoke the 160-acre limitation policy into the State Water Program Organized labor spearheaded this effort under the guise that there should be no unjust enrichment of anyone because of the State Water Program Speculation and extremely large landholdings were cited as the reason for the need of acreage limitations

These are not valid reasons, because such property, along with all taxable property, of which agricultural land and improvements comprise a large part, will be used to guarantee repayment of the bonds and these property owners will pay the full price for water So—why should a limitation be placed on them?

STATEMENT OF WILLIAM A. PETERSON
U. S. Forest Service

The Forest Service is greatly interested in the reservoir development program in the Feather River Watershed Since water is one of the primary attractions for recreation development and use, it stands to reason that additional reservoirs would increase this activity considerably During the past few years increased use has been evidenced at existing reservoirs, such as Bucks Lake and Lake Almanor

Operation and maintenance of the recreational features of state projects could readily be handled by local public agencies Public agencies in the mountain areas generally have had considerable experience in such activities.

The Forest Service will be very happy to work with both Plumas County and the State of California to devise ways and means whereby recreation facilities can be operated and maintained for the best interests of the people of California

Payment of admission fees by persons using recreation facilities or a lease arrangement whereby individuals may operate and maintain the facilities may be a method for obtaining at least partial repayment of costs The Forest Service at present has a number of campgrounds which are under a similar lease arrangement Although the Forest Service does not collect fees for camping use, a lessee may do so and in turn use collections for maintenance and operation

The Forest Service appreciates the opportunity to participate in recreation planning for the reservoir development program Recreation is at present and will continue to be one of the major uses of public as well as private lands in our mountainous areas

As one of the most important activities in multiple use land management, it is the intent that national forest land will be developed to meet requirements for public recreation

STATEMENT OF SAMUEL E. WOOD

Pacific Planning and Research and Ebasco Service Incorporated

(This statement was prepared by Mr Wood based upon his remarks to the committee)

Gentlemen, my name is Samuel E Wood, I am Sacramento Director of Pacific Planning and Research and Ebasco Services Incorporated Our firm did the basic recreation planning work for the State Department of Water Resources on both the original five authorized recreation reservoirs and on the 14 reservoirs that are covered in this report I'm appearing here both on behalf of our firm and at the request of the Plumas County Board of Supervisors I want to say in the first place that the recreation demand figures we have developed in the three reports completed for the State of California are conservative figures They are astronomical but they are conservative Studies that have been printed since we began our research work on recreation demand and recreation supply factors in California and the United States by Resources of the Future, by the National Park Service and by the Forest Service indicate that these figures are reasonable

Our recreation demand build-up, as you know, is related to population growth, primarily, but also to the level of income, to leisure time and to ease of transportation These are the factors that you weave into determining possible future demand We feel that you will have in the Upper Basin a greater demand for recreation than even the recreation supply that you will create in conjunction with the construction of these reservoirs Our main problem in the standards we developed in co-operation, of course, with the Department of Water Resources, because this sort of study had never been done before, and in our location of facilities, was to control the amount and the intensity of recreation uses permitted in certain areas We have been extremely careful to protect and indicate to all the development agencies that what you need to protect here is this water-timber producing area because if you permit overuse to destroy these characteristics of the area, which also are prime economic values to the area, then you also destroy the recreation resource

I do want to say one or two things about the activities of Plumas County itself There has been some questioning here about whether or not Plumas County is ready to assume a responsibility in the field of recreation development and administration I think that the county recognizes that recreation is now, and will continue to be, a prime economic resource of this area I think that I can say without equivocation from my knowledge of the natural resource counties in California that not a single county has gone so far in its planning work, both to preserve its natural resources and to enhance its recreation resource I would like to submit to the committee as an exhibit and as part of this record the General Plan for the Future Development of Plumas County which considers the recreation industry as primary to the growth—future growth and welfare of the county There are a number of problems, I am certain, raised in this plan that will interest this committee One of them is the question of reimbursement of recreation I would like to point out to the committee that the population in this county trebles during the recreation season In a while there may be some economic gain here, and there is undoubtedly some present economic gain and some of that is examined in the statistical tables in this report The fact is that this county has to furnish services from its present tax base to a population in the summertime of three times its normal population and this population will increase in proportion to normal resident population as the recreation resources in this area are discovered

Now the county has developed this general plan study and has adopted it by official board action on August 4, 1959, resolution 1092 The county recognizes that the prime purposes of this basin are its timber and water producing ability and this action indicates that it is insistant in this plan that these resources be protected The board of supervisors have also indicated their desire to work out more detailed planning around these reservoir areas as they are authorized and constructed The recreation plan outlined in this report adopts these recreation reservoir areas as a part of the plan The board has further, by additional resolutions based on actions of the planning commission, and minute orders embarked itself upon more detailed planning in developing recreation areas I reiterate these things because I think the committee ought to appreciate the fact that it isn't simply a question of administering or assuming some financial responsibility in regards to recreation objectives, it's also a question of so planning the area that recreation will be enjoyable to the people from Los Angeles and the rest of the State of California when they come here

SHASTA HEARING, SEPTEMBER 10, 1959

STATEMENT OF W. A. BARR
Siskiyou County

Recreation is without a doubt going to be our greatest economic endeavor Without it, our county is doomed to a static, if not a regressive condition

I believe equable conditions can be established where the local political entity can supervise and maintain recreational facilities after they have been provided by a central agency such as the State of California or the United States and that by concerted action, a program that would be feasible and desirable could be worked out and activated

I do not feel that fees should be collected for entrance to, or use of recreational facilities except for services rendered, or merchandise delivered Improvements should be taxed under the regular taxation program of the tax structure where located

I do not know of any proposal to buy hydroelectric energy in this immediate vicinity There is a proposal by two power companies to develop power on the McCloud and Pitt Rivers

Acreage limitations should be governed by geographic and economic conditions

STATEMENT OF J. MORGAN JONES
Mayor of Dunsmuir

I see no reason at all, (why) there should not be some return after (Box Canyon) is completed or after the lake is formed There are going to be certain concessions there that I think should be willing to pay rent for the use of the privilege of locating there In Dunsmuir we have some 25 to 30 residents that have boats Every weekend they'll bring their boats down to Shasta Lake and it costs money for gasoline If they had a closer location, I am sure that possibly they would be willing to pay something for the use of those facilities Another thought is that some years ago the California-Oregon Power Company made a survey of the possibilities of a dam in Box Canyon I think they might be encouraged to make use of the falling water I do think from a financial standpoint, that it would be entirely possible to put Box Canyon on a paying basis

I don't think that the people and the taxpayers of Siskiyou County would object to the paying of reasonable amount of money for I don t think that the bill should be dumped in the lap of the State In other words, you have a holiday and you go out and want to have a good time either in a boat or swimming or any type of recreation, you're willing to pay for it I wouldn't object to paying my share if I had some fun out of the use of a lake

STATEMENT OF NORMAN WAGONER
Shasta County

At the present time lumber is probably the most important single industry in the overall economy of Shasta County Subsequent to World War II, recreation has become an increasingly more important part of the economy of Shasta County and with proper planning, and proper facilities, recreation is destined to become more and more important in the economy of Shasta County in the years to come At the present time the demand is outstripping the supply of recreational facilities, particularly on man-made lakes All resources should be called upon to provide adequate recreational facilities on these man-made lakes This development should be done by private enterprise and by local, state and federal governments

It is our feeling that the capital outlay improvements and the subsequent maintenance and operation of the recreational features of the state projects should be made on a joint venture by state and local governments We feel this is absolutely mandatory in the cases where the recreational facilities serve people all over California and, in fact, from some adjoining states The federal government has established a precedent generally of meeting recreational needs of the man-made lakes by allocating certain moneys for recreational facilities We strongly feel that should

the State build a project, then the State should allocate a percentage of the total construction cost toward the planning and development of recreational facilities.

The Revenue and Taxation Code provides for an ad valorem property tax on resort property, cabins and lease land for private development Where possible, we feel that it would be desirable not to charge a general admission fee to a recreational park This is especially true where the cost of collection of the admission fee is equal to, or greater than, the revenue derived from the fees.

We would like more time to study the provisions that should be included in a contract between the state and local agencies over the sale and use of project services.

At the present time there are only two public entities that have been established to purchase and distribute power in Shasta County They are the City of Redding and the Public Utility District in Central Valley We suggest you contact the Redding City Council and the Board of Directors of the aforementioned regarding this question.

We would like to re-emphasize that as far as recreation is concerned, when a state builds a man-made lake, it creates a demand for the construction and maintenance of recreational facilities and, therefore, it has a definite obligation in the construction of the capital outlay recreational facilities and subsequent maintenance and operation of said facilities. Shasta County does not have the necessary financial resources to properly plan, build and maintain these very necessary recreational facilities, and because the State creates the responsibility, it should aid and assist in the operation of said facilities. This would be a benefit to the citizens of Shasta County and to the citizens of the entire State of California

STATEMENT OF JOHN F. REGINATO
Shasta-Cascade Wonderland Association

Because of the very nature of the Shasta-Cascade Wonderland Association, interested primarily in tourism and development of recreational facilities in the six northeastern counties of California—namely Lassen, Modoc, Shasta, Siskiyou, Tehama and Trinity—we will confine our remarks to the recreational aspects of the California Water Plan As an integral part of the recreational aspects, we give also serious consideration to the preservation and enhancement of fish and wildlife resources, so vital to our economic growth, as well as the continued well-being of the citizens of our State

In order to fully utilize our natural resources, the State in developing the California Water Plan must give consideration to all uses and develop each facet to the fullest Recreation is an integral part of any water project and plans must be developed for recreational facilities in conjunction with the overall planning of the project With concurrent planning of the recreational features, there must also be concurrent construction of these features, so that when the project is completed it will be ready for the recreation user, as well as providing water so essential to the growth and prosperity of California

The development of these facilities is not the responsibility of county or city government The task in providing these essentials falls upon the State County and city government is not in a financial position to make the capital outlay for these recreation facilities

The State should provide for these optimum basic facilities on a nonreimbursable basis Once these facilities have been established the maintenance and operation of such facilities should be turned over to the appropriate agency, either county or city government

Precedence has been established by the federal government in many of their water projects, whether constructed by the Bureau of Reclamation or the Army Corps of Engineers. While moneys have been appropriated for these recreation facilities, they have not been of sufficient amounts to meet the basic needs of our citizens.

Shasta Lake is a good example, where adequate facilities are lacking, thus creating a fire hazard as well as a health and sanitation problem The State certainly can profit by these mistakes, by providing on a nonreimburseable basis adequate funds to construct optimum basic recreational facilities.

By optimum basic recreational facilities we mean sufficient lands for all types of users, access roads, piped palatable water, sanitation facilities, campgrounds, picnic areas, organizational camp sites, launching ramps, summer home site areas, floating moorage facilities at launching ramps, buoys, etc.

The construction of water projects in any county or political subdivision creates a nuisance for county government unless these facilities are planned and constructed concurrently with the project County government is immediately faced with a law enforcement problem and health and sanitation problems when a water project is completed The State has a responsibility therefor to provide these basic facilities to ease the growing problem in California

We believe that operation and maintenance of the recreational features, once they have been constructed by the State on a nonreimbursable basis, should be maintained by the local government

Any revenues that local government realizes from operation of these optimum basic recreation facilities should be returned by local government for maintenance and improvement and operation costs. Taxes, which will generally be on the unsecured roll should go to local government to carry on normal functions of day to day operation Whether it be law enforcement, roads, aid to the needy, or what have you.

Reservoir projects will unquestionably materially assist in the economic growth of the project areas You only have to look about you to see the development that has occurred on Shasta Lake Many facilities have been established by private enterprise to meet the needs of the visiting public It has created many supporting businesses It has improved the general welfare of the area The United States Department of Commerce in a bulletin issued several years ago stated that two dozen visitors a day for a year in an area is comparable to an industry with a payroll of $100,000 annually But just as you have problems arising in an area from establishment of an industry, similar problems are thrust upon an area with increased recreational use But we welcome those problems

It is general knowledge that where large areas are needed for reservoirs, that severe damage is done to wildlife, be it big game or upland game Where wildlife habitat is removed in perpetuity, the State has a responsibility, wherever practicable, to improve the adjacent habitat for big game and upland game The deer herds in this State as well as our other game can be decimated if their wintering grounds are eliminated This must not come to pass

We have briefly reviewed a copy of "A Study of Economic and Financial Policies for State Water Projects," recently released by the Assembly Water Committee We wish to comment on a portion of the study, particularly pages 66-67, which states there are a number of programs already established which can assist in the development of recreation at state projects

Listed as No 1 is the Wildlife Conservation Board Under a policy change dated June 1959, funds will be allocated under a balanced program, integrated with the existing programs of the Department of Fish and Game, in the following general categories and approximate amounts:

1	Inland Fisheries	$360,000
2	Marine Resources	165,000
3.	Game Management	175,000
4	Overhead and Services	50,000

Thus, under the $750,000 annually allocated to the Wildlife Conservation Board, only $360,000 will be spent for Inland Fisheries, and what of this amount will be for fishing access, such as roads, launching ramps, etc ?

Under the Division of Small Craft Harbors program, it is our understanding that nearly $9½ million is earmarked or allocated for projects, under a 10-million dollar revolving fund, voted by the people This source of funds is also limited to boating facilities, and provides no funds for other recreational features vital to an overall program of development

Listed as No 3 is the Division of Beaches and Parks Only recently the commission eliminated $14,000,000 of proposed projects because funds were not available under the present allocation system

The Department of Fish and Game, with its present sources of revenue from sale of licenses, is operating at limited financial capacity, and it would be disastrous to other vitally important programs to transfer funds to absorb additional costs created by state water projects The federal government assumes the financial burden on projects affecting fish and wildlife resources.

The final sources of funds listed is the United States Forest Service, and the report hits the nail on the head when it states "to the extent of its available funds" With the development and implementation of "Operation Outdoors" we cannot foresee the Forest Service having any funds available for development of optimum basic recreational facilities at state water projects.

Shasta Lake is a prime example of the Forest Service's shortage of funds to provide basic facilities to meet the demands of the visiting public. The Shasta-Trinity National Forest could intelligently spend $100,000 a year for the next five years to meet the needs so prevalent on Shasta Lake today

With the completion of the Trinity Division of the Central Valley Project, the Shasta-Trinity National Forest will have the administration and operation of Trinity and Lewiston Lakes, which places an additional financial burden for development of optimum recreational facilities We are urging Congress to allocate $2,500,000, or only one percent of the cost of the project, for development of recreational facilities on Trinity, Lewiston and Whiskeytown Lakes Let us not look to the Forest Service for these funds which are a state responsibility

We honestly question whether the already existing state and federal programs can support increased financial burdens of the nature contemplated or desired for recreation in the State Water Plan

We would like to add that the Wildlife Conservation Board Program has been largely successful and acceptable to local government, because capital outlay is provided by the Wildlife Conservation Board, and the maintenance and operation is assumed by local government with no repayment strings attached

We cannot stress too strongly that the State must provide on a nonreimbursable basis the optimum recreational facilities If not, chaos will result Local government cannot bear this capital outlay cost

STATEMENT OF CLAIR A. HILL
Redding Chamber of Commerce

Recreation is one of the major industries of our county Shasta County, which is classified as a mountain county is very diverse The elevations range from about 400 feet here in the valley to over 10,000 feet at the top of Mt Lassen We have good agricultural soils in most of the valleys and a good deal of productive soil in the rolling foothills. The county has been, over the years, well blessed in natural resources The economy of western Shasta County was based, for many years, primarily on mining During the First World War, there were six smelters operating within a few miles of the City of Redding Due to the world market conditions, all of these smelters were closed by the late twenties which was a severe blow to the economy of the county During the thirties, when the price of gold was raised, mining again assumed a great deal of importance to the county's economy, and there were many gold dredges operating These were all, one by one, shut down during the World War and due to the rising operating costs and the stable price of gold, essentially none have operated since the war Today, there is only one mine of major importance operating in Shasta County and that is the Mountain Copper Company's mine at Iron Mountain which has operated continuously for over 50 years

The timber industry in the county was of major importance 50 years ago and then dwindled to being only a minor industry until about 1940 when its importance again grew to where today the lumber industry is the number one industry in Shasta County and its importance should continue over the years due to the sustained yield method of operation We hope that it will be supported as time goes on by the introduction of pulp and paper mills to help utilize the products from the forest which are now wasted

Historically, water development has played, and is playing, a major role in the development of this county Although 10 percent of the State's water falls on Shasta County, we have our areas of deficiencies and our problems with dry cycles as is witnessed by the fact that we have more adjudicated streams in this county than any other, seven in number

Much of the water development in the county has been for power purposes There are 13 power plants producing, with a capacity of close to 1,000,000 kilowatts Of these, 11 are private and two public, Shasta and Keswick being a part of the Great Central Valley Project, the balance being owned and operated by the Pacific Gas and Electric Company These projects operated by private industry are the backbone of the county's finances

We have an excellent example of what water resources projects mean to the economy of an area with Shasta Lake and the operation of Shasta Dam I won't attempt to give a lot of statistics on this and the only way to really appreciate the recreational activity on the lakes and streams is to actually see it on a busy weekend and to stop to talk to people who are putting boats into the lake or taking them out when

the day is completed and find out where these people have come from You will find that many of them are local people but a very large percentage come all the way from San Diego to Medford, Oregon with many people hauling boats from the major metropolitan center to spend the weekend on the lake Many others come and spend their whole vacation period camping around the lake and engaging in water sports such as boating, skiing, and fishing

I should not pass this item without commenting that the operation of Shasta Dam has also made practically a year-round fishery of the Sacramento River It is seldom that I cross the bridge within the city limits of Redding that I don't see from one to fifty people fishing

I would say that (local operation and maintenance of recreation features) is both feasible and desirable and, in general, can be done at a lesser cost by a local agency than it can by a large organization such as the Division of Beaches and Parks

A local district or public agency can collect admission fees, levy taxes against resort property, lease land for private development, etc, to raise funds adequate for operation, maintenance and policing costs It is our belief that all access roads should be constructed as part of the development, and the lands must be obtained by the project and turned over to the agency, whoever it is, to handle the leases and operate the public facilities It is believed that the local agency handling the project, with revenues derived from taxes and leases, could build boat launching ramps, picnic areas, campgrounds and the like

It should be pointed out that whoever does handle concession leases, home tracts, etc, provisions should be such that private financing can be obtained This requires 50-year noncancelable leases A lease of the federal, 20-year cancelable type makes it nearly impossible to finance improvements and should not be used

There are two public agencies in the area distributing electric power One is the City of Redding and their annual actual kilowatt-hours sold for the year 1957-58, July to June, was 87,103,276 Their projected electric estimated requirement by 1966 is 123,800,000

The other agency is the Central Valley Public Utility District The Central Valley Public Utility District is now obtaining power from the Central Valley Project and I assume will continue to do so The City of Redding now obtains power from the Pacific Gas and Electric Company under a five-year contract The city would be interested in obtaining power from a state project in the amount of its projected needs However, before the city would be interested in obtaining such power, it would have to be economically desirable and the city should be left free to operate its own business and establish its own retail rates

At the time that the Reclamation Act of 1902 was established, it was, in effect, an adaptation of the old Homestead Act, which was developed to assist in the settlement and development of the West It was based, under certain circumstances on giving a family-sized farm to a family who would develop and operate it During the past 57 years, conditions have changed drastically Very little water developed under a state project will be applied to land owned by the State which is to be given away by the State under such provisions as the reclamation law

Over the years, farming has changed drastically from an activity involving the use of a few horses and mules and a lot of hand labor, to one that to be successful has become highly mechanized and very scientifically operated Today, it takes a large acreage to justify the investment in the equipment necessary to operate a farm successfully It must be borne in mind that agriculture is in competition, not only within the State of California, but with the nation and the rest of the world as well If we are going to farm successfully and maintain our competitive position in the national and world markets, we must operate as economically as possible without artificial restraints that cause higher operating costs It is often stated that if agricultural water is to be subsidized by power revenues or from other sources, that the subsidized water should not be utilized on holdings that were not covered by an acreage limitation It appears that under both state and federal income tax laws, the State will get adequate return from any subsidy and that, basically, the size of acreage that is farmed by any one man or corporation should be a matter of economics and not politics

I would like to cite a trend which is, in the long haul, damaging to the furnishing of food for our expanding population and that is the development of these 5-, 10-, 15-, and 25-acre rural home tracts that are owned by people who obtain their income from some other pursuit and live on a farm more or less for a hobby These make for pleasant living for those who like them, however, they add very little to the

nation's food supply and, in effect, are taking away from agriculture production just as much as though the entire area was built up into a rural housing community

STATEMENT OF JOHN PEREZ

My name is John Perez, a farmer in both Shasta and Tehama Counties Although I have been chairman of the Shasta County Water Resources Board for the past four years, and am a director and past president of the Shasta County Farm Bureau, I am speaking to you today as a dirt farmer and businessman

My subject for discussion with you today is recreation, its effect on the local economy and responsibilities in its development and administration

We farmers are vitally interested in and are aware of the economic importance of the recreation dollar For example, I am in the dairy business and know that the influx of vacationers during various recreation seasons creates additional demands for milk This amounts to approximately 10 percent during the summer and fall months This, of course, is a direct return to the farmer and generally improves the wealth of the local area As regards further effects of recreation developments associated with water resources development, you have only to look about you These facilities are a perfect example of what can develop and though they are on public lands they contribute taxes to the county treasury which in turn reduces the burden to the farmer

It is my personal feeling that the general administration of recreation developments associated with state water projects should be handled as much as possible by local government In addition, local government should be given the opportunity of participating in the planning stages It is only fair that they be given an opportunity to share in these responsibilities

As to admission fees, lease management, levying of taxes, etc, local control is highly desirable Private enterprise should be given its fair share of opportunity to develop facilities A balanced public and private development can be realized in the best interest of all if properly planned and administrated

Another interest to the farmer and particularly to the livestock men is the effects of recreation use of lands encroaching on grazing privileges, etc We believe in the multiple-use concept of our natural resources

STATEMENT OF J. GORDAN TODD
Tehama County Farm Bureau

We oppose any efforts to establish acreage limitations on the use of water developed by the State of California and made available to agriculture.

Acreage limitations should be eliminated on federal projects supplying supplemental water where the lands are largely or entirely privately owned and farmed or have existing water rights

Acreage limitations, when applied to delivery of water to water users in California, work both an injustice and a fraud on small and large landowners alike, as well as the public.

Such limitation tends to place the burden of costs for conservation and importation of supplemental water on the small landowner.

Economic and profitable production of crops often requires different acreages in different areas as soil and climatic conditions vary. Thus, an effort to apply acreage limitations uniformly over the country is economically unsound and unworkable

As a requirement in the development of public lands, acreage limitations, now in effect under federal reclamation law, originated in 1902 as a carryover from the homestead law Conditions have almost completely changed, especially in California, and limitations are not properly or fairly applicable to lands or water deliveries in California where lands to be irrigated are practically all held in private ownership It tends to promote unfair discrimination which adversely affects all water users and the public.

It deters and prevents co-operation among all water users in development of water resources and induces serious delay in such development.

Without the impediment of acreage limitations, irrigation districts have successfully developed and made water available for agricultural use. The 114 such districts in California, plus other local districts, have developed over two-thirds of the 20 million acre-feet of surface water developed to date in the State.

STATEMENT OF DALE E. BORROR

I am Dale Borror of Gerber, Tehama County. My son and I operate a time family farming operation in the Tehama-Gerber area It is wholly owned by us and at least 90 percent of the labor of the entire operation is done by the family

Agriculture and its attendant agribusiness is by far the largest industry in California Any socialistic legislation designed to hamper the development of this largest of industries will surely reflect upon the entire economy of the State of California

The 160-acre limitation is contrary to all American ideals of free enterprise and competition It is discriminatory in that all real property is the final security upon which the bond issue must be guaranteed It is contrary to our California water law under which our irrigation districts operate, for they are required to deliver water to all users whether one acre or a thousand acres

Furthermore, excess land within the boundaries of water districts would be subjected to either a discriminatory tax or would be assessed and taxed on a wholly different basis causing endless confusion

Those who would enforce the 160-acre limit on agriculture have not, as yet, given voice to similar limitation on other businesses

We have only to look out the window of this building to see other industries that are being subsidized Hundreds of common carrier trucks travel up and down Highway 99 each day Why should each owner not be limited to one or two rigs on the road? Two rigs would easily provide employment for five men on a full-time basis Highways are built from fuel taxes collected from all of the people

Or to be more facetious, why not limit the size of the suburban lot that could get state project water, or the number of employees an industrial plant working on state projects could have on its payroll?

Mr Chairman and Members of the Committee, agriculture will always play fair with the people of California It is the most basic industry we have, it will provide the food and fiber for a growing economy if it has the incentive which can come from sound governmental regulations

I would like to bring to the attention of the committee two possible problems that may be at issue in our proposed state water program in regard to water users' contracts and pricing policy

First, it has been reported by the Administration and others closely connected with it that this plan will make cheap public power available in some areas of the State and that the recreational features will bring much new wealth into the mountain counties

I would caution the committee that any of the accessory features of our state-wide water plan must be considered equitably in repayment and financing and that cost of water to consumers, either agricultural or suburban, be kept at a legitimate level. Power should be sold at market value to any consumer There must be no preferential customer Recreational features should be charged as a non-reimbursable feature and paid by all of the people

In the second place, I feel that all contracts to take water from the watersheds of origin should be made only on a definite surplus water basis The watersheds of origin should be fully protected from depletion for the present and all future needs

Furthermore, users of agricultural water in the watershed should be guaranteed irrevocable title to the water used upon their land, and when the project is paid for the installations should become the property of the water users on the district which represents them

In conclusion, Mr Chairman, I would like to impress upon the committee that the purpose of the state water program is to supply water to the people at the lowest possible cost for the water, not to set the State up in the power business nor to provide unneeded recreational facilities at the expense of water users

STATEMENT OF SENATOR RANDOLPH COLLIER

The future economic growth of Northern California is dependent to a great degree upon recreation Our lumber industry is converting to a sustained yield basis while at the same time it is making technological improvements Both of these factors are resulting in decreased employment in the lumber industry For example, the town of Tennant in Siskiyou County had a population of some 1,100 persons a few years back Now the town is no longer occupied by lumber workers.

Employment has declined in the railroad industry in Northern California due to dieselization of locomotives and other mechanical improvements Some 400 persons were once employed at the Southern Pacific shops and roundhouse at Dunsmuir Not over 25 are there today

Agricultural employment has also declined Farms that used to employ from five to 30 men on a seasonal basis now do the same work with machinery Also the trend toward larger farms has decreased the number of families engaged in agriculture

The California roster shows an estimated population for Siskiyou County of 30,400 as compared with a 1950 census figure of 30,733 Thus, we have had a decline in population in the last nine years while other areas of California have been growing at a fantastic pace

In order to maintain the assessed valuation of the county it is important that we find a new means of income Recreation is a growing industry and our area has the natural beauty but not the facilities

Due to the overcrowded conditions in recreation areas adjacent to the cities it is important to the State that new recreation areas be created to supply the increased demand

I wish to call your attention to the Box Canyon area in southern Siskiyou County near the City of Mount Shasta This area provides what has been described as the last natural dam site in California

This site is approximately one mile from U S Highway 99 It is estimated that 6,000,000 persons traveled through this area last year on Highway 99

A preliminary survey of the Box Canyon dam site by The California-Oregon Power Company a few years ago indicated that at least 45,000 acre-feet of water could be stored in back of the dam

Topographical reports indicate that construction of a dam below the COPCO site would store a considerably greater amount of water The COPCO SURVEY was based upon diversion to the McCloud project

I understand that a private power company would be interested in buying any power produced at the dam as a supplement to their present production at other sites If it were feasible to produce marketable amounts of hydroelectric power at the dam then a considerable portion of the cost of the project would be self-liquidating

The following statement was received after the hearing

STATEMENT OF E. G BABCOCK
Big Valley Irrigation District

The Big Valley Irrigation District, located in Lassen and Modoc Counties, would like to express its opinion for your consideration on the following points of policy with regard to state water projects

1 In the event that a local water development project is constructed in our area by the State of California, it is our opinion that if the project receives subsidization from the State for recreational facilities at the time of construction for initial installation of basic facilities (access roads, boat landings, boat launching ramps, sanitation), then it should be the responsibility of a local agency, either public or private, to operate, maintain and improve on these facilities Any fees for entrance or use of these facilities should be determined by the local agency

2 The 160-acre limitation should not apply to state-financed or constructed projects, however, a limitation governed by the economic family operation should be determined for each project The limitation would then be flexible enough to take into account climatic geographic, and economic conditions in each area

The limitation in our particular area should be approximately 550 acres, this being the economic family unit for this particular region

SOUTHERN CALIFORNIA HEARINGS

QUESTIONNAIRE ON ACREAGE LIMITATION, POWER PREFERENCE AND CONTRACT PROVISIONS

The Assembly Water Committee will meet at the following locations, convening at 10 00 a m each day:

September 22	Bakersfield	Changed to Council Chambers, City Hall, Truxton and "I" Streets
September 23	San Luis Obispo	California State Polytechnic College Auditorium of Agricultural Engineering Building
September 25	Sacramento	State Capitol, Room 4202
October 20	Los Angeles	State Building, Room 115
October 21	San Diego	San Diego County Water Authority Bldg , 2750 - Fourth Avenue

These five hearings will constitute an integrated series of hearings to secure factual information and ascertain public attitudes on the general subject of acreage limitations, power preference and other problems related to contracting for state water project services In addition, the committee will appreciate receiving any comments on "A Study of Economic and Financial Policies for State Water Projects" which anyone may wish to present

In order to assist persons and agencies who wish to appear before the committee at any of the five hearings, the material under headings I, II, and III below has been prepared The material under headings I and II contains both a statement of the problem before the State and a brief description of federal policies, as well as several broad questions Heading III is a group of questions on contract matters This material should serve as a guide in understanding the committee's objectives and interests in scheduling these hearings Please do not feel that you need to comment on all aspects of the material, particularly if a question does not pertain to your agency or office Other related testimony and comments will be welcomed

I. ACREAGE LIMITATION

In the repayment of irrigation costs of state projects, possible policies may involve (a) no subsidy, (b) subsidy only at the local level, or some form of subsidy such as (c-1) use of power revenues, (c-2) use of municipal and industrial revenues, (c-3) foregoing interest on irrigation investment or (c-4) using the interest component from power. Under any of the above circumstances, a state project will still benefit irrigation water users and other beneficiaries because of (1) use of the State's credit, (2) providing a water supply and (3) enhanced land values Benefits similar to (1), (2) and (3) occur whenever public funds are used to construct certain facilities such as highways, parks, office building, etc , and are considered normal under such circumstances However, most public expenditures are for facilities which are open to use and benefit by everyone while irrigation water supplies are committed through the medium of local agencies by water right or contract to the service of private property

Federal reclamation law provides subsidies under (c-1), (c-2), (c-3) and (c-4) above, but limits the amount of water from a federal project to sufficient land for an average family This is done because of both the substantial amounts of subsidy federal reclamation projects confer on irrigation water users and the social belief that federal policies should encourage the small, family-type farm and prevent land speculation Although there are exceptions, the limitation is generally based on the 160-acre size family farm derived from the homestead laws Congress has authorized both larger and smaller acreages where 160 acres was not considered appropriate for a family-size farm, has provided for removing the limitation when interest is paid on irrigation costs (the Washoe formula), and occasionally the acreage limitation has been lifted entirely.

In general, regulating or transporting irrigation water by means of federal facilities, even though the rights to the water involved have always been held by the parties receiving the water, is sufficient basis for application of the 160-acre limitation However, the use of conservation or other types of water distribution districts which may locally subsidize irrigation water users by assessing nonagricultural property within the district to repay irrigation costs, is not considered to affect the federal acreage limitation Similar limitations are not placed on beneficiaries of other project services such as power (except privately-owned utilities), municipal and industrial water service, navigational and flood control

Question 1 What policies do you feel the State should follow with respect to acreage limitations or the encouragement of family-sized farms?

II. POWER PREFERENCE

The marketing of hydroelectric power from the Oroville power features or other power facilities which may be constructed in the future at state projects, presents several possibilities These are, in general, (1) sale of the power to maximize revenues, (2) sale of the power to recover costs, or (3) sale of the power to achieve certain objectives such as the encouragement of public power, expansion of certain segments of the economy, repayment assistance to irrigation water users or other project beneficiaries Overall physical and economic limits on the extent to which any power marketing policy can be followed as established by an interrelated complex consisting of the nature of the power market within transmission distance, the nature of the power to be generated by the project, the costs of generating and transmitting that power, as well as the revenues which it will bring

The federal policies covering power preference are expressed in varying forms by a number of statutes In essence, federal power preference contemplates that hydroelectric power generated at federal projects, which is surplus to the needs of the project, shall be marketed giving first preference to publicly-owned electric distribution facilities such as municipal or district utilities and rural electrification cooperatives The quantity of federal power developed at a project is limited Its price covers the cost of production and frequently includes some repayment assistance to irrigation water users Even so, federal power is usually sold at lower prices than privately-owned utilities would charge the public agency The preference in availability, therefore, achieves its real meaning through a favorable pricing structure Obviously, the lower the price of federal power in relation to alternative sources, the greater is the economic impact of the power on the area using it

The philosophy behind the preference clause is that low-cost power attributable to federal project construction should be marketed to assure that the benefits or savings in power costs are realized by the ultimate consumer and to prevent monopoly by privately-owned utilities Any type or size of customer can purchase federal power provided it is available for purchase through a publicly-owned distribution agency To assure that federal power can be delivered to preference customers, most federal agencies wholesaling power have been granted statutory authority to construct transmission lines and related facilities to transmit the power to preference customers

Question 2 Does your agency wish to purchase power from the State? If so, under what conditions?

Question 3 What policies do you feel the State should follow in marketing project power?

III. SPECIAL PROBLEMS IN CONTRACT POLICIES

Question 4 Are you willing to contract for the amounts of water shown at the price shown in Bulletin 78?

Question 5 Do you have the financial capacity to construct distribution facilities to utilize such water?

Question 6 What preparations are you making to provide such distribution facilities?

Question 7 What assessments and other financial resources can you pledge to guarantee repayment of state project costs under adverse circumstances?

Question 8 How do you propose to secure funds needed each year to pay for both the capacity allocated to you and the water delivered by the State?

Question 9 What commitments to provide a water supply do you need from the State before you can finance and construct distribution facilities?

Question 10. What provisions do you desire in a contract relating to assurances of a continuity of water supply?

Question 11 Would escalation of water rates to cover increased costs of constructing additional facilities to supply water, increased operation and maintenance costs, et cetera, be acceptable?

STATEMENT OF WALTER G. SCHULZ

Department of Water Resources

The service area of the San Joaquin Valley-Southern California Aqueduct System in the San Joaquin Valley portion of Kern County includes the irrigable lands lying generally west and south of the Shafter-Wasco Irrigation District and west of the Arvin-Edison Water Storage District plus urban lands in the Bakersfield area. On the extreme western and southern fringes, the service area includes lands up to an elevation of 1,200 feet above sea level or well above the proposed canal alignment Although water will have to be pumped to the higher lands from the main aqueduct, most of the service area in Kern County will be served by gravity water delivery.

The service area in Kern County comprises about 962,000 irrigable acres of strictly agricultural land and 41,000 irrigable acres which are presently agricultural but which ultimately will be taken over by urban development At present some 335,000 acres are irrigated each year The estimated annual net consumptive use for this acreage is about 900,000 acre-feet Present annual net ground water withdrawal exceeds estimated firm yield by about 540,000 acre-feet with a resultant progressive lowering of ground water levels

Irrigation water from the San Joaquin Valley-Southern California Aqueduct System is expected to be available to the service area by 1965 or 1966 Use of project water in limited amounts will commence at that time and thereafter will increase at a rapid rate to about the year 1990 Maximum use of irrigation water is expected by the year 2010 at which time about 810,000 acres in the area are expected to be under irrigation Also, at about this time, a major portion of the previously indicated transition of agricultural to urban land use in the Greater Bakersfield Metropolitan Area will have taken place. The requirement for municipal and industrial water service will begin to increase by large amounts starting in about 1970 By 1985 it is estimated that total population in the service area will be about 350,000 A large portion of this population is expected to be concentrated in urban areas The projected rate of growth in total population for the service area over the period 1950 to 2020 is as follows:

Year	*Population*
1950	165,000
1960	197,000
1970	257,000
1980	312,000
1990	397,000
2000	541,000
2010	728,000
2020	935,000

The present economy of Kern County is based primarily on petroleum production and agriculture; each of these activities has accounted for revenues of over $2 billion during the past decade. The passage of time is expected to witness some decline in oil production A substantial decline in agricultural activity can be anticipated unless supplemental water is obtained from outside sources Manufacturing activity is comparatively small at present but is well diversified and growing Food and agricultural products are among the leading industries along with petroleum refining, fabricated metal products, textiles and transportation equipment

Based on an employment survey of the Greater Bakersfield Area in 1957, it is estimated that each 10 jobs directly associated with agriculture and agricultural service provide about three jobs in the basic food and agricultural industries. It is further estimated that on the average the equivalent of one full-time job is provided by each 20 irrigated acres in the service area. For example, assuming these relationships to apply to the land area which project water will keep under irrigation as well as the new land to be irrigated, it is indicated that if sufficient water supplies are made available there will be an increase of about 37,400 basic jobs in agriculture, food processing and related industries in the service area by 2010. This

course of reasoning indicates that about 48 percent of the new jobs required to maximize economic growth of the area could be directly attributed to project water service A portion of the remainder of jobs which would have to be provided by basic manufacturing activity also might have some indirect relation to agricultural expansion

In its studies on the ability of water users to pay for water, the method used by the department is essentially the same as that used by the U S Bureau of Reclamation Fundamentally, it consists of computing the gross returns from the sale of crops and subtracting from this sum the costs of production The difference or residual, if any, then is considered to be the payment capacity or income available for the payment of water costs The costs include all labor and materials, except water, used in crop production, cash overhead, such as taxes and repairs, interest on the investment and depreciation, and charges for management of the enterprise

In connection with the determination of payment capacity, net farm income to farm operators also is estimated This component includes the operator's labor wages, interest return on his investment, and the management charge referred to above This income is over and above the payment capacity figure Net farm income varies on a per acre basis as the size of the farm unit varies Net income determination is important for it serves as a guide in ascertaining the minimum sized farm necessary to support a family and to provide for incentive

In connection with the preparation of Bulletin 78, extensive studies were made of the ability to pay of the potential water users It was found that the cost of water as set forth under cost allocations previously described was well within the ability of urban water users to pay and, in many cases, was comparable to costs presently experienced by such users With respect to irrigated agriculture, these studies disclosed that in some areas the cost of Northern California water would be too expensive to be employed on some types of crops and in some areas The capacity of Aqueduct System "B," presented in Bulletin No 78, on which the facilities defined in Senate Bill 1106 are based, was adjusted to the economic demand for water in the areas that would be served thereby Included in the studies was the recognition given to the cost of conveyance and distribution works that must be locally constructed and financed to bring water from the main aqueduct to the farmer's headgate

As previously stated, the service area in the San Joaquin Valley portion of Kern County consists of 902,000 irrigable acres which is expected to be utilized for agricultural purposes throughout the foreseeable future Over one-third or 352,000 acres of this land is of such quality as to be suitable for all climatically adapted crops without reclamation Another 389,000 acres show a present limitation for irrigated crops because of the presence of saline and alkaline salts These salts are susceptible of removal through reclamation measures which have proved to be economically feasible in actual practice After completion of a three- to seven-year reclamation period, these lands will also be suitable for all climatically adapted crops

There are, however, an additional 221,000 irrigable acres of agricultural land in the study area possessing physical characteristics which in one or more ways seriously limit their suitability for irrigated agriculture. Over half of these lands show the presence of saline and alkaline salts and will, therefore, require reclamation effort of varying intensity to achieve a maximum degree of utilization For the most part, sizable capital investment is required to successfully bring these problem lands under irrigation This fact, coupled with inherent limitations as to crop adaptability, precludes utilization of high-cost irrigation water in their development

Although Kern County does not occupy a monopolistic position with regard to any of the agricultural crops grown there, it has been able to obtain yield and early maturity advantages over competing areas largely due to a long growing season and mild winter climate These particular advantages presently apply principally to the valley floor lands since local water supplies for the higher lands are extremely limited However, the advent of project water service will permit exploitation of thermal conditions favorable to the production of citrus and deciduous fruit on presently dry lands above the valley floor in the western and southwestern portions of the county

Cotton is the dominant crop under present conditions of development and is expected to retain this position in the future as more land is developed for irrigation with project water. Potatoes are expected to retain their approximate present importance while a substantial expansion in field crop acreage associated on a rota-

tional basis with cotton is anticipated. Grapes are relatively unimportant in the area contemplated for project water service and although expansion in grape acreage is expected, this crop will utilize only a minor quantity of project water. The most significant development from the standpoint of the agricultural economy of Kern County which is expected to stem from project water service, lies in the fruit category. Over 100,000 acres of high quality irrigable land still in its native state lying generally above the proposed route of the San Joaquin Valley-Southern California Aqueduct is considered by authorities to be highly suitable to the production of deciduous and citrus fruit. There appears to be sufficient justification to project a sizable acreage of fruit for the new lands to be developed with project water.

The cost of irrigation water, like any other cost involved in the production of agricultural commodities, must be covered by the income derived from its marketing. It is obvious that all crops do not have the same ability to pay for water because of variation in gross return, in production costs and in unit water requirements. Previous reference has been made to the favorable climatic characteristics of Kern County and to the large acreage of excellent soil in the study area. As a result of these factors, the area shows a relatively high income potential. This is essential to any extensive use of project water due to its relatively high cost and also to the necessity that sufficient economic incentive be provided if presently dry land is to be developed to irrigation. Difficulty is encountered in accurately identifying the incentive which will be required if extensive use is to be made of project water in the study area since this is a matter for decision by individual water users. The residual amounts which would be available as incentive and for payment of water costs for the important crops which are grown in the study area are indicated by Attachment Nos. 1 and 2. While these tabular data do not have complete application to the entire service area, they are representative of a major portion of it. On a composite basis, we estimate average payment capacities for the several sub-areas within the larger area for which project water service is contemplated to fall within a range of $10 to $16 per acre-foot, measured at canalside. In deriving these values, provision has been made for an incentive allowance which is considered adequate in the light of the varied nature of farm operations characteristic of the area. Provision has also been made for costs which will be incurred in conveying and distributing water from the aqueduct to farm headgates. Distribution system costs vary considerably with such major factors as distance and elevation in relation to location of the aqueduct but for the most part fall within the range of $5 to $8 per acre-foot.

Indication of the minimum economic sizes by various crop categories which could be expected to utilize project water at a total cost of $20 per acre-foot is presented in Attachment No. 3. However, many of the farm units which will utilize project water in the service area are larger than the indicated minimum size.

The Department of Water Resources is currently in the process of making a survey to determine the number and size of landownerships within the proposed Feather River and Delta Diversion Projects service areas.

Soil conditions throughout the southern San Joaquin Valley portion of the State service area vary considerably. In some areas we believe replenishment of ground water basins can be accomplished without difficulty by such means as over-irrigation or spreading through existing facilities. In other areas the nature of the soils is such that little replenishment can be accomplished by these means and other methods will be required. Quality of ground water basins is also a problem in some areas which will in turn have an effect upon the usability of such basins.

The possibility of percolation to ground water basins outside the service area of contracting agencies was considered a substantial problem before water deliveries from the Central Valley Project were begun in the San Joaquin Valley in the 1940's. The Bureau of Reclamation's experience in the operation of the Friant-Kern Canal indicates that benefits of percolation to ground water basins have resulted both to farmers in districts under water service contracts and to farmers outside those districts.

There is no doubt that the surface use and application of water from the San Joaquin Valley-Southern California Aqueduct System will result in the augmentation of ground water supplies available to both the actual service areas and to adjacent areas. This problem is being studied at the present time with the aim of formulating a means to bring all those areas and individuals who benefit from project water service into the repayment structure.

It is the Department's present view with regard to the main San Joaquin Valley-Southern California Aqueduct System that the authority and responsibility for operation, maintenance and management of the primary aqueduct system will necessarily remain a state function It is contemplated, however, that water will be sold to contracting districts at main turnouts along the aqueduct and that at this point the district shall assume responsibility for control, handling, use, disposal, and distribution of the water

The basis for this division of responsibility is that it is considered necessary for a single agency to maintain control of the primary aqueduct system since the system will be a main trunk line serving any and all agencies desiring water thus making it impractical and restrictive to relinquish control to any particular agency or agencies However, on the other hand, local distribution is primarily a matter of local concern and can best be accomplished by the contracting district

The existing organized entities in the service area include three recently organized water storage districts which were established in anticipation of receiving project water The Semitropic Water Storage District lying in the northeastern part of the service area was formed in 1958 It encompasses approximately 224,200 acres of which about one-third are under irrigation The Rosedale-Rio Bravo Water Storage District lying in the central portion of the service area was formed in May, 1959 It covers 43 000 acres of which slightly over 50 percent are under irrigation The Wheeler Ridge-Maricopa Water Storage District lying along the southern fringe of the service area was formed in August, 1959 It encompasses approximately 127,500 acres of which slightly less than 50 percent are under irrigation

In addition to the above districts, the City of Bakersfield, the Bakersfield Municipal Water District, the West Kern County Water District and Kern County, have formally indicated an interest in project water service We believe, with the representations made on behalf of Kern County itself, that the entire project service area in Kern County is represented by existing agencies, although specific additional local agencies may be subsequently organized to meet specific needs

No formal negotiations on repayment agreements or agreements on points of water delivery have yet been undertaken with local agencies, although possible water requirements have been discussed The Department is presently in the process of formulating proposed contract principles with the intention of making them publicly available at the earliest possible date

In the studies which have been made it has been necessary, of course, to make studies of the repayment capacity of lands which would receive water in order to estimate water demands since water demand is a function of water price which, in turn, must be related to repayment capacity It also has been necessary to estimate the approximate location of points of water delivery in order to establish where changes in the capacity of the main aqueduct should be made We do not anticipate any major problems with respect to reaching agreements with local agencies relative to the points of delivery from the main aqueduct system

The drafting of contractural provisions involves comparatively few difficulties, once principles behind such provisions are established There are, however, several problems concerning principles which relate to the firmness of water supply and which might be considered by the Committee These problems can be divided into two categories (1) the continuity of water supplies to the Sacramento-San Joaquin Delta for export as envisioned under the so-called "Delta Pool Concept" and (2) the operational problems in prorating available project water supplies during drought periods

With respect to the first problem, namely, that of assuring an adequate water supply in the Sacramento-San Joaquin Delta, it is necessary to insure, as the present supply to the Delta diminishes by virtue of upstream development, that additional storage projects are developed which will augment the water supplies in the Delta which are available for export This augmentation for the most part, we expect, will be from additional projects on the North Coast We believe that the Burns-Porter Act provides the assurance of continuity of water supplies in the Delta.

According to the Department's present studies, adequate water supplies will be available in the Delta, with the construction of Oroville Dam and Reservoir, to meet project requirements until about 1987, assuming the most adverse conditions of depletions in inflow to the Delta At about that date it may be necessary to bring additional supplies to the Delta from the North Coast.

With respect to the second problem, we wish to point out that the Feather River and Delta Division Projects, as included in the facilities described under the Burns-

ATTACHMENT NO. 1

DERIVATION OF UNIT RESIDUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY CROPS

HIGH QUALITY LAND

Crop	Production unit	Land class	Yield	Average F O B prices received 1952-56	Gross income	Crop production costs	Net return	Operator's management	Operator's labor	Operator's labor and management	Residual income	Farm water delivery demand	Residual income per acre-foot
Alfalfa hay	ton	V	7 50	24 00	180 00	123 79	56 21	18 00	7 97	25 97	30 24	3 9	7.75
Alfalfa seed	lb	V	625 00	34	212 50	150 30	62 20	21 25	9 04	30 29	31 91	2 5	12 76
Potatoes	cwt	V	270 00	2 55	715 50	502 77	211 73	71 55	5 40	76 95	134 78	3 6	37 44
Melons	crates	V	200 00	3 25	650 00	458 73	191 27	65 00	10 48	75 48	115 82	2 0	57 96
Cotton	bale	V	2 00	165 00	330 00	174 91	155 09	33 00	10 48	43 48	111 61	2 7	41 34
Grain	ton	V	1 50	48 00	72 00	46 40	25 60	3 60	1 61	5 21	20 39	1 7	11 99
Sugar beets	ton	V	24 00	12 50	300 00	186 26	113 74	30 00	6 75	36 75	76 99	2 9	26 55
Plums	ton	V	4 00	160 00	640 00	344 72	295 28	96 00	32 90	128 90	166 38	3 9	42 67
Navel oranges	field box	V	400 00	1 70	680 00	458 48	221 52	68 00	33 75	101 75	119 77	2 9	41 30
Irrigated pasture	lb	VS	810 00	20	168 00	118 82	49 18	16 80	8 14	24 93	24 25	4 1	5 91
Cotton	bale	VS	2 00	165 00	330 00	174 91	155 09	33 00	10 48	43 48	111 61	2 7	41 34
Milo	ton	VS	2 50	54 00	135 00	89 88	45 12	13 50	4 85	18 35	26 77	2 0	13 39
Plums	ton	H	4 00	160 00	640 00	344 72	295 28	96 00	32 90	128 90	166 38	2 9	57 37
Grapes	ton	H	7 00	65 00	455 00	274 35	180 65	45 50	22 80	68 30	112 35	3 1	36 24
Navel oranges	field box	H	400 00	1 70	680 00	458 48	221 52	68 00	33 75	101 75	119 77	2 9	41 30
Alfalfa hay	ton	VI	6 50	24 00	156 00	107 99	48 01	15 60	7 97	23 57	24 44	4 4	5 55
Grapes, table	ton	VI	7 00	65 00	455 00	274 35	180 65	45 50	22 80	68 30	112 35	3 6	31 21
Alfalfa seed	lb	VI	575 00	14	195 50	138 01	57 49	19 55	9 04	28 59	28 90	2 6	11 12
Potatoes	cwt	VI	250 00	2 55	662 50	465 26	197 24	66 25	5 40	71 65	125 59	4 5	27 91
Grain	cwt	VI	1 35	48.00	60 00	45 90	14 10	1 00	1 61	4 61	9 49	1 9	4 99
Cotton	bale	VI	1 50	165 00	264 00	151 29	112 71	26 40	10 48	36 88	75 83	3 1	24 46
Plums	ton	VI	3 50	160 00	560 00	307 22	252 78	84 00	32 90	116 90	135 88	3 3	41 18
Navel oranges	field box	VI	350 00	1 70	595 00	435 95	159 05	59 50	25 25	84 75	74 30	3 3	22 52
Cotton	bale	VIS	1 60	165 00	264 00	151 29	112 71	26 40	10 48	36 88	75 83	3 1	24 46
Milo	ton	VIS	2 00	54 00	108 00	73 18	34 82	10 80	4 85	15 65	19 17	2 1	9 13
Grapes	ton	HI	7 00	65 00	455 00	274 35	180 65	45 50	22 80	68 30	112 35	3 6	31 21
Navel oranges	field box	HI	350 00	1 70	595 00	435 95	159 05	59 50	25 25	84 75	74 30	3 3	22 52
Navel oranges	field box	HP	350 00	1 70	595 00	435 95	159 05	59 50	25 25	84 75	74 30	3 1	23 97
Grapes	ton	HP	6 00	65 00	390 00	244 85	145 15	39 00	22 80	61 80	83 35	3 1	26 99

Irrigated pasture	lb.	VP	720 00	20	144 00	91 50	52 50	14 40	8 13	22 53	29 97	3 9	7 68
Cotton	bale	VP	1 30	165 00	214 50	136 92	77 58	21 45	10 48	31 93	45 65	2 9	15 74
Navel oranges	field box	VP	350 00	1 70	595 00	435 95	159 05	59 50	25 25	84 75	74 30	3 1	23 97
Irrigated pasture	lb	VPS	600 00	20	120 00	92 48	27 53	12 00	8 13	20 13	7 39	3 9	1.89
Navel oranges	field box	VR, HR, HPR, VR1, HTR1	350 00	1 70	595 00	435 95	159 05	59 50	25 25	84 75	74 30	3 1	23 97
Grapes	ton		6 00	65 00	390 00	244 85	145 15	39 00	22 80	61 80	83 35	3 3	25 26

ATTACHMENT NO. 2

DERIVATION OF UNIT RESIDUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY CROPS

MEDIUM QUALITY LAND

Crop	Production unit	Land class	Yield	Average F O B prices received 1952-56	Gross income	Crop production costs	Net return	Operator's management	Operator's labor	Operator's labor and management	Residual income	Farm water delivery demand	Residual income per acre-foot
Alfalfa hay	ton	V	7 50	24 50	183 75	123 61	60 14	18 38	11 57	29 95	30 19	4 0	7 55
Potatoes	cwt	V	270 00	2 60	702 00	472 14	229 86	70 20	5 40	75 60	154 26	2 0	77 13
Melons	crate	V	200 00	3 25	650 00	468 86	181 14	65 00	10 35	75 35	105 79	1 4	75 56
Alfalfa hay	ton	VS	6 50	24 50	159 25	107 93	51 32	15 92	11 57	27 49	23 83	4 0	5 96
Alfalfa seed	lb	VS	575 00	35	201 25	142 30	58 95	20 12	9 04	29 16	29 79	2 5	11 92
Pasture	lb	VS	840 00	20	168 00	117 98	50 02	17 64	8 13	25 77	24 25	4 3	5 64
Cotton	bale	VS	2 00	170 00	340 00	156 15	183 85	34 00	10 48	44 48	139 37	3 3	42 23
Potatoes	cwt	VS	250 00	2 60	650 00	444 03	205 97	65 00	5 40	70 40	135 57	2 0	67 79
Milo	ton	VS	2 00	54 00	108 00	79 99	28 01	10 80	4 85	15 65	12 36	2 5	4 94
Sugar beets	ton	VS	21 50	12 50	268 75	181 76	86 99	26 88	6 75	33 63	53 36	2 5	21 34
Melons	crate	VS	160 00	3 25	520 00	388 68	131 32	52 00	10 35	62 35	68 97	1 4	49 26
Grain	ton	VS	1 50	48 00	72 00	55 94	16 06	3 60	1 16	4 76	11 30	1 1	10 27
Cotton	bale	VHS-VIS	1 60	170 00	272 00	142 29	129 71	27 20	10 48	37 68	92 03	3 3	27 89
Pasture	lb	VPS	600 00	20	120 00	91 88	28 12	12 60	8 13	20 73	7 39	4 3	1 72
Cotton	bale	VPS	1 30	170 00	221 00	129 92	91 08	22 10	10 48	32 58	58 50	3 3	17 73
Grain	cwt	VPS	1 25	48 00	60 00	48 64	11 36	3 00	1 16	4 16	7 20	1 1	6 55

ATTACHMENT NO. 3

APPROXIMATE SIZES OF FARM UNIT REQUIRED TO EARN $10,000 NET FARM INCOME BY TYPES OF FARMING

VALLEY FLOOR AREAS

Types of farming—crops	Gross receipts per acre[1]			Cash costs and depreciation—per acre[2]							Net income per acre before payment of water costs	Assumed water cost at $20 A/F[3]		Net income per acre after payment of water costs	Percent distr of crop acreage	Size of farm unit required to earn $10,000 net farm income	
	Prices received	Crop yield	Gross income	Hired labor	Contract	Fuel and repairs	Materials excl water	Depr, int, taxes	General exp, others	Total		AF/A	Cost			Acres[1]	Net farm income[5]
	$		$	$	$	$	$	$	$	$	$		$	$			$ (rounded)
Extensive field																	
Small grains	50 00	1 0 ton	50 00	1 85	2 88	5 00	8 00	12 30	1 80	31 83	18 17	(dry	farmed)	18 17	33⅓	--	
Rice	4 25	40 sks	170 00	--	46 95	10 35	22 40	50 07	7 25	117 02	52 98	6 8	136 00	—83 02	66⅔	--	--
Total	--	--	--	--	--	--	--	--	--	--	--	--	--	--	100	--	--
Intensive field																	
Sugar beets	13 00	20 0 ton	260 00	40 00	45 00	8 58	24 50	44 63	10 98	173 69	86 31	3 0	60 00	26 31	33⅓	95	2,500
Tomatoes, processing	22 50	18 0 ton	405 00	27 00	110 50	14 18	38 65	58 88	17 69	266 90	138 10	3 0	60 00	78 10	33⅓	95	7,420
Barley	50 00	1 5 ton	75 00	60	--	9 05	11 20	20 75	2 64	44 24	30 76	1 5	30 00	76	33⅓	95	80
Total, farm	--	--	70,300 00	--	--	--	--	--	--	46,059 00	24,241 00	713	14,250 00	9,991 00	100	285	10,000
Intensive field																	
Cotton	165 00	2 0 bls	330 00	10 53	108 12	13 72	25 00	41 50	18 74	217 61	158 39	2 9	58 00	100 39	40	63	6,325
Potatoes	2 65	250 sks	662 50	17 25	242 37	9 68	123 20	49 03	34 80	477 83	189 67	3 8	76 00	113 67	20	31	3,564
Milo	54 00	2 0 ton	108 00	7 92	14 00	4 01	9 75	26 59	3 98	66 25	41 75	3 0	40 00	1.75	40	63	111
Total, farm	--	--	51,488 00	--	--	--	--	--	--	32,541 00	18,947 00	426	8,530 00	10,417 00	100	157	10,000
Truck																	
Melons	3 25	200 crs	650 00	16 20	320 00	8 60	30 30	52 53	34 27	461 90	188 10	3 0	60 00	128 10	33⅓	37	4,740
Beans, dry edible	8 00	20 0 sks	160 00	4 00	27 00	7 20	14 00	37 94	5 84	95 98	64 03	2 0	40 00	24 02	33⅓	37	889
Dry onions	1 60	560 sks	896 00	16 95	530 00	18 10	66 80	48 83	47 20	727 88	168 12	2 4	48 00	120 12	33⅓	36	4,371
Total, farm	--	--	62,226 00	--	--	--	--	--	--	46,845 00	15,381 00	272	5,428 00	9,953 00	100	280	10,000

Vineyard (table varieties)	65 00	6 0 ton	390 00	44 10	60 00	21 50	16 60	76 25	16 40	234 85	155 15	3 3	66 00	89 15	100	112	10,000
Total, farm	--	--	43,680 00	--	--	--	--	--	--	26 303 00	17,377 00	370	7,392 00	9,985 00	100	112	10,000
Deciduous fruits (plums)	160 00	3 5 ton	560 00	148 05	--	30 77	28 00	93 98	27 05	337 85	232 15	3 3	66 00	166 15	100	60	10 000
Total, farm	--	--	33,600 00	--	--	--	--	--	--	19,671 00	13,929 00	198	3,960 00	9,969 00	100	60	10,000
Nuts (walnuts)	400 00	1 0 ton	400 00	11 00	30 00	24 00	49 25	121 50	13 86	249 61	150 39	3 0	60 00	93 39	100	107	10,000
Total, farm	--	--	42,800 00	--	--	--	--	--	--	26,708 00	16,092 00	331	6,420 00	9,672 00	100	107	10,000
Citrus (oranges)	1 70	400 bx	680 00	5 40	135 00	17 25	115 00	132 38	30 32	435 35	244 65	2 9	58 00	186 65	100	54	10,000
Total, farm	--	--	36,720 00	--	--	--	--	--	--	23 509 00	13,211 00	157	3,132 00	10,079 00	100	54	10,000

[1] Prices received and crop yields are based on 1952-56 average
[2] Based on 1952-56 average production costs
[3] At the farm headgate
[4] Productive acreage
[5] *Includes returns to operator's* labor, capital, and management It is predicated on owner-operation with 50 percent equity in farm capital investment
[6] $20 acre-foot water costs would preclude extensive field crop types of farming particularly those crops with high water requirement
[7] Net cost after deducting the value of cottonseed and cull potatoes
[8] Net acres of cropland assuming 50 percent of the acreage double-cropped

Porter Act, are designed to provide firm water supplies during a period similar to the most critical historical record In the remote event, however, that a dry period might occur at some time in the future, consideration must be given to the operational problems that would be encountered in prorating water These operational problems might involve the possible establishment of priorities among the various project service areas, they might involve the possible establishment of priorities among the various types of use, such as agricultural, municipal and irrigation use, and they also might involve temporary adjustments of amounts of water to be delivered on a firm basis and on an interruptable basis

With respect to the problems of prorating water supplies during drought periods, the department is currently studying formulae that might be used and would welcome any comments which the committee may have

Nonfirm or interruptible water deliveries through project facilities are possible during the winter season in some years and at less frequent intervals during all or parts of the irrigation season of wet years Winter season transfers are generally considered useful principally for ground recharge where such recharge is possible Although no studies are available at the present time regarding the value of such water to users it appears that its value will be considerably in excess of the costs of pumping and conveying the water to the majority of the service areas

Although it is anticipated that there will be a considerable demand for water on an interruptible basis from the aqueduct system, and that such deliveries will be made, it also must be kept in mind that arrangements to furnish such water to users must be made on a basis which will not adversely affect recovery of the State's investment.

STATEMENT OF WILLIAM CARVER

Kern County Board of Supervisors

To the limit of our abilities, we pledge to you our wholehearted co-operation in the furtherance of the objectives of bringing supplemental water to areas of deficiency for the maximum benefit of this State. The earliest delivery of water to the County of Kern is a matter of great concern. The population growth during the past decade and the growth projected by state studies indicate that additional agricultural land must be brought into production With the diminishing availability of agricultural lands south of the Tehachapi mountains, it will be necessary that new lands be made available elsewhere Not only must these lands lost to urban encroachment be replaced but additional irrigable lands must be placed in production to accommodate the demands of a growing populous for food and expanding industry for raw materials. In this respect, Kern County is strategically located and is fortunate in having vast areas of high quality irrigable land, which lands are not in production by reason of lack of irrigation water. Population forecasts for the Antelope Valley-Mojave area, of which eastern Kern County is a part, indicate that during each of the next three decades, the population of this area will double that of each preceding decade. Since this area has a very limited supply of water, supplemental water will be required to sustain this predicted growth

The board of supervisors understand the California Water Plan as one aimed at benefiting all of the State's population, urban and suburban, metropolitan and agricultural Questions involving broad policy and multipurposes have not been investigated and studied by the board Nevertheless, the board would be opposed to a system of acreage limitation, or any other inequitable system, which would shift the cost of project repayment from the larger landowner to the small landowner and which would allow the large landowner to participate in the use of recharged ground water at no cost, that is to say, the board has indicated that it would be opposed to the recommendation of any system which would tend to diminish the quantity of water to be delivered to this area and/or curtail the county's ultimate development and/or leave an adverse effect upon this county.

Without considering the ramifications of who would be the recipients of the power, the board of supervisors feel that the revenues from power production should apply to repayment of the project

The County of Kern is not at this time contemplating a direct contract, for irrigation purposes, with the State for the purchase of water

The county has filed applications by letter with the Department of Water Resources of the State of California for water from the San Joaquin-Southern California Aqueduct System and/or the Feather River and Delta Diversion Projects These letter applications are considered to be formal applications.

The first application was made to the department on June 21, 1955, requesting 400,000 acre-feet annually, and the application was made for and on behalf of the Wheeler Ridge-Maricopa Water Storage District, formerly the proposed Maricopa Flats Area Water Storage District, pending the creation of the proposed water storage district

The second application was made to the Department of Water Resources on July 20, 1959, for domestic water in metropolitan areas of Kern County There was requested in said application domestic water for 200,000 acre-feet to be used in the metropolitan area in the vicinity of Bakersfield, 50 000 acre-feet for the areas of Shafter, Wasco and Delano, and 25,000 acre-feet for the West Side areas of Kern County

The third application to the department, dated August 28, 1959, was for 30,000 acre-feet per annum from the date of delivery until January 1 1980, and in the amount of 60,000 acre-feet thereafter, for recreational waters to be used in the county parks and recreation areas

The board of supervisors made the above applications for and on behalf of the respective inchoate districts, pending their creation and final organization

STATEMENT OF WILLIAM J. MEAD
Kern County Water Association

The importance of ground water to Kern County's economy and the fast rate of its depletion is a fundamental reality which stands out sharply when considering the basic questions stated in your committee's letter The water association does not make recommendations with respect to political actions But we do emphasize that from objective technical analysis—and aside from all ideological considerations —it appears likely that any policies regarding water pricing and deliveries which would tend to unduly limit the ability of Kern County water users to take fullest possible advantage of additional imported supplemental water will further aggravate an existing serious water problem and could work economic hardships on future generations here, whether involved in agriculture or in other industries

STATEMENT OF ROLAND CURRAN
Kern County Water Commission

Acreage limitation was first conceived on irrigation projects financed by federal funds on undeveloped public lands The limitations apply only so long as it takes the landowners to free themselves from the debt owed the federal government for constructing the irrigation project After that, they are free to buy and sell lands as their desire and the opportunity occurs

California has witnessed the greatest development of irrigated lands known anywhere in the world, financed by private enterprise, and unfettered by restrictions or limitations

Acreage limitations first came into the public eye when the Central Valley Project was beginning to get well along on its construction program Being financed with federal funds, lands under the project, even though for the most part wanting only supplemental water, were subjected to the reclamation laws These limitations have been and still are a subject for controversy in the courts, and have blocked the service of vast areas of highly developed and productive lands with project water

In the Central Valley area there are few lands that can be developed agriculturally, within the public domain The other lands are all privately owned and for the most part require supplemental water rather than a full supply Under present law to obtain water, any lands coming under a state project would have to be included in an operating district That being done, the lands would be entitled to receive a proportionate share of the water and pay a proportionate share of the costs

Under our irrigation laws, nonproductive land must be put to work in order to earn the proportionate share of the costs that it must bear This is the important thing, it seems to me, that the land be put to beneficial use, and not condemned to remain sterile for lack of water unless a holding is dismembered

Acreage limitations upon private lands in a fluid economy such as ours is a social question and is not being pushed with the idea of expediting or being helpful to a water relief program We have no quarrel with limitations on the development of the public domain

No limitations are placed upon the protection of private property from the expenditure of funds for flood control, or upon the ownership of cars or trucks using public built roads, or the size of a business served by public power

In the opinion of the Water Commission, acreage limitations on lands within the service area of state projects serving only private holdings are neither necessary nor desirable, provided each acre of benefited land pays its proportionate share of the costs and receives its proportionate share of the water

In our opinion it is neither economically justified nor is it feasible to impose the burden of project cost repayment upon the small farmer alone, nor is it in the public interest to deny any acre of productive land a proportionate share of the water To do so would be a major blow to the economy of our county and would place in jeopardy the financing of the water projects

It is the opinion of the Water Commission that power surplus to the needs of the project should be sold on the open market at the best price obtainable The revenues from such sale to apply to reimbursing the costs of the entire project

STATEMENT OF ALLEN BOTTORFF
Semitropic Water Storage District

Needless to say our district is interested in the prospective opportunity to secure a water supply through the proposed State's Water Facilities. Basically our district was organized as a legal agency in order to negotiate and contract for a water supply as well as to distribute it to lands within the district We are new in the field and it has taken us some time to organize and get our "feet on the ground" so to speak We have now completed the preliminaries and can now proceed with further steps

The board has recently authorized development of a preliminary engineering and investigation program relative to the steps necessary to secure water supplies for the district This has just begun

At this stage in our district's development we will not be able to answer some of your questions or, at least, not fully We would like to be as helpful as possible, however, in offering our views, although at times it may be necessary to qualify them considerably. We will take up your questions in sequence·

On the basis of present knowledge, we believe the State should *not* include acreage limitations in its water delivery policy Generally speaking, we believe that state policy in water resources development should be such that property owners, both large and small, would be encouraged to accept their proper responsibility with respect to such development, on a basis relative to benefits received. This should be true at both the state and local level This could not be the case under state legislated acreage limitations.

The State Department of Water Resources has indicated in its official report on the Semitropic Water Storage District that this district will require substantial amounts of supplemental water in the future. (Of course, our direct experience in lowering and changing our pumps also confirms this) The State's report specifically sets forth, however, that ground water resources including inflow from various sources will continue to be utilized as part of our total supply, just as they are now It would appear that a major result of enforced acreage limitation in our district would be to place a disproportionate share of the cost for imported water on the only lands that could, accordingly, receive such water—lands owned by the smaller farmers

We can offer for your consideration a prepared, objective analysis of some of the problems which might be involved in the application of the 160-acre limitation to lands within our district We attach this analysis as an appendix to this statement

We believe the existing provisions of the code governing the State Central Valley Project, which would apply to the State's water facilities, if the bond referendum is approved as written in present legislation, provides acceptable policy with respect to marketing project power. However, we favor the following policy. namely, that all surplus power revenues of the state project should be applied so as to uniformly reduce the cost of water to all users

We are not prepared to exactly answer (whether we are willing to contract for the amounts of water shown at the price shown in Bulletin 78). We will comment, however, that it was clearly stated at the time Bulletin 78 was presented that the amounts and values shown were based on several arbitrarily arrived at assumptions with respect to cost allocations, sizing, and construction of facilities and that these assumptions might, or might not, prevail in final plans

In order to intelligently and fully consider this question, we believe it is necessary for us to develop much additional information concerning our district This we expect to do as rapidly as possible. We should also be permitted access to all possible infor-

mation concerning state-proposed contracts, prices, terms, and conditions, including information concerning the Department of Water Resources' estimated project costs and cost allocations, reach by reach, as well as the methods of cost allocation being considered

Beyond this, we would hope for and encourage the exercise of highest skill and efficiency in the financing and construction of the State's water facilities in order to provide lowest possible costs to water users We would like to emphasize that those who cultivate the land in our district as well as in all California, are volume users of water, engaging in a most important human activity, which has been reasonably called "the foundation upon which all other industries finally rest." Low-cost water for such use will yield a benefit to the whole population

The State Department of Water Resources in its Report on the Semitropic Water Storage District found it would be economically feasible for the district to pay the costs of providing distribution facilities to move water to nearly all parts of the district As previously said, we have our own studies under way These must include very serious consideration of this question by our board and, ultimately, by landowners within the district. We have no illusions regarding the very considerable financial undertaking involved We must await further engineering and cost studies before we exactly know what to expect or how we shall proceed

APPENDIX A

A In an irrigation district, whenever possible the conjunctive use of the groundwater basin with supplemental water should be employed To be successful, it should be based on the assumption that maximum contractual quantities will be utilized during wet years to give the needed groundwater buildup, so that in water-short years groundwater may be drawn on to augment surface supplies

The contractual supply and utilization of the groundwater basin should be based on all irrigated lands within the district receiving water. The inability of districts, handicapped by having excess acreages so they could not use their maximum commitment, poses several serious problems

(a) Financial loss due to the inability to sell maximum quantities of water (true in districts selling water at a profit to offset assessments).

(b) Problems of distribution system construction. Capacity should be built into the system to serve all irrigable land as the possibility exists of this land requiring water as a result of future change of ownership This unused capacity is a loss which must be paid for even though it may never be used.

(c) Inability to build up the groundwater supply to an economical level is financial loss to water users The theory of less expensive pumping is presented as argument in favor of district operations which require the user to retain a pumping unit Without decreasing pump lifts the user is faced with payment of the distribution system, assessments and *increased* pumping costs

(d) Irrigation districts may assess excess lands as they may be benefited through a groundwater buildup, *no groundwater buildup—no benefit—no entitlement to assess*

(e) Possibility exists of a district losing some of its contractual water supply due to inability to deliver and beneficially use it This would not be a problem during maximum water supply years—which will become rare with the complete development of districts served; but the supplies during minimum years could be cut back and, from both the financial and water supply standpoints, this could be a critical loss.

B Imposing the 160 acre limitation with respect to water deliveries under the proposed State project, could jeopardize the entire State's water delivery program, particularly the San Joaquin Valley portion of the project for the following reasons

(a) It is impossible to determine in advance the quantities of water a district will contract for due to prevalence of and potential change in the acreage of "excess" land It would be foolhardy to contract for water for all irrigable acres yet the possibility of the need for future irrigation of presently "excess" land poses a difficult economic problem

(b) *Location of land held in excess holdings would result in a checkerboard arrangement of irrigated and nonirrigated land* If a distribution system were constructed under such circumstances the costs could be prohibitive Capacities built in at time of construction for service to "excess" land, when they might become "nonexcess" would be very expensive, and such costs would result in excessive tax burden on irrigated lands—those owned by the smaller farmers

(c) Sale of project water will pose enough difficulties without the addition of unwarranted assessment rates.

(d) Cost of the project will greatly increase if maximum quantities cannot be utilized and higher per acre-foot water costs will result

STATEMENT OF ONIE SANDERS
Wheeler Ridge-Maricopa Water Storage District

After more than three years of study and organizational planning the district's formation election was held on August 11 of this year resulting in formation of this district by vote of 23,035 to none The unanimous vote in favor of the district and its aims conclusively demonstrates the recognition by the landowners of the need for supplemental water The district lies at the southerly end of the San Joaquin Valley on the slopes bordering the San Emigdio mountains and the Tehachapi mountains and includes more than 127 000 acres It is noteworthy that the proposed aqueduct under the California Water Plan traverses the length of the district practically through its center

Among the many and diverse irrigated crops grown in the district are potatoes, grapes, citrus, cotton, grain, corn, melons, vegetables and alfalfa.

The board of directors has had but little opportunity to collectively consider the questions posed for discussion here, and requests the committee's permission to present a further statement at one of the October hearings However, the board of directors unanimously voted to go on record at the earliest opportunity as opposing any acreage limitation under the California Water Plan The members of this district want no so-called "subsidy" but on the contrary believe that all those who derive benefit under the California Water Plan should pay their full and fair share of allocated costs, when such allocations reflect the true benefits received

The board of directors of this district fails to see any logic or justification whatsoever in the acreage limitation concept in connection with the California Water Plan This concept developed a century ago as a vehicle to encourage settlement of public lands, was related to a give-away program designed to promote initial development of the vast public domain, at that time 160 acres was considered a family size farm and an economic unit, and the horse and buggy was considered an efficient means of transportation Such conditions no longer prevail U S Government figures showing the annual decrease in the farm population should be proof enough to any one that a small farming operation barely provides subsistence and is no longer economically feasible Any plan designed to, or having the effect of, establishing a predetermined limitation on the size of farms would only result in increasing the consumers' costs of agricultural products

The participation by the large landowners in the program for distribution of supplemental water is a necessity for several reasons In the first place, the resulting checker-boarding of participants would make the distribution and diversion works prohibitively costly to them In the second place, small landowners by importing supplemental water would be paying for the replenishing of the ground water supply of the nonparticipating large landowners, for obviously imported water would be replenishing the ground water basin by percolation at the same time that pumping would be decreased by the small landowners

Thus the result would be inequitable to the small landowners and would, in fact, make it impossible for agriculture to pay its fair share of the cost of the program Agriculture can exist and pay its fair share of the program only if it can operate on an economically sound business basis An acreage limitation would operate to prevent a small landowner from acquiring the size necessary for an economically sound operation This would remove all incentive and would mark the end of free enterprise in agriculture

STATEMENT OF VICTOR S. CERRO
Kern County Farm Bureau

One of the principal questions you have raised concerns attitudes with respect to the so-called 160 acre limitation We believe you are aware that we have *not* been among those who have encouraged the idea of acreage restrictions in connection with the supplying of water for irrigation

In Kern County there are both small and large farms There is a wide variety of farm operations There is reasonable harmony under these farming conditions as they prevail in Kern County. The development of successful farms in Kern County, regardless of size, has been the result of the industry of the people, the workings of nature, and of the economic forces that have existed. What we see of so-called acreage limitation is unfavorable to the theory in every way.

We completely concur with the views of California Farm Bureau Federation with respect to acreage limitations for many reasons, including the following:

1 Acreage limitations should be eliminated for federal projects supplying supplemental water where the lands are largely or entirely, privately owned and farmed or have existing water rights

2 Acreage limitations, when applied to delivery of water to water users in California, work both an injustice and a fraud on small and large landowners alike, as well as the public

3. Such limitations tend to place the burden of costs for conservation and importation of supplemental water on the small owner

4 Economic and profitable production of crops often requires different acreages in different areas, as soil and climatic conditions vary. Thus, an effort to apply acreage limitations uniformly over the country is economically unsound and unworkable.

5 Without the hindrance of acreage limitations, irrigation districts have sucessfully developed and made water available for agricultural use The 114 such districts in California, plus the many other local districts, have developed over two-thirds of the 20 million acre feet of surface water developed in the State to date.

STATEMENT OF GILBERT DALTON
Kern County Grange

For the benefit of those who do not understand what the Grange organization stands for I would like to digress from the subject matter and state that the Grange since its inception some 90 years ago has always championed the rights of the small farmer (family size) and has recognized the fact that if our democracy is to endure as we know it today the family farm must be nutured, nor can we subscribe to any law which gives the large land owners control of the majority of the wealth that rightly belongs to the average citizen Our organization has always contended that which is good for the majority of the people is good for all the people

At our county meeting held July 24th at Fairfax Grange Hall it was almost a unanimous vote in favor of supporting the California State Grange and the California Water and Power Users Association's stand in upholding the one hundred sixty (160) acre limitation, and Federal control of all power derived from its falling water

Some of us feel that the 160 limitation could be changed and throw some of the penalty on the tenant farmer which would influence the large landowners to lease in smaller plots, say 160 acre to a farmer, and still receive water from federal projects There are hundreds of good farmers here in Kern County that would like to go back to the farm if land was available.

STATEMENT OF JOHN E LUHMANN
Weedpatch Grange, Kern County

The Grange has always favored the acreage limitation in the reclamation law passed by Congress in 1902 This law was meant to protect the family farm Any water project whether built by the Federal Government or the State, should include the limitation on water WITHOUT IT, it would encourage large scale and corporation farming, resulting in over production of certain crops, such as cotton and wheat, of which we already have a large surplus Many attempts have been made to lift the acreage limitation in California, but without success so far. In order to get around the limitation, a proposal is under way that the State build the Feather River Project, at an estimated cost of about 1½ billion dollars The cost to be paid by the water users

We feel that the cost of irrigation water will be prohibitive and will force many small farmers off their lands

The federal government would charge for water only what the farmer could afford to pay, therefore we favor the federal construction of all major water projects in California

STATEMENT OF L J MEYERS
Department of Water Resources

As you know, during the period 1956 to 1959, extensive studies were made by the Department of Water Resources throughout the southern California area, including the service areas of the proposed Coastal Aqueduct It was concluded in Bulletin No. 78 that both San Luis Obispo and Santa Barbara Counties may be expected to share, to a substantial degree, in the growth in both population and irrigated agriculture that is estimated will occur throughout the State It also was concluded that an economic demand for imported water will exist in this service area by about 1971 After that date, the prosperity and further economic development of the two counties will be dependent on the existence and availability of imported water supplies which can be furnished by the proposed Coastal Aqueduct

This aqueduct would leave the San Joaquin Valley near the Kings-Kern County line and would proceed westward through three pumping lifts to a tunnel through Polonio Pass As presently conceived, it would traverse the upper Salinas Valley in San Luis Obispo County, largely in canal section, to a second tunnel at Cuesta Pass near the City of San Luis Obispo Near the outlet portal of this tunnel, a power plant would be constructed utilizing a 500-foot power drop From the power plant the aqueduct would continue southerly to a terminus near the Santa Maria River at the San Luis Obispo-Santa Barbara County line

Deliveries of water would be made en route to the Upper Antelope Plain portion of the San Joaquin Valley, to San Luis Obispo County, and from the Santa Maria terminus, where water would be delivered into the local distribution to be built by Santa Barbara County Eventually, it is estimated that this aqueduct would deliver approximately 50,000 acre-feet annually to San Luis Obispo County and about 160,000 acre-feet annually to Santa Barbara County Facilities provided under Senate Bill 1106 would include full sized tunnel and canal sections and the initial stages of pipelines, pumping plants, and power facilities

A definite reversal of trend in population growth in (San Luis Obispo and Santa Barbara Counties) has been forecast, with San Luis Obispo County's population expressed as a percent of the total State's population, increasing from 0 45 percent in 1958 to 1 25 percent in the year 2020 and Santa Barbara's population increasing from 0 84 percent to 1 63 percent during this same period This reflects increasing densities in the present urban areas of the State, which will force the population to the less populous counties Also reflected is the trend toward the dispersal of manufacturing industries, which is evident today, throughout the State At present, manufacturing employment in these two counties is very low in proportion to the total population and labor force

The employment bases of these two counties have been very heavily centered in trade, services, government and agricultural employment In the future, as irrigated agriculture develops in both San Luis Obispo and Santa Barbara Counties, employment in the agricultural category will increase However, its ratio to the other employment sectors will probably decrease due to the projected increase in manufacturing employment which will replace agriculture as the basic industry in these counties

This trend is already evident in Santa Barbara County where, in the last three or four years, manufacturing employment has increased substantially This has been due to the changed outlook, in the south coastal portion of the country, regarding the location of light manufacturing industries in the area as well as to the increasing tendency of industry to disperse from existing metropolitan areas

The activity at Vandenburg Air Force Base has also been foreseen as providing a stimulus to manufacturing in the Santa Maria Valley, Lompoc Valley and in the south coastal portion of Santa Barbara County, as well as providing substantial employment in itself. It is estimated that by 1980 manufacturing employment in San Luis Obispo County will have increased by about eight times and in Santa Barbara County by about five times over present, 1956, levels

It is anticipated that the majority of the population forecast for San Luis Obispo County will reside in and around the City of San Luis Obispo and in coastal portions of the county to the south of this city Of the 700,000 population forecast for this county 60 years hence, approximately 80 percent will be located in the foregoing areas and the balance in the Upper Salinas Valley, primarily around Atascadero, Templeton, and Paso Robles.

An increase in truck farming is forecast for the area around the City of San Luis Obispo with the advent of project water, but through the encroachment of

urban developments, this farm activity gradually will disappear Irrigated agriculture also is foreseen to develop on the Nipoma Mesa and in presently dry farmed areas in the Upper Salinas Valley In the Upper Salinas Valley, the climatic conditions and prevailing soil profiles will act to limit the increase in irrigated agriculture to bottom lands along the main water courses in the area and on some of the rolling hill lands

In Santa Barbara County urban centers are foreseen to be located in the Santa Maria Valley in and around the City of Lompoc, with subsidiary development in the Upper Santa Ynez Valley around Solvang, and, of course, in the existing metropolitan area around the City of Santa Barbara On a long term basis, heavy industries are foreseen to locate in Santa Maria Valley with light manufacturing in the south coastal area around the City of Santa Barbara The portion of the south coastal area to the west of Goleta is foreseen to develop as a mixture of small agricultural residential developments with home sites in the range of 5 to 10 acres, with the framing of lemons, avocados, and some cut flowers carried on in this area

Irrigated agriculture of this nature in the south coastal area is estimated to increase from about 15,000 acres in 1960 to nearly 26,000 by 2020 The expansion of urban development in Lompoc and in the Santa Maria Valley is estimated to force out a certain amount of agricultural production within the next 10 years After that time however, (further) agricultural development is foreseen to take place along the peripheries of these valleys and in the Santa Ynez River bottom lands between Lompoc and Buellton

A basic premise in the projections of the economic demand for water presented in Bulletin No 78 was that users of project water would pay the actual cost thereof Generally speaking, it was found in San Luis Obispo and Santa Barbara Counties that the effects of the relatively high derived water costs, limited areas of highly productive land, the probable future encroachment of urban development, and limited crop adaptability because of prevailing climatic conditions in certain areas, would tend to restrict large-scale irrigated agricultural development, particularly as compared to the San Joaquin Valley

The greatest limitations on agricultural productivity in the coastal aqueduct service area occurs in the Upper Salinas Valley portion of San Luis Obispo County, where climate and topography combine to inhabit high levels of farm production Heavy frosts during the winter months and the shortness of the summer growing season (about 200 days) restrict the area to hardy perennial plants and rapidly maturing summer truck crops Flat lands in the area generally have deep, fertile soils, but sloping and hill lands, which predominate the area, often have shallow soils combined with some degree of rockiness

The areas in this portion of the county with the greatest potential for irrigated farming are around Shandon, Paso Robles, and Atascadera Hill lands in the Paso Robles area are suitable for fruit production—almonds, pears, and walnuts, although only walnuts are likely to be grown as an irrigated crop Irrigated crops best suited to the Upper Salinas Valley are alfalfa hay, irrigated pasture, sugar beets, walnuts, and a limited variety of truck crops In a few very protected areas strawberries can be grown

The coastal portion of San Luis Obispo County enjoys a milder climate than the Upper Salinas Valley and is therefore adaptable to a wider range of crops with a greater payment capacity for water Furthermore, there are more extensive acreages of flat land with good soils in this area, which are suitable for irrigation development.

The growing season in coastal San Luis Obispo County varies from 240 to over 300 days, making the double cropping of truck crops feasible In some cases even triple cropping of the land is possible. The relatively cool summers in this area are conducive to the production of such crops as celery, broccoli, cauliflower, artichokes, and brussels sprouts The most productive agricultural areas in this portion of San Luis Obispo County are the Arroyo Grande-Pismo Beach-Oceano district, Los Osos Valley, and the Morro Bay area The Nipomo Mesa area, although presently undeveloped, is expected to have substantial growth in irrigated farming in the future

The northern portion of Santa Barbara County is suitable, with some exceptions, for the same types of crops that can be grown in the coastal portion of San Luis Obispo County The climate of the area is generally mild and has a growing season of 250 days or more in the most temperate areas Winter temperatures are never severely low Double cropping, and triple cropping in some cases, is practiced in truck crop-growing areas

There are extensive areas of flat land in the Santa Maria Valley, especially adapted to the growing of beans, potatoes, sugar beets, flowers, flower seeds, and many truck crops Lompoc Valley is also a productive area, with truck crops, flowers and flower seeds being the important crops There are limited foothill areas in the Santa Ynez Valley that could possibly support citrus fruit acreage in the future, when water service to those areas is provided Lemons and Valencia oranges hold the greatest promise in this respect

The south coastal portion of the Santa Barbara County has a belt of flat and gently sloping lands bordering the coast line from Point Conception to the Ventura County line The soils here are fertile and capable of supporting a wide variety of crops The balance of the area is generally very steep and mountainous and not suitable for irrigated agriculture The climate of the area is extremely mild The winters are warm and the summers rather cool The growing season is generally 300 or more days The cool summers exclude some crops from being economically feasible, but for others it proves ideal

Crops that are well suited to the area are lemons, walnuts, avocados, flowers, dry lima beans, green lima beans, tomatoes and lettuce. Lemons are presently the predominant crop A high degree of urbanization is projected for this area in the future, which will tend to impede the development of irrigated farming, although a moderate growth in irrigated acreage is probable

Soil conditions throughout the coastal aqueduct service area vary considerably There are, however, areas where return flow from project water applied for irrigation purposes could be captured and put to use by nonproject participants in several ways For instance, in areas overlying usable unconfined ground water, the unconsumed portion of the applied water would percolate to ground water and be available for reuse by either project participants or nonparticipants In less permeable areas, this return flow would collect in the water courses and, similarly, be available for reuse Similarly, urban areas served with project water, in certain instances, could discharge their sewage to the underground in such a manner that it could be available for capture by irrigators who would not be project participants

The analysis made in connection with Bulletin No 78 led to the conclusion, however, that for the most part, return flow from irrigation application, either to ground water or to surface streams, would be small An important factor leading to this conclusion was that the relatively high cost of water would encourage efficient irrigation practices It also is true that the somewhat limited availability in many areas of usable underground water supplies restricts the opportunity for the large-scale reuse of return water by entities outside the project

TABLE 1

HISTORICAL AND PROJECTED POPULATION OF SAN LUIS OBISPO COUNTY

Year	*Total County*	*Percent of California*	*Percent of nine Southern California Counties*	*10-year increase percent*
Historical Population				
1900	17,000	1 12	4 93	
1910	19,000	0 82	2 44	16 5
1920	22,000	0 64	1 59	12 9
1930	30,000	0 52	0 99	35 3
1940	33,000	0 48	0 88	12 3
1950	51,000	0 49	0 88	54 6
1958	67,000	0 45	0 76	——
Projected Population				
1960	70,000	0 44	0 75	36 2
1970	92,000	0 42	0 70	31 4
1980	130,000	0 46	0 77	41 3
1990	205,000	0 59	1 03	57 7
2000	340,000	0 81	1.47	65 8
2010	520,000	1 06	2 00	52 9
2020	700,000	1 25	2 45	34 6

TABLE 2

HISTORICAL AND PROJECTED POPULATION OF SANTA BARBARA COUNTY

Year	*Total County*	*Percent of California*	*Percent of nine Southern California Counties*	*10-year increase percent*
Historical Population				
1900	19,000	1 27	5 61	
1910	28,000	1 17	3 49	46 5
1920	41,000	1 20	2 98	48 2
1930	65,000	1 15	2 18	58 6
1940	71,000	1 02	1 87	8 3
1950	98,000	0 93	1 67	39 2
1958	124,000	0 84	1 42	——
Projected Population				
1960	148,000	0 93	1 58	50 7
1970	207,000	0 95	1 58	39 9
1980	283,000	1 00	1 68	36 7
1990	385,000	1 10	1 93	36 0
2000	520,000	1 24	2 25	35 1
2010	695,000	1 42	2 68	33 6
2020	915,000	1 63	3 20	31 7

TABLE 3

EMPLOYMENT BY CATEGORIES IN 1956

Industry category	*San Luis Obispo County*	*Santa Barbara County*
Agriculture	4,356	7,052
Mineral	160	1,060
Construction	1,438	2,923
Manufacture	759	2,766
Transportation	1,677	2,130
Trade	4,258	10,201
Finance	156	1,519
Services	2,791	8,464
Government	5,143	4,544
Nonclassified	3,600	9,600
Totals	24,538	50,259

The greatest opportunity for utilization of return waters either from urban or agricultural areas exists in Santa Maria Valley However, in this area it may be presumed that the overlying lands which would have the opportunity to recover project return water from the underground would also participate in the project. The physical situation in coastal San Luis Obispo and Santa Barbara Counties would preclude the reuse of all but negligible amounts of project return water

Both San Luis Obispo and Santa Barbara Counties have overall water agencies which include the proposed project service area These agencies are the San Luis Obispo Flood Control and Water Conservation District and the Santa Barbara County Water Agency, respectively, both of which have adequate power to contract with the State for water In addition to these countywide agencies, several local water agencies exist within each county

No formal negotiations on repayment agreements or agreements on points of water delivery have yet been undertaken with local agencies, although possible water requirements have been discussed The Department is presently in the process of formulating proposed contract principles with the intention of making them publicly available at the earliest possible date

The nature of the Coastal Aqueduct Service area indicates that only a very limited market for nonfirm or interruptible water exists. The type of crops that it is anticipated will be grown with project water, the limited availability of local

TABLE 4

DERIVATION OF UNIT RESIDUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN THE SAN LUIS OBISPO SERVICE AREA

Crop [a]	1 Production unit	2 Yield [b]	3 Average F.O.B. prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [c] 10=6—9	11 Use of applied water acre-feet	12 Residual income per acre-foot 12=10÷11
Deciduous Fruits and Nuts												
c Walnuts	ton	1.0	$517.00	$517	$325	$192	$52	$0	$52	$140	9	$155
i Walnuts	ton	1.0	517.00	517	325	192	52	0	52	140	1.6	88
Truck Crops												
c Artichokes	crate	200	3.02	604	367	237	75	20	75	162	1.9	85
c String Beans	ton	9.0	125.30	1,128	913	215	58	0	58	157	1.9	83
c Cauliflower	crate	500	1.33	665	632	33	27	0	27	6	1.9	3
c Celery	crate	1,000	2.23	2,230	2,020	210	70	0	70	140	1.9	74
c Cucumbers	lug	700	1.50	1,050	620	430	73	0	73	357	1.9	188
c Lettuce	cwt	350	2.11	739	630	109	46	0	46	63	1.9	33
c Peppers, Bell	crate	250	3.54	885	584	301	81	0	81	210	1.9	126
i Strawberries	lb	26,000	.12	3,120	2,165	955	169	0	169	786	1.8	437
i Potatoes	cwt	250	2.55	638	512	96	46	5	51	45	2.3	20
Field Crops												
c Alfalfa	ton	6.0	27.40	164	177	47	16	0	16	31	3.5	9
i Alfalfa	ton	7.0	27.46	192	123	69	19	0	19	50	3.7	14
c Permanent pasture	AUM [d]	11	7.00	77	58	19	8	0	8	11	3.5	3
i Permanent pasture	AUM [d]	12	7.00	84	59	25	8	0	8	18	3.9	5
i Sugar Beets	ton	25	14.80	370	262	108	37	5	42	66	1.9	35
c Sugar Beets	ton	25	14.80	370	262	108	37	5	42	66	1.1	60

[a] c = coastal area
i = Upper Salinas Valley area
[b] Columns 2 to 11 expressed as values per acre
[c] A maximum residual above all farm operating costs available to pay for water and as operator's incentive to farm
[d] AUM is an animal unit month equal to 0.4 ton of alfalfa hay

TABLE 5

DERIVATION OF UNIT RESIDUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN THE SANTA BARBARA SERVICE AREA

Crop [a]	1 Production unit	2 Yield [b]	3 Average F O B prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [c] 10=6—9	11 Use of applied water acre-feet	12 Residual income per acre-foot 12=10÷11
Citrus, Subtropical Fruit												
e Lemons	packed box	360	$4 44	$1,598	$1,178	$420	$95	$25	$120	$300	1 6	$188
e Avocados	flat	346	2 11	730	476	254	67	0	67	187	1 6	117
Truck Crops												
1 Potatoes	cwt	300	2 84	852	710	142	46	5	51	91	2 3	40
1,e Snap Beans	ton	3	178 00	534	420	114	37	0	37	77	2 3	33
1 Artichokes	crate	200	2 50	500	335	165	45	50	95	70	2 3	30
1 Carrots	crate	300	3 59	1,077	882	195	43	10	53	142	2 3	62
1 Broccoli	ton	3	120 00	360	311	49	36	0	36	13	2 3	6
1 Lettuce	crate	350	2 19	767	550	217	49	20	69	148	2 3	64
1 Flower Seed	pound	300	1 30	390	241	149	39	25	64	85	1 4	61
1 Cut Flowers	acre			2,950	2,330	620	295	100	395	225	1 5	150
1 Cabbage	crate	300	2 27	681	384	297	65	50	115	182	2 3	79
1 Celery	crate	1,000	2 08	2,080	1,870	210	70	0	70	140	2 3	61
Field Crops												
1 Ensilage	ton	25	8 50	213	146	67	21	4	25	42	1 4	30
1 Alfalfa	ton	7	26 00	182	122	60	18	10	28	32	2 9	11
1 Sugar Beets	ton	20	14 40	288	188	100	29	25	54	46	1 4	33
e Permanent pasture	AUM [d]	12	7 00	84	58	26	8	0	8	18	3 0	6
1 Permanent pasture	AUM [d]	12	7 00	84	52	32	8	0	8	24	3 1	8
Deciduous Fruits & Nuts												
e Walnuts	ton	1	524 00	524	325	199	52	0	52	147	1 3	113
1 Walnuts	ton	1	524 00	524	284	240	52	0	52	188	1 9	99

[a] e = south coastal area
1 = northern portion of the county
[b] Columns 3 to 11 expressed as values per acre
[c] A maximum residual above all farm operating costs available to pay for water and as operator's incentive to farm
[d] AUM is an animal unit month equal to 0 4 ton of alfalfa hay

water, and the predominantly urban demand in the service area leads to the conclusion that the majority of contracts for the area will be drawn on the basis of a firm water supply

STATEMENTS OF FRED KIMBALL AND ROBERT BORN

San Luis Obispo County Flood Control and Water Conservation District

At last count by our County Director of Agriculture Extension, there were approximately 1,260 commercial farms in San Luis Obispo County As used here, the term "commercial" farm represents a self-sufficient farm unit capable of yielding a gross income of at least $7,000 per annum It excludes the many small farm units supplying but a portion of the owner's income, which owner oftentimes maintains full-time employment in town at a fixed salary or hourly wage

The average farm unit of all types in San Luis Obispo County comprises approximately 850 acres The development of farm units of this size has been completely natural and dictated solely by the multitude of production and marketing factors unique to San Luis Obispo County only From the point of view of existing circumstances, therefore, it would appear both arbitrary and unfair to impose a smaller acreage limitation, on lands receiving water from State water projects, than that which has already evolved for a particular area by the natural economic processes

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

It has been said that the 160-acre limitation provided for under federal reclamation law has been adopted to encourage the small, family-type farm *and prevent land speculation* These laws may serve a particular and worthwhile purpose insofar as the use of federal funds is concerned, but they fail to recognize the commercial character of farming today, especially in California Present day farming is big business and its success or failure depends on how well sound business management principles have been applied Why, then, should the commercial aspect of any legitimate farming operation be debased or penalized through the preservation of an outdated law?

In his letter, the chairman states that 'Congress has approved both larger and smaller acreages where 160 acres was not considered appropriate for a family-sized farm, has provided for removing the limitation when interest is paid on irrigation costs (the Washoe formula), and occasionally the acreage limitation has been lifted entirely " One example of the latter has been the Santa Maria Project, a joint venture of the United States Bureau of Reclamation and Corps of Engineers in co-operation with the Santa Maria Valley Water Conservation District Water conservation benefits of this project include the retention of flood waters behind Twitchell Dam, dedicated just last Sunday, and the regulated release of same down the Santa Maria River within the absorptive capacity of the channel No surface distribution system is contemplated as all water would be redivertd by the many wells serving the overlying lands of the district

In the case of the Santa Maria project, strict application of the 160-acre limitation under federal reclamation law was readily accepted as impractical due to the inherent difficulty in separating natural ground water from percolating project water

In the interests of economy, it is anticipated that a great deal of water delivered to San Luis Obispo County from state water projects will likewise be used to recharge ground water basins This is particularly true in the upper Salinas Valley, Cuyama Valley, the Carrisa Plains, Santa Maria Valley, and, to a lesser extent, in portions of the coastal area Application of an acreage limitation to any extent would be impractical for the same reason as for the Santa Maria project

We therefore oppose the application of an acreage limitation of any extent on lands in San Luis Obispo County receiving water from state water projects, and respectfully request that state water policy be devoid of any such limitation for any purpose

It is presently contemplated that all power required for the operation of facilities owned by this district will be purchased from Pacific Gas and Electric Company, the only agency having electrical power marketing facilities in San Luis Obispo County It is understood that any power generated at the power drop contemplated along the coastal aqueduct of the Feather River-Delta Diversion Project would have

a ready market at the pumping installations along the aqueduct just west of Avenal Gap.

Briefly speaking, we believe that power generated at Oroville Dam and at any other state facility should be marketed under whatever conditions would produce maximum revenues. These revenues should be applied against the cost of water development and thus reduce the eventual cost of water to irrigation and other project beneficiaries.

It is believed that such a policy is incompatible with current federal policies which allow power to be sold at preferential rates to publicly owned utilities. We further take issue with the premise that the placing of publicly and privately owned utilities on an equal competitive basis as regards their wholesale power costs is necessarily detrimental to the public's best interests.

In the preparation of a report such as Bulletin 78, many assumptions must be made as regards the future of California's economy in order to properly evaluate the State's ability to finance its water development program On the local level, considerable more care must be exercised in the adoption of underlying assumptions due to the inherent variable natures of our local economies We are satisfied that, under the limitations imposed, the Department of Water Resources did the best possible job of determining the economic demand for imported Northern California water in San Luis Obispo County, and that the conclusions drawn from the available basic data under the stated assumptions are entirely valid

At the hearing last winter in Los Angeles at which Bulletin 78 was presented to the California Water Commission, Director Harvey Banks stated that several of the underlying assumptions regarding population growth in the central coastal area were no longer valid due to the impact of Vandenberg Air Force Base on the area. Although this effect is being felt primarily in Santa Barbara County, we are currently noting definite effects in coastal San Luis Obispo County. Subdivision recordings, school enrollments, voter registrations, sales taxes and all other indicators of population growth point to a population increase exceeding that projected in Bulletin 78 for San Luis Obispo County For example, estimates of the Department of Finance, the California Taxpayers Association, and the Security First National Bank all indicate a population this year exceeding that projected for 1960 by about 10 percent.

At the time of preparation of Bulletin 78, a water rights controversy was being waged before the State Water Rights Board between San Luis Obispo County and Monterey County. The outcome of that argument, which could not possibly have been forecast by the Department of Water Resources, has necessarily changed the whole picture as regards the availability of local water for irrigation use This in turn will affect the economic demand for irrigation water from Northern California in San Luis Obispo County.

The foregoing examples are cited, not in criticism of conclusions drawn in Bulletin 78, but merely to show that more work must be done both on the State level and in San Luis Obispo County before a contract for imported water can be intelligently negotiated. Although this work has been under way on the local level for the past year, there is much work to be done. Further, we still must hold up certain water policy discussions on the local level until the State has adopted in entirety its own financial policy.

For example, the finding by the Department of Water Resources that the so-called "Aqueduct System B" was engineeringly and economically superior to any of the alternatives considered, including the all-coastal route, has, in effect, prevented this board of supervisors from selecting an internal pricing policy which would lower the price of Northern California water to a point at which irrigated agriculture in the upper Salinas Valley could afford to pay This finding alone affects the cost of water delivered to San Luis Obispo County by about $22 per acre-foot

If, on the other hand, the State were to adopt some pricing policy which would favor irrigated agriculture, then perhaps a local level pricing policy could be adopted which would encourage the use of imported water for irrigation purposes. A drastically increased demand for irrigation water would, in turn, have a decided effect on the overall unit cost of water delivered

In summary, we therefore cannot say at this time that we are ready to contract for the amounts of water shown at the price shown in Bulletin 78 The State must first decide whether the costs shown in Bulletin 78 are to be the State's price In other words, the State must adopt its own financial policy The State must then give local agencies adequate time to review Bulletin 78 in light of that policy Much

of the supporting data for Bulletin 78 has not yet been placed in the hands of local agencies, though it is understood these data will eventually appear in published form as appendixes to Bulletin 78 Until this information is made available, the local agencies are hardly in a position to give either an affirmative or a negative answer to this question.

The San Luis Obispo County Flood Control and Water Conservation District anticipates it will have adequate financial capacity to construct distribution facilities to utilize Northern California water for which it contracts. We cannot now state with any assurances whether or not we will have the financial ability to contract for the amounts stated in Bulletin 78

Present studies of the San Luis Obispo County Flood Control and Water Conservation District include an analysis of our financial capacity independently from the method utilized in Bulletin 78. The results of these studies, coupled with the results presented in the appendixes to Bulletin 78, will provide sufficient information to ascertain our financial capacity

Senate Bill No 1344 which was passed at the 1959 Session of the State Legislature makes major revisions in our district act, originally enacted by the Legislature in 1945 Amendments included in Senate Bill No 1344 provide a legal basis for the provision of an adequate distribution system for Northern California water

In addition, certain of our local projects now under consideration will require distribution facilities which can and will also serve to distribute imported water Some of these distribution facilities will be installed prior to the time of delivery of imported water and will thereby reduce the cost of distribution of that water We are presently planning to utilize underground storage to the maximum practicable extent, both for regulation and for distribution

Recent amendments to our district act, as well as provisions in the original act of 1945, include the ability to collect revenues from water sales, to levy assessments, and the ability to derive funds from the sale and lease of property Both revenue and general obligation bonds may be sold under a variety of plans including some of the provisions of the more popular improvement acts which have been incorporated into our act.

We cannot state at this time exactly how we would propose to secure all such funds (to repay project costs) In general, it can be said, however, that the bulk, if not all of the funds would be derived from water sales to existing and future water distribution agencies within San Luis Obispo County, with our district and its component zones functioning solely as a wholesale financing medium Where water revenues would be insufficient to meet obligations, then either an ad valorem assessment or a pump tax would be levied Initially, some form of bond issue will be required, although the debt service requirements would be met from water revenues insofar as possible

We believe that a firm contract with the state calling for the delivery of specified quantities of water over specified times at an agreed upon price or method of reimbursement is sufficient for our purposes A constitutional amendment allocating specific quantities of water to various parts of the state is considered desirable though not mandatory In lieu thereof, commitments of specific portions of the diversion system facilities would suffice for our purposes In this regard, we would consider it necessary for the Legislature to adopt a firm policy whereby the Legislature would recognize its continuing responsibility to provide adequate funds to the Department of Water Resources for further developmental studies on the Eel, Trinity, and other Northern California streams Planning for projects on these streams must be brought to a state of readiness so as to provide supplemental water beyond the Feather River when and as needed

We believe (that escalation of water rates) is completely consistent with normal practice of any agency charged with the development, conveyance and distribution of water to consumers, whether they be irrigators or urban users. The rate of escalation need not necessarily be at the same rate as costs, however, depending upon the amount of funds available from sources other than contracts with water users

At this point, we are suggesting the possibility of modification of the State's financial policy at a later date which may be more or less favorable to agriculture This would allow for the possible variation in agriculture's ability to pay for water with the passage of time.

STATEMENT OF NORMAN H CALDWELL
Santa Barbara County

Santa Barbara County, like all of California, is growing at a rapid rate As a result of the establishment of Vandenberg Air Force Base, the Naval Missile Range and other industries, the County is experiencing an almost explosive growth at this time, which is severely taxing its financial resources as well as imposing an unanticipated burden on available water supplies Department of Water Resources Bulletin No 78 indicates the need for supplementary water in the County by 1971 The county concurs in the conclusion that imported water will be needed at least by that date

Our county has a proportionate stake, along with other deficient areas in the state, in the facilities proposed for construction under S B 1106 We endorse the objectives of this bill, but recognize the extent of our participation in the program is dependent on the nature of policies which are being explored by this committee

The Board of Supervisors of the county are cognizant of the importance of developing a policy relative to securing and utilizing imported water in the county Facts are needed on which to base this policy and steps are being taken to supply them An "Impact Study" is in preparation which will soon be available to aid in assessing the economic effect of the missile bases on the county

It is important to Santa Barbara County to know if a utility or repayment type contract will be proposed by the state This is particularly important to our county since a great drain will be placed on our financial abilities in financing and building distribution works within the county These facilities were estimated in Bulletin No 78 to ultimately cost about $41 million

To the extent Santa Barbara County can and will participate in the project, this participation must be with the assurance of a firm and continuing supply of water in accordance with the contractural amounts We recognize the necessity for future augmentation of the water supply in the Delta and are aware that this together with increases in operation and maintenance costs might necessitate an "escalator clause" in any contract Again, at this time, we are not in a position to comment on the effect of such a clause on the extent of our participation or on the construction of such a clause

As described in Bulletin No 78, a considerable amount of power will be required for pumping imported water within the county distribution system The coastal aqueduct set forth in that Bulletin and included in S B 1106 provides for a power drop at San Luis Obispo Santa Barbara County definitely would be interested in securing power from this source provided suitable arrangements could be worked out

STATEMENT OF JOHN P. ANDREWS
San Luis Obispo County Farm Bureau

Acreage limitations as incorporated in Federal Reclamation laws are ancient and do not conform to the realities of today's agricultural economy The small farm of the past is a vanishing feature of an economy which is ever tending toward larger production and smaller margins of profit Whether or not we like it, the fact remains that this transformation is taking place To tax all land and property and then limit the use of this same tax paying entity seems far from just

Agriculture only asks that the State make the water available and agriculture will pay the cost

This water program will feature a great potential for recreation In the same light, recreation should pay its own way and not be supported or carried by those who put water to productive use Likewise, the California Water Plan will produce a great deal of power This power should be sold to private enterprise and public utilities at its actual value and at no preferential prices We feel that it should be a state policy that the State remain out of competition with private enterprise in the selling and buying of this power when needed Conforming to this policy will prevent subsidization of any one group by any other

Agriculture will use the larger part of the water produced Agriculture is in a disadvantageous economic squeeze It will not be to the benefit of the state to impose any hardship or penalty upon the production of the state's food supply

We feel that contracts with the state for water at cost should be the policy of the state

STATEMENT OF ROBERT T DURBROW
Irrigation Districts Association of California

For a brief background of the Irrigation Districts Association of California, about all that needs to be said is that the organization was formed in 1910 and that, among the purposes for formation listed in the original constitution, was "to promote the orderly development of California's water resources" This objective is still one of its fundamental purposes and is the primary reason for our testimony before this committee The association that started with five district members in 1910 has grown to include almost every important local water agency in the state Now our 194 members are the users of approximately three-quarters of all the water which is put to beneficial use in California We do not pretend to speak for every member of the Association, but our State Water Development Policy was adopted without dissent at a general convention in 1957, and it is that water policy which is the basis for most of our recent previous comments to legislative committees on policy for state water development

In line with our policy approving orderly development of water resources in California, we believe that, if the state is to enter the field of water development, it must be upon a sound financial and economic basis As we have testified before the Porter Sub-committee of the Joint Interim Committee on Water Problems on September 16, 1958, we believe that in any completely and properly planned water project all the direct beneficiaries should pay allocated costs up to their full worth We believe that the best method to determine whether or not a project is financially feasible is to negotiate contracts for the sale of the saleable products of the project prior to construction of the project We believe in the proven district system, and that contracts can and should be negotiated with districts, cities, counties or other local entities for the water and power that is to be made available It is our policy that, before the state builds a project, it should know how all of the costs of the project will be met and it should know that none of the costs of the project will become a burden upon the general taxpayer of the state

If, as appears likely, the state is going into the water development business on a utility concept, where it will continue to build projects to supplement the supply of water at the delta, it seems to us just as important that we know or have good reason to believe that the products of each increment of the utility system will make that increment a sound venture Here again we believe that the sound method of determination of the value of the products to be balanced against the costs of a project is through negotiated contracts, and again the logical primary customers for contracts are our districts

Districts, as guarantors of repayment for state projects, may do more than just act as financial security for the cost of water facilities In our judgment, many of the repayment policies (including acreage limitations), which have been the cause of argument throughout the state, can be settled by permitting the district law to operate Let me illustrate by some quotes from some prominent people

In 1915, the Irrigation District Law was well explained in the July 25 Los Angeles Times by a former legislator, the Honorable L L Dennett of Modesto Mr Dennett said "I doubt if any law ever enacted by our Legislature has even approached the beneficial results of this law It puts a premium upon development and improvement and a penalty upon slothfulness and selfishness It has perpetuated to the people and to their children a great heritage The people's greatest birthright has been preserved not to be administered by a remote National, or even State, organization, but by the very people whose birthright it is This is the logical solution of the water question, the control, by the users themselves, of water which they use, and to this solution must in time all systems come"

In 1956, Harlan Trott, in an article in the August issue of Frontier Magazine entitled "Doing it the Wright Way," wrote "The Wright Act (the name given to the Irrigation District Law of 1887) made possible the locally financed multipurpose reclamation works that transformed Modesto and Turlock and surrounding Stanislaus County from a vast, semi-arid, treeless tract of 81 played-out wheat farms into a flourishing green plain with over 7,000 independent family-sized farms now boasting twice as many registered pure-bred cattle as any other two counties in the United States, and first in peach canning and second in the United States for dairy products"

In Edward F Treadwell's biography of Henry Miller, entitled "The Cattle King," the attitude of the big cattlemen toward the irrigation district movement was clearly stated "For the smaller farmer," wrote Treadwell, irrigation districts are essen-

tial, but for the large landowner and cattleman they were deemed a menace They compelled development . . they transformed control from the large landowner to the populace. They invaded the liberty of action on which the land barons prospered They gave Henry Miller more trouble than droughts, floods and pests"

Irrigation districts, to which the three quotes above refer, made a shaky start in the latter part of the nineteenth century, but gradually evolved a workable act that has dominated the agricultural water district field in California ever since the passage of the Wright Act in 1887. Irrigation districts today include over half of the irrigated land in the State Irrigation districts do not tax improvements on the land, and this has been a primary reason why this type of district promotes development. All land in a district is assessed (taxed), whether it is irrigated or not, and this tends to put idle lands into production, or cause them to be put up for sale, as landowners can't continue to pay substantial taxes and not have the land in production. In irrigation districts, too, all registered voters can vote at district elections, whether they are landowners or not As land goes into irrigation production, families of workers are required to farm the lands, and these families form the nucleus for colonization of land as it becomes available through sale, inheritance, tax deed, or otherwise These developments of the irrigation movement were responsible for what some agricultural experts have felt was not the danger of farms getting too large, but of getting too small to be economical family units

Next to the Irrigation District Law in importance in irrigated agriculture in California are the Water Storage District Act of 1921, the County Water District Act of 1913, and the California Water District Act of 1913 Several other types of districts are important as present or potential users of water or as the form of district which may eventually be used to represent land which is not now in a district. There are 31 general water district acts under which water districts may be formed, and before the 1959 Legislative Session there were 45 special water district acts. The 1959 Session added 16 new special districts and one general district act (the Levee District Act of 1959). A comparison of the various water district acts has been prepared periodically by the Department of Water Resources and the latest of these comparisons was reproduced in July 1958. Commenting on the variety of water district acts, S. T. Harding, retired Professor of Irrigation of the University of California and one of the recognized authorities on water development, stated: "No one form of organization can meet all of the conditions of size, land, ownership, construction costs and crop returns that are found in irrigation projects. To meet these conditions, several different types of irrigation organizations are used. Each of these has been developed to meet certain conditions and each is better adapted to these conditions than the other available forms"

If contracts with districts are to be the primary device used to repay the costs of a state water project, it might be well to make a brief comparison of the voting and assessing provisions of the four principal types of general districts which may be the contractees for agricultural water—irrigation districts, water storage districts, county water districts, and California water districts

Irrigation districts, as indicated above, assess (or tax) land values only. This same provision prevails in water storage districts and in California water districts In county water districts, both land and improvement are taxed.

Voting is similar in irrigation districts and in county water districts, and in both acts all registered voters residing in the district are eligible to vote. In water storage districts and California water districts, voting is by land values

The differences in these acts were largely, as Professor Harding has said, developed to meet certain conditions The placing of district charges upon land only is a device which is aimed at encouraging development, since improvements on the land will not be taxed. It provides a penalty upon nonuse, for all lands in these districts are taxed The tax on improvements in county water districts reflects the use of that act more frequently where there is substantial domestic service and where the improvements, such as homes and industries, are more the beneficiaries of the water supply than the land itself Also, this type of tax raises substantially more revenue, even if it does place something of a penalty on development.

The traditional voting by registered voters, which is adhered to in irrigation districts and county water districts, is defended as a true democratic method of administering a district which insures that the district will be run for the benefit of the majority of its inhabitants The system is generally satisfactory, except where cities develop or grow into the district, creating the possibility that a majority may be made up of the holders of small lots who may then vote bonds or other debts which they could pay but which may become an impossible burden to the

holders of larger parcels of land The fear of landowners that control of a district may be obtained by a majority of voters on a small percentage of the land is one of the reasons for the popularity of district acts providing for the vote to be by land values The land value vote seems to be a logical method to insure that all actions of the district will be in the best interests of the landowners who will be paying the bulk of the cost of any development

With this brief background, which is only a partial discussion of the differences between some of the districts, we want to come back to the suggestion that water districts now exist or can rather readily be formed for the entire service area of any proposed State water facilities We recommend that the State negotiate contracts with these districts as rapidly as it is possible to do so, and that the major policy governing the contract negotiations be one of obtaining total revenues from such contracts or from any other available revenue sources that will fully repay the costs of the project facilities

The Irrigation Districts Association of California has consistently opposed the application of the federal acreage limitation concept or any similar device in California This is not because we sympathize with large landowners or think that they cannot take care of themselves We oppose limitations simply because such provisions don't work, create both inequities and iniquities, penalize the small landowner with higher costs (when the large landowners refuse to bring their land into a project having land limitations), or slow down and perhaps even curtail project development (as witness the dilemma of the Sacramento Valley Canals in the Federal Central Valley Project).

In 1947, our Association adopted its "Principles of Water Development and Use" which includes a principle on acreage limitations that was reaffirmed in 1958 and which reads as follows. "Artificial and arbitrary limitations in acreage, as applied to lands in private ownership, are unworkable, unsound, and contrary to free enterprise, and must not be permitted"

We believe that the orderly development of California's water resources will require the participation and support of all the land that can make economical use of water along the route of the canals of the State Water Resources Development System We think that the best means of securing the support of all the lands involved is by the means of contracts with districts. We are certain from experience that the normal operation of the districts will cause adjustments in land holdings which will be beneficial to the State and the nation. We know that application of artificial land limitations to the lands served by state projects will cause substantial quantities of that land to go out of production, representing a tremendous economic loss to the State, the State project, the communities of the area, and the landowners themselves We believe the established district system offers a logical, practical, workable way to approach water development constructively, with emphasis upon sound financial and economic policies.

STATEMENT OF GEORGE OHM AND RAY HUNTER
California Farm Bureau Federation

The California Farm Bureau Federation, which is headquartered at 2223 Fulton Street, Berkeley, represents more than 65,000 farm and ranch families in California.

Water users face the definite danger of subsidizing power and recreational users unless the hydroelectric power produced in connection with state water projects is sold at market value rather than at preferential rates to preference customers It is improbable that the State will build its own trunk lines to transmit the power produced at projects in the North to supply the pumping energy in the South. The alternative is for the State to sell the use of falling water or the power produced at the site and to purchase the power needed for pumping purposes from sources available in the area of pumping need.

The only, and absolutely the only, basic reason for a state water program is to conserve and distribute water to meet the water needs of our people, so our total economy will be enriched. Hydroelectric power is a valuable byproduct of the program which should be used to its maximum to help finance the overall water program The Department of Water Resources estimates the pumping energy needs of the State Water Resources Development System to be double the amount of hydroelectric power that will be produced by state projects If the State's power is sold at preferential rates to preference customers and the State buys back power for pumping at going market rates, then the water user or the taxpaying public will have to pay the difference Thus water users are in grave danger of subsidizing

power users unless the power is sold at market value and the resulting revenues applied to the repayment of the power and water features and operation and maintenance costs

By the same token unless a cost allocation policy, which recognizes the true benefits which will accrue to recreational users 30 to 50 years from now, is adopted, water users are in grave danger of paying for a large share of the recreational benefits which will develop in connection with state water projects

The danger that the State Water Program will become a tool for social reform is very evident Effort was made during the 1959 legislative session to get action on bills to envoke the 160-acre limitation policy into the State Water Program Proponents of this effort say there there should be no "unjust enrichment" of anyone because of the State Water Program. Speculation and extremely large land holdings were cited as the reason for the need of acreage limitations to prevent the unjust enrichment We agree that no one should be unjustly enriched at others' expense However, as the State Water Program now stands, there will be no unjust enrichment and the reasons just mentioned are not valid, because such property, along with all taxable property, of which agricultural land and improvements comprise a large part, will be used to guarantee repayment of the bonds under the Burns-Porter Bond Act and these property owners will pay for the water they use So property owners will not be unjustly enriched at anyone's expense Therefore, why should a limitation be placed on any class of property owners? The nonproperty owner is the one who will get free use of the State's credit and if the power is sold to preference customers at preference rates, the power users will have the opportunity to become unjustly enriched at the expense of water users and property owners

Our state water program must not be saddled with any kind of discriminatory limitation on any class of water users At our last annual meeting, held last November in San Jose, our House of Delegates, made up of representatives from each of the county farm bureaus in the State, unanimously adopted the following policy relating to acreage limitations connected with the delivery of water from state projects:

"We oppose any efforts to establish acreage limitations on the use of water developed by the State of California and made available to agriculture

"Acreage limitations, when applied to delivery of water to water users in California, work both an injustice and a fraud on small and large landowners alike, as well as the public

"Such limitation tends to place the burden of costs for conservation and importation of supplemental water on the small landowner

"Economic and profitable production of crops often requires different acreages in different areas, as soil and climatic conditions vary Thus, an effort to apply acreage limitations uniformly over the country is economically unsound and unworkable

"As a requirement in the development of public lands, acreage limitations, now in effect under the Federal Reclamation Law, originated in 1902, as a carryover from the Homestead Law Conditions have almost completely changed, especially in California, and limitations are not properly or fairly applicable to lands, or water deliveries in California, where lands to be irrigated are practically all held in private ownership It tends to promote unfair discrimination which adversely affects all water users and the public

"It deters and prevents co-operation among water users in development of water resources and induces serious delay in such development"

To apply acreage limitations to the delivery of water by the State for agricultural use would be discriminatory and would penalize all California agriculture in an effort to solve problems of possible land speculation which is not an agricultural problem nor can it be solved with acreage limitations on water use

The acreage limitation policy of the federal government originated in connection with homesteading of federal public lands and was carried over as a policy in the Reclamation Law of 1902, to be applied in the reclamation of public lands to be opened for homesteading Reasonable acreage limitations, compatible with soil potentials of the areas involved and the economic situation of the country, are probably justifiable for application to reclamation of public lands, being brought into use as a result of making available the water supplies developed by federal projects

The 160-acre limit has not worked even here as experience has shown that federal limitations for homesteading need to be flexible so as to fit the soil, climate and farming patterns of different areas In recent years, the federal government has

tried to apply the 160-acre limitation, without success, to federal water projects supplying supplemental water to lands already in private ownership and already under production of some type of farm commodity

Here in California our presently developed agricultural land and most all potentially irrigable lands not yet developed are under private ownership, most of which have some degree of existing water supplies and/or water rights The need of water deficient agricultural areas is for a supplemental water supply to insure maximum economic development of these areas Certainly, the State of California owns no public lands to be reclaimed and homesteaded Water from our state projects supplied to agriculture will be largely supplemental to existing supplies

Experience has shown that efforts to apply acreage limitations in connection with supplying supplemental water to privately-owned lands having existing water supplies and rights, even though deficient, have been unworkable and unjust to all concerned

The Supreme Court of the United States has made it perfectly clear that landowners cannot be forced to participate in such a program, that excess landowners do not have to sell off acreage in excess of 160, but rather that they may choose to do either of three things (1) Stay out of the program completely, (2) designate the 160 acres to receive federal project water and agree to sale of the excess acreage, or (3) designate the 160 acres to receive project water and keep the excess land to manage any way they see fit without direct application of project water

They may develop their own water supply from other sources, such as wells that draw from underground sources which may be partially replenished by the project water used for irrigation, or they may ask the local irrigation district to supply them with an alternative source of water Thus we have the so-called small landowners (the complying owners) having to carry the entire financial burden of repaying the costs of the project Such would not be the case and all landowners in an irrigation district would pay, and justly so, their equitable share of the costs based on water used and the district tax levied, if acreage limitations were not applied to the delivery of water to lands already devoted to agriculture and in private ownership

The same situation applies to efforts to establish acreage limitations in connection with the State Water Program Water developed by the State and delivered for agricultural use will be supplemental water to privately owned lands already largely devoted to agriculture If the acreage limitation policy is adopted, the whole of agriculture will be penalized, the so-called small landowners will bear the burden of the cost, irrigation districts will be put in an impossible position since most districts derive their finances through a multiple-structure of water rates, taxes and assessments, etc The result would be that our State's agricultural economy would be hamstrung, local water districts would be saddled with seriously complicated operational and management problems the State Water Program would probably fail and the speculative land problem, if such exists, would not be solved

Everyone, nationwide, recognizes the cost-price squeeze that agriculture is in at present Congress has struggled for years trying to resolve this economic problem of agriculture Any practices used in connection with our state water program which limit agricultural growth and development in our State, will reduce agriculture's ability to buy and use the water made available It is estimated that under ultimate development of our water resources, agriculture will still use 75 to 80 percent of the total supply The state water program will succeed only if agriculture remains healthy and can pay the price and use the water it needs If agriculture suffers because of discriminatory limitations, the total economy of the State will also suffer

Our state water program is predicated upon complete repayment with interest of all the costs properly allocated to the water conservation features of multipurpose projects The "Utility Method" through the "Delta Pool" approach will be used by the State The State will deliver water under contract to local water districts who will pay to the State the full cost of the water delivered to them The State's pricing policy should not reach beyond this level From this point on, the local district policy should be the guide The State will be completely repaid for all water delivered What justification, then, is there for the State to try to limit the amount of water the local district is to serve to any class of user in the district? Why should any class of water user be discriminated against? The problems of water delivery to individual users, fixing of water rates to correlate with district assessments and tax rates, etc, should be left to the local districts The State's major concern should be that the local contracting water district have adequate repayment capacity to meet its contract commitments It is the responsibility of each contracting district or

agency to secure the funds for repayment by the means best suited to its own policies and local conditions

We are asking no special treatment or subsidy from the State and agriculture does not want to be saddled with any kind of discriminatory limitation

The real danger to agriculture and all water users is that water users may find that they are subsidizing power and recreational users unless sound policies, in line with those previously suggested in this statement, are adopted

So, in conclusion, the prime purpose and justification for a state water program is to develop and make water available Other vendible services are incidental thereto and should be used in such a way so as to minimize the cost of water to all water users. Otherwise, water users will be in danger of subsidizing other project features The costs thusly allocated to the water conservation and distribution features can and will be completely repaid by water users There will be ample water to satisfy the beneficial needs of all water users according to the best information available from the Department of Water Resources Agricultural and other taxable property will underwrite the bond issue Therefore, there will be no unjust enrichment of water users and no justification for establishing limitations on agriculture or any class of water user To do so would make the state water program a tool for social reform and doom it to failure as a program to assure maximum growth and development of our great State of California

STATEMENT OF WILLIAM R. GIANELLI
Department of Water Resources

Bulletin No. 78 concluded that the historical growth in population and industry would continue into the future with the Southern California area maintaining its rate of growth relative to that of the State as a whole. It also concluded that this growth within the service areas of the east and west branches of the San Joaquin Valley-Southern California Aqueduct System centering around the Los Angeles and San Diego metropolitan areas would require quantities of water to sustain it such that by about 1970 the full capacity of the Colorado River Aqueduct under California's historic claimed rights in and to the waters of the Colorado River would be utilized Future expansion after that date would be dependent on the existence and availability of additional imported water supplies from Northern California which could be furnished by the proposed aqueduct system

This aqueduct system would leave the southern end of the San Joaquin Valley through pumping plants which would lift the water more than 3,150 feet to a series of four tunnels, discharging into the westerly end of Antelope Valley The aqueduct would here split into east and west branches The west branch would pass through a series of power recovery plants, regulatory reservoirs, and siphon and tunnel sections, ending at a terminal structure located at the north edge of the San Fernando Valley

The east branch would pass through a power recovery plant located near the tunnel portal, and would then traverse the southerly rim of Antelope Valley in canal section to a pumping plant near Pearblossom From here, the east branch would continue in canal to Cedar Springs Reservoir, to be constructed on the west fork of the Mojave River The aqueduct would leave this reservoir by means of a tunnel through the San Bernardino Mountains and thence through the Devil Canyon Power Development and would terminate in Perris Reservoir in Riverside County

Deliveries of water would be made to Ventura and the Southern California Coastal Plain from the west branch, with approximately 50,000 acre-feet and 950,000 acre-feet, respectively, estimated to be delivered annually to these two areas by 1985

The east branch would deliver water en route and at Perris Reservoir for the Antelope-Mojave service area, which includes portions of Los Angeles, Kern, and San Bernardino Counties; the Whitewater-Coachella service area in Riverside County; and coastal San Bernardino, Riverside, and San Diego Counties, and Orange County. This reach of the aqueduct system would by 1985 deliver about 110,000 acre-feet annually to the Antelope-Mojave service area, about 25,000 acre-feet annually to the Whitewater-Coachella service area, and about 250,000 acre-feet annually to the remaining areas

The financing provided through Senate Bill No 1106 would permit the construction, in appropriate stages, of the Tehachapi Tunnels, Cedar Springs and Perris Reservoirs, canal sections in the Antelope Valley, the San Bernardino Tunnel, pumping and power recovery plants, siphons, and penstocks, as required through 1985.

The basic premise underlying the projections of the economic demand for supplemental water presented in Bulletin No 78 was that users of project water would pay the actual cost incurred by the State in making the water available.

It is estimated that over 90 percent of the water delivered through the east and west branches of the aqueduct system would be used for urban purposes The estimated cost of project water in this area will be greater than the cost of present supplies However, with use of project water to supplement existing supplies, the net increase in cost to the ultimate urban consumer probably would not exceed 50 percent of the present cost in any case and in most instances would be considerably less This is because the water prices that urban consumers now pay reflect high local storage, transmission, distribution, water treatment, and customer accounting expenses, which generally comprise 70 to 90 percent of the present price of water to consumers as well as the original cost of producing the water. Thus, an increase in the water supply cost component would not, in itself, cause corresponding percent increase in the price of water thereto.

Within the range of costs estimated for delivery of surplus Northern California water to Southern California, it does not appear that there would be any appreciable variation in the magnitude of demand for water by urban entities and that the costs of Northern California water are well within the payment ability of urban water users.

In support of this conclusion with respect to use of surplus Northern California water for urban purposes, selected communities in the Southern California area were investigated to ascertain the present cost of water to consumers therein It was found that the actual cost of water as delivered to the consumers in the sampled areas ranged from a low of about $35 per acre-foot to a high of $168 per acre-foot. The majority of communities sampled indicated costs to the consumers on the order of about $75 per acre-foot. These costs are not directly comparable to the computed costs of Northern California water, as they reflect the many expenses associated with distribution beyond the principal conveyance systems Included among these are costs of distribution, meters and services, customer accounting, taxes, and general administrative expense which, it was estimated, averaged between $40 and $70 per acre-foot Production, treatment, and conveyance expenses were estimated to average from about $20 to $40 per acre-foot Thus, although direct comparisons of present water costs with probable future costs after introduction of Northern California water are difficult to prepare, the foregoing values would indicate that the resultant change in the direct cost to the ultimate consumer would on the average be comparatively small.

In studies of the ability of agricultural users to pay for project water, the department developed a value for each climatically-adapted crop type in each portion of the service area, which was designated "Residual Income Available to Pay for Water Charges and Provide Incentive to Farm" As the term indicates, this value expresses in dollars the amount of total farm income remaining after all other expenses, to pay for water and to provide incentive to farm. Such values for crop types in Ventura, Los Angeles, Orange, San Bernardino, and Riverside Counties are tabulated in Tables 1 through 5 which are attached at the end of this statement Values for the Whitewater-Coachella service area were not prepared for Bulletin No 78

As you will recognize, the tabulated values cannot be interpreted as ability to pay until there is subtracted from each an allowance for incentive to farm. Studies of appropriate allowances are presently in progress In this connection and in view of the complexities of the problem of determining payment capacity of agricultural lands for irrigation water, and of the fact that the department has not as yet finalized all of its studies in this regard, we would appreciate the opportunity, as we expressed at the San Luis Obispo hearing, to make a presentation to your committee after November 1, 1959, concerning the technical aspects of payment capacity studies and the results of our studies of the areas that will receive water from the state water facilities

The Department of Water Resources is currently in the process of making a survey to determine the number and size of land ownerships within certain portions of the project service area where extensive agricultural water service is anticipated and is making other studies related to this problem The results of these studies will be made available as soon as possible.

We do not at this time plan to obtain such data with respect to the highly urbanized areas of Southern California, the time and expense involved would be very heavy due to the very large number of property owners

Soil and geologic conditions throughout the area vary considerably and in many portions thereof limit or prevent the recharge of water to the underground There are, however, areas where return flow from project water applied for irrigation purposes could be captured and put to use by nonproject participants in several ways. For instance, in areas of unconfined ground water, the unconsumed portion of the irrigation application would percolate to ground water and be available to either

project participants or nonparticipants In less permeable areas, this return flow would collect in the water courses and, similarly, be available for reuse Urban areas served with project water in certain instances also could return their sewage to the underground in such a manner that it could be available for capture by irrigators or other water users who would not be project participants

The analyses made in connection with Bulletin No 78 led to the conclusion that, for the most part, return flows from use of imported water in Southern California would be recaptured and used by the contracting agencies themselves or by entities who pay taxes or water tolls to the contracting agencies and thus would be within the repayment structure for the state facilities. Important factors to be considered include (1) the relatively high cost of the imported water which would encourage efficient irrigation practices and minimize the quantity of return flow, (2) the nature and areal extent of the organized water districts in Southern California which tend to encompass entire ground water basins, streams, watersheds, or other hydrologic units, and (3) the necessity for exportation of sewage directly to the ocean in order to maintain ground water quality in many portions of the service area. Thus, we do not consider the question to be a significant problem insofar as the Southern California area is concerned.

It is the department's belief with regard to the main San Joaquin Valley-Southern California Aqueduct System that the authority and responsibility for operation, maintenance and management of the primary aqueduct system must necessarily remain a state function It is contemplated, however, that water will be sold to contracting agencies at main turnouts along the aqueduct and that at these points the agency will assume responsibility for control, treatment, distribution and resale of the water

The basis for this division of responsibility is that it is considered necessary for a single agency to maintain control of the primary aqueduct system since the system will be a main truck line serving many agencies contracting for water thus making it impractical to relinquish control to any particular agency or agencies However, on the other hand, local distribution is primarily a matter of local concern and can best be accomplished by the contracting agencies

The South Coastal Area contains numerous organized water agencies, including public districts, municipal water supply systems, and public and private water companies which cover a large portion of the area of potential water service The adjacent desert areas currently have or are in the process of forming water agencies which cover a large part of the developable land within reasonable distance of the proposed aqueduct facilities Because of the great number of agencies involved, only a generalized discussion is attempted herein The general boundaries of organized areas in the Southern California area are shown on the display map

The probable service area in Ventura County is represented by the Ventura River Municipal Water District, the United Water Conservation District, and the Calleguas Municipal Water District These agencies encompass all of the land on which development is projected to occur in the county with only minor exceptions

Large portions of coastal Los Angeles, Orange, San Bernardino, and Riverside Counties, as well as coastal San Diego County, are included within the boundaries of The Metropolitan Water District of Southern California This district currently includes an area of 3,200 square miles Included within The Metropolitan Water District are many member agencies which purchase wholesale water from the district for distribution to their constituent water users, and some of the member agencies wholesale water to smaller member agencies within their service areas A major wholesaling water agency included within Metropolitan Water District is the San Diego County Water Authority. Also included within the Metropolitan Water District is the City of Los Angeles, represented by the Department of Water and Power, which agency operates a major importation project bringing water to the city from the Mono-Inyo basin

In coastal Los Angeles County, the Las Virgenes Municipal Water District covers a substantial area which needs imported water. The upper San Gabriel Valley has recently been taking steps to organize water agencies The Cities of Alhambra, Azusa, Monterey Park, and Sierra Madre have recently organized the San Gabriel Valley Municipal Water District Also, an election has been set on the formation of the proposed Upper San Gabriel Municipal Water District which will comprise most of the area in the San Gabriel Valley not included in the former district

The San Bernardino Valley Municipal Water District contains most of the potential water-using areas in the western portion of that county which are not within member agencies of the Metropolitan Water District Also, the San Bernardino

County Flood Control District, covering the entire county, has represented the area in certain water matters

In the desert areas, formation of two water agencies, the Antelope Valley-East Kern Water Agency and the Mojave Water Agency, was authorized at the recently completed session of the Legislature, for the stated purpose of contracting for project water The former agency has been formed Pursuant to the provisions of the authorizing legislation, the Department of Water Resources will hold a hearing on the need for functioning of the latter agency, on November 17, 1959, and formation of the agency depends upon favorable results of an election in the concerned area These two agencies represent most of the potential water service area, with the exception of a small area around Palmdale and Littlerock in Los Angeles County Here, the Palmdale and Littlerock Creek Irrigation Districts are already in existence

The majority of Coachella Valley is presently covered by the Coachella Valley County Water District.

The areas in the upper regions of the Whitewater River extending through the City of Banning are represented by the Riverside County Flood Control and Water Conservation District.

From the inception of the program, principles of operational and financial management have been under informal discussion with possible contracting agencies in an attempt to crystallize the appropriate and necessary principles It is anticipated that, in the near future, many of such major principles will have been sufficiently formulated to permit more detailed discussions and negotiations

The drafting of contractual provisions involves comparatively few difficulties, once the principles behind such provisions are established There are, however, several problems concerning principles which relate to the firmness of water supply which might be considered by the committee These problems can be divided into two categories (1) the continuity of water supplies to the Sacramento-San Joaquin Delta for export as envisioned under the so-called "Delta Pooling Concept," and (2) the operational problems in prorating available project water supplies during emergency drought periods

With respect to the first problem, namely, that of assuring an adequate water supply in the Sacramento-San Joaquin Delta, it is necessary to insure, as the present unregulated supply to the Delta diminishes by reason of further upstream water use, and as water demands increase, that additional storage projects are developed which will augment the water supplies in the Delta which are available for export This augmentation, for the most part, will be from additional projects on the North Coast The Burns-Porter Act provides for the continuity of water supply by virtue of the fact that there is legislative provision to build up a bank account to assure the availability of bond proceeds to construct the necessary physical works

According to the department's present studies, adequate water supplies will be available in the Delta, with construction of Oroville Dam and Reservoir, to meet project requirements until about 1985, assuming the most adverse conditions of depletions in inflow to the Delta At about that date it might be necessary to bring additional supplies to the Delta from the North Coast

With respect to the second problem, we wish to point out that the Feather River and Delta Diversion Projects, as included in the facilities described under the Burns-Porter Act, are designed to provide firm water supplies during a repetition of the most critical historical dry period of record In the remote event, however, that a drier period might occur at some time in the future, consideration must be given to the operational problems that would be encountered in prorating water These operational problems might involve the establishment of priorities among the various project service areas; establishment of priorities among the various types of use such as agricultural, municipal, and industrial use, and temporary adjustments of amounts of water to be delivered on a firm basis or on an interruptible basis In any event, flexibility in proration should be allowed in order to insure equitable adjustments in the light of all the circumstances which might prevail in a given instance

As indicated in the discussion above, it is the principle behind any contract provision that is of primary importance. Nonfirm or interruptible water deliveries through project facilities are possible during the winter season in some years and at less frequent intervals during all or parts of the irrigation season of wet years Winter season transfers are generally considered useful principally for ground recharge where such recharge is possible. Although no studies are available at the present time regarding the value of such water to users it appears that its value might be considerably in excess of the costs of pumping and conveying the water to the majority of the service areas, particularly where the opportunity of artificial recharge occurs.

TABLE 1

DERIVATION OF UNIT RESIDUAL ANNUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN THE VENTURA COUNTY SERVICE AREA

Crop [a]	1 Production unit	2 Yield [b]	3 Average F O B prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [c] 10=6—9	11 Use of applied water acre-feet	12 Residual income per acre-foot 12=10÷11
Citrus, Subtropical Fruit												
1,c Valencia Oranges	packed box	335	$3.10	$1,039	$860	$179	$80	$10	$90	$89	1 6	$56
c Lemons	packed box	335	4.40	1,474	1,207	267	113	10	123	144	1 5	96
c Avocados	flat	400	2 07	828	526	302	83	25	108	194	1 5	129
Deciduous Fruits and Nuts												
1 Walnuts	ton	1 0	502.00	502	362	140	50	0	50	90	1 8	50
c Apricots	ton	8 5	67 73	576	478	98	58	10	68	30	1.7	18
Truck Crops												
c Spinach	ton	10	32 00	320	250	70	32	0	32	38	1 4	27
c Broccoli	ton	2.75	120 00	330	260	70	33	0	33	37	1 4	26
c Cabbage	crate	300	2 27	681	505	176	36	0	36	140	1 4	100
c Green Lima Beans	cwt	50	7 46	373	263	110	37	0	37	73	1 4	52
c Dry Chile Peppers	ton	1 5	419 00	629	432	197	63	0	63	134	1 4	96
c Lettuce	crate	300	2 32	696	595	101	28	0	28	73	1 4	52
c Tomatoes	ton	20	25 86	517	362	155	52	0	52	103	1 4	74
c Strawberries	tray	2,000	2 39	4,780	3,811	969	338	0	338	631	1 4	451
Field Crops												
c Sugar Beets	ton	20	14 40	288	225	63	29	5	34	29	1 8	16
1,c Dry Lima Beans	cwt	30	10 54	316	217	99	32	0	32	67	1 7	39
1,c Alfalfa Hay	ton	7 0	30 07	210	155	55	21	0	21	34	2 9	12
1 c Barley	cwt	30	2 58	77	65	12	8	0	8	4	1 0	4
1,c Irrigated Pasture	AUM [d]	12	7 00	84	52	32	8	0	8	24	3 0	8

[a] c = coastal areas
1 = inland areas
[b] Columns 2 to 11 expressed as values per acre
[c] A maximum residual above all farm operating costs available to pay for water and as operator's incentive to farm
[d] AUM is an animal unit month equal to 4 ton of alfalfa hay

TABLE 2

DERIVATION OF UNIT RESIDUAL ANNUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN COASTAL LOS ANGELES COUNTY AND ORANGE COUNTY

Crop	1 Production unit	2 Yield [a]	3 Average F O B prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [b] 10=7+8	11 Use of applied water acre-feet	12 Residual income per acre-foot 12=10÷11
Citrus, Subtropical Fruit												
Navel Oranges	packed box	280	$3 50	$980	$781	$199	$67	$10	$77	$122	2 1	$58
Valencia Oranges	packed box	300	3 00	900	783	117	57	10	67	50	2.1	24
Lemons	packed box	350	4 28	1,498	1,129	369	87	10	97	272	2 1	130
Avocados	flat	345	2 23	769	576	193	71	40	111	82	2 1	39
Truck Crops												
Celery	crate	1,000	2 39	2,390	2,175	215	114	0	114	101	1 7	59
Mustard Greens	crate	500	1 19	595	437	158	60	10	70	88	1.7	52
Strawberries	flat	1,500	2 25	3,375	2,804	571	203	20	223	348	1.7	205
Radishes	crate	300	1 21	363	206	157	36	50	86	71	1 7	42
Snap Beans	cwt.	180	7 83	1,409	900	509	141	50	191	318	1 7	187
Field Crops												
Dry Lima Beans	cwt.	25	10 79	270	205	65	27	0	27	38	1 7	22
Blackeye Beans	cwt.	25	9 44	236	150	86	23	10	33	53	1.7	31
Sugar Beets	ton	20	11 73	235	200	35	23	0	23	12	1 7	7
Irrigated Pasture	AUM [c]	12	7.00	84	52	32	8	0	8	24	3 6	7

[a] Columns 2 to 11 expressed as values per acre
[b] A maximum residual above all farm operating costs available to pay for water and as operator's incentive to farm
[c] AUM is an animal unit month equal to 0 4 ton of alfalfa hay

TABLE 3

DERIVATION OF UNIT RESIDUAL ANNUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN COASTAL SAN BERNARDINO COUNTY

Crop	1 Production unit	2 Yield [a]	3 Average F O B prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [b] 10=6—9	11 Use of applied water acre-feet	12 Residual income per acre-foot 12=10÷11
Citrus Fruit												
Navel Oranges	packed box	280	$3 71	$1,039	$773	$266	$73	$5	$78	$188	2 5	$75
Grapefruit	packed box	560	2 29	1,282	1,007	275	75	5	80	195	2 5	78
Lemons	packed box	335	4 47	1,497	1,132	365	89	5	94	271	2 5	108
Deciduous Fruits												
Peaches	lug	700	1 53	1,071	806	265	88	75	163	102	2 2	46
Plums	lug	350	2 36	826	617	209	72	75	147	62	2 2	28
Truck Crops												
Strawberries	tray	1,500	2.25	3,375	1,944	1,431	214	50	264	1,167	2 2	530
Cabbage	crate	300	2.38	714	427	287	66	80	146	141	2 2	64
Sweet Corn	crate	200	2.13	426	357	69	28	30	58	11	2 2	5
Endive	crate	1,000	1.00	1,000	544	456	94	80	174	282	2 2	128
Italian Onions	50-lb sack	400	1.75	700	535	165	53	70	123	42	2 2	19
Dry Onions	50-lb. sack	1,000	1 38	1,380	1 104	276	98	0	98	178	2 2	81

TABLE 3—Continued

DERIVATION OF UNIT RESIDUAL ANNUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN COASTAL SAN BERNARDINO COUNTY

Crop	1 Production unit	2 Yield [a]	3 Average F O B prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [b] 10=6—9	11 Use of applied water acre-feet	12 Residual income per acre foot 12=10÷11
Truck Crops (continued)												
Spring Potatoes	cwt	300	$3 04	$912	$681	$231	$62	$10	$72	$159	2 2	$72
Sweet Potatoes	box	250	2 96	740	445	295	62	50	112	183	2 2	83
Field Crops												
Alfalfa Hay	ton	8	30 00	240	165	75	24	7	31	44	3 5	13
Blackeyed Beans	cwt	20	9 50	195	138	57	18	5	23	34	1 4	24
Cover Crop	acre	—	25/ac	25	17	8	3	2	5	3	0 7	4
Irrigated Pasture	AUM [c]	14	7 00	98	58	40	11	0	11	29	3 5	8
Miscellaneous Crops												
Ornamental plants	(1000s)	5	1 50	7 500	4 472	3 028	534	0	534	2 494	2 0	1 247
Roses	(1000s)	9	25	2,250	1,911	339	195	0	195	144	2 0	72
Shade Trees	(1000s)	5	1 00	5,000	3,510	1,490	308	0	308	1,182	2 0	591

[a] Columns 2 to 11 expressed as values per acre
[b] A maximum residual above all farm operating costs available to pay for water and as operator's incentive to farm
[c] AUM is an animal unit month equal to 0 4 ton of alfalfa hay

TABLE 4

DERIVATION OF UNIT RESIDUAL ANNUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN COASTAL RIVERSIDE COUNTY

Crop	1 Production unit	2 Yield [a]	3 Average F O B prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [b] 10=6—9	11 Use of applied water acre-feet	12 Residual income per acre-foot 12=10÷11
Citrus Fruit												
Navel Oranges	packed box	280	$3 99	$1,117	$773	$344	$81	$5	$86	$258	2 7	$96
Valencia Oranges	packed box	250	3 59	898	733	165	62	5	67	98	2 7	36
Grapefruit	packed box	560	2 88	1,613	1 007	606	108	5	113	493	2 7	183
Lemons	packed box	335	4 55	1 524	1,132	392	92	5	97	295	2 7	109
Deciduous Fruits												
Apricots	ton	9	$7 80	790	630	160	57	10	67	93	2 2	42
Cherries	box	U-pick	1,000/ac	1,000	732	268	100	75	175	93	2 2	42
Peaches	box	700	1 76	1 232	806	426	104	75	179	247	2 2	112
Plums	box	350	2 36	826	617	209	72	75	147	62	2 2	28
Truck Crops												
Watermelons	ton	20	31 12	622	334	288	48	15	63	225	2 2	102
Cantaloupes	crate	300	2 46	738	487	251	54	5	59	192	2 2	87
Dry Onions	sack	1,000	1 53	1,530	1,104	426	113	–	113	313	2 2	142
Spring Potatoes	cwt	300	2 83	849	681	168	46	10	56	112	2 2	51
Fall Potatoes	cwt	200	2 83	566	468	98	30	10	40	58	2 2	26
Sweet Potatoes	box	250	2 96	740	445	295	62	50	112	183	2 2	83
Field Crops												
Alfalfa Hay	ton	8	26 34	211	165	46	21	7	28	18	4 7	4
Alfalfa Seed	pound	550	30	165	118	47	12	5	17	30	4 7	6
Blackeye Beans	cwt	20	9 75	195	138	57	18	5	23	34	1 4	24
Ensilage	ton	20	8 50	170	141	29	15	4	19	10	2 2	5
Cover Crop	acre	–	25/ac	25	17	8	3	2	5	3	0 8	4
Irrigated Pasture	AUM [c]	14	7 00	98	52	46	8	–	8	38	4 7	8

[a] Columns 2 to 11 expressed as values per acre
[b] A maximum residual above all farm operating costs available to pay for water and as operator's incentive to farm
[c] AUM is an animal unit month equal to 0 4 ton of alfalfa hay
(Note) includes Southwestern Riverside County

TABLE 5

DERIVATION OF UNIT RESIDUAL ANNUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN THE ANTELOPE-MOJAVE SERVICE AREA

Crop	1 Production unit	2 Yield [a]	3 Average F O B prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [b] 10=6—9	11 Use of applied water acre-feet	12 Residual income per acre-foot 12=10÷11
Truck Crops												
Cantaloupes	crate	200	$3 00	$600	$477	$123	$42	—	$42	$81	2 9	$28
Carrots	crate	300	3 20	960	843	117	40	—	40	77	2 9	27
Onions	sack	900	1 20	1,080	868	212	72	—	72	140	2 9	48
Potatoes	cwt	275	2 50	688	488	200	33	—	33	167	2 9	58
Field Crops												
Alfalfa Hay	ton	6	26 50	159	118	41	16	$10	26	15	5 9	3
Alfalfa Seed	pound	700	30	210	149	61	21	10	31	30	5 9	5
Irrigation Pasture	AUM [c]	12	7 00	84	47	37	8	—	8	29	5 5	5
Field Corn	ton	3	65 00	195	118	77	20	10	30	47	4 1	11
Milo	cwt	45	2.75	124	82	42	12	10	22	20	1 7	12
Wheat	cwt	40	3 50	140	87	53	14	10	24	29	1 7	17

[a] Columns 2 to 11 expressed as values per acre
[b] A maximum residual above all farm operating costs available to pay for water and as operator's incentive to farm
[c] AUM is an animal unit month equal to 0 4 ton of alfalfa hay

The nature of the service area of the east and west branches of the aqueduct system indicates that only a very limited market for nonfirm or interruptible water would exist The type of crops that it is anticipated will be grown with project water, the limited availability of local water, the limited opportunity for artificial recharge, and the predominantly urban demand in the service area lead to the conclusion that the majority of contracts for the area will be drawn on the basis of a firm water supply

In the event contracts are executed for nonfirm water, arrangements to furnish such water must protect the capacity allocated to the contractors for firm water from permanent pre-emption by nonfirm water contractors

(Transcript of October 20, 1959, page 10)

STATEMENT OF WILLIAM S. ROSECRANS
Southern California Water Co-ordinating Conference

Our conference advocates the State's selling water at the primary source at a price which will recover to the State all costs for production of water at that point, including interest on moneys advanced for construction purposes (except for costs properly allocated to flood control or other purposes declared by the Legislature to be nonreimbursable) It is our further recommendation that the cost for transportation of water from the primary source to contracting water-using agencies likewise be fully recovered with interest

Under such a policy no question of unjust enrichment arises since all contractors will fully pay for all benefits received Any attempt to impose acreage limitations, therefore, could be based only upon an attempt to inject a social philosophy into an economic operation and such action would result in many inequities and great difficulties in getting the State Water Plan into operation Furthermore, it likely would result in reduction of the size of contracting areas, volume of water used and consequent increase in unit costs The effect of this could be abandonment of some projects or an increased burden on the State's taxpayers

The project will develop hydroelectric power in large quantities, but not nearly so large as the energy requirements of pumping Accordingly, we believe that electric energy produced by the project should be fully utilized to reduce the cost of additional energy requirements The primary function of the state water program is that the State will store and convey water to local areas of need that are prepared to repay all costs to the State The development of electric power is incidental to this primary function

In considering contracts, the first premise should be that the State acts only as a wholesaler of water

The second should be that with the exception of costs allocated to purposes specifically designated by the Legislature as nonreimbursable, the State should recover all moneys advanced for construction with interest and, likewise, should recover all maintenance and operating costs

In line with these two basic considerations, it is our opinion that contracts should be made up of three parts in order to afford maximum flexibility in handling cost problems having basically different characteristics and to facilitate the changes that may be required over the years The total contract payment will be the sum of the cost developed in the three parts of the contract as follows

Part 1 To cover the payment to the State for water delivered into the transmission facilities which will convey it to the contracting agency This payment is to cover all costs incurred by the State in conserving, storing and protecting the water down to and including all costs of those works necessary to make deliveries of water into the transmission system Essentially, Part 1 payments cover all the cost incurred by the State in getting water ready for delivery at the "tap"—initially the Delta This price is to be the same for all who receive water at a given supply point, but provision should be made for changing the price from time to time as the costs of "producing" water at that location may change

Part 2 To cover all fixed costs incurred by the State for all facilities needed to transport water to the contracting agency from the common delivery point selected by the State These fixed costs will include debt service as set forth below under "Debt Repayment" Allocations of capital costs for jointly used facilities shall be made as set forth below under "Cost Allocation" The costs to an agency in Part 2 are essentially the costs of ownership of water transmission facilities Their magnitude depends on the investment made by the State for works to transport the water to that agency. Provisions should be made for readjustment of

charges under this part as changes are made in the State's investment in water transport facilities

Part 3 To cover all expenses incurred by the State in using the transportation facilities to bring the water to the agency Their magnitude depends basically on the amount of water so transported They include all operating, upkeep, and repair expense as set forth below under "Operating Costs."

The agency will sign a contract with the State in which it commits itself to make the above contract payment The contract normally will be executed in advance of construction by the State of the works needed to transport water to the agency

Payments under the contract may commence with the start of construction but must begin not later than the first delivery of water to an agency Interest during construction is to be capitalized and the total capital sum recovered with interest in a period of 50 years The interest rate shall be the same as that for the first block og bonds sold and shall be modified biannually to conform to the current average interest rate being paid by the State

After all its share of the State's fixed costs have been repaid, an agency will have completely discharged its obligation under Part 2 above Its total contract payment thereafter will be the sum of Part 1 and Part 3

Operating costs that are common to two or more agencies are to be apportioned between them on the basis of the relative volumes of water transported for these agencies

Operating costs are all of those expenses that develop out of the use of the water transportation facilities provided by the State as contrasted with fixed costs which are due to the existence of these facilities Operating costs, therefore, are related to volume of water transported They include all expense incurred in the upkeep and repair (but not betterment) of the water transportation facilities, and the expense incurred in transporting water through them The power, fuel, material, supplies, labor, tools including motor vehicles, and services necessary to keep the water safe and cause it to flow in the desired amounts are the major items involved

(Transcript of October 20, 1959, page 50)

STATEMENT OF JOSEPH JENSEN

Metropolitan Water District

On October 2 of this year, the Board of Directors of The Metropolitan Water District of Southern California adopted a Water Policy Statement setting forth its views with regard to the State's water development program, particularly with the phases of this program to which it is understood your committee is directing its special attention A portion of the Water Policy Statement follows

"No facility or unit of the State Water Resources Development System should be constructed unless it is determined that the water users have the potential ability to pay, and will pay, for the operation, maintenance and bond servicing costs computed on the average life of the bonds In evaluating feasibility, weight should be given to any possible recreational benefits of statewide importance and possible revenue therefrom

"There should be created the 'California Water Authority' consisting of a seven-member board to direct construction, operation and administration of the State Water Resources Development System There should be three members from Northern California, three from Southern California and the Director of Water Resources as chairman

"The principles set forth in the amendments submitted by the Metropolitan Water District of Southern California to the Assembly, and rejected, are still essential to Senate Bill No 1106 The chief of these principles are

Subject to vested rights and specific reservations to counties of origin the title of the State to the water it will contract to deliver, should be firm so that the water cannot be recaptured at a future time and so that there will be reasonable assurance that the contractors who supply the funds will receive water

'In order that contractors for this water can properly plan for and finance their facilities, delivery contracts (except those of a temporary nature) should provide for permanent service, with the protection of the provision that the Legislature, acting alone, cannot modify the contracts at least for the life of the bonds

"The provisions for financing the construction of the state water facilities should be amended and made adequate to assure the completion of those works in the event the proceeds of the bond issue prove to be insufficient'

"Water contract terms should explicitly state the works and facilities to be built and made available to conserve and transmit firm water supplies for contracting agencies

"Water contract terms or water prices should be based on the proportional use of the state water facilities

"Water contract terms should not require payments that produce revenue in excess of that required for operation, maintenance, necessary replacements and bond interest and redemption

"In the event of water shortage all water from a project should be prorated, basing such proration upon present Water Code provisions relating to water use priorities

'Construction schedules and expenditures should be so planned that, when water is available, and is needed, from the north, the facilities to carry and store it for distribution in Southern California shall also be ready Bonds should be reserved for this purpose"

As to the question of acreage limitation, this matter has not come before the board, because the district does not have an acreage limitation policy In that field of water project policy insofar as State planning is concerned, we are not in a position to express an opinion

Replying to your question of possible purchase of power from the State by the Metropolitan Water District, if the State is to have surplus power to sell from its water project and if the district would require further development and enlargement of its system, we would undoubtedly be in the market for any available power the State has to sell

As to a policy of proposed preference to public agencies in the matter of marketing power from a state system (in connection with state water project development) it is the district's purpose only to state that the water users under state projects should not suffer any financial penalty because of any preference granted to either a public or a private agency All power or power revenues should be used for the benefit of the state water facilities and particularly for use in pumping water within the facilities

In reply to your question about the willingness of the Metropolitan Water District to contract for amounts of water at the price shown in Bulletin 78 at the direction of the board of directors of the Metropolitan Water District, the general manager and chief engineer of the district and his staff are now engaged in a study of the problems in the importation of water from Northern California sources, including quantities and prices These studies are scheduled to be completed by January 1, 1960

The Metropolitan Water District is in a financial position to construct the distribution facilities to utilize such water if the district may contract with the State When that time comes, the district will be in a position to make such additions to its present distribution system as will be necessary to take such supplemental imported water

The district will finance any construction program it enters upon by means of revenues from water sales and district taxes

As to proposed escalation of water rates in contracts, the Metropolitan Water District adjusts its water rates to member agencies from time to time as the board of directors sees the need therefor We do not operate under a contract system in dealing with our member agencies In our procedure, of course, the representatives of the member agencies have a voice in any proposed change in water rates It might well be that in writing a contract for state water some sort of provision should be made to allow for increased payments by water users or power users to meet increased costs Whether this should be provided for by an escalator clause in an original contract with the State, or whether the State should rely upon an additional or second contract to meet the new situation, the Metropolitan Water District is not in a position to express an opinion at this time

(Transcript of October 20, 1959, page 79)

STATEMENT OF WILLIAM S. PETERSON
Department of Water and Power of the City of Los Angeles

The Department of Water and Power is established in the charter of the City of Los Angeles to serve water and electricity for all purposes within the City of Los Angeles It owns and controls its principal sources of water, hydroelectric and fuel-generated power supplies It purchases water and some unused power from the Metropolitan Water District of Southern California, of which it is a founding member Electric power is also purchased from the Hoover Dam and power plant of the United States Bureau of Reclamation. The department co-operates with the cities of Pasadena, Glendale and Burbank by the transmission to each of them of Hoover power over its high-tension transmission lines from Hoover Dam The department also has major electric transmission interconnections with the Southern California Edison Company and the California Electric Power Company.

Over two-thirds of the water presently used by the city is transported by the Inyo-Mono-Los Angeles Aqueduct, which water produces enroute annually a gross average in excess of 856,000,000 kilowatt-hours of power. Less than a third of the city's water supply is obtained from sources requiring pumping such as underground water and water from the Metropolitan Water District Local distribution requires some pumping to elevations of use

The department has always looked ahead and has thus avoided any water or power shortages From time to time the department has appeared before your committee and other committees of the Legislature urging prompt authorization, financing and construction of the Feather River and Delta Diversion Projects in order that there may be adequate water for Southern California. We continue to urge that water deliveries to Southern California begin in 1970

The financing of such needed water development is afforded by the Burns-Porter Act, Senate Bill No 1106 This board, before the enactment of Senate Bill No 1106, avocated certain amendments to clarify its intent and facilitate the administration of funds established by it for state water development These amendments were not adopted This board, because of the urgent need for state water development, believes that the bond issue and financing as authorized by Senate Bill No 1106 should be adopted by the people and that lacking the amendments above mentioned, the Legislature, as suggested in the act, must first establish certain of the broader, basic terms of the contracts for the sale of water compatible with the intent of the Burns-Porter Act

We concur in the Department of Water Resources' proposal that the cost of the multiple-purpose Oroville storage and power development be allocated on the separable cost-remaining benefit theory, and that the costs of the aqueducts from the Delta, be allocated on the basis of proportional use of capacity

We are opposed to any state subsidy Rather, we believe the State should recover its full costs including repayment of all capital costs with interest All Californians should benefit in proportion to their contributions to the costs—those that receive the benefits should pay, without subsidy, the costs Under these conditions, the problems of acreage limitation should disappear

The project will develop hydroelectric power in large quantities, but not nearly so large as the energy requirements of pumping Accordingly, we believe that such electric energy should be fully utilized to reduce the cost of water deliveries The primary function of the state water program is that the State will store and convey water to local areas of need that are prepared to repay all costs to the State The development of electric power should be wholly incidental and of assistance to this primary function of economic water delivery.

It is understood that there will be some power recovery in passing over the mountains onto the coastal delivery areas The Department of Water and Power will be glad to continue to work with the State toward purchase, sale or exchange of power so as to produce the lowest net cost of water deliveries It would appear that those local agencies paying their pro rata share of the aqueducts, including power recovery installations, should receive proper credit for the value of this power in the same way that local agencies will be required to pay for necessary pumps and power for pumping to their respective points of delivery.

The Department of Water and Power supports the preference afforded public agencies under Senate Bill No 1106 by the adoption by that act of the provisions of the Central Valley Project Act. The department in its sale of power gives preference to other public agencies.

We believe that costs of water projects to provide for recreation and propagation of fish and wildlife should not be charged to the water users Such costs should be repaid by charges for recreational use, or to the local area benefited or, in some cases of statewide interest, be made nonreimbursable and thus a charge to all the people of the State

It is clear that contracts must return with interest all capital costs contracted from the $1,750 million bond authorization We urge that all capital expenditures from other sources, including the Water Fund, be returned with comparable interest charges and in comparable periods of time This would make more workable the provisions of the Burns-Porter Act, Senate Bill No 1106, which require the first use of money from the Water Fund whenever available, rather than from bond funds

We suggest a two-part rate under which local contracting agencies will return the properly allocated capital cost with interest within 50 years Insofar as practicable, we believe that local agencies should make payments on the capital account, as charges for bond interest and redemption fall due, to the State The department stands ready to do this as it has had to do on its own water and power projects Such a policy would relieve the State of collecting taxes for this purpose from others not so directly benefited This should prove a strong factor in gaining support for the project in all areas of the State, including areas not so directly benefited

The second part of this rate structure should be agreement to pay to the State on an acre-foot basis, the average net cost of water at the Delta, after proper credits for flood control, power, or other contributions or revenues, plus the operating maintenance and replacement cost of the aqueduct and pumping plants, to the point or points of delivery to the local agencies, also on a cost per acre-foot basis It is understood that the average net cost of water at the Delta will increase as more expensive storage and diversion projects are constructed to increase and firm up the available water at the Delta The costs will be reduced as capital costs are repaid Other operating, maintenance and replacement costs will vary through the years The contracts should provide for periodic adjustments to return to the State its true costs

It appears equitable that there should be pricing of water by reaches of aqueduct —one in the Feather River service area, one at the Delta, and at least one for each pump lift in successive and accumulative stages As provided in Senate Bill No 1106, water would be sold by the State to local agencies, both publicly and privately owned, at one price at each of these price reaches This is in accord with the policy statement of the Feather River Project Association and other statewide organizations

Under such a pricing formula, each local agency would then determine its own tax and water pricing policy within its own area in raising the money necessary to fully repay the State for its capital charges, plus water delivery charges and the local agencies' own costs of delivering the water to its customers History shows the necessity of taxes during the earlier years of all major aqueduct projects

Multiagency organizations, when contracting for State water for their member organizations or area use, should be so organized that within the agency inequities will not result and that participants share both benefits and costs on an equitable basis in terms of delivery capacity and quantities

We and other local agencies make some distinction in rates to different classes of water service, such as for irrigations In 1957-58 the department delivered 5 2 percent of its water for intermittent irrigation use and 1 4 percent under the schedule for combined domestic and irrigation service The water deliveries after 1970 under the intermittent irrigation schedule will be substantially nil

The city desires contracts for permanent water supply and urges the State to observe the Governor's announced utility concept of always providing sufficient water at the Delta to meet every obligation of its contracts and, as previously stated, to charge the average net cost of such water without the establishment of certain rights by constitutional amendment This method together with the financing therefor written into the bill is the means of meeting the needs of the County of Origin with adequate replenishment to care for areas of deficiencies The city and all other local agencies have this utility obligation to their customers Unless the State assumes such utility obligation, the local agencies would fail in their ability to carry out their own local utility responsibility

The Department of Water and Power, as well as the City of Los Angeles, have the power to enter into contracts directly with the State for water and power which is proposed to be developed by the State The terms of such contracts should be determined now and made available well ahead of the time the bond issue is submitted to the people in November 1960

The department is opposed to any requirement that the contracts be subject to ratification by the Legislature However, as provided in Senate Bill No 1106, the major terms of such contracts, should be established by legislative act so as to provide uniformity and assurance that the contracts will in fact be based on the "Delta Pool Utility Concept"

(Transcript of October 20, 1959, page 149)

RESOLUTION PRESENTED BY DOMER F. POWER
Tulare County Taxpayers' Association

WHEREAS, Tulare County has sometimes been referred to as county of origin rather than a county of deficiency, and

WHEREAS, Only a small portion of Tulare County is receiving supplemental water from the Central Valley Project, and

WHEREAS, Tulare County has an overdraft of close to half a million acre-feet of water at the present time, and

WHEREAS, The California State Water Plan is designed to develop all surplus water wherever available and transport it to areas of need thus augmenting any and all federal reclamation projects, and

WHEREAS, The 1959 State Legislature decided to place $1,750,000,000 water bond issue on the 1960 general election ballot for the voters' consideration, and

WHEREAS, The measure on the ballot is designed to finance the actual start of water development by the State of California; now therefore

Be It Resolved That the Board of Directors of the Tulare County Taxpayers' Association hereby recommends to all water agencies that Tulare County be considered a county of deficiency in the development of water projects designed to transport surplus water to areas of deficiency, and be it further

Resolved That proceeds from sale of electric energy or other by-products of water development be utilized to help retire the cost of the project, and be it further

Resolved That water from state projects be delivered and sold at a cost based on the use to which the water is to be put, recognizing the economic fact that industrial and domestic users can afford water at a higher cost than those users producing food and fibre, and be it further

Resolved That the repayment plan to retire the bonds to pay the cost of construction be such that the people receiving the benefits from such projects shall pay for all costs of operation and amortize the original cost of the project on the basis of the use to which this water is put

(Transcript of October 20, 1959, page 194)

STATEMENT OF LOWELL O. WEEKS
Coachella Valley County Water District

Although this statement is being made by the Coachella Valley County Water District the committee should understand that, even though there are 267,000 acres within the district's boundaries, those boundaries do not include all of the area that lies within the Whitewater River-Coachella Valley area as defined in Bulletin 78 However, in discussing the following subjects, we will attempt to express the views of the entire area

We believe, of course, that in entering the field of water development, the State must do so upon a sound financial and economic basis This requires that those who use the water shall pay all operation and maintenance costs and return to the State the aggregate of all reimbursable capital costs with interest Through interest payments the State will be paid for the use of its money By this method of financing there will be no subsidy There should be no restriction on the amount of land held in individual ownership We, therefore, do not favor acreage limitation

As we understand the State Water Plan, it seems that ultimately more power will be required than will be produced There may be, during the early development of this project, some surpluses of developed power available for sale We believe that all power or power revenues should be completely utilized to reduce the cost of water deliveries to the people

The quantities of water shown for this area in Bulletin 78 should be increased because of the following reasons·

1 To meet the demand of residential and recreational development on the Salton Sea
2 To include water delivery to areas along the new proposed canal route to Coachella Valley.
3 To supply the full supplemental requirement from the State Aqueduct System, permitting return flows to the underground to be available for the lower valley, recoverable through wells
4 Water sources presently available to the Whitewater River-Coachella Valley area are uncertain and indefinite and appropriate provisions must be made to meet those conditions The Coachella Valley area is willing to contract for, and is able to pay its fair and equitable proportion for the additional water needed in this area

The current assessed valuation of the Whitewater River-Coachella Valley area is in excess of two hundred million dollars It is anticipated that the capital works will be financed by the issuance of bonds, excluding works to be constructed under federal or state financing. The policy of the Water District has been to finance capital costs from taxes and to meet operation and maintenance costs from water sales.

The district submits that contracts should be for a permanent water supply and urges the State to observe the utility concept of always providing water at the Delta to meet every obligation of its contracts

We believe that there should be one uniform price for water to a contracting agency within a given zone of the State Aqueduct System This water contract price should be based on the proportional use of the system, and the price should not require payments that produce revenue in excess of that required for current operation and maintenance and repayment of reimbursable capital costs with interest We submit that the need for a price differential should be at matter to be determined within the local contracting agency

The district believes that the fundamental and controlling terms of water contracts should be determined as soon as possible in order that each contracting agency will be able to inform its water users and the public of the contract conditions before the bond issue is submitted to the vote of the people in November 1960

(Transcript of October 20, 1959, page 198)

STATEMENT OF H. P. NEEDHAM
Ventura County

On the basis that local agencies will probably have to repay the State with interest for all capital outlay expenditures in connection with the State Water Plan projects and that there will probably be no subsidy for irrigation at the State level, it is believed that no acreage limitation should be considered in connection with these projects If irrigation subsidy is granted at the local agency level, then some form of flexible limitation might be considered locally in allowing a larger subsidy to the smaller farms

It is believed that ample power is available from local distribution system of Southern California Edison Company and purchase of power from the State should not be contemplated

Power should be marketed on an interchange basis with Public Utility Companies in such manner as to afford the most economical combination of maximum revenue and minimum operating charges

Categorical reply cannot be made at this time (regarding the amount of water we would contract for), even though quantities stated will eventually be required, because

1 It is not known who will be the local contracting agency or agencies
2 Prices stated in Bulletin 78 are nebulous and subject to change
3 Terms and form of contract are not known

(The) responsibility for construction of distribution facilities (is) not yet determined with regard to contracting agency or agencies, but, in any case, financial ability is available

Studies and estimates are being prepared for those areas in most urgent need of water.

Assuming a project is financed by bond issue, the amount of water set forth in contract should be inviolable for the life of the contract, which presumably would correspond to life period of the bond issue, unless in case of overall water shortage there is need for proration In this case, proration should apply alike to all users including the areas of origin

Escalation of water rates to cover increased cost of operation and maintenance during the period of the water purchase contract might be acceptable providing such escalation is applied equitably and uniformly to all water purchases However, it is not considered that escalation of water rates should be considered in connection within increased costs of constructing additional facilities to supply water if such additional facilities are in addition to those contemplated in the project covered by water purchase contract when executed

(Transcript of October 20, 1959, page 189)

STATEMENT OF MRS RICHARD GLASS
League of Women Voters of California

For the past year the League of Women Voters of California, consisting of 59 local leagues and more than 10,000 league members has been studying water resources To date, we have agreed that there is need for a statewide water plan in California We believe that the State has a major role to play in developing our water resources to meet our explosive population growth and expanding water demands While local agencies have met many of our water supply problems in the past, they do not have the financial resources to build comprehensive, multipurpose projects In the past, the federal government's role has largely been limited to flood control and irrigation. We recognize that California will need continued federal assistance in these functions However, since we have a major river basin within our boundaries and sufficient water for our predicted ultimate need, and the financial means to develop our water resources, the State is the logical regional agency to meet the mounting demands for water

California league members are now engaged in discussing the problems involved in the Burns-Porter Act We are seeking consensus on the best methods of financing and repayment for state projects, on whether the State should follow federal policy in irrigation and power, and what safeguards are necessary to protect public and private interests in the state program In considering these problems, the league is finding the committee's "Study of Economic and Financial Policies for State Water Projects" most illuminating As soon as our membership has reached conclusions on these water problems, we will express them publicly and take political action on proposed state legislation

To help our members, and citizens generally, consider the crucial water issues that face California, the league has prepared this pamphlet, "Water Lines," which we would like to present to this committee The major issues, as we see them, are:

1. *What are the best methods of financing state water projects?*

   The suggestion of the use of revenue bonds for the power costs of the state program is an interesting one Is it feasible to separate one function of a multipurpose project for separate financing? Are revenue bonds practicable in view of the long period from the start of a project and the actual return in revenue from the sale of water and power? Is not the interest rate generally higher on revenue bonds than on general obligation bonds?

2. *What should state repayment policies be?*

   This seems the most vital issue facing the California water program How much of the cost should be borne by the beneficiary and how much by the general taxpayer? There are obvious advantages in requiring as much reimbursement by water users as possible, such as curtailing economically unsound projects and eliminating subsidies However, when projects contribute to the general welfare, to public health, safety and defense, it seems only right for the general taxpayer to assume some of the cost As the Cooke Commission pointed out in 1950, there is a disposition to apply to public undertakings, ideas and practices appropriate to the private capital market where full reimbursement is the rule While our economic system is predominantly private, it rests on a foundation of public investment in basic facilities such as roads,

communications and schools The market mechanism does not give us the complete answer Social and human values have to be considered as well as economic efficiency The control of floods or pollution, for instance, may not maximize economic returns to the nation but the benefits to the people involved may justify the cost The meeting of recreation needs, the preservation of fish and wildlife may well be more important to the kind of environment we want for ourselves and our children than the cost in dollars and cents This does not mean we minimize the importance of careful economic evaluation of projects and the relationship of government investment in water to its other government functions

3 *What is state policy on irrigation?*

In this area it seems likely that the State may depart from federal precedents Can the State afford to subsidize the farmer at all? Should there be an acreage limitation on state water? Should the State commit the great portion of its future water supply to agriculture? League members have not yet decided on acreage limitation but they are concerned with the problem of "undue enrichment" of large landholders and agree that some kind of limitation is desirable if there is an agricultural subsidy in state projects The chapter on irrigation repayment in the committee's study is most comprehensive We too are concerned lest water be progressively tied to the land by the doctrine of "prior appropriation," regardless of the economic utility of alternate uses The West's problem has changed from putting more land into production to providing water for more people, more industry and more recreational usage Will our legal system give us enough flexibility to make changes in water allocations as circumstances change?

4 *What part will power play in state water development?*

Power plays an important role in any multipurpose water project because it is a dependable source of revenue The State has yet to establish its power policies Should it use power revenues as the federal government does to subsidize irrigation? What should be done about preference and pricing? Basically, the State is faced with the question whether it is wise to sell the power produced by the new system rather than utilize it internally for pumping purposes If it is sold, the decision must be made whether it should be priced at a minimum rate to increase use or whether it should be sold at the maximum market price to secure revenue Since the preference clause is already in the California Water Code, it seems likely to remain in effect.

5 *What safeguards are needed?*

The league is concerned that our water laws protect public as well as private interest in water resource development The very serious problem of overdraft of ground water raises the question whether new regulations or laws are needed to control pumping Some states do so Water experts agree on the need for integrated management of ground and surface water During last year's study, league members had no consensus on the need for a constitutional amendment to protect water rights and needs In our evaluation of the Water Bond Issue we are now considering whether the provisions for validity of contracts and affirmation of the County of Origin Law and Watershed Protection Act give adequate protection to the welfare of the entire State In general, the league, after its study of the Constitution, is reluctant to incorporate statutory material into that lengthy and much-amended document The feeling was evident that many of these problems could be handled by the State Department of Water Resources

(Transcript of October 20, 1959, page 202)

STATEMENT OF WILLIAM R. GIANELLI
Department of Water Resources

San Diego County, because of its very meager local water resources and rapidly increasing water requirements, has for some time depended heavily upon importations of water from the Colorado River through the Colorado River and San Diego Aqueducts In recognition of the inadequacy of the twin barrelled San Diego Aque-

duct as it then existed to support further growth in the county, the California Legislature of 1956 appropriated funds for an investigation by the Department of Water Resources of alternative aqueduct routes to San Diego County

The study was completed late in 1956 and reported upon in Bulletin No 61 The Metropolitan Water District of Southern California and the San Diego County Water Authority are now nearing completion of construction of the second aqueduct substantially as recommended in Bulletin No 61

The investigation by the department included detailed studies of the future growth of economic demand for imported water in San Diego and southwestern Riverside Counties The information developed was incorporated into material developed for the entire Southern California area as reported in Bulletin No 78, entitled "Preliminary Summary Report on Investigation of Alternative Aqueduct Systems to Serve Southern California, February, 1959." As we told your committee in Los Angeles yesterday, it was concluded that the historical growth in population and industry would continue into the future, with the Southern California area maintaining its growth relative to that of the State as a whole It was also concluded that growth in the service area of the San Joaquin Valley-Southern California Aqueduct System centering around the metropolitan areas of Los Angeles and San Diego would require such quantities of water to sustain it that by about 1970 the full capacity of the Colorado River Aqueduct under California's historic claimed rights in and to the waters of the Colorado River, would be utilized Future expansion after that would be dependent on the existence and availability of additional imported water supplies from Northern California which could be furnished by the proposed San Joaquin Valley-Southern California Aqueduct System

Studies in southwestern Riverside and San Diego Counties indicate that almost two-thirds of the future requirements for imported water therein will be for urban purposes A major part of this urban growth is expected to occur in the southern portion of San Diego County While the costs of project water in this area on a wholesale basis will be greater than the cost of obtaining wholesale quantities locally, pumping from the underground, the net increase in costs to ultimate urban consumers, even if no credit is given to local water supplies, would probably not exceed 50 percent of the present cost in any case, and in most instances would be considerably less This is because the water prices urban consumers now pay reflect very high local storage, transmission, distribution, water treatment, and customer accounting expenses, which generally are reflected in 70 to 90 percent of the price of water to consumers, as well as the original cost of producing the water Thus, an increase in the water supply cost component would not, in itself, cause corresponding percent increase in the price of water thereto

Within the range of costs estimated for delivery of surplus Northern California water to Southern California, it does not appear that there would be any appreciable variation in the magnitude of demand for water by urban entities and that the costs of Northern California water are well within the payment ability of urban water users

In support of this conclusion with respect to use of surplus Northern California water for urban purposes, selected communities in the Southern California area were investigated to ascertain the present cost of water to consumers therein It was found that the actual cost of water as delivered to the consumers in the sampled areas ranged from a low of about $35 per acre-foot to a high of $168 per acre-foot The majority of communities sampled indicated costs to the consumers on the order of about $75 per acre-foot These costs are not directly comparable to the computed costs of Northern California water, as they reflect the many expenses associated with distribution beyond the principal conveyance systems, Included among these are costs of distribution, meters and services, customer accounting, taxes and general administrative expense which, it was estimated, averaged between $40 and $70 per acre-foot Production, treatment, and conveyance expenses were estimated to average from about $20 to $40 per acre-foot Thus, although direct comparisons of present water costs with probable future costs after introduction of Northern California water are difficult to prepare, the foregoing values would indicate that the resultant change in the direct cost to the ultimate consumer would, on the average, be comparatively small

Historically, irrigated agriculture in southwestern Riverside and San Diego Counties has been retarded by the small quantities of water available for use With the advent of imported water through the San Diego Aqueduct into San Diego County, an increase of 15,300 acres, or nearly 25 percent, has occurred in irrigated

acreage in the coastal portion of San Diego County since 1950. It is expected that this trend will continue in the future. Encroachment of urban development has occurred and is expected to continue on existing and potential irrigated lands in this area However, we have found that there are substantial areas of land in southwestern Riverside and San Diego Counties adaptable to the production of high-valued crops, which lands are not expected to be occupied by urban developments

In studies of the ability of agricultural users to pay for project water, the department developed a value for each climatically-adapted crop type in each portion of the service area, which was designated "Residual Income Available to Pay for Water Charges and Provide Incentive to Farm" As the term indicates, this value expresses in dollars the amount of total farm income remaining to pay for water and to provide incentive to farm after all other farm expenses are paid Such values for crop types in the San Diego service area are tabulated in Table 1 which is attached at the end of this statement.

As you will recognize, the tabulated values cannot be interpreted as ability to pay until there is subtracted for each an allowance for incentive to farm Studies of appropriate allowances are presently in progress In this connection and in view of the complexities of the problem of determining repayment capacity of agricultural lands for irrigation water, and of the fact that the department has not as yet finalized all of its studies in this regard, we would appreciate an opportunity, as we expressed previously, to make a presentation to your committee on or after November 1, 1959, concerning the technical aspects of repayment capacity studies and the results of our studies of the areas that will receive water from the state water facilities

Soil and geologic conditions throughout coastal San Diego County vary considerably, and in many areas limit or prevent the recharge of water to ground water basins Ground water basins in this area are of limited extent There may be a few isolated areas where return flow from project water applied for irrigation purposes could be captured and put to use by nonproject participants For instance, in those few areas overlying usable unconfined ground water, the unconsumed portion of the ground water would percolate to ground water and be available to either project participants or nonparticipants. In less permeable areas, this return flow would collect in the water courses and, similarly, be available for diversion and reuse Urban areas served with project water in certain instances could discharge their sewage to the underground in such a manner that it could be available for capture by irrigators or other water users who would not be project participants

The analyses made in connection with Bulletin No 78 led to the conclusion, however, that for the most part, return flow from use of imported water in the San Diego area would be recaptured and used by the contracting agencies themselves or by entities who pay taxes or water tolls to the contracting agencies In this service area, the majority of the developed areas and areas having access to the return flows are organized into public water agencies and are constituent members of the San Diego County Water Authority Thus, any water not recaptured by the original area of use would probably be either captured by other members of the authority or would escape to the ocean Thus, we do not consider the question posed to be a significant problem insofar as the San Diego area is concerned

The probable project service area in coastal San Diego County is represented on nearly all presently developed lands by the San Diego County Water Authority and its member agencies, which is, in turn, a member of the Metropolitan Water District of Southern California

From the inception of the program, principles of operational and financial management have been under informal discussion with possible contracting agencies in an attempt to crystallize the appropriate and necessary principles It is anticipated that, in the near future, many of such major principles will have been sufficiently formulated to permit more detailed discussions and negotiations

The nature of the area in coastal San Diego County indicates that only a very limited market for nonfirm or interruptible water would exist The type of crops that it is anticipated will be grown with project water, the limited availability of local water, the limited opportunity for artificial recharge, and the predominantly urban demand in the service area lead to the conclusion that the majority of water delivered in the area will be on a firm delivery basis

(Transcript of October 21, 1959, page 12)

TABLE 1

DERIVATION OF UNIT RESIDUAL ANNUAL INCOME FOR FARMING INCENTIVE AND PAYMENT OF IRRIGATION WATER BY PRINCIPAL CROPS IN COASTAL SAN DIEGO COUNTY

Crop	1 Production unit	2 Yield [a]	3 Average F O B prices received 1952-56	4 Gross income 4=2×3	5 Crop production costs	6 Net return 6=4—5	7 Operator's management	8 Operator's labor	9 Operator's labor and management 9=7+8	10 Residual income [b] 10=6—9	11 Use of applied water acre-feet	12 Residual income per acre-foot 12=10÷11
Citrus, Subtropical Fruit												
Lemons	packed box	300	$4 55	$1,365	$1,000	$365	$106	$10	$116	$249	1 9	$131
Valencia Oranges	packed box	270	2 97	802	690	112	61	10	71	41	1 9	22
Avocados	ton	2 5	408 00	1,020	600	420	102	10	112	308	1 9	162
Deciduous Fruit												
Peaches	ton	5 0	185 00	925	700	225	93	5	98	127	2 1	61
Truck Crops												
Strawberries	tray	1,500	2 16	3,240	2,800	440	184	0	184	256	1 9	135
Green Beans	cwt	122	10 83	1,321	1,020	301	132	0	132	169	1 9	89
Celery	crate	950	2 50	2,375	2,120	255	138	0	138	117	1 9	62
Lettuce	crate	350	2 23	781	550	231	30	0	30	201	1 9	106
Tomatoes, Spring	flat	1,600	1 90	3,040	2,066	974	238	0	238	736	1 9	387
Tomatoes Fall	flat	1,950	1 90	3,705	2,501	1,294	270	0	270	934	1 9	492
Cabbage	crate	300	1 70	510	384	126	19	0	19	107	1 9	56
Cucumbers	lug	1 000	1 70	1,700	1,200	500	138	0	138	362	1 9	191
Peppers Dry Chile	ton	1 5	419 00	629	450	179	63	0	63	116	1 9	61
Field Crops												
Alfalfa Hay	ton	7 0	29 00	203	165	38	20	10	30	8	3 3	2
Irrigated Pasture	AUM [c]	12	7 00	84	52	32	8	0	8	24	3 3	7
Dry Lima Beans	cwt	25	10 83	271	205	66	27	10	37	29	1 7	17

[a] Columns 2 to 11 expressed as values per acre
[b] A maximum residual above all farm operating costs available to pay for water and as operator's incentive to farm
[c] AUM is animal unit month equal to 1 4 ton of alfalfa hay

STATEMENT OF WILLIAM JENNINGS
San Diego County Water Authority

The social reform aspects of land limitation and encouragement of family-size farms is a subject of major importance and one the solution of which will require a great deal of serious study and analysis It should not be attached to the water program as presently before the electorate in the form of Senate Bill No 1106 Any hasty or abrupt decision will add such controversy to the debate upon the proposed bond issue as to practically assure its defeat If a firm policy is adopted to insure the repayment of proportional applicable costs by the beneficiaries of the State's water development program the stigma of unjust enrichment will be avoided

The San Diego County Water Authority foresees no need to purchase power from the State

As the overall power requirements of state water development and delivery will exceed the amount produced thereby, power is an incident to the main purpose of the program It should be sold, exchanged or consumed by the project to the best advantage of the State in reducing the costs of operation, maintenance, repairs and construction of the needed water facilities

We understand the amounts quoted in Bulletin No 78 to represent *costs* at the designated points of delivery rather than *prices* As such, they do not appear beyond the means of this area Pricing may be affected by grants and nonreimbursables, costs of operation and maintenance, which may vary in relation to quantities delivered, and other factors not completely known to us at present The question of the C W A contracting direct with the State for water has not been determined as yet and will depend upon what conditions are imposed by the Metropolitan Water District in connection with the distribution of Northern California water Considerable study will be required before this matter can be decided

The C W A with an assessed valuation of $1,300,000,000 is in a position to construct any needed facilities within our service area for the distribution of future water supply from the north In fact, the C W A is now constructing the second San Diego Aqueduct at a cost of $35 million This is a joint venture in co-operation with the Metropolitan Water District constructing the northern section from Hemet to San Diego County at an additional cost of $25 million

The second San Diego Aqueduct, now building, is in fact the southern end of the Feather River Project and can be easily supplied with water by a connection with the Perris Reservoir, 12 to 15 miles north of San Diego county line We wish to call your attention to the fact that while the Senate Bill No 1106 specifies that water will be delivered into San Diego County, Bulletin No 78 shows the terminus at Perris Reservoir with no construction or money spent within the county The San Diego County Water Authority has taken on that job well in advance of our future need

(The commitments to provide a water supply we need from the State before we can finance and construct distribution facilities are) its firm contract to deliver a specific quantity through specific facilities at a specific location (not necessarily from a specific source) supported by assured and adequate financing to make good its promise

The contract should provide that, barring temporary shortages resulting from natural deficiencies or act of God, the State undertakes to make the deliveries in the quantity and at the location contracted for and warrants that it will construct the conservation and distribution works required from time to time to meet its obligation It should also covenant not to contract with others on a more favorable basis and not to enter into permanent contracts in excess of its known resources

Escalation of water rates both up or down appears to be fair provided that ample opportunity is given to take and give evidence showing the need to increase rates Of course there will be little objection to decrease in rates (Transcript of October 21 1959, page 71)

STATEMENT OF HOWARD CROOK
Orange County Water District and Board of Supervisors of Orange County

In order that you may better understand our attitudes regarding the State's water program, I will reacquaint you with some of the activities pertaining to water supply which are now in progress in Orange County

The people of Orange County, through their various water supply agencies and Orange County Water District, have been receiving and paying for large quantities

of Colorado River water from the facilities of Metropolitan Water District of Southern California The records indicate that approximately 825,000 acre-feet of Colorado River water will have been received in Orange County during the 10-year period, 1950 to 1959, inclusive This figure is determined by totaling actual deliveries to September 30, 1959, and using estimated figures only for the last three months of this year. This total of 825,000 acre-feet of water compares favorably with the estimated anticipated requirement of approximately 680,000 acre-feet of imported water for the same 10-year period (estimated by) the Department of Water Resources

Of the total 825,000 acre-feet of Colorado River water it is estimated will have been received in Orange County for the 10-year period ending December 31, 1959, approximately 530,000 acre-feet will have been used for ground water replenishment

The ground water replenishment program now being conducted on an expanded basis in the area of the Orange County Water District is proving to be most successful It is financed in the main with funds received from a replenishment assessment (locally referred to as a "pump tax") levied by the Board of Directors of Orange County Water District as authorized by the 1953 California Legislature Briefly, the main features of the 1953 amendments to the Orange County Water District Act are the following

1 All water producing facilities located within the boundaries of the district must be registered with the district

2 A water measuring device, capable of registering the accumulated amount of water produced, must be affixed to all water producing facilities except those with a discharge outlet not greater than two inches in diameter which provide water for irrigation or domestic use on an area not exceeding one acre

3 Water production statements must be filed for each water producing facility within 30 days following December 31 and June 30 of each year, reporting the total amount of water produced during the respective six months periods

4 A replenishment assessment must be paid at the time of filing the water production statement on the total amount of water produced at the current replenishment assessment rate per acre-foot levied by the Orange County Water District Board

5 All funds collected from the levy of the replenishment assessment are deposited in a separate account and must be used exclusively for the acquisition of water for replenishing the ground water supplies of the district

6 Each year the district must order an engineering investigation and report on the ground water supplies of the district to be made in writing and delivered to the district on or before the second Wednesday in March

7. Each year, in June, the board of directors of the district is required to hold a public hearing for the purpose of determining the need and desirability of levying a replenishment assessment and fixing the rate if an assessment is levied

The act provides that the total of the replenishment assessment levied in any year shall not exceed an amount of money found to be necessary to purchase sufficient water to replenish the average annual overdraft for the immediate past 10 water years, plus an additional amount of water sufficient to eliminate over a period of not less than 10 years nor more than 20 years, the accumulated overdraft It provides further that the replenishment assessment in any year as computed and fixed at a uniform rate per acre foot of water produced shall not exceed $7 50 per acre-foot of water produced except upon the vote of eight of the ten directors of the district

The two important features, therefore, involved in the levy of the replenishment assessment are first, the determination of the amount of water to be acquired for ground water replenishment, and second, the estimate of ground water production during the fiscal year for which the assessment is levied Assuming the board of directors of the district finds and determines the amount of water to be acquired is 70,000 acre-feet, if the prevailing price of water from the facilities of Metropolitan Water District is $12 per acre-foot, then the amount of money to be raised is 70,000×$12=$840,000 If the ground water production is estimated to be 210,000 acre-feet, the replenishment assessment will be $840,000 divided by 210,000 acre-feet estimated production, or $4 However, since the Orange County Water District Act requires that "in computing and fixing the replenishment assessment rate there shall be allowed 10 percent for delinquencies" we divide $4 by 90 percent and arrive at a replenishment assessment rate of $4 44

The Orange County Water District received its first delivery of Colorado River water for ground water replenishment in August of 1949 By September 30, 1959, a total of 522,230 acre-feet of Colorado River water had been purchased and received for this purpose Not all of this water was purchased from replenishment funds Before the replenishment assessment program went into effect, both the Orange County Water District and Orange County Flood Control District had purchased water from general funds, and Orange County Water District is continuing to purchase water not only from the replenishment fund, but with general fund moneys as provided in the district act and as approved by the board of directors of the district

At the end of the water season (October 1 to September 30) 1943-44, the average elevation of water levels in wells in the district basin was 23 6 feet above sea level Sixteen years later, at the end of the water season 1949-50, the average elevation of water levels had lowered to 10 3 feet below sea level The 34-foot drop in water levels during this period occurred just prior to the first purchases of Colorado River water for ground water replenishment It is also significant to note that during the first few years that Colorado River water was imported for ground water replenishment, the limited purchases did not halt the further lowering of ground water elevations However, as funds from the replenishment assessments became available for the purchase of Colorado River water in larger quantities to replenish the ground water supply, by the end of the 1957-1958 season, average ground water elevations had been raised to those that prevailed at the end of the 1949-1950 season

Experience from the time of the levy of the first replenishment assessment to date indicates to a great extent that farmers are producing better crops with smaller, well-planned applications of water Many farmers have stated that with water meters on their wells and having to pay the replenishment assessments on the production of ground water, they are for the first time in their farming operations giving careful consideration to their water usage Some of the industrial plants, where in former years water was used once and then dumped in the sewer, have re-engineered their operations and are successfully reusing their water many times before dumping it in the sewer Other industrial plants have indicated their willingness to place spreading ponds in operation so that they can return effluent water to the ground water supplies whenever analysis indicates the water is of such quality that it should be conserved Water conservation practices such as these are no doubt the result of higher costs of water

A recent survey in our area reveals that the average cost of producing ground water for agricultural use is $9 30 per acre-foot When the replenishment assessment of $4 30 (current rate) is added, the average cost is increased to $13 60 per acre-foot It is indicated that the cost of producing water for urban uses is approximately the same, even though most of the water produced must be placed in distribution systems under pressure This is due to more constant production and the resulting much larger volume in production per unit As the cost of water increases, it appears that a definite trend develops to use water to the optimum rather than to the maximum I believe from this trend in our area we can conclude that if water to agriculture or industry is subsidized to provide a low cost to the user, larger aqueducts will have to be built to carry excess water to provide for maximum rather than optimum use

Located in Orange County and outside the boundaries of the Orange County Water District are large areas of heretofore unwatered lands Plans are now developing for the utilization of much of these lands for urban use Practically all of these lands have been annexed or are in the process of being annexed to the Metropolitan Water District Much or probably all of these lands are so located that, with adequate water supply available, they will have great potentials to offer for homesites as well as industry and commerce

Now, as to our attitudes in regard to the State Water Resources Development System

We believe Metropolitan Water District facilities should be used to distribute Northern California water to Orange County agencies That portion of Orange County which contains in excess of 99 2 percent of our total assessed tangible values has been annexed to and is a part of the Metropolitan Water District of Southern California Up to July 1, 1959, Metropolitan had delivered a total of 3,869,945 acre-feet of Colorado River water, of which 827,633 acre-feet, or 21 4 percent of the total deliveries, came into Orange County Our county is located many miles from both the Balboa Terminus and the Perris Reservoir of the proposed San

Joaquin Valley-Southern California Aqueduct System Connecting water conveyance facilities from either of these two termini into Orange County to serve Orange County water requirements would probably not be economically sound We believe it would be most unwise to consider any duplication of the existing water conveyance facilities of Metropolitan which are already constructed, or those authorized to be constructed, to deliver water to our area. These existing facilities of Metropolitan can be supplemented in the future as needed to deliver adequate water to meet the supplemental water requirements of the various water distribution agencies within Orange County, including the water necessary for ground water replenishment We are looking to Metropolitan Water District of Southern California to be the contracting agency for water from state constructed facilities and for delivery of this water to our area as needed

As we understand the Feather River and Delta diversion projects, they will in the main be power-consuming projects rather than power-producing projects There may be, in the development of these projects certain short periods of time when surpluses of power are available for sale When and if this situation develops, if not tied into some kind of favorable power exchange arrangements, the power should be marketed to produce the greatest advantage to the water users of the system

We believe all users of water from the state system should pay for the service at the same rate and that no price differentials should be established for different uses of water.

A system closely paralleling a suggested zone pricing system for water delivered from state aqueducts is being used in Orange County for both water and sewage main line conveyance systems in which more than one agency is participating. In one of the water supply systems in operation in our area, for example, there are three participating agencies The respective take-out points for the three agencies are three, six and 12 miles distant from the head end of the line where the Colorado River water supply is available Each agency has estimated its water requirements from this supply for the year 1979. The system is designed to deliver these total ultimate requirements Each agency owns and is paying for its capacity share in each section of the line required to deliver water to its respective turn out points In other words, each agency owns certain definite capacity rights in one or more of the sections of the system, and only in those sections required for its water delivery service By this method, each agency is guaranteed a certain annual proportional use in the line, and its capacity in the line is available to the agency when its requirements for water reach anticipated demands

There is also a county-wide main line sewage collection system in operation in Orange County, embracing approximately 300 miles of pipe lines complete with treatment plants and a 7,000-foot ocean outfall This system is owned and operated by approximately 33 public agencies The entire system is operated as a joint venture with each agency, or in some instances groups of agencies, owning capacity rights in those facilities necessary to serve their respective anticipated requirements and areas We believe a method such as this should be considered in determining distribution of capital costs, including interest for repayment purposes to the beneficiaries of the State's water system

It would appear that the State could and probably should consider selling water to both public and private agencies where either power of taxation exists or where careful investigation indicates ability to pay all costs can be assured It would also appear that under other than short-term conditions power requirements will exceed power production, and that some kind of power exchange arrangements may prove to provide the greatest advantage to water users as a whole

We believe that the policies and principles pertaining to terms and conditions of contracts should be established at the earliest possible date—preferably long before the vote on the bond issue

In order to accomplish this objective, and time is of the essence, it appears that these determinations can be made more expediently by the administrative branch of our government These determinations, of course, must be within the framework of any effective determinations previously established by the Legislature

When policies and principles pertaining to terms and conditions of contracts are adopted, it appears that to wait for ratification of each contract by the Legislature might hinder rather than expedite the orderly development of the system and early deliveries of water therefrom

(Transcript of October 21, 1959, page 127.)

STATEMENT OF JOHN W BRYANT
Riverside County

We believe that acreage limitation as presently applied by the Bureau of Reclamation is outdated and cannot be applied to mechanized agriculture in the State of California Statements have been made that as long as all lands receiving water under the state water program sign contracts for the delivery of water and the repayment of construction costs proportionate thereto that acreage limitation does not have to be considered We do not entirely agree with this statement We wish to point out that in the case of large acreages there will be unjust enrichment far beyond that on the average size farms served Therefore, it would seem to us entirely proper that some assessment be made over and above the contract price for water on large acreages We are not prepared to recommend the acreage limitation beyond which this assessment should be made, but feel this is a question that should be determined through study and consultation by your committee, the Legislature and the Department of Water Resources

The projects authorized by Senate Bill No 1106 are for the purposes of developing adequate water supply and delivery to areas of need The development of power is incidental to the program and when completed the California Water Plan will be a power consuming program However, it is recognized that there will be periods during which there will be a surplus of power It is our opinion that the power developed from the authorized projects should be sold, exchanged or consumed in a manner most beneficial to the program to reduce the cost of water to the consumer

We are not prepared to answer at this time (regarding our willingness to contract for the amounts of water shown at the price shown in Bulletin 78) The supervisors have requested that a study be made within the county to determine the amounts of water that will be required and this study is now being made It is anticipated that we will have the answer to this question by early spring of 1960 Indications are that the county or districts within the county will be willing to contract for the amounts which can be supported by the present study

(Transcript of October 21, 1959, page 145)

STATEMENT OF EDWIN PRESSEY
San Diego County Farm Bureau, Inc.

Electric power developed in the State Water Plan should be sold at full market value There will not be sufficient power developed to equal the power needed, so power sold should bring as high a market value as possible In this way those who are purchasing the water will pay the costs of water and not be involved in selling power at less than it is worth

Recreation values developed in the State Water Plan should be evaluated in their relationship to the future needs and growth of the State, and such values should be charged to recreation and not to water costs

Much of the lake frontage and improved streams could be developed on a lease basis, which would return money to the State to help pay for the water project All the incidental values of the project could be so managed as to return to the State financial assistance to keep the cost of project water to the most realistic figure

There should be no acreage limitation, because any such regulation is not democratic or economically feasible Any limitation on the size of a farm or use of water, establishes a principle of regulation that may have no end The practical application of such a regulation is quite involved, and often results in not even coming near to accomplishing the results that those who advocate such regulations desire It can hamper water development, hurt both small and large farmer, cause impossible conditions in water districts that require supplemental water but are at present serving all their water users in a satisfactory manner

If the users of water pay their just share of its costs, then any acreage limitations are not needed Besides the danger is in accepting the principle that acreage can be limited If acreage can be limited, the plats of land could be reduced to an ultimate end of small uneconomic size that would require subsidy

(Transcript of October 21, 1959, page 154)

STATEMENT OF JAMES H. KRIEGER
Western Municipal Water District

Four special agencies are responsible for making available most of the supplemental water in Riverside County These are Palo Verde Irrigation District, Coachella Valley County Water District, Eastern Municipal Water District and Western Municipal Water District of Riverside County All of these agencies deliver Colorado River water to the lands within their service area Each was created by the vote of the people, and is governed by its own board of elected officers who speak for it None of them are under the control of the County of Riverside If and when the County of Riverside, as such, contracts for and delivers water it will be to some area not included in one of the existing public agencies, and of course the question which must then be asked is whether such an area has the water consumption and assessed valuation which will enable it to contract with the State through the county government

Two agencies, namely, Eastern Municipal Water District and Western Municipal Water District of Riverside County are members of the Metropolitan Water District of Southern California One agency, the Coachella Valley County Water District, imports Colorado River water through the All American Canal, and is under certain quantitative limitations These three agencies have a real interest in the Feather River Project and the contracts to be entered into between the State and water distributing agencies Even though Western Municipal Water District of Riverside County expects that the Metropolitan Water District of Southern California will be the contracting agency for all of its members, we believe the view of the contracting parties should be given full weight and careful consideration With this background, we wish to make the following observations

First· The California Water Resources Development Bond Act (Senate Bill No 1106) is in no way a perfect piece of legislation On the contrary, Southern California interests have felt for many years that a constitutional amendment was the only way in which its interests could be adequately protected We were asked to retreat from this position and finally did so

Then the Legislature passed Senate Bill No 1106, but you will remember that the bill was amended time and time again in the Senate When the Assembly considered it, it was on a take-it or leave-it basis The Senate implied that it would not pass any water legislation unless the Assembly took the bill as presented without any changes This ultimatum went so far that even clarifying amendments were not welcome The result is an act with many uncertainties and ambiguities For that reason, we believe the Governor should call a special session of the Legislature and correct these deficiencies We are not requesting that the spirit and philosophy of the act be changed, even though we may disagree with it, but only that it be made an understandable, workable piece of legislation

Second We believe that the act should be tested for its constitutionality It is our understanding that reputable bond counsel in both the north and south agree that they will not issue a legal opinion regarding the validity of the bonds until the act is tested before the Supreme Court as to constitutionality We believe that there is general agreement that the act should be tested The only question is whether it should be tested before the 1960 election or after We believe it should be tested before the people vote on it The chances of passing the act are increased immeasurably if the people know the act meets the test of constitutionality Furthermore, if there should be deficiencies in the act they could be corrected at a special session of the Legislature in 1960 and before the election

Third· Having been assured that the bond act will give Southern California the same protection as a constitutional amendment, and it having been further suggested that no special session of the Legislature is necessary to correct any deficiencies in the act, we have been assured that all of these things can be corrected by contracts We believe it doubtful that a contract can supply deficiencies in legislation any more than it can make constitutional an imperfect piece of legislation And then there has been assurance that the water project contemplated by the bond law will be self-liquidating through revenues realized from contracts between the State and distributing agencies Not only do we have no contracts or a proposed form of contract, but there is a suggestion that even these will not be available and in final form until after the November 1960 election

If the State Water Project is to be self-liquidating then proposed contracts must be acceptable to the agencies to whom they are offered or they won't be entered into in the first place In the second place, those contracts, all together, must provide enough revenue to pay for the project if the project costs are not to be a burden

on the general taxpayer So far, we have no knowledge of what the contract terms will be Until we know this, we certainly cannot guess as to how many agencies, if any, will accept those contracts and, until this is known, we can hardly assure our voters that the state project will be self-liquidating We take the view that a declaration of principles to be inserted in proposed contracts is not enough Principles are important but, until they are reduced to contract provisions, they are subject to as many definitions as there are parties negotiating We believe the terms of the contracts should be in specific contractual language and, if possible, actually entered into before the people are asked to approve the bond issue Anything short of this invites the people of the State to speculate on the method of repaying the costs of the project

Fourth Some policies that should be decided immediately by the Governor so that the contracts can be drafted are

1 What, if any, measures will be taken to meet the charge of "unjust enrichment" raised by the AFL-CIO?

Just as certain landowners will benefit more from the State Water Plan than will others, so will certain classes of labor benefit more from this vast construction program than will other classes of labor There is no purposeful enrichment to anybody within the plan as proposed and, therefore, there is no reason to attempt to correct benefits which happen to accrue to one group more than another Some inequality in benefits is inherent in practically all public projects

2 Should the 160-acre limitation, or any variation of it, be built into the proposed contracts?

We believe the answer is definitely "no"

3 Should power be sold at competitive prices so that the revenues to the project will be maximized or will power be sold at preferential rates?

Power should be sold so as to maximize the benefits to the project and not be sold at preferential rates to public agencies

4 What will happen to the revenue from power—will it be allocated to irrigation water or spread evenly over the entire project?

Here, again there should be no effort to allocate power revenues to irrigation water, but all power revenues should be enjoyed equally by the project as a whole

5 Does the State contemplate a built-in subsidy to farmers to compete with the Bureau of Reclamation under federal projects, or will subsidies, if any, be determined at the local level by the agencies contracting with the State?

We believe all variations in rates between municipal, industrial and agricultural water should be determined by the local contracting agencies Its board of directors is more sensitive to the requirements for subsidy, if any, within its own area than is the State

These are some of the things that should and must be answered in the firm contractual provisions before the people should be asked to support the State Water Plan

This district would like to go on record as being critical at the time of the bond law in its present form Now is the time to solve these problems—not after the people have voted general obligation bonds on the faith that somebody will do the best he can It is this critical and demanding viewpoint that will produce a water program which water distributing agencies can, in good faith urge their voters to support Short of this, and almost in direct proportion as these questions are left unanswered, water distributing agencies can hardly urge their voters to buy the water plan simply because there is a need for water

So that there may be no misunderstanding, I will repeat that the Board of Directors of Western Municipal Water District of Riverside County and, it is believed, an overwhelming majority of the people whom they represent are in favor of the importation of northern water, and are in favor of the general method proposed by Senate Bill No. 1100. It is because this board fears the defeat of the bond issue at the polls next year that prompts it to make the recommendations just given

(Transcript of October 21, 1959, page 160)

STATEMENT OF PAUL BEERMANN
City of San Diego

Acreage limitations as such would not directly affect the City of San Diego since less than 5 percent of our total water consumption is for agricultural purposes We do feel, however, that no limitation should be placed upon acreage under one ownership in those areas served by the state water projects

We believe that any subsidy should be only at the local level and at the discretion of the distributing agency Under such a program, agricultural users would receive no direct subsidy from the State and, therefore, should not be limited in acreage to be irrigated Indirect benefits undoubtedly enhance land values but such indirect benefits accrue not only to all property owners, agricultural or otherwise, but to the State as a whole

Since the prime purpose of state water projects is to deliver water to the consumers in adequate quantities at a reasonable price, it is felt that sale or use of power should be effected to offset project costs to the best advantage of the project

The City of San Diego would be willing to contract for specific amounts of water The exact amount to be contracted for will depend upon the final settlement of the California-Arizona litigation of the Colorado River and arrangements with other agencies

Since the Colorado River is the prime source of supply to much of Southern California, any reduction in entitlement will directly affect our water requirements from other sources

The City of San Diego and the San Diego County Water Authority have the financial capacity to construct distribution facilities to utilize water from the California water projects The Metropolitan Water District and the County Water Authority are now constructing the Second San Diego Aqueduct which will have adequate capacity to deliver large amounts of water from state water projects The San Diego County Water Authority's share of this aqueduct is financed by bonds already voted by the citizens of the area Additional bonding capacity is available to permit future expansion as required

The repayment of state project costs for this area can be pledged by the County Water Authority and its member agencies In most cases, the distributing agencies could directly guarantee such repayment although adequate land values would insure that assessment for such costs would be paid The City of San Diego may pay for allotted capacity and for actual water deliveries from operating funds Our rate structure can be adjusted if necessary to provide for the annual payments

With reference to our construction of distribution facilities, the city and the County Water Authority are now constructing such facilities without firm commitments from the State but in anticipation of the ability of the State to deliver additional water Continued growth in the area dictates that we plan for the future and construct the facilities needed to serve the area

Escalation of water rates to cover increased costs of additional facilities and increased operation and maintenance costs would be acceptable since it is a basic premise of the State Water Plan that additional projects must be built as the need for water develops and also that the initial phases of the State Water Plan (Feather River Project) are more economical than many of the projects to be constructed at a later date It is only reasonable to assume that agencies benefiting originally from the lower cost projects shall share in the costs of later projects just as in any utility operation

(Transcript of October 21, 1959, page 174)

STATEMENT OF JOHN R. TEERINK
Department of Water Resources

Both the North Bay Aqueduct and the South Bay Aqueduct will make water available in service areas where there are present water deficiencies and where presently available sources are inadequate to meet expected future requirements The plans for these projects did not contemplate, nor does the department intend to serve water in areas which are receiving adequate water supplies from other sources In this respect, both projects will supplement but not replace existing developments

The South Bay Aqueduct, originally called the Santa Clara-Alameda Diversion of the Feather River Project Aqueduct, was included as a feature of the project when it was authorized in 1951 by Chapter 1441, Statutes of 1951 Following this early report there were several significant events in the aqueduct service area Rapid de-

velopment of the northern portions of the North Santa Clara Valley and of the South Santa Clara Valley, together with water shortages in San Benito County indicated the desirability of extending the aqueduct to serve water to those areas Service to water deficient areas in southwestern Contra Costa County was determined to be advisable Additional studies also indicated that the water use of large portions of Alameda and Santa Clara Counties would change from an agricultural to a predominately urban character The situation was further complicated by the fact that during the 1951-56 period several additional ways of importing water to the South Bay area and to San Benito County were proposed at the local level as alternatives to the authorized project

In view of the foregoing circumstances, a re-evaluation of alternative means of delivering water to the South Bay area was considered necessary In co-operation with local interests, studies of alternative sources and alternative routes were conducted by the Department of Water Resources A total of 13 such plans and numerous modifications of those plans were studied

Based on the findings of the studies, the Director of Water Resources, acting under the authority contained in Section 11260 of the Water Code, issued orders on October 14, 1958, and on March 26, 1959, modifying certain features of the South Bay Aqueduct which are west of the point where the aqueduct enters the Livermore Valley It is now proposed that at this point the conduit would divide into two branches, with one extending west along the northern edge of Livermore Valley to Doolan Canyon Reservoir and serving water to the northern part of the valley which includes portions of both Alameda and Contra Costa Counties The other branch would extend along the eastern and southern edge of Livermore Valley to a regulatory reservoir, Del Valley Reservoir located in Livermore Valley on Del Valley Creek From this point, the aqueduct would extend westerly through Mission Pass to a point southeast of Niles and then turn and extend along the foothills of the Bayshore in a southerly direction to the terminal Airpoint Reservoir east of Milpitas on Arroyo De Los Coches This branch would serve the remaining portion of Livermore Valley, the Bayshore portion of Southern Alameda County and the North Santa Clara Valley The order of March 26, 1959, also added the Pacheco Pass Tunnel as a part of the authorized project This project would enable the conveyance of water pumped directly from San Luis Reservoir to South Santa Clara Valley, northern San Benito County, and to lands along the Pajaro River in Santa Cruz and Monterey Counties

A legislative amendment to the 1956 Budget Act appropriated $3,550,000 to initiate design of the South Bay Aqueduct to acquire right-of-way for the necessary reservoirs At its 1959 session, the Legislature appropriated $8,013,000 for acquisition of aqueduct right-of-way and initiation of construction of the South Bay Aqueduct The department has advertised the first construction contract and the bids are scheduled to be opened November 4 in Sacramento This first contract involves construction of the Intake Canal from the Delta-Mendota Canal and the Bethany Forebay Dam It is planned that four other contracts will be advertised during the present fiscal year Completion of construction under the first five contracts will permit delivery of water, initially 45 cubic feet per second or 32 000 acre-feet per year, to the eastern end of Livermore Valley where it will be available for local use and for conveyance in Las Positas Creek for percolation and use in the Niles Cone area in Western Alameda County where saline water intrusion threatens the entire underground basin Such deliveries can probably be made in 1962

The proposed second stage of the aqueduct will permit conveyance of water to and its storage in Del Valle Reservoir Del Valle Reservoir will also provide some conservation of local runoff and flood protection to downstream areas In the third and final stage the aqueduct would be extended to Airpoint Reservoir and to Doolan Canyon Reservoir

The total estimated cost of the South Bay Aqueduct is approximately $38,000,000 The aqueduct is being designed to deliver 210,000 acre-feet per year which capacity should be reached in about 1995

The proposal for the North Bay Aqueduct resulted from studies which were made in connection with the Abshire-Kelly Salinity Control Barrier Act of 1953 and particularly the continuance of the investigation as provided by the 1955 Legislature which specified the development of complete plans for a means of accomplishing delivery of water to the San Francisco Bay area, including the Counties of Solano, Napa, Sonoma and Marin Such a physical plan, the North Bay Aqueduct, was presented in Bulletin No 60, "Interim Report to the California Legislature on the Salinity Control Barrier Investigation," March 1957

At the 1957 regular session, the Legislature authorized the North Bay Aqueduct as a unit of the State Central Valley Project and appropriated $1,340,000 for engineering studies and the preparation of construction plans This work is in progress at the present time The 1959 Legislature also appropriated $1,000,000 for the acquisition of rights-of-way The aqueduct would convey water from the Sacramento River to areas of use in Solano, Napa, Sonoma and Marin Counties

Some minor modification of the aqueduct as proposed in Bulletin No 60 has resulted from investigations made since 1957 Current plans for the aqueduct propose an enlarged intake channel through the existing Calhoun Cut leading from Lindsay Slough to a pumping plant From the pumping plant, an unlined canal would extend about 21 miles to a point near Cordelia and a second pumping plant From this point the water would be conveyed through a lined canal, tunnel and pipe lines for about 32 miles extending across Napa, Sonoma and Petaluma Valleys to a terminal reservoir located near Novato in Marin County The estimated cost of the North Bay Aqueduct is approximately $30,000,000

At the beginning of operation, a large portion of the water conveyed in the South Bay Aqueduct will be used for ground water recharge in the Niles Cone area to supplement supplies for agricultural and municipal and industrial purposes The portion of the water used for municipal and industrial purposes will increase each year in the future At the prices which are indicated for delivery of water for municipal and industrial purposes from the South Bay Aqueduct, it appears that the cost of the water will be well within the payment ability of users of such water

Presently available data indicate that there exists an immediate demand for agricultural water from the aqueduct in Livermore Valley and the Almeda-Bayside service areas It is estimated that a maximum of about 3,000 irrigated acres in these areas could be served from the aqueduct Almost 60 percent of this acreage is expected to be devoted to the production of truck crops with field crops occupying a position of secondary importance A maximum use of project water for irrigation is expected to be achieved by about 1980 Thereafter, a declining trend of use is anticipated with eventual elimination of irrigated agriculture in the service areas by about the year 2000, due to urban development

With regard to agricultural water, an approximate value of average payment capacity for the total South Bay Aqueduct service area is about $15 per acre-foot at the aqueduct The studies from which this value was derived are presently being refined Furthermore, as we have indicated at the previous hearings, in view of the complexities of the problem of determining payment capacity of agricultural lands for irrigation water, and of the fact that the department has not as yet finalized all of its studies in this regard, we would appreciate an opportunity to make a presentation to your committee concerning technical aspects of payment capacity studies and the results of all studies of areas that will receive water from the State Water Facilities

The foregoing comment also applies to the North Bay Aqueduct where earlier studies are also being reviewed so that they will be on a common basis with all such studies for service areas of the State Water Facilities. However, an average agricultural payment capacity of $5 per acre-foot is indicated for the crop projection used in Bulletin No 60 studies

As we have stated previously, it should be borne in mind that the problem of percolation to groundwater basins is not unique to the state project or to any portion of it This problem is attendant to all service areas of water conservation projects whether they are federal, state or local projects It has particular importance as a local problem, since a local area in obligating itself to pay a portion of the project costs will surely wish to recover those costs from all who benefit, so that no individuals of areas receive a free ride

This problem is of considerable importance in the service area of the South Bay Aqueduct In general, the service area is divided into three portions, the Livermore Valley, including parts of Alameda and Contra Costa Counties, the Bayshore area of Alameda County and the North Santa Clara Valley at the south end of San Francisco Bay Each of these areas does now and has for many years relied upon their underground water basins as a source of water supply In each of the three areas, there are regions where water applied on the surface will percolate downward and be available for use by others in the service area

In the studies which the department has made to establish the water requirements to be met by the South Bay Aqueduct, it has been assumed that such percolation and reuse would occur. Therefore, it is important not only for project operation but also to permit recovery of costs from all who benefit, to have the local agencies

agree and co-operate to handle this problem and to assure that all those who benefit are included within the boundaries of the district or districts which contract for water

In the service areas of the North Bay Aqueduct this is not expected to constitute an important problem The ground water basins in Napa, Sonoma, and Petaluma Valleys are shallow and limited and are overlain by relatively heavy soils Therefore, it is unlikely that significant quantities of water would percolate to recharge of the ground water basins and be available for reuse In the marshlands in Solano County, ground water is not useable Percolation to ground water also will not be an important factor in Marin County not only because use of ground water in that area is very limited but also because most of the water from the North Bay Aqueduct would largely be used for urban purposes

The portion of Contra Costa County in the Livermore Valley which will be served from the South Bay Aqueduct is not organized into a specific local district The area, however, is included within the Contra Costa County Flood Control and Water Conservation District and the Contra Costa County Water Agency These agencies cover the service area and could contract with the State for water service

As pointed out previously, the remainder of Livermore Valley, together with the service area along the eastern shore of San Francisco Bay, is in Alameda County which has a countywide flood control and water conservation district Either the overall district, or one of several zones which have been established within the district, could negotiate with and receive water from the State For instance, Livermore Valley is included in Zone 7 of the Alameda County Flood Control and Water Conservation District Also within Zone 7 is the Pleasanton Township County Water District In the southern portion of western Alameda County, along the bayshore, the Alameda County Water District presently serves water and also is an agency which could contract with and receive water from the State It should be pointed out that all of the foregoing agencies have exhibited a continuing and active interest in working with the department with the aim of receiving water from the South Bay Aqueduct

In Santa Clara County there is the countywide Santa Clara Flood Control and Water Conservation District Also in the northern portion of the county extending from the vicinity of Morgan Hill to San Francisco Bay, is the Santa Clara Valley Water Conservation District This district encompasses most of the valley floor of North Santa Clara Valley These two districts are agencies which could contract for water deliveries from the South Bay Aqueduct in Santa Clara County

In the South Bay Aqueduct service area there also is the Santa Clara-Alameda-San Benito Water Authority which consists at the present time of three member agencies, Santa Clara Valley Water Conservation District San Benito County Flood Control and Water Conservation District, and the Santa Cruz County Water Conservation and Flood Control District This authority also has indicated an interest in the South Bay Aqueduct

In the service area of the North Bay Aqueduct, the three counties of Solano Napa, and Sonoma, each have countywide flood control and water conservation districts The Solano County Flood Control and Water Conservation District has taken a leading role in contracting with the United States Bureau of Reclamation for water from the Putah South Canal but has not yet actively studied the proposed additional service from the North Bay Aqueduct in that county

The Napa County Flood Control and Water Conservation District has been inactive in recent years It seems probable that the City of Napa might be an initial contracting agency However, the flood control and water conservation district could be reactivated and finally replace the city as the major contracting entity when project water supplies are available and required in a broader service area

The Sonoma County Flood Control and Water Conservation District has been active principally in the construction, operation and financing of the Corps of Engineers' Coyote Project on the Russian River The district has constructed a distribution system for making water deliveries to the City of Santa Rosa and is studying possible extensions of that system to other areas Although the Russian River Project has been the principal concern of the Sonoma County district, the district also has exhibited considerable interest in the North Bay Aqueduct and could contract for water in that area

There are two principal districts in Marin County which the State could contract They are the North Marin County Water District serving water in the vicinity of Novato, and the Marin Municipal Water District which serves the southern portion of the county adjacent to San Francisco Bay Both districts have developed existing

water supplies and the North Bay Aqueduct would be a supplemental source in both instances.

From the inception of the program, principles of operational and financial management have been under informal discussion with possible contracting agencies in an attempt to crystallize the appropriate and necessary principles Department of Water Resources personnel met November 3 with agencies in the South Bay Aqueduct service area in continuance of these water contract discussions. It is anticipated that, in the near future, many of such major principles will have been sufficiently formulated to permit more detailed discussions and negotiations

There are no special local problems involved in contractual provisions relating to assurances of continuity of water supply from the North or South Bay Aqueducts The department can assure the provision of water in approximately the amounts of the design capacities of the aqueducts under the Delta Pooling Concept where future major water conservation projects would be constructed as they are required in order to make water available in the Delta

In the service areas of the South Bay Aqueduct there probably exists a market and use for limited quantities of nonfirm water or interruptible water. Deliveries of such water would be possible through the project facilities during the winter season in some years Such deliveries could, under appropriate conditions, be released to natural channels for percolation to the ground water and subsequent reuse at a later time However, the predominant and increasing municipal and industrial requirements in the service areas lead to the conclusion that the major portion of the water supplied by the South Bay Aqueduct will be on a firm delivery basis In the event contracts are executed for nonfirm water, arrangements to furnish such water must protect the capacity allocated to contractors of firm water from pre-emption

With regard to the North Bay Aqueduct, it seems that there would be little market for nonfirm or interruptible water because of the limited availability of ground water storage capacity and the probable predominant future urban character of the demand However, as in the South Bay Aqueduct, nonfirm deliveries would be available during the winter season of wet years and arrangements could be made to make such deliveries provided that as stated before, the capacity allocated for deliveries of firm water would not be pre-empted.

(Transcript of November 4, 1959, page 5)

STATEMENT OF ALBERT T. HENLEY
Santa Clara-Alameda-San Benito Water Authority

It is felt that the broad policy questions of acreage limitation, enhancement of land value and power preference are of insubstantial or indirect concern to the area of the authority The board of directors has not given these vitally important subjects the thorough study and review upon which decisions should be based and is therefore not prepared to discuss them at this time.

Investigation has indicated a need for imported water supplies which by the year 2010 will reach these estimated totals

North Santa Clara Valley	160,000 acre-feet annually
South Santa Clara Valley	12,500 acre-feet annually
Hollister area, San Benito County	50,000 acre-feet annually
Pajaro-Watsonville area, Santa Cruz County	15,000 acre-feet annually
Pajaro-Moss Landing area, Monterey County	10,000 acre-feet annually
Total	247,500 acre-feet annually

It is anticipated that the means of water importation into the authority's area will be either or both of two projects. One is the Pacheco Tunnel Conduit and the other is the South Bay Aqueduct. Both will tap Central Valley seasonal surpluses, initially from the Delta-Mendota Canal and eventually from the Feather River Aqueduct It is indisputable that the Pacheco Tunnel project provides the only outside water for all of the areas listed above except North Santa Clara Valley which under present state proposals will receive 88,000 acre-feet of water from the South Bay Aqueduct by 2010.

However, discussion and inquiry in North Santa Clara Valley center on the question whether the South Bay Aqueduct or the Pacheco Tunnel should be looked to for an imported supply. Considerations of cost, time and feasibility are involved A review board consisting of nationally recognized engineers, Samuel B. Morris,

John S Longwell, and Sidney T Harding are presently at work in this field Their conclusions are expected to provide a basis for these local decisions

While the Pacheco Tunnel is a part of the California Water Plan, it is also, under the title "San Felipe Division of the Central Valley Project," receiving joint study by the Bureau of Reclamation and the authority as a possible federal project

All areas of the authority to which water will be brought have adequate financial capacity to meet the full costs of the project if such costs are expressed in water prices in the order of $20 an acre-foot as presently estimated

Distribution systems are within the financial capacity of the areas of the authority requiring special local conduits However, it is doubtful whether districts in San Benito, Santa Cruz, and Monterey Counties could afford, in their present state of development, to provide local regulatory storage of Pacheco Tunnel supplies which would be necessary if San Luis Reservoir is not built

As to any supplies of imported water to the area of the authority, based upon a contract with the State of California, the authority will be prepared to accept as assurance of continuity the safeguards proposed in the Burns-Porter Act

It is the authority's understanding of state proposals that water prices will be directly related to the actual costs of conservation and delivery Within a stated upward limit, therefore, it would seem proper and acceptable that contract water prices move both up and down in response to actual unit costs of water made available to consumer agencies

(Transcript of November 4, 1959, page 54)

STATEMENT OF ROBERT C. KIRKWOOD
City and County of San Francisco

The City and County of San Francisco, through its Public Utilities Commission, now supplies primary and supplemental water for domestic and urban use to those who request it within (our) service area As you will note, such service area includes not only the City and County of San Francisco, but also a major portion of San Mateo County, the northerly portion of Santa Clara County and a portion of the southerly part of Alameda County San Francisco is prepared to continue to supply those within this service area with all needed supplemental water for domestic and urban use to conditions of ultimate development

Senate Bill 1106 does not prescribe the principles of contracts for, or the method of pricing of vendible project services of the State Water Resources Development System to be financed under the provisions of that bill While those advocating the development of the State Water Plan express the policy that such services will be sold at rates sufficient to pay all operating and maintenance costs and the reimbursement of capital expenditures allocable to the various features of the project, there is currently no proof in the actions of the Department of Water Resources that such a policy will obtain Numerous features of the state water system are now under construction, bids have been received for additional work and land and rights-of-way are being acquired for the project However, no contracts have been written or entered into for the sale of water or other project benefits and no formula for fixing the rates for such services has been published

San Francisco is concerned with this situation in view of the expressed policy of the City and County of San Francisco relative to the California Water Plan which reads as follows

> "That the State Legislature authorize for construction each specific project only upon recommendation of the Department of Water Resources, provided that the cost of construction is equitably apportioned to the beneficiaries and provided further, that the charges for water furnished to proposed water users are sufficient to cover all costs equitably allocable thereto"

This statement of policy you will find is in general agreement with the summary contained on page 76 of "A Study of Economic and Financial Policies for State Water Projects" issued by the Assembly Water Committee on August 5, 1959 However, additional discussion of the text of that report is presented to clarify San Francisco's position.

On page 35 of the report it is indicated that San Francisco is "skimming off the cream of the market and leaving the unprofitable service to the State" within the area to be served by the South Bay Aqueduct San Francisco would take issue with this statement at least to the extent that it implies criticism of the city's role in its service area

The fact is that San Francisco has, without financial aid from outside sources and by bonding itself to the limit, provided a vitally needed supplemental water supply to large areas outside San Francisco Such service in most cases has been made available from city's transmission pipe lines in or immediately adjacent to the area served The very substantial growth of these areas has been made possible through the co-operative effort of San Francisco in providing such a water supply

The State of California's program in constructing the State Water Plan in general contemplates furnishing supplemental water to areas in which the present water supply is deficient, and the sale of such water should normally be made on the basis of integrating the State's facilities with existing local facilities Where there is an existing purveyor of supplemental water—and this is the situation of San Francisco in its service area—there may at times be justification for sales by the State to local agencies on a basis competitive with the existing purveyor The City and County of San Francisco should not, however, be placed in the position of competing for water business against a state *subsidized* source of water

The last sentence on page 36 of the report states that "the safest course is to permit the play of economic factors and particularly supply and demand to exercise their *natural influence in the market*" If this policy is followed, there can be no discrimination in rates charged to any water user under the state program—or against any local agency which is presently a purveyor of supplemental water

With reference to recreation, it may be stated that San Francisco agrees with the conclusion expressed in the last sentence of page 69 There can be little objection to a reasonable statewide financial aid in providing recreational facilities either as an adjunct to its water supply facilities or otherwise

San Francisco has adopted no official policy concerning the marketing of project power, except as that project power in combination with other vendible services be used or marketed in such a way as to make the overall project self sustaining

(Transcript of November 4, 1959, page 66)

THE POLICY OF THE CITY AND COUNTY OF SAN FRANCISCO RELATIVE TO THE CALIFORNIA WATER PLAN

PREAMBLE

More than 50 years ago the people of San Francisco dedicated themselves to the Hetch Hetchy Project on the Tuolumne River watershed to insure an adequate supply of domestic water for themselves and the people of contiguous and adjacent territories After securing rights-of-way from the federal government and from private interests, and after securing water rights from the State of California and from private interests, the city began the construction of dams, aqueducts, powerhouses, and other facilities to bring the water to the city, a distance of over 150 miles

In 1930, San Francisco, in furtherance of its policy of controlling its own water supply, purchased all of the water rights and operative properties owned by the Spring Valley Water Company of San Francisco, Alameda, San Mateo, and Santa Clara Counties, and has developed all local resources of water to the fullest practical extent.

San Francisco has developed and is still developing its power and water resources on the Tuolumne River watershed. To date, it has spent or definitely committed over $400,000,000 for its water supply and power system Future plans contemplate the expenditure of such additional funds as may be necessary to carry the project to its ultimate development

In a firm determination to protect the fruits of its years of work and planning and the people who are now served by its water system, which includes cities, towns and areas outside the City and County of San Francisco and in which there was little or no water and which could not have developed without San Francisco's aid, the City and County of San Francisco adopts the following water policy until changing circumstances warrant the Board of Supervisors altering or amending the same

San Francisco shall support a California Water Plan which will include the presently authorized Feather River Project of which the South Bay Aqueduct is a necessary part and shall support other legislation to control, conserve, protect and distribute California's water resources to provide sufficient water supplies to meet anticipated water requirements for all beneficial uses in all areas of the State insofar as practicable, provided that such plan meets the following requirements

(a) That the California Water Plan does not interfere with the vested water rights of the City and County of San Francisco, and the Turlock, Modesto and Waterford Irrigation Districts on the Tuolumne River and tributaries, and does not interfere with the operations of planned and existing projects owned by these parties

(b) That there be no interference with San Francisco selling water for primary and supplemental domestic and urban purposes in the area within which San Francisco is now supplying such services, as requested, and within which San Francisco is able to continue such supply to ultimate requirements

(c) That an equitable formula be evolved to make available waters necessary for the ultimate development of the areas within which said waters originate, such waters to be allocated from presently unappropriated waters and waters included in applications for appropriations filed by the State under Section 10500 of the California Water Code

(d) That each area of the State shall, insofar as is consistent with the welfare of the entire State, be assured that the water allocated by the California Water plan to that area be available when needed for beneficial use even though there is no present need therefor

(e) That the State Legislature authorize for construction each specific project only upon recommendation of the Department of Water Resources, provided that the cost of construction is equitably apportioned to the beneficiaries and provided further, that the charges for water furnished to proposed water users are sufficient to cover all costs equitably allocable thereto.

(f) That there be no interference with the sanitary restrictions now imposed by the City and County of San Francisco on its watersheds

STATEMENT OF M. P. WHITFIELD
Alameda County Water District

We anticipate that as a prospective purchaser of South Bay Aqueduct water we will be one of the first agencies to enter into a water contract with the State We realize that the answers to many questions relating to this contractual relationship will have to be answered in the very near future In our statement before the Joint Subcommittee on Economic and Financial Policies for State Water Projects, presented at Hayward on August 28 1958, we presented our views on economic and financial matters, many of which, of course, are pertinent to water contracts

We believe that a brief description of our district would be of aid to your committee in understanding our particular situation The Alameda County Water District encompasses an area of nearly 100 square miles in the southern portion of Alameda County Included in the district are about 15,000 acres of irrigated lands and a present population of nearly 50,000 The district is experiencing a rapid population and industrial growth and it is anticipated that there will be a population of over 200,000 persons within the next 20 years

One of the district's major functions is the protection and enhancement of the valuable ground water supplies in the Niles Cone, which underlies the district, and the district is actively pursuing a program of providing facilities to increase the recharge to this ground water basin Upon the availability of South Bay Aqueduct water, this water will be utilized to supplement the local ground water supplies

The district's other major function is the distribution of municipal water supplies to about 40,000 people and numerous industries within the district Essentially all of the waters used for irrigation, and a large part of the waters used by industry, are obtained from individually owned wells

We believe that all costs incurred by the State in the furnishing of irrigation water supplies, including interest on the capital investment, should be fully repaid by the water users With such a policy of full repayment for irrigation water the necessity for acreage limitation would, in large part, be eliminated In addition, the adoption of a policy of acreage limitation would probably result in more difficulties than could be justified by any benefits accruing therefrom In our particular case, South Bay Aqueduct water used for irrigation would be placed in our underground basin and would mingle with the local water supplies Under these circumstances, it would be extremely difficult to determine upon which lands South Bay Aqueduct water was being used and upon which lands the local water was being used

We believe that power developed by state water projects should be sold at rates which will result in the greatest revenue therefor. The only condition where preference to public agencies would be justified in the disposition of project power would be if identical revenues would accrue to the State from either a public or private agency Since the State will be a large consumer of power for pumping water, there would be no justification for the State's selling power developed by the water projects at less than market value, then subsequently being required to buy back power at market value for the pumping of water

For many years after the completion of the South Bay Aqueduct, the district will utilize water therefrom to supplement local water supplies in recharging the ground water basin. At the present time, facilities exist for placing this water underground, for extracting it from the underground basin for use, and for distributing it to areas presently requiring water These facilities are adequate for the present water needs of the district The district is presently expanding its system to take care of near-future needs and has the financial capacity to further expand and extend this system as necessary to take care of future growth within the district

Should other sources of revenue be inadequate to repay state project costs under adverse circumstances, the district has the power to levy such taxes as are necessary to supplement these other sources of income Present assessed valuation of the district is approximately $80,000,000.

Sources of funds available to the district for repayment of state project costs include water revenues from the district's municipal distribution system, ad valorum taxes, and possibly assessments on the basis of amount of water pumped from individually-owned wells Which of these methods will be utilized to obtain funds and the relative amounts of money to be obtained from each source are currently under study by the district

As brought out (above), distribution facilities utilized for South Bay Aqueduct water will be the same as those utilized for the local ground water supply Therefore, the financing and construction of these facilities is independent of a commitment from the State to supply imported water. However, it should be brought out that definite commitments as to state water projects will enable us to more adequately plan our future requirements for distribution facilities with resulting economies in the cost of constructing these facilities

Insofar as this inquiry may relate to the degree of title acquired by the State in the water subject to contract, we believe that the provisions of the Burns-Porter Act (Senate Bill 1106) provide an adequate solution to this problem. We are of the opinion that any attempt to gain for contracting parties the additional benefits of increased stability of water supply by again opening this question will create an unjustifiable risk to the early and orderly development of the state water program

There should be sufficient flexiblity in contracts between the State and local agencies to allow the State to recover the full costs of operation and maintenance, including any future increase in such costs In addition, the costs of water to each agency should realistically reflect the actual cost of upstream facilities required to develop the water supply. We recognize that as further increases in water demand require the construction of more expensive water development projects in the Sacramento Valley and the north coastal area, the cost of water at the delta will have to be adjusted upward accordingly

In the case of repayment for water conveyance facilities, a given contract should relate only to repayment of those facilities which are to be constructed in the immediate future Prior to the negotiation of a contract for repayment of the costs of water conveyance facilities, sufficient engineering studies should have been undertaken to define accurately the nature and size of the specific facilities involved, the accomplishments thereof, and the allocated cost thereof to each prospective contracting agency. Should future developments indicate the desirability of supplementing the water conveyance facilities, the repayment of the costs of the supplemental facilities should be the subject of a new contract or an amendment to the existing contract on terms mutually acceptable to the State and to the contracting local agency

(Transcript of November 4, 1959, page 98.)

STATEMENT OF RICHARD KARN
Alameda County Flood Control and Water Conservation District
Zone No. 7

Zone No. 7 of Alameda County Flood Control and Water Conservation District covers an area of some 425 square miles in the eastern part of Alameda County, constituting approximately one-half the area of the county. The board of directors of Zone No. 7 present the following statements in answer to your questions:

The board of directors are not opposed to the encouragement of family-sized farms. However, it is considered that the use of acreage limitations as a means of encouraging such development has not proven entirely successful. The board would not favor the adoption of acreage limitations in regard to the California Water Plan.

It is felt that the State should sell power at market value in order to obtain maximum revenue to the state water project. There should be no distinction made between public or private agencies in the marketing of power from a state water project.

Zone No. 7 was formed in 1957 to provide an overall agency for water development in eastern Alameda County. The zone presently has no bonded indebtedness and will be able to finance the construction of the facilities necessary to make use of water from the South Bay Aqueduct.

The board of directors of Zone No. 7 has authorized the staff of the Alameda County Flood Control and Water Conservation District to prepare a master plan for water development in the zone. This plan will lead to the adoption of an initial project by the zone to provide the facilities necessary for water development in the area.

Under the provisions of the Alameda County Flood Control and Water Conservation District Act, Zone No. 7 can levy taxes or water service charges for the purposes of developing a water supply system and importing water into the zone.

The primary source of revenue to the zone will be from resale of the water to the distributing agencies to the zone. Additional funds can be obtained by taxation if necessary.

Before committing themselves to a financial burden, the water users and taxpayers of Zone No. 7 would need from the State a definite assurance of the delivery of the water supply, establishment of the locations of the water delivery points, and agreements as to the method of repayment and the cost of water. Such commitments could be contained in a contract with the State providing for delivery of the contracted water to our agency and for repayment of all allocated costs and interest charges to the State.

The estimated future water requirements of Zone No. 7 indicate that imported water will eventually be the principle source of water. Therefore, continuity of water supply will be vitally important to the zone and should be assured in the contract.

If the costs of providing water, at the locations where the zone takes its supply from the state facility, increase in the future, the zone has no objection to paying the increased costs. If such costs decrease in the future, the price should be decreased accordingly.

(Transcript of November 4, 1959, page 128.)

STATEMENT OF W. J. O'CONNEL
Contra Costa County

The importance of the early formulation by the Legislature of the basic terms and conditions under which water supplies from the State Water Resources Development System will be available to prime customers cannot be overstated. Until this is done, the potential users cannot properly plan the solution of their water supply problems nor are they able, with any degree of definiteness, to commit themselves to participate in the State's program.

Recognition should be given to certain fundamental differences between water service furnished by the Bureau of Reclamation and by the State of California which arise from the methods by which the two supply systems are financed. To the extent that the California system is financed by bonds rather than the general funds of the State its costs must be met currently. The State's costs, rather than the consumer's ability to pay or benefit received, would appear to be the guide to pricing of water for sale by the State. It may be found necessary in order to guarantee repayment, that the State's contracts must be limited to contracts with public agencies such as districts with the power to tax embracing entire counties or service

zones. These customers would contract for specific quantities of water delivered at specified points at specified prices. These prime customers would in turn subcontract their supplies among their member units, their cities, irrigation districts, large industrial users, private water companies, and the like. The matter then of subsidizing particular water users or differentiating between the costs of water for agricultural, municipal, and industrial use could be handled locally.

The prime customers contracting directly with the State should be called upon to pay, first, a charge for water that will proportionately repay to the State only their share of the cost of transportation and offstream storage facilities used in effecting deliveries from the Delta. In addition, all the prime customers buying water from the Delta would contribute to either or both the capital cost and operation and maintenance of all facilities to divert water into upstream storage and to bring to and to convey it across the Delta, but from that point on, each prime customer would contribute to the costs and expenses of only those pumps, conduits and other works necessary to convey the water to the particular prime customer's point of delivery. For example, Solano County should be called upon to pay its fair share of the cost of assuring a usable supply to the Delta and for lifting water from the Sacramento River and transporting it across Solano County but should not contribute to the cost of repumping at Cordelia and tunneling through the hills for delivery beyond Solano County into Napa, Sonoma, and Marin. Similarly, Contra Costa should contribute to all the costs of delivering water through principal aqueducts to the South Bay zone, but not the cost of the aqueducts to deliver water to Southern California. This method of pricing between zones is sometimes described as the "railroad-ticket" basis as opposed to the "postage-stamp" basis.

It should be recognized tha the State will not be able to contract to furnish water at a fixed unit price that will be unchanging through the years. The Bureau of Reclamation has done this primarily because its contracts are made by individual project service areas for their theoretical yields. The California Water Resources Development System, on the other hand, does not contemplate giving any one contracting district a specific allocation to a fixed quantity of water from a particular source. Since water from all sources developed by the system will be merged at common points of rediversion, the State's obligation will be to deliver at certain points commingled water supplies of an assured quantity and quality irrespective of their separable sources. Since each unit within the facilities will produce water at a different unit cost, the average cost of water to and for export from the Delta or the costs for all the water produced by the facilities at any time regardless of where it is rediverted, will fluctuate as each unit is brought into operation. If the State is to operate all the facilities on essentially a cost basis, we see no escape from the result that water prices will have to be subject to escalator clauses that reflect changes in accumulated unretired capital costs per unit of water conserved and of changes in costs of operation and maintenance.

Similarly, downward cost readjustments should be made in pricing as additional users contract for water supplies and as the bond issues are retired, provided the needs for capital expenditures to assure statewide needs are being met. For this reason, it would appear advisable actually to segregate and to state separately the price paid to the State for water into three component elements, and three divisions of those components, one for capital expenditure, i.e., bond interest and retirement for delivery of water enroute and to the Delta, another for delivery across the Delta, and lastly, the proportionate cost of the portion of the aqueduct used by each zone including the expenses of operation, pumping and effecting delivery in these elements.

The generation of electric power is an integral part of the facilities for upsrteam water conservation and storage. All revenues derived from the sale of such power should, therefore, be applied to the repayment of the costs of such storage facilities. Power revenues should not be devoted to subsidizing the water users of any particular class or locality, but should be used to reduce the gross cost of the conservation and storage facilities to their true "net cost after power revenues." The charges paid to the State by each using district should include the fair value of the power used in effecting delivery of water from the delta pool to such district so that there would be no substantial difference in accounting for power used by features of the water resources development system and "surplus" power that may initially be sold by the State for general use. (Transcript of November 4, 1959, page 137.)

STATEMENT OF DWIGHT M. COCHRAN
Kern County Land Company

The Kern County Land Company is a corporate landowner and, as such, is frequently misrepresented as a tightly held organization benefitting a very few chosen people at the expense of the many We are owned by more than sixteen thousand people They are located in every state in the Union and outside the limitations of Continental United States More than ten thousand of the people holding shares in the company live in California—about evenly divided between the northern and southern parts of the state Our shareholders represent a good cross-section of the population—among them school teachers, doctors, lawyers, housewives, farmers, union members, investment trusts, and college endowment funds

Kern County Land Company is a growing business It deals in cattle, it deals in oil; it deals in farming These are its principal enterprises As a business concern, it has substantial meaning as a taxpayer to the nation, to the State, to municipalities. It plays a vital part, particularly in the Bakersfield area, as an employer of people, a lessor of agricultural land, a purchaser, a taxpayer The Kern County Land Company employs about five hundred fifty persons A large number of other persons—the spouses, children, or relatives of these employees—are supported by activities of the Kern County Land Company As a lessor, the company leases 90 percent of its developed agricultural land to some three hundred independent agricultural business men In many respects, they are our farming partners, although 80 percent of them also operate farm land other than ours, much of it their own This group, their families, and their employees obviously have a substantial impact on the economy of the San Joaquin Valley

The company is a substantial purchaser Each year it spends roughly fourteen million dollars in making purchases from more than three hundred suppliers The Kern County Land Company last year paid a total of just under eight million dollars in taxes to various levels of government. All of this is in addition to the basic fact that the Kern County Land Company and their farming partners are the suppliers of food products, grains, and other necessities in today's society

The success or failure of the Feather River Project will depend upon its ability to pay its own way. We think the reimbursable costs of the project should be borne by the users of the water—and not the general taxpayers There should be no subsidies Therefore, the key lies in the ability of the project's planners to bring water to users at a price that they are willing to pay, and at a price that will pay for the costs of the project, including interest charges

We as a company want no favors Moreover, we do not favor anyone getting more than his share of the benefits or getting something for nothing

All of us know from long experience and plain common sense that no one is going to buy water priced beyond what it is worth to him What people will pay for water is actually an accurate measure of the benefit they expect to realize by using the water So, when they pay the full market price, this price automatically reflects all the benefits they will get

Therefore, we believe the price of the water should be at full market value This pricing policy will cover all possible benefits the users will realize, including any enhancement in the value of their property Thus, no one has unjustly benefited, no one is unjustly enriched

All of the studies that we have seen indicate that benefit, from the project will be from two to three times its cost Therefore, charging the full market value cannot help but return revenue in excess of the cost More than ample economic justification should exist for the project under this method of deriving revenues.

As to the term "unjust enrichment," it has its own special meaning in the Law It certainly has no place in this situation The term has been taken out of its proper context and is being used as a *catch-phrase, so to speak*

There will, of course, be "enrichment" for millions of people if the bond issue is approved and the Feather River Project becomes a reality This is the purpose of the project There will be enrichment for the entire state The state will be able to sustain a larger population, more industries, more farm land In brief, this project will mean a larger and more prosperous California—enrichment, if you will, for all

It is accepted that farmers along the way will find a new value added to their land as soon as water from the program becomes accessible, industries will find increases in their capital values; cities and towns will gain Suburban lands in metropolitan areas will acquire new high values as potential real estate subdivisions. In fact, property values will go up all along the line Thousands of our citizens will

gain, among them shareholders of corporations such as Kern County Land Company who benefit as these companies benefit

Meanwhile, so long as the prices the users pay for water cover all reimbursable costs and are based on the full market value of the water, there are no problems of "unjust enrichment" The term is without substance

In summary, we believe that.

1 The revenues from the sale of water and power must be sufficient to cover all reimbursible costs of the project, including interest
2 There should be no subsidies.
3 No part of the cost of collecting, storing, transporting, and delivering water for domestic, industrial, or irrigation uses should be borne by the general taxpayer
4. The price for water and power should be their full market value in each service area.
5 The market value—what a man is willing and can afford to pay—should be determined by careful analysis of the worth of the water to buyers in each service area throughout the project Among elements to be considered in determining what water is worth are·
   a The cost of producing an alternative water supply from some other sources, such as pumping from the underground,
   b. The incremental price a consumer would be willing to pay for establishing and maintaining a permanent water supply,
   c The price he would be willing to pay for enhancement in the value of land for agricultural or sub-division purposes resulting from a new water supply
   By this method of pricing water, all possible benefits resulting from the project are fully paid for, and there is no "unjust enrichment"
6 The so-called nonreimbursable aspects—such as recreation and flood control—will and should be borne by the general public. At the same time, effort should be made to establish methods by which the direct beneficiaries of the nonreimbursable features can contribute directly to their cost and thus reduce this burden on the general taxpayer.

Since there will be no "unjust" enrichment, proposals calling for acreage limitation as a means of minimizing "unjust enrichment" are unnecessary Acreage limitation could be used only as a means of so-called "social reform" to try to force the breaking up of landholdings

We believe that the purpose of the Feather River Project should be to supply water to the areas needing it It should not become a tool of those seeking questionable social reform If that is attempted, the project will fail

Moreover, acreage limitation as a concept is economically unsound in this program It attempts to place a firm ceiling on farm growth whether by individuals or corporations without regard to the economies of the operation In California large farms are increasingly necessary for competitive operation Acreage limitations puts a heavy hand on success and constitutes a direct challenge to a farmer's fundamental freedom

Acreage limitation in a water program is unsound because it discriminates against one group No such types of discrimination are prevalent in other kinds of public projects.

Acreage limitation would, over a period of time, impair the ability of California farmers to compete in national markets Today Californians are proud and profit from the fact that their fruit and produce are eaten all over the country. Under acreage limitation, Californians' ability to maintain their place as important food and fibre producers would be diminished.

By arbitrarily reducing the amount of water sold, acreage limitation would increase the cost to those using the water.

Perhaps more important than anything else is the simple fact that, with acreage limitation, the Feather River Project will never succeed Everyone agrees that the project should be self-liquidating This means that enough water would have to be sold to pay for the cost of the project; and this means the sale of lots of water to farms—at a price farmers can pay Acreage limitation would prevent farmers from purchasing water for large acreages of their land Under such circumstances, it is doubtful that the program could be self-liquidating Not enough water could be sold Those who are insisting upon the acreage limitation are placing the entire program in jeopardy

It is our sincere hope that more individuals and more groups will study the acreage limitation proposal, for thorough analysis is certain to expose its essential unsoundness We as a company will support any constructive efforts to shed objective light on acreage limitation It has no proper place in the Feather River Project

For these reasons our position should be clear, but, in order that there shall be no misunderstanding, *Kern County Land Company would have no interest in* purchasing water subject to any acreage limitation

Our Company does not wish to be considered as a prospective purchaser of power to be produced by the state in the operation of the facilities authorized by S B 1106, but irrigation districts or water storage districts where we own land, may want to contract with the state for some power

When completed and placed in full operation, the facilities of the State Water Plan which are contemplated by S B 1106 will not produce any surplus power In fact, this project will consume more power than it produces The primary objective of the entire project is the development and distribution of water resources, not the manufacture and sale of power In no sense of the word can this project be considered as a power project

In the operation of the project, however, it will be necessary to produce and sell power at certain places and at certain times, and at other times and at other places to purchase power from outside sources For example, power will be produced by the facilities in Northern California and will be consumed by the state project in the water lifting operations at the Delta and in Southern California

In order to keep the net cost of the water lifting operation at a minimum, all power which is sold by the project should be sold at the highest available price, including proper premiums for "peaking" service and all power which is purchased should, to the fullest possible extent, consist of low-cost, "off-peak" power

This project should not be made subject to any price differential in favor of public agencies Such a differential is applied to some types of federal power projects but, if applied to this project, it would reduce the revenue to be derived from the sale of power and correspondingly increase the net cost of the power consumed by the project in its water lifting operations

The California "preference clause" in the Water Code (Sec 11626) requires preference to be given to public agencies in cases of equal offers, but it does not require or even permit any price differential in favor of public purchasers We believe this principle is sound

We should first state, the company does not plan to contract water directly, but it is assumed that the Wheeler Ridge-Maricopa Water Storage District and the Semitropic Water Storage District, in which some company lands are situated, will contract for water at market prices The price which water users will pay will be based on the state's price, the districts' costs, and the districts' pricing policies

The price shown in Bulletin No 78 for the Wheeler Ridge-Maricopa Water Storage District is $16 per acre-foot. To this, of course, must be added distribution costs which total an estimated additional $8 50 per acre foot This makes a total cost at the land to the user of $24 50 per acre foot Figuring that three acre feet are needed per acre, this comes to $73 50 for water costs before any costs for seed, fertilizer, land preparation, cultivating, or harvesting The total present cost for water on our land in this district, including operation, maintenance, depreciation, and energy, ranges from $9 to $19 per acre-foot, averaging $14 per acre-foot This is not necessarily representative of the whole district Some water users have more favorable conditions than we do and some may have less

The price shown for the Semitropic Water Storage District is $10 per acre-foot To this must be added $5 25 per acre-foot for distribution, making a total of $15 25 per acre-foot Our present range of costs for water in this district is $7 to $9 per acre-foot

So, in response to your question and while we cannot commit ourselves nor our farmer partners—nor can we speak for the districts—we can say that the company would be willing to pay more than the present costs to be assured of steady future supply, and more than present costs to bring new acreage into production—if we can find crops to profitably grow thereon

It is anticipated that the distribution facilities which will be required to distribute water to lands of this company will be constructed by public districts, such as the Wheeler Ridge-Maricopa Water Storage District. We believe these districts will be able to finance the cost of construction of such facilities by land assessments and, if necessary, by the issuance of bonds (Transcript of November 5, 1959, page 152)

STATEMENT OF J. P. van LOBEN SELS
Southern Pacific Company

Southern Pacific Company and Southern Pacific Land Company (which is a wholly owned subsidiary of the former), own a total of approximately 2,000,000 acres in California. Southern Pacific Company owns about 1,700,000 additional acres in Nevada and Utah, mainly grazing lands. We also own the mineral rights beneath an additional 1,140,000 acres under lands previously sold in the western states.

The California properties may be broadly classified into the following categories:

1. Timber lands, approximating 470,000 acres, located mainly in northern California's Coast Range and Sierra areas.
2. Desert and grazing lands, comprising approximately 1,380,000 acres scattered throughout California, but largely located in the desert region of the southern portion of the State.
3. Agricultural lands, mainly located in the southern San Joaquin Valley, comprising approximately 150,000 acres.

These lands consist of our remaining ownership in the outlying properties obtained through Acts of the United States Congress as partial consideration for building the western railroads. These are commonly known as "land grant properties," but that term is actually a misnomer since the transaction was in reality a contractual agreement between the railroads and the federal government. The railroads, including Southern Pacific's predecessors, obtained alternate sections of land lying in a strip 20 miles on each side of the main line railroad, but extended to 30 miles when certain lands were excluded from consideration for acquisition. The predecessors of Southern Pacific obtained original grants in the 1860's and 70's. The lands were not actually patented to us until they had been surveyed and classified by government geologists and appraisers.

In return for these properties, the railroads hauled huge volumes of government traffic free or at 50 percent of the commercial rate. Southern Pacific Company, for example, transported such shipments over certain of its lines in Oregon and California without any charge for a considerable period. In many instances where the so-called land-grant rates did not apply on lines of Southern Pacific Company, it executed equalization agreements with the government whereby it consented to application of such rates on government shipments. The Association of American Railroads estimates that application of land-grant rates on government shipments in the United States exceeded the value of lands acquired nine times over. This arrangement continued for many years until the Transportation Act of 1940 when Congress provided that upon the railroads' releasing all claims to unpatented lands and other claims under the Land Grant Act, land-grant rates should apply only on military personnel and on military and naval property of the United States moving for military and naval use, and not for civil use. Southern Pacific Company returned approximately 93,000 acres to the federal government and waived any claim to approximately 2,000,000 additional acres which, due to overlaps and conflicts in land-grant legislation, had not actually been acquired by the railroad. On October 1, 1946, by an act of Congress, all land-grant rates for government traffic were finally abolished.

Despite accusations in certain circles, our West Side lands in California were acquired properly in accordance with the law. Southern Pacific obtained no land for which a railroad was not built as required. A projected section of line between Alcalde and Tres Pinos, California, never was constructed, with the result that land-grant properties attributable to that section of line were returned to the public domain pursuant to congressional requirement.

Southern Pacific lands are operated on a long range management basis. They are not for sale, and will not be offered for sale in the foreseeable future.

Our agricultural properties are mainly in Kings, Tulare, Fresno and Kern Counties, although we do have some of our developments in Imperial, Riverside, San Diego and San Bernardino Counties. We farm no lands ourselves, but make long-term leases to responsible operators who are interested in farming our properties. Our lessees often own intervening lands themselves and conduct and manage ours in conjunction therewith. The main crops on these properties are cotton, grain, melons, potatoes and alfalfa seed. Other minor crops are seasonal vegetables, rice, soy beans, castor beans, and various field crops.

Nearly all of our agricultural land is presently irrigated from deep wells. Soil types for the most part are excellent, and the lands produce outstanding crops. Our

lessees are successful, responsible local businessmen and our leases are held in high regard. These leases are on a modified crop share basis wherein we participate in a percentage of the income. Southern Pacific is intensely interested in the welfare and future of irrigated agriculture in California. We have recently contributed $10,000 toward the establishment of the Five Points Field Crop Experiment Station of the University of California

Our properties are leased as commercial farms, and produce for the commercial market. They are efficient, highly mechanized and well organized business ventures, and certainly contribute to the welfare of the people of this State and elsewhere in the production of high quality food and fiber products at reasonable prices There is no stigma attached to sharecrop farming in California. On the contrary, it is a highly regarded method of agribusiness, and is in line with current trends in industry and business whereby very often a factory building or service station is not owned by the business occupant, and the build-sell-lease back technique is common practice We are under no great pressure from any responsible parties to sell our land. We do have many inquiries regarding land purchases, but these are mostly through real estate brokers who, of course, have access to other properties for their clients. As a counter trend, three of our well-financed, highly successful agricultural lessees offered to sell Southern Pacific their intermingled property at a fair appraised price, provided they could lease it back and continue to lease the railroad land Many crops require annual expenditures equal to the land value, and operators prefer to lease land, thus preserving their capital for current farming expenses We have not yet reached a conclusion on this particular matter

It is our feeling and strong recommendations that there be no acreage limitation in the State water program We feel that any land owners or any business, industry or city should have the right to purchase water from the state program regardless of size or any other special category We also feel that there should be no subsidy as such to any particular farm or farmers, but that each user should pay his own way. We are certainly willing to do so This, of course, calls for very careful allocations of project cost to agriculture and other users

The State is using a utility concept in its contemplated water program Following that thought to a logical conclusion, it appears to us that there may be logically justified wholesale or off-peak rates for agricultural water which will bring the price range of such water within repayment capacity of the area involved Surely there will be differences in prices for water for different uses, regardless of the actual cost of transporting water to that area of use. A simile would be railroad freight rates wherein low-value bulk commodities are transported at very low rates, while the same tonnage of a high-value commodity may carry a rate several times the previously mentioned rate

It is our feeling and belief that if fair and equitable cost allocations are made, then agricultural water users will be able to pay their own way without any subsidy It would, therefore, appear that there would be no justification for limitations on acreage or water availability. As for antispeculation measures, it is our belief that property values will in some instances be enhanced However, this will be a slow, gradual process based upon the availability of water, price therefor, changing crop patterns and long-term agricultural marketing advances, and will reflect a variety of economic forces. In other instances, the arrival of imported water will be a rescue operation and will enable land to remain in production which would otherwise revert to grazing or dry farming In one extreme instance with which we are familiar, the total capital costs of the project and distribution system to be charged against the landowners approximates $800 per acre Present value of the land is about $400 per acre and, in our opinion, the land after full development will perhaps be worth $800 per acre In such cases it would seem obvious that there is no subsidy or enrichment involved

As for use of the term "unjust" enrichment, we feel it is an ill-advised and unfair word "Unjust" can mean illegal, immoral, uneconomic, and perhaps convey other shades of meaning Certainly no responsible land owner, individual or business organization intends to seek or accept any enrichment under such categories On the contrary, the State of California and everyone in it should expect to be enriched over the long pull by state water development, provided only that the costs are economically feasible and justified To us this seems desirable, fair, and should be fully acceptable throughout the State There are many examples of appreciation in land values caused by state or federal expenditures, such as freeways, flood control, river and harbor improvements, parks, airports, defense facilities, etc Seldom is any obligation or restriction placed upon adjacent property owners who may be benefited thereby.

Southern Pacific Company has about 70,000 stockholders, the majority of whom own 100 shares or less Therefore, in talking of our agricultural lands, each stockholder owns the equivalent of approximately two and a fraction acres of land. This hardly seems an excessive figure Family size farms, as we understand the phrase, certainly have a place in California Many of our properties are leased by individuals, partnerships and family-owned corporations. It is our belief that any farm operators who have the desire, experience, ability and resources to enter into agriculture should be free to do so without governmental restriction. The important aspect of this matter is to encourage the establishment of economic farm units Trends are nationwide in decreasing farm population and increasing size of commercial agricultural operations This is no accident, it is not "bad," but rather a natural outgrowth of economic necessity The results should be favorable to consumers in better quality, to the federal government in firm marketing activity and more independence for the individual farmer It should also result in increased and stabilized activity in business and industry serving or dependent upon agriculture, and the economy of areas, the State and nation should benefit accordingly. It is inconceivable to us that a corporation owning land would be subject to different rules than an individual, a family ownership or a partnership.

We have felt that federal restrictions on Bureau of Reclamation projects were uneconomic, unbusinesslike, and saddled the land owners and operators with unrealistic burdens In certain areas within California the landowners have declined to form districts to negotiate with the bureau for water, and authorized and funded projects have been partially suspended We certainly hope that the State will avoid these pitfalls

It appears to us that revenue-producing functions of a water project should be utilized to full advantage The end product under the state program is water, and any method which will contribute toward lessening its cost should be desirable We feel that the State should be free to buy, sell, trade or exchange electric energy with any privately owned utility, federal agency or publicly operated utility. As we understand it, the Feather River Project will eventually be a net power consumer, although in its early stages it may have power to sell It would seem logical to sell or enter into long term agreements for trade or exhange in a manner most advantageous to capacity operation of the project for its primary purpose of water control and distribution

Southern Pacific presumably will not be in a position to contract directly with the State Various water and irrigation districts in which we own land will do so on the behalf of us and other landowners There are important factors connected with water contract in addition to price We feel that in the absence of sample contracts, firm cost allocations and equally firm contract provisions for repayment, that the question on our willingness to contract for water cannot be answered at this time

We assume that a continuity of water supply will be provided under the State plan. That is the basis for the Feather River Project and subsequent north coastal development as part of the overall California Water Plan Agricultural water supply may be flexible under certain limiting conditions For example, extra water can be used in some winter seasons for sinking underground To a lesser extent, surface water supply can be diminished in periods of stress by relying upon the underground "bank"

It appears that escalation clauses within contracts of all types are becoming more common Under some conditions our agricultural and other leases have escalation clauses It would appear practically impossible to guarantee a continuing water supply at a certain price without allowing for any flexibility for fluctuation in labor, power and material costs This again would have to be a matter of careful study and consideration so as to keep the escalation provisions on a reasonable and workable basis For instance, just assuming that agricultural water is going to sell for $7 50 at canal side in certain areas in the San Joaquin Valley, water for higher uses sold in Southern California might be priced as high as $40 per acre-foot

A subsequent blanket $1 per acre-foot additional charge for water at the Delta would increase the farmers' price by 13⅓ percent, while the same $1 per acre-foot increase would only add 2½ percent to the domestic consumers' price.

In conclusion, we desire to re-emphasize our firm conviction that a water program must go forward in California Southern Pacific is willing and anxious to work with any federal and state agencies or local districts in furtherance of such a program In that regard, it is possible that one-half or more of our agricultural lands may come under an entirely federal water development program. We feel that our land management program is sound and in accordance with the best interests of our

stockholders and of the economy of California Southern Pacific has taken a leading part in the development of California and the West for nearly 100 years Our natural resources assets have contributed extensively to our record as a major force in the development and progress of the western United States We hope and expect to utilize these assets for the same constructive purposes in the future

(Transcript of November 5, 1959, page 209)

STATEMENT OF WILLIAM E. MOORE, JR.

Tejon Ranch Company

The Tejon Ranch Company has acreage within the newly formed Wheeler Ridge-Maricopa Water Storage District This district is located at the southerly end of the San Joaquin Valley on the slopes bordering the San Emigdio and Tehachapi Mountains It comprises 134 200 acres of land, all within a few miles of the main aqueduct to be constructed by the State from the Sacramento-San Joaquin Delta to Southern California Our lands consist of 40,934 acres on the eastern flank of this district This amounts to 30 percent of the district The elevation varies on our property from 500 to 1,500 feet above sea level

Total Tejon acreage in the proposed Antelope Valley-East Kern Water Agency, which was created in the last session of Legislature, totals 2,720 acres and amounts only to a very small percentage of the district.

We would like to draw the committee's attention to the fact that our land in the Wheeler Ridge-Maricopa Water Storage District is located in a thermal belt and is some of the most productive agricultural land in the United States Among some of the many diversified irrigated crops are cotton, potatoes, grapes, citrus fruits, corn, melons, vegetables, grain and alfalfa In this district, 13,874 acres of the company lands are being farmed Much of the remaining acreage has been farmed in years gone by, particularly before the turn of the century, with the supply of water coming from the surface flow of nearby streams and creeks We have, however, no official records of this exact acreage.

All but 40 acres of our farming properties are operated by lessees Our records show that 21 leases are involved which provide jobs for the equivalent of 461 full-time workers on this property Further expansion of this area by use of underground water will be slow because of the receding water levels and the large capital cost of new and deeper wells Pumped water on these lands average between $15 and $16 per acre-foot on the lease Water wells have historically cost an average of $35,000, including pumping equipment; however, replacement wells in this area are being drilled deeper and are now costing approximately $50,000 Studies made by the Department of Water Resources show that the average static water level lowered 48 feet from 1951 to 1956 and 24 feet from 1956 to 1958 The present average pumping lift in our area is 512 feet—our maximum lift is 723 feet For these reasons, we can safely estimate that, primarily, field crops will be grown in this area until such time as the area can import a reliable supplemental supply of water for crops that require higher initial investment, such as citrus fruit

Assuming receipt of state project water, we concur with the excellent studies of the Department of Water Resources which indicate that acreage in this area will (1) continue to grow high income field crops and (2) be diverted to grapes citrus and deciduous fruits and high return vegetable crops

The following table summarizes general information on Tejon lands in the Wheeler Ridge-Maricopa Water Storage District

Acres owned in district	40,934
Acres not presently farmed in district	27,060
Acres farmed in district (gross acres)	13,874
a Farmed by landowner (gross acres)	40
b Farmed by lessees (gross acres)	13,834
1 Number of leases	21
2 Average acres in a lease	658 76
Irrigable acreage in district not presently farmed	22,060
Nonirrigable acreage in district (due to rock, topography, roads, oil field facilities, airfields, etc)	3,500
Acreage questionable as to irregularity (due to topography)	1,500
Average pumping lift	512′
Average total cost of pumping per acre foot	$15 88
Number of shareholders (October 1, 1959)	1,543
a. Number of shareholders residing in California	1,150

The Tejon Ranch Co land in the Antelope Valley-East Kern Water Agency is at approximately 3,000 feet elevation and, as a result, has a limited growing season for agricultural crops At present 2,080 acres of our property in this district is farmed The crops in this area are alfalfa hay, alfalfa seed, potatoes, grain, corn, and some deciduous fruit Insofar as these lands are concerned, it is our considered opinion that they belong in this new water district which has been formed to receive primarily industrial and domestic water However, until the anticipated growth of this area has been realized, we would continue to farm with our present underground water supply

In further summarizing it should be pointed out for the record that Kern County, in particular our area in the Southern San Joaquin Valley, is one of the most critical water deficient areas in the state *We must have a supplemental supply of water at the earliest possible moment* You have heard our neighbors testify to the same point We indeed feel that our area and our company with its over 1,500 owners (stockholders) are a part of the State of California As such, we are willing to pay our fair share of this fine water program the California Water Plan We ask no subsidy and we expect to pay with interest for the benefits received

With these points in mind, we wish to comment on some of the various questions posed for study of this committee

We are against any acreage limitation in any form here in California Our company advocates that the State sell water at the primary source or Delta at a price that will recover to the State all costs for production of water at that point including interest on monies advanced for construction proposals and excluding only costs properly allocated as nonreimbursable such as flood control, rights of way, recreation, and fish and wildlife

We further recommend that all costs for the transportation of water from the primary source to water using agencies be fully recovered with interest Under these policy recommendations, there is no question of unjust enrichment since all the contractors for water willfully pay for all the benefits received In our opinion, acreage limitation is not practical in California in any sense of the word An endeavor to impose acreage limitation would be based only upon an attempt to inject social philosophy into an economic operation and such action would provide many inequities and result in great difficulties in getting the State Water Plan into operation In addition, it most probably would result in a reduction in the contracting areas, a reduction in the volume of water used and consequently an increase in unit costs This, in turn, would probably increase the tax burden on the people of the State of California, and it would be particularly unjust to metropolitan areas such as San Francisco and Los Angeles which have already paid for their water projects

Insofar as our local area is concerned, it is imperative that all landowners participate in the supplemental water program, otherwise, the resulting checker-boarding of participants would make the distribution and diversion works prohibitive from the cost standpoint In addition, nonparticipating landowners would receive indirect benefits from the supplemental water without paying for their fair share of the program

It is our belief that power generated by any state project which is energy deficient and which is primarily for water conservation, distribution and flood control, should be marketed to produce maximum revenues These revenues should be applied against the cost of water development and, thus, reduce the eventual cost of water to project beneficiaries It should be emphasized that this is a water project and is not a power project power is only a by-product

In our opinion, Bulletin 78 represents the most detailed analysis of its type ever prepared and the Department of Water Resources and its personnel are to be complimented on their fine effort

We do feel, however, that the price of $24 per acre-foot canal site in Bulletin 78 to our area is very high for agricultural water At the present time, as we have stated heretofore, we are paying about $15 per acre-foot Due to the fact the Wheeler Ridge-Maricopa Water Storage District is newly formed and keeping in view our present cost of water, we cannot say definitely at this time, without additional study in and by our district, whether we are willing to contract for the amount of water shown at the price shown in Bulletin 78 However, we do think that the Department's demand study is excellent and we also believe that we could *possibly* contract for *substantial* amounts of water at the price shown and at the time shown in Bulletin 78.

To date, we have not had the opportunity to study the various other methods of cost allocation that the State might take into consideration in selling agricultural water to Kern County. It is our hope that the State could select another method of cost allocation in the California water program which would not embody subsidy, but which, would provide the San Joaquin Valley, including the Wheeler Ridge-Maricopa Water Storage District, with an agricultural water supply at a lower price We believe that we *may* be able to answer this question in the affirmative, after further study, only because of our special growing conditions which would allow us to produce the higher income crops

It is our feeling that a firm contract, with the State, which has a definite quantity of water at specified times and at an agreed upon price is sufficient, We do not feel that a constitutional amendment is necessary and we support S B No 1106 in its present form, since the entire program is founded on the premise that there is enough water in the State for the future ultimate development of California. We do, however, feel that it is necessary for a legislature to adopt, before the November 1960 election, a firm and reasonable policy toward its continuing responsibility of providing water conservation and flood control for California

(Transcript of November 5, 1959, page 225.)

STATEMENT OF D. B. McHENRY
Standard Oil Company of California

A vast majority of (our acreage in California) is used for development of oil and gas potentialities and not for farming purposes. The character of this land renders it unsuitable for farming or other than grazing purposes It is mostly located above and to the west of the proposed canal and is generally leased to sheep and cattle men for grazing A great portion is taken up with existing oil and gas producing facilities It is not economically or topographically suited for agricultural development

On the other hand, (areas around Coalinga and south of Buena Vista Lake) are currently employed as irrigated farmland (Other areas principally around Avenal) are currently employed as dry farms Most of the latter could benefit from water resources projects only in the long run You will note that most lie to the west and at an elevation of about 350 feet above the proposed canal This area to the north totals about 16,500 acres in what is known as the Pleasant Valley of Coalinga It is currently irrigated by well water and it and the contingent dry farms could be developed under a state water project only by lifting water, a method not contemplated in the first phase of the state water project

In the Lakeview area of Kern County, south of Buena Vista Lake and west of Highway 99, we own approximately 9,000 acres of improved farmland presently irrigated from wells. In addition, we own about 12,000 acres in the same area which lie below proposed canal elevations and could be developed with water from project canals.

May I point out here, as emphatically as possible, that Standard Oil Company of California is *not* in the farming business All of the lands to which it holds title and which are used for agricultural purposes are leased to individuals in the farming business who quite often own lands of their own adjacent to the company property The company's business is petroleum and it confines itself to that activity, though it does retain an active interest in the general welfare of the farm community

Most of our tenants have been in the farming business for long periods of time, all are competent farmers highly regarded in farming circles Our leases with them are based on a percentage of the crops grown, as established by local custom

All of our potential arable lands lie within the proposed project service area At this time, however, we are unable to guess at how much of this might be incorporated into such a project. It would depend, again, on price and availability of water from the project We can assume that the aforementioned 12,000 acres in the Kern County area would be most affected

May I take this opportunity to voice my company's faith in the future of the San Joaquin Valley In this vein we have taken the position that an acreage limitation should not be applied to the proposed project. We sincerely feel that such a limitation, if imposed, would run directly counter to the basic elements of free enterprise. It would also fail to recognize the startling agricultural trends of the past several decades which have shifted farming away from family type operations on small plots to the mass production science necessary to feed and clothe the rising population. In short, we believe that an acreage limitation would contribute much toward stifling our growing economy in California which is based so firmly in the farmlands of the great Central Valley.

STANDARD OIL COMPANY OF CALIFORNIA

LANDS WHICH MAY BE AFFECTED BY WATERS FROM PROPOSED STATE WATER PROJECTS SAN JOAQUIN VALLEY

Fresno County	
Long range (15,000 acres now under irrigation)	16,000 acres
Kings County	
Long range (1,500 acres now under irrigation)	10,000 acres
Kern County	
Short range (9,000 acres now under irrigation)	21,000 acres
Long range	15,000 acres
Total	62,000 acres

(Transcript of November 5, 1959, page 249)

STATEMENT OF ONIE SANDERS
Wheeler Ridge-Maricopa Water Storage District

In Bakersfield, I reported in some detail on the question of acreage limitation. We wish to reaffirm the unanimous action of the board of directors opposing acreage limitation in any form as part of the California Water Plan.

There are many factors which the board considered, but the board was unable to see any justification or reason for acreage limitation From the land ownership pattern, acreage limitation would make the cost of distributing water extremely high, since it is believed that many landowners would not purchase water under acreage limitations This would place the cost of the distribution system on the remaining scattered landowners, and we are sure they could not alone pay the cost of such system Acreage limitation is against the fundamental principles of the American free enterprise system It limits initiative; it could prevent success by limiting farm efficiency, it prevents a farmer from growing larger by expanding his operations; it penalizes those who are successful. Acreage limitation is purely arbitrary and has no bearing on a supplemental water project Proponents use acreage limitation as a method of accomplishing social change, rather than for any positive economic and social advancement

At my appearance before you in Bakersfield, you requested that the district furnish certain information concerning land ownership, acreage, and related matters respecting the Wheeler Ridge-Maricopa Water Storage District Attached to this statement as Appendix "A," you will find a table outlining the information which you have requested

On the question of purchasing power from the State, we believe that any agency should buy needed power wherever available at the most favorable price. We don't know what our district power needs may be, but we cannot see how any agency could have other than the above policy.

We believe that the State should market surplus project power at the highest price possible in order to recover pumping lift costs or reduce the costs of the water. At times and places when the State needs additional power, it should be purchased from any available source at the most favorable price

Your questions relating to special problems in contract policies cannot be answered as readily without some background into the district involved, and, since all these questions are interrelated, I would like to discuss the remaining questions as a group.

Some 20-odd years ago our district was mostly sagebrush and jackrabbits A small group of farmers armed with only intestinal fortitude, integrity, and the confidence of financial backers, began drilling 500- 600-foot wells, pumping water, clearing sage, and farming These first efforts were far from profitable; more backing was needed, wells were drilled deeper, more debt was piled up, until eventually, after many farmers had given up, some profits began to appear. Then many years were consumed in paying off initial indebtedness Then came three of the most profitable years known to agriculture· 1950-51-52. Of course, the earthquake of 1952 caused need for huge capital outlay in new pipelines, new wells, releveling ground, etc. Nevertheless, farmers in the area consolidated and improved their holdings, and began to show the world some real crop production. This good production did not just happen These farmers were now seasoned veterans who were faced with a realization that as pumplifts had become greater and water costs

continued to rise, they had to produce higher crop yields merely to stay even. Other costs such as tractors, labor, etc., had gone up too, but our neighbors in other parts of the State were faced with similar problems. We now face the same neighbors in the competitive market, despite the fact that some of them have been furnished federal project water at prices less than we could distribute Feather River water even if it were free at canal side. We must not only pay our high price for water, but we must also pay some of our neighbors' water costs in the form of subsidy in the Federal Water Program.

Farmers are optimistic by nature. Most feel that they will do better next year in spite of a bad previous year, hoping for better weather, fewer bugs, and less disease. However, if you had asked these same farmers 20 years ago if they could pay the cost for water they are paying today, you would have had a cold stare and someone would have called for the wagon. I'm sure if you had asked them if they could produce three bales of cotton per acre or more you would have had the same reaction. Now these people are doing what would have seemed impossible 20 years ago. The search for survival through high production is still going on today.

When the California Water Plan developed to the talking stage, there were guestimates of $8 to $10 per acre foot for water in our area. Now after some studies and surveys, and no established pricing policies, Bulletin 78 says $16 to $24 at canal side. I think you will appreciate the fact that enthusiasm for supplemental water, no matter how firm the supply, decreases as costs of such proposed water go above present pumping costs of ground water. This is only human nature in relation to basic economics. Some farmers will simply continue to drill 2,000- to 2,500-foot replacement wells and hope to come out with a profit. Consequently, as to signing a binding contract at this time for water at Bulletin 78 prices, (even though we are in dire need of water right now) I would be forced to say we should have further study and a survey at our local area, before we could contract for water at Bulletin 78 prices.

We would like to draw your attention to the specific wording in Bulletin 78 (Chapter 2, Page 4,) which states as follows:

> "It is not the purpose of this investigation to establish a pricing schedule, but rather to estimate a future demand for water by areas on a conservative basis."

This implies that the prices shown are in excess of the reasonable share of the costs and benefits to water users. This means that your committee is asking whether users are willing to pay more than the State Department of Water Resources considers necessary. The prices shown in Bulletin 78 are high. These prices, added to the estimated distribution costs, are substantially more than present pumping costs within our district. Therefore, landowners who can pump water probably will continue to pump as long as the well supply is cheaper. The real question is whether agriculture would be profitable at these higher prices.

We believe that the project beneficiaries should pay all costs for the project. With high fixed costs, an important factor in any business is to increase sales volume as much as possible. The more water sold, the greater the revenue, and the more feasible the project.

There are probably several methods of charging for the services from the project that could be satisfactory. The point that I wish to stress is that the project should stand on its own feet. All beneficiaries should pay their fair share of the costs.

The feasibility reports on our district, prepared by the Department of Water Resources and a private engineering firm, indicate there should be financial capacity available for construction of distribution facilities.

Concerning what preparations our district is now making to provide distribution facilities, we should like to again point out that this district has been very recently formed. However, we do have the benefit of the excellent study prepared by the Department of Water Resources, dated July 1959, relating to the proposed Wheeler Ridge-Maricopa Water Storage District, which considers various aspects of the plan of distribution system within the district, including design criteria, land subsidence, capital costs, annual costs, and other related considerations. We have also obtained a feasibility report prepared by the engineering firm of Leeds, Hill and Jewett within our district, and have recently engaged engineering services to assist in planning. We will be able to continue our studies in a more orderly fashion as soon as the State establishes a definite plan and if pricing policies are within the ability to pay.

We may point out that a water storage district has specific revenue-raising powers set forth in the Water Code It is therein provided that a water district may raise funds by three methods the issuance of general obligation bonds, the levy of assessments on lands lying within the district according to benefits received, and the collection of charges and tolls from persons receiving the benefit of irrigation or other services rendered by the district proportional to the services rendered

We feel that there must be a contract for specific amounts of water at definite prices and delivery dates

Our district feels that escalation would be acceptable if the price of water is within the farmer's ability to pay

Appendix A

MARICOPA-WHEELER RIDGE WATER STORAGE DISTRICT

1	Total number of acres in district	134,200
2	Total number of landowners in district	455
3	Acreage in district that is irrigable	129,470 acres or 96 47% (includes 6,680 acres added to district as formed)
	$\frac{129\,470}{134,200} = 96\ 47\%$ $\frac{122,790}{127,520} = 96\ 29\%$	
4	Acreage in district under irrigation in 1956	52,910 acres or 39 42% (includes 6,680 acres added to district as formed)
5	Characteristics of lands lying within district	(* pg 52) († pg. 7)

Description	*Gross acres*
Excellent quality for all climatically adapted crops	78,010
Slightly less desirable due coarser soil texture	22,960
Affected by concentrations of soluble salts or exchangeable sodium, but reclamation procedures can convert to good productivity	8,890
Productivity limited by shallow soil depths, rock cover, or unfavorable topography	12,930
Subtotal of irrigable lands	122,790
Nonirrigable or urban lands	4,730
Total acreage shown in reports	127,520
Good quality lands included in district as formed but not shown in either report	6,680
Total acreage in district	134,200

6	Average pumping lift in district	450′ *
7	Land characteristics and operations by three major landowners in district	

* Denotes information obtained from State of California, Department of Water Resources *Report on Proposed Wheeler Ridge-Maricopa Water Storage District*, dated July 1959 This report used 127,520 acres as the total acreage in the proposed district

† Denotes information obtained from Leeds, Hill and Jewett district feasibility report, May 1959 This report used 127,520 acres as the total acreage in the proposed district

	Kern County Land Co	*Standard Oil Co of Calif*	*Tejon Ranch Co.*
A Acres owned in district	34,300	18,000	40,934
B. Acres not presently farmed in district	24,800	9,000	27,060
C. Acres farmed in district, gross acres (includes roads, farm yards, etc.)	9,500	9,000	13,874
a. Farmed by landowner, gross acres	400	--	40
b. Farmed by lessees, gross acres	9,100	9,000	13,834
D Irrigable acreage in district not presently farmed	21,800	6,500	22,060 (Est.)
E Estimated nonirrigable acreage in district (due to rock, topography, roads, oil field facilities, airfields, buildings, etc.)	3,000	2,500 (Est.)	5,000 (Est.)
F Average pumping lift (Note. This figure does not reflect the limited quantity of water produced from many of the shallow wells)	561′	525′	512′
G Average cost of pumping, per acre foot	$14	(No figures available from tenants as to power costs)	$15 88
H. Number of shareholders	16,000	167,000	1,543
a. Number of shareholders residing in California	10,000	60,000	1,150

(Transcript of November 5, 1959, page 268)

STATEMENT OF DON VIAL
California Labor Federation AFL-CIO

The California Labor Federation, AFL-CIO, is pleased to have the opportunity to respond to Chairman Carley V. Porter's letter dated October 16, 1959, directed to Secretary-Treasurer C. J Haggerty, concerning the testimony of federation representative Don Vial, before the Assembly Interim Committee on Water, September 25, 1959, in support of anti-monopoly, anti-speculation (unjust enrichment) protections in the distribution of benefits under the proposed water development program.

In his testimony, Mr. Vial made reference to the policy vacuum that exists in the State not only in regard to protections against monopoly and speculation in the distribution of benefits, but also in regard to the allocation of costs between project beneficiaries, related pricing and subsidy questions, and policies which shall govern the determination and economic feasibility of various units of the state program The federation, it was pointed out, went firmly on record at its 1959 convention in San Diego that this policy vacuum must be filled before the $1.75 billion water program goes to a vote of the people in November 1960.

In regard to anti-monopoly, anti-speculation protections specifically (which have generally come to be referred to as anti-enrichment protections), it was reiterated that federation support of the water program is contingent upon enactment of protections at least equal in strength and purpose to those in federal reclamation law. The basis for this demand, in turn, was described as resting upon (1) the amount of subsidy, if any, to be realized by irrigation users, and (2) the enhanced value of land resulting from its greater productivity as water is brought to land by the people. The anti-monopoly, anti-speculation provisions of federal reclamation law, it was noted, are predicated upon both of these concepts

In response to questioning by Chairman Porter, it was pointed out that while the federation would hardly be in a position to ask for restrictions on water deliveries based on subsidies, if in fact no subsidies were involved, there would nevertheless be the need for protections against unjust enrichment that would be derived by large landholders as the result of water being made available by the people, apart from any subsidies which may or may not exist. As an alternative to the so-called 160-acre limitation in reclamation law, Mr Vial discussed the possibilities of placing a dollar limitation on so-called enrichment from both subsidies and enhanced land values

Chairman Porter's letter clearly indicates an intent that there shall be no subsidies for irrigation water users, and further, with regard to unjust enrichment

which may stem from enhanced land values, that perhaps the application to an avowed state "business operation" of the business concept of "supply and demand," at least to the extent that project beneficiaries fully repay the allocated cost of the project's services they receive, "would provide a more effective, direct and fair restraint upon unjust enrichment for water users than any other method yet devised."

We would point out, first, as Mr. Porter himself indicates, that there are no assurances whatsoever that there will be no subsidy to irrigation water users in state projects We reiterate the policy vacuum that exists in this regard, and note specifically that mere statements that project beneficiaries will fully repay *allocated costs* does not rule out the possibility of subsidies, when we are also without any policy or criteria on the allocation of costs By way of example, we pointed out that if power is sold at a price higher than necessary to recover the full cost of developing that power, power users will be paying a subsidy for water users somewhere along the line

We therefore assume that if the concept of "no subsidy" is to be implemented, policies will be enacted which require water users to pay the full cost of deliveries at any point of delivery without power subsidies or without any contrived allocation procedures which would have the effect of reducing the calculated cost of water deliveries below actual cost.

Assuming, however, that there will actually be an elimination of subsidies by policy action (and therefore the "subsidy" basis for imposing restrictions on water deliveries) we turn now to Mr Porter's theory of "supply and demand" in relation to water pricing and repayment of allocated costs as a restraint upon unjust enrichment stemming from enchanced land values

At the outset, however, again we must question the basis for invoking the concept of "supply and demand" as a "business principle," and applying it to a major water development project by the State If private enterprise, based on the principle of supply and demand, could not undertake the basic water development program being proposed to the people as a state undertaking, why should the principle of supply and demand that has failed in this regard be forced on to the government as a policy guide for pricing and payment of costs? Might we not be dooming the State to failure also? We are of the firm opinion that basic resources development, where private enterprise cannot possibly undertake the responsibility, is not in any sense a business operation on the part of the government

But even conceding this, however, the concept of "supply and demand" advanced in Mr Porter's letter appears to us to be a vague concept with a theoretical potential for rationalization, but without a realistic base for application that can give it any meaning The concept of "supply and demand" within the operation of our private enterprise economy has a meaning that the demand for scarce goods, through the pricing mechanism, will invoke the development of a supply at a fair profit to the supplier It does not appear to us in Mr. Porter's letter that it should be the intent of the state government to profit on the water development program On the contrary, it appears that this concept is to be invoked only to the extent that allocated costs of water development are recovered Thus, at the outset, there is an extremely tenuous relationship between the concept of "supply and demand" and the pricing mechanism for the repayment of allocated costs.

Rather than being based on the concept that demand for water in relation to supply, in various parts of the State, should determine where the water should be distributed through the pricing mechanism, we would point out that the California water program was developed by a somewhat arbitrary allocation of water to various service areas and uses, and that only now is it being suggested that the price of deliveries be sufficient to repay full allocated costs If supply and demand is to have any meaning in relationship to pricing and repayment of costs, then anywhere along the aqueduct where the possibility of a greater return on investment exists, that area should get the water, irrespective of amounts that may now be allocated to various service areas This may be a suitable concept for rationalizing the transportation of water from one hydrographic area to another, but it does not necessarily mean the most economic development of a limited resource which should govern a water development program In other words, invoking the concept of "supply and demand" only to the extent of repaying allocated costs where the water deliveries themselves are allocated by service areas is in itself a tacit admission of the nebulous practical application of the concept

In regard to the specific points raised in Mr. Porter's letter, the first is that charging irrigation users full allocated costs (assuming no subsidies) will prevent

unwarranted enhancement of land values on the premise that it is the cheap subsidized water which creates windfall land values because the land market capitalizes most of the subsidy We would agree that the higher the price for water paid, or conversely the lower the subsidy, the lower the resultant enhancement of land values as a result of water brought to the land However, we cannot agree that if full allocated costs are paid that major landholders in the lower end of the valley will not be unjustly enriched as a result of the activities of the people of this State in the development of water. So long as it is the intent to deliver water at a price that it can be used, thereby increasing the productive value of the land by some amount, those holding vast amounts of land are going to be enriched out of proportion to those holding much smaller amounts, such as the family farmer Is this to be the policy of the State? Whatever the price, within limits of the use, each unit of land of the same quality will be increased in value by the same amount In the lower end of the valley, it is almost completely meaningless to say that the application of "supply and demand" will have the desirable effect of increasing the wealth of an area as the intended purpose of water development, because 63 percent of the area in question is owned by a relatively few individuals and corporations Is it to be the policy of the State to fortify and entrench this kind of ownership pattern in the development of a basic resource?

We repeat, so long as certain amounts of water are allocated for use in a given area, it is reasonable to assume that even under the "supply and demand" concept invoked that prices will be set at levels where the water will be used.

In this regard, the question is raised in Mr Porter's letter that if recovering costs does not provide sufficient limitation upon enhancement of land values, then the question is asked "How far should the State go?", "Should it make a profit on water?", and "Is there justification for imposing so-called extra market restraints that are not part of our traditional business operation?" Obviously, if the "supply and demand" principle borrowed from business were fully invoked, the State should take a profit Our state government, however, does not operate for profit, nor do governments generally undertake the responsibility for basic resources development to bring a profit to the treasury On the contrary, they usually undertake such programs, as in the case of the federal government, to profit the people through the widest possible distribution of benefits Again, policy is needed where policy is lacking on the state level in this regard

The second argument raised in Mr Porter's letter is that realistic pricing can effectively preclude subsidy to irrigation water, whereas an acreage limitation, for example, does not limit the subsidy itself Rather, it is argued, that the more stringent the acreage limitation, the more likely it is that lands will be kept out of the project service area and thereby make repayment more difficult It is argued further, that a vicious circle can occur in that the more we limit subsidy to each landholder, the more subsidy is required for the irrigation project purpose in the payout period

In regard to this argument, it should be pointed out that the California Labor Federation is not taking a position on whether or not there should be a subsidy on irrigation water. We have merely stated that if there is to be a subsidy, it should be by a conscious policy determination, and there must be some kind of a limitation on the amount of subsidy which can accrue to any one individual On the other hand, we have stated what appears to us to be the position of many farmers, namely, that they cannot use the water if they must pay prices based on the full allocation of costs. On the other hand, Mr Porter's letter indicates that there are many farmers who claim that they can pay the full cost We have also made the point that if this subsidy issue were taken out of the area of speculation by a policy declaration, that we might find a basic realignment of support or opposition to the project from farm groups.

Further, in regard to this second point in Mr Porter's letter, it is stated that limitations on deliveries, such as an acreage limitation, have the undesirable effect of keeping lands out of the service area Indeed, this is the threat made by large landholders who oppose limitations, but their threats have not been borne out in the experience of the application of the excess lands provision under federal reclamation law to CVP units On the other hand, if the large landholders, by their participation in a project, can actually determine its feasibility, then we say categorically that such power must be broken up if any state water program is to have an objective other than the entrenchment of that power

The third point raised in Mr Porter's letter is that limitations on water deliveries are inconsistent in certain regards with public agency preference in the distributon

of public power as a policy also advocated by organized labor The argument here appears to be that an enrichment question is involved in low cost power (priced to pay the cost of providing that power without subsidy) only if public preference in the distribution of power is provided for We submit that some benefits from low cost power are realized also even if private agencies are permitted to extract a profit in the distribution of the low cost power which may be sold to private agencies The point in the preference question is whether or not users should be permitted to take advantage of obtaining that low cost power without paying a profit to someone The idea that there can be enrichment to the so-called wealthy and large corporations who use cheap public power because if there was not public distribution they would have to pay a higher price through private agency distribution, ties enrichment to whether or not some third party is going to be allowed to make a profit on public power We do not believe that the comparison is valid or that it in any way enhances the argument advanced for application of a "supply and demand" concept to water development

In regard to the point made in Mr Porter's letter that use of water for urban and industrial purposes can also enhance land values and result in land speculation, we would agree with this possibility This is a new problem only to the extent that the California water program has an industrial and domestic supply purpose that has been largely lacking in major projects undertaken under the CVP The fact that the California program is broader in scope should not mean that we continue to concern ourselves only with enrichment in the use of irrigation water and ignore enrichment from application of the water to other uses.

The fourth point in Mr Porter's letter relates to a declared lack of understanding why a subsidy is supposedly necessary for the small farmer who is purportedly unable to pay the full cost of water while the same price results in exorbitant profits for the large owner We do not believe that this point is pertinent to our testimony We have not said that a subsidy is needed for the small farmer, and that it produces exorbitant profits for the large landholder We have pointed out only that small farmers claim they need the subsidy if they are to use the water Whether or not large farmers need it also, we do not know Our point is that if there is a subsidy, we believe that both the small farmer and the large farmer will profit from the subsidy In our opinion, it is then a question of public policy of how much profit we are going to allow to accrue to individuals at the expense of the public

Finally, in the fifth point in Mr Porter's letter, it is stated that federation calculations on enrichment do not allow for the rather large investments that water users must make to utilize the water delivered at canal side by the State We are well aware of these additional investments, but we do not see how they remove the potential from enrichment which may stem from state subsidy or public activity on the part of the people It would appear to us that these local investments are to take advantage of the water supply provided by the State, and therefore, should not be looked upon as a factor for the removal of the advantages of a state supply.

In conclusion, we reiterate our position that when the State undertakes a project as fundamental in importance as that proposed in the California water program to the future growth and development of our State, it is unthinkable that such undertaking should be without policy declarations governing its purpose and the distribution of benefits We do not believe that the concept of "supply and demand," in the application of a so-called business principle to government activity, provides any effective restraint on unjust enrichment for water users when in fact, the application of the principle must be cut off to accommodate the implied judgment that price should be governed by repayment of full allocated costs The invoking of supply and demand on this basis appears to us to be more of a rationalization of certain pricing policies in the search for a criteria that will give the proposed project financial feasibility than a means for controlling unjust enrichment.

(Transcript of November 5, 1959, page 254)

STATEMENT OF FREDERICK BOLD, JR.

County of Solano

Solano County appreciates the opportunity to present to this committee its views on the marketing of water supplies from the State Water Resources Development System Until the Legislature establishes the basic terms and conditions under which such supplies will be available, it is extremely difficult for the using agencies properly to plan the solution of their water supply problems or to commit themselves with any degree of definiteness to participate in the State's program

It is our recommendation that the State sell water at the proportionate cost of making available in the Delta plus the cost of the proportionate use of facilities necessary to deliver the water to the zone of use The State's contracts for such a water supply should be with a public body with jurisdiction over the entire zone

Specifically, we regard Solano County as an appropriate marketing zone and Solano County Flood Control and Water Conservation District as an appropriate public body to contract with the State. The price for water to be paid by Solano County we feel should be based upon the State's unit cost of water delivered to the Delta, that is, the proportionate share of the cost of constructing, operating and maintaining mountain storage facilities with credit for all revenues from the sale of power developed at the mountain reservoirs, plus the proportionate share of the construction and operation costs of that portion (based upon quantities of water transported) of the first 23 miles of the North Bay Aqueduct which are used in effecting delivery throughout Solano County. The quantity of water available to Solano County is considered to be the capacity of the aqueduct at its intake at Lindsay Slough less the capacity of the aqueduct where it leaves Solano County at the Cordelia Pumping Plant.

The County of Solano has not yet adopted a policy with respect to the question of whether the State should sell water at a single price thus leaving the subsidization of agricultural use to the individual zones or whether the State should set one price for agricultural water and another for water put to nonagricultural uses When a decision on this matter has been reached, it will be transmitted to your committee

The Board of Supervisors of Solano County has not established any policy nor has it yet taken any position with respect to acreage limitation. The matter is currently under study.

It will be necessary that power be purchased from the State in the operation of the Calhoun Cut Pumping Plant of the North Bay Aqueduct Costs for pumping at this point of the quantities of water delivered to Solano County should properly be included in the cost of water.

The generation of electric power from falling waters released from the mountain reservoirs is an integral part of the upstream storage facilities We, therefore, feel that all revenues from the sale of such power should be applied to the repayment of the cost of the storage facilities Power revenues should not be devoted to subsidizing the water users of any particular class or locality but should be used to reduce the gross cost of the conservation and storage facilities to their true "net cost after power revenues" The charges paid to the State by the district responsible for each zone should include the fair market value of the power used in effecting delivery of water from the Delta Pool to such zone. We see no reason for the State to sell power for use by features of the Water Resources Development System at a cost lower than that at which surplus power may temporarily be sold to private utilities.

Solano County Flood Control and Water Conservation District proposes to subcontract water supplies to its member units, i e, irrigation districts, county water districts, municipalities, etc, for delivery from the North Bay Aqueduct The member units would in turn construct their own transmission lines and distribution systems This is the policy now followed by the county with respect to the water supplies from the United States Bureau of Reclamation Solano Project whereby the conservation district delivers water at turnouts from the Putah South Canal The Solano Irrigation District is presently constructing its own distribution system We feel that the cities and districts within the county have sufficient resources to finance these projects

No preparations are now being made to provide distribution facilities from the North Bay Aqueduct.

It is recommended that the contracts with the State be similar to those of the Bureau of Reclamation whereby the contractor for the zone has general taxing power and the contractual obligations constitute a general lien upon the lands served

A combination of a countywide tax imposed by the conservation district and payments made by member units would provide the funds to meet obligations to the State under a water service contract The member units in turn would raise the funds to meet their obligations to the conservation district by a combination of water charges and ad valorem taxes

Obviously, Solano County desires the greatest assurance possible of a firm water supply. We recognize, however, that there may be shortages beyond the control of the State. In such event, the State would undoubtedly reserve the power to

allocate available supplies We recommend that the State establish certain priorities of use by which municipal, domestic, agricultural and industrial uses would be superior to power, recreational, fish and wildlife and navigation uses We recommend also that, if other considerations are equal, priority of supply be given to the zone whose contract with the State is earlier in time

Solano County recognizes that there is a fundamental difference between the financing of water projects by the United States Bureau of Reclamation and the pay-as-you-go concept which is implicit in the Water Resources Development Bond Act of 1959 (Statutes of 1959, Page 4234, Chapter 1762, Senate Bill No 1106). To the extent that the California system is financed by bonds rather than the general funds of the State, costs must be met concurrently The State's costs rather than the consumer's ability to pay or benefit received would appear to be the guiding principle in the pricing of water sold by the State It follows that the State will not be able to contract to furnish water at a fixed unit price that will be unchanging through the years Rather water prices will of necessity be subject to escalator clauses that reflect changes in expenses of operation and maintenance with downward readjustments as bond issues are retired It would appear advisable to segregate and to state separately the State's water prices into two component elements, one for capital expenditures, i e, bond interest and retirement and another for operation, pumping and maintenance of storage and delivery facilities

(Transcript of November 5, 1959, page 278.)

STATEMENT OF JAMES F. SORENSEN

Friant Water Users Association

The Friant Water Users Association has as members 19 public districts on the Friant-Kern and Madera Canals in Madera, Fresno, Tulare and Kern Counties which distribute water from the Friant Unit of the Central Valley Project Most of these public districts lie within the boundaries of Tulare County and within Tulare County there are large areas which now are in need of additional water above and beyond that received from the Central Valley Project

The districts and areas represented here today are areas of long experience in seeking, receiving and using supplemental water supplies from the Central Valley Project as well as now seeking service from future projects.

This statement is based on a belief that it is imperative that agriculture must continue to grow in California to meet the demands of our increasing population. It is obvious that agricultural users of water are only able to pay so much for water which they need A delicate balance exists in maintaining this agricultural production with water at a price which agriculture can afford to pay without getting into some sort of a program where subsidies in the price of water create an impossible situation on a competitive basis with other segments of our economy both agricultural and otherwise

We feel that if there are no subsidies granted in the agricultural water pricing policies, there should be no acreage limitation Or if there is to be subsidy, it would seem fair to have some method by which the excess landowner would repay the subsidy, thereby eliminating any unfair advantage All lands used for agricultural purposes are entitled to the proportion of benefits from projects of which these lands are a part so long as they pay their proportionate share of these costs Many of our districts operating under federal acreage limitations find that there are serious inequities in enforcement of the law In certain instances, idle lands are forced to pay for distribution systems which are of no benefit to the lands in question

The member districts of the Friant Water Users Association and all areas of Tulare County are now served by either the Pacific Gas and Electric Company or the Southern California Edison Company and there have been no recent steps to purchase power for public distribution

We feel that the State of California should market power at its market value and at not less than its unit cost of production It seems to us that these factors are much more important than the matter of a marketing preference to public agencies There are only two salable items from these projects—water and power, and it is obvious that the revenues must be maximized to make a feasible project.

In this connection, all beneficiaries including recreation and salinity control should return costs of construction so far as these costs are within their ability to repay. It is our belief that reimbursable costs should include all those functions which are not of general benefit. We feel that fish and wildlife uses are not of any more general benefit to the people of the State of California than irrigation uses and on this basis we feel that fish and wildlife uses of water should be paid for on a reimbursable

basis If uses such as fish and wildlife are to be classed as nonreimbursable because of their general benefit to the people of the State, then repayment of costs for most of the other uses should be paid for partially from state funds since there is indirect general benefit

Along these lines, it might be pointed out that many irrigation and water districts in the San Joaquin Valley have long imported and developed water supplies of tremendous benefit to metropolitan areas which in most cases do not pay anything toward the expense of the districts

The prices indicated in Bulletin No 78 are for water on the west side of northern Kern County and whether this price would hold for the east side of the San Joaquin Valley is not known We feel that such a price nears the upper limit which most San Joaquin Valley areas can pay for water at canal side Furthermore this price is probably above that payable for most field and forage crops and we assume that there would be reluctance on the part of potential purchasers to buy water at these price levels

Development of water supplies in areas where present use is agricultural and the future use will probably be municipal and industrial may call for some kind of special rate structure It is obvious that it is not proper governmental planning to bypass forever areas not now in development in favor of richer areas which now need water

In the San Joaquin Valley, much of the increased agricultural water demands have been due to the dislocation of Southern California agriculture because of the great demand for land by subsidized United States defense operations Another important point in this regard is that it is oftentimes the best irrigated area which is taken over for urban uses

Water user organizations would have varying financial capabilities to finance irrigation distribution facilities In areas already developed where gravity systems could be utilized, probably financing would be readily available For areas not yet developed where high pressure distributions systems would be required, some financial difficulty, no doubt, would be encountered

In any event interest charges are a substantial item and it should be noted that many districts in our area use federal loans, with no interest, to either construct their own systems or to have the federal government do the construction

Our water districts, irrigation districts and utility districts have powers of assessment enforceable by tax sales to guarantee repayment in the unlikely event that project operation and maintenance costs and repayment cannot be met from normal assessments and water tolls

Generally speaking, approval or authorization of the obligations by the California Districts Securities Commission requires that a dependable supply of water at a price within the ability to pay must be assured

Where water is delivered for any use, it seems evident that some provision making the water appurtenant to the land upon which it is used is absolutely necessary Financing would require such provisions Lack of assurance of the permanency of the water supply might imply possible intent to withdraw such water from an area in question and this would not be in the public interest

Water rights are property rights and as such are based on a priority system In this connection, it should be noted that units which contract for water supplies from state or federal units should have some assurance that their water supplies will not be reduced by later developments In particular, where districts have already expended large sums of money for distribution systems they are entitled to assurance that project water supplies will not be oversold thereby resulting in more areas being short of water rather than less areas being short of water Means to assure this might be to either limit the later supplies to those available after satisfaction of earlier contracts or to guarantee that only certain supplies would be placed under contract from certain projects

If it becomes necessary to raise rates for water due to increased operation and maintenance costs, it would seem equitable that costs of water be increased if repayment ability exists The contracts should provide for escalation only at expiration of 20-, 30- or 40-year periods It should be possible to determine costs for many years in advance and it is only equitable that a farm operator know what his base cost will be As to increased costs for further development this is a matter requiring considerable exploration and study Certain base costs for fundamental units might be included in water pools, but costs of complete facilities should be recovered from the respective units served

(Transcript of November 6, 1950, page 297)

STATEMENT OF WILLIAM B. STAIGER
Agricultural Council of California

The Agricultural Council of California (is) an organization representing 67 farmer-owned and operated co-operatives in California with a combined membership of 93,000 agricultural producers. We are vitally interested in the subjects currently being studied by this assembly interim committee on water. We do not pretend to speak for each and every farmer, but we do believe that our policies do reflect their majority thinking.

We are concerned, however, with numerous policy questions as yet unanswered which will substantially affect the direction which water development takes, and because of the importance of water to agriculture in this State as well as to many other important industries, the answers to these questions will substantially affect our State's future economy.

May I make it clear that as of this moment our organization does not have a definite policy or position with respect to the bond election resulting from passage of the Burns-Porter Act. Answers to such important policy questions as acreage limitations, power preference and other subjects being studied by this committee will in large measure determine our position between now and election date in November 1960.

It has been my pleasure to read some of the testimony already presented to your committee, and our organization is in general concurrence with the testimony presented by the Irrigation Districts Association and the California Farm Bureau Federation. We consider these groups to be eminently qualified on many of the issues your committee is studying.

We are unalterably opposed to acreage limitations of any size or in any form, since they place undue restrictions on success and serve to stifle initiative. The average acreage of Californian farms today is slightly over 300 acres. Under the economic pressures resulting from the need for increased mechanization; a revolution in marketing procedures resulting in fewer and fewer buyers; and a continually wider spread between the prices paid by farmers for their production materials and the prices received by farmers for the things they produce; the size of California farms is destined to increase if the farmer is expected to have an economic business unit.

Acreage limitations would, in our opinion, tend to prevent or discourage the development of an economic unit. With respect to the use of acreage limitations to encourage family-size farms, we fail to see where the imposition of acreage limitations would in any way benefit the so-called family-size farmers, and could serve to prevent many small farmers from developing an economic unit in our rapidly changing agricultural picture.

At this point, may I state that we are strong supporters of family-size farms and consider them to be the backbone of our agricultural economy. We are convinced that they are here to stay. In our opinion, the majority of 123,000 California farms listed in the 1954 census of agriculture are family owned and operated. However, the family-size farm of today, like everything else in our economy, has had to grow in size and efficiency to keep pace with modern living conditions, or fall by the wayside. Thus the family-size farm of today is no more like the family-size farm of 50 years ago than is the average industrial plant, retail store or home comparable to its predecessor of the early 1900's or even the 1930's. This growth in size and efficiency is the only way possible for us as a nation to raise our standard of living to the high level we now enjoy.

We hold that all users of state-developed water should pay their full proportionate share of the cost of developing and delivering this water to them and are therefore favorable to a "delta pool" price which will recognize all of the normal cost and price factors, including volume differences between the various purchasers. We support the idea that from the "delta pool" the water should be sold through contracts negotiated with irrigation districts, cities, counties, or other local entities, who in turn will establish their own pricing schedule to the ultimate users. If this policy is practiced, there will be no so-called "unjust enrichment" as the enrichment which will result from full use of our State's water resources will accrue to the benefit of all citizens. The members of this committee are undoubtedly far more familiar with the Burns-Porter Bond than are members of our organizations, but for the moment, let us review our analysis of the built-in protections now in the act against any unjust enrichment.

a. All taxable property of the state, of which agricultural land and implements comprises a large portion, will be used to guarantee repayment of the bonds. There-

fore the property owners are not being subsidized through the use of free state credit as is often claimed.

b. The providing of a stable water supply is often given as a reason why the irrigation farmer is being enriched unjustly by this program. We submit that an adequate water supply is essential to all segments of our economy, not farming alone. Furthermore, farmers' use of this water supply is solely for the purpose of improving their agricultural production, which if accomplished, cannot help but be reflected in greater revenue for the state. Finally, under the program as we would like to see it developed, all property owners will pay their full allocated costs for all the water they use.

c. Another example of so-called "unjust enrichment" is the enhancement of land values by reason of an adequate supply of water. While there is no question that land values will increase as water is more readily available, here again, the State benefits directly through higher taxes on the land and indirectly through increased production and a higher cash value of agricultural crops. We must also bear in mind that all lands, whether farming or not, will be enhanced by reason of this water project.

(Transcript of November 6, 1959, page 328)

STATEMENT OF WILLIAM P. PRICE
United Water Conservation District of Ventura County

As background for United's position, the following brief description may be helpful. United is a water conservation district organized under the Water Conservation Act of 1931. It comprises all of the Santa Clara Valley within Ventura County and essentially all of the Coastal Plain from the City of Ventura on the north to the Pacific Missile Range at Point Mugu on the south. Approximately 85,000 acres of the district are highly developed urban and agricultural lands. This includes the majority of the irrigated agricultural lands of Ventura County. An additional 25,000 acres are susceptible of ultimate development.

The district includes the cities of Oxnard, Port Hueneme, Santa Paula, Fillmore, and Piru, and a portion of the City of Ventura. It also includes the Pacific Missile Range at Point Mugu, the Naval Construction Battalion Center at Port Hueneme, and the Oxnard Air Force Base.

Population of the district is in excess of 85,000 and growing rapidly. Assessed valuation of the district has increased from approximately $72,000,000 in 1951 when the district was formed to approximately $180,000,000 for the year 1959-60.

Development of local water resources was begun in 1928 by United's predecessor organization with the construction of the Piru Spreading Grounds. In 1929 the Saticoy Spreading Grounds were built. United completed Santa Felicia Dam on Piru Creek, enlargement and improvement of the Saticoy Spreading Grounds, construction of a new spreading area at El Rio, a pipeline and terminal reservoir for the Pleasant Valley area, and a pumping plant and pipeline to the Oxnard and Port Hueneme areas under a local bond issue program in 1955.

Planned development of additional local surface and ground water resources will permit the district to meet its water needs until such time as imported water is available under the State Water Plan. Engineering studies by United, and confirmed in the State's studies, indicate an ultimate need for substantial quantities of imported water to meet our ultimate needs. United is therefore vitally interested in seeing the State Water Plan move forward on an orderly basis. We are also interested in the development by the State of a form of water delivery contract that will insure to the State the return of its investment by the beneficiaries of the project, and at the same time provide the users of water a contract under which local contracting entities can distribute water under long established precedents and policies of existing water laws.

(The material) set out below takes into account the fact that United's present operations involve a conjunctive use of surface and underground water resources; that any imported water would be comingled and therefor unidentifiable; and that United is representative of substantial urban, agricultural, and public interests all of which benefit from United's present program and will share in the benefits of any importation program.

It is the opinion of United's board that no acreage limitations should be imposed by legislative action or in the water contracts. Since we understand that the State contemplates being reimbursed, with interest, for its expenditures, no subsidy is involved for any areas. United agrees that benefited areas should repay in full the costs allocated for the delivery of water to those areas. Having done this, any

contracting entity should be free to distribute the state water to any of its taxpaying landowners and users without restrictions. No limitations were included in the legislation which was passed. In our judgment, no limitations should be added now. Any attempt to do so may well jeopardize the entire project.

In the case of the United area, imported water would be supplemental water and would be comingled with natural local supplies. Identification would be impossible. Administrative problems would be created with no practical means of solution. Any attempt to exclude holders of more than 160 acres from participation in the importation program would merely mean that they would continue to draw on local supplies to meet their needs without contributing to the cost of the importation program. The financial burden would be transferred to the small landowners and the urban areas which would obviously be inequitable.

There is the further possibility that nonparticipation of large areas of the State, because of acreage limitation, would jeopardize the feasibility of the project. If large areas failed to participate, the unit cost of water under a project of reduced size would be higher, and many areas that would otherwise be able to participate would not be able to afford the higher cost water. Thus the adverse effects would pyramid, quite possibly to the point where the project would no longer present the sound financial feasibility that will be necessary for the sale of project bonds.

Our attorney indicates that under the rule established by the California Supreme Court in the Ivanhoe case, there is doubt that the State can legally impose any acreage limitation. It is not wise to invite litigation of this point to complicate an already complicated matter.

In the circumstances, therefore, it is United's opinion that since no subsidy of water costs is involved there is no basic justification for the State or the water distributing agencies to discriminate between taxpayers on the basis of acreage owned. United recommends against any acreage limitation in the legislation or in the water contracts.

Under present plan, United contemplates no requirement to purchase power from the State. It is possible that the converse may be true with some of United's future development, and that United may wish to dispose of power or the energy of falling water.

It is the belief of the United board that the Feather River Project must be recognized as a water project; the development of power is incidental to the primary purpose of the project, and the total power to be developed will be less in any event than the power required. Thus the project will be a net consumer of power.

Since the power developed will be incidental to the primary project function, it should be utilized directly for project purposes such as pumping, or applied to project purposes through exchanges with other power agencies along the project route on the most favorable possible basis or disposed of by sale on a competitive basis. In the event of equal proposals for the sale of power, public bodies could be given preference. This preference should be a matter of priority between equals only, however, and not of price.

It is the belief of United's board that power revenues should not be used to subsidize agricultural water or any other special class of service. Power revenues should be applied to the overall project to reduce the cost of water to all users.

To the extent that subsidized agricultural water is cheaper than water to other users it encourages waste through improvident farm practices. This in turn will create a requirement for more water and correspondingly larger facilities. The overall cost of the project would be increased, thereby nullifying, at least in part, the effects of the subsidized water program.

The State should dispose of water as a wholesaler only, leaving to the local contracting agencies the determination of whether there shall be any differential rates for water distributed.

United is therefore opposed to any power preference, so far as price of power is concerned, and is opposed to the use of power or other project revenues to subsidize the cost of water to any special class of users.

United plans to contract with the State for imported water to meet its ultimate requirements. Its staff has been directed to co-operate with other agencies working toward a satisfactory form of state contract. However, the amounts and prices shown in Bulletin 78 are not firm enough for United to agree categorically at this time to a contract on such basis. Furthermore, the terms and form of the contract must be known before United's board can determine whether such a contract would serve the best interests of all of its constituent areas. It is possible, too, that United will be a part of some larger contracting agency and would not then contract directly with the State.

With the state facilities at the locations presently contemplated and shown in Bulletin 78, only a minimum of facilities would be required to discharge water into the upper reaches of Piru Creek near Bear Trap Reservoir north of Castaic. From this point the water would follow natural channels to Santa Felicia Dam and thence down the Santa Clara River to ultimate points of use.

In any event, United has the financial capacity to construct the necessary distribution facilities to utilize the water, whether through Piru Creek or by other routes the State has studied.

Plans and studies are in progress for expansion of United's present facilities to provide additional distribution lines to points of need on the Coastal Plain and elsewhere. A recently completed "Plan for Ground Water Management," made for the United District, outlines the basis for utilizing the imported water for both quality improvement and ground water recharge as a part of United's conjunctive operation of surface and ground water resources.

Taxes on the full tax base of the district are the basis of support for the present improvements constructed under a local bond issue. The same base would be available for other water projects approved by the voters, including a contract with the State.

(The method we would use to pay for both the capacity allocated to us and the water delivered) would depend on the terms of the contract and future circumstances. For example, in the future some replenishment assessment provisions might be adopted similar to those for Orange County. In this case, the funds might be secured from the assessment or from a combination of the assessment and ad valorem taxes. Under the present circumstances, the funds would have to be secured from ad valorem taxes since there is no way for direct water sales where the water is commingled with local supplies and transported largely through underground gravels.

(The contract commitments we would need from the State would be) an acceptable form of contract which assures construction of necessary facilities by known dates and a satisfactory formula for adjusting the price of water from time to time to reflect the utility concept of additional projects to supply the Delta Pool, and to reflect increases or decreases in the cost of operation and maintenance. The formula should also define the adjustment that would result after the full share of the capital cost has been repaid.

With these questions cleared, the district could use its local financing ability to modify existing facilities or construct new facilities to accommodate water delivered from state facilities

(In a state contract we desire) assurance of continuity of water supply for the full life of the state bond financing program, and acceptance by the State of the "utility" concept of state responsibility for replenishment of the Delta Pool. It is believed that ultimately some reasonable basis of providing firm water rights can be worked out since the statewide problem is one of "distribution" rather than "shortage."

A means of adjusting water rates to reflect the cost of additional projects to maintain the supply in the Delta Pool plus the changes in cost of operation and maintenance would be necessary in order to be consistent with a policy of recovering the State's full costs from contracting water using agencies.

Conversely, costs should be reduced when appropriate to reflect payoff of capital costs.

(Transcript of November 6, 1959, page 339)

STATEMENT FILED BY E. K. DAVIS
California Municipal Utilities Association

The association is composed of some 50 municipally owned California utilities and utility districts located throughout the State of California and serving areas from the Mexican to the Oregon borders. Association members provide about 70 percent of California's population with one or more services such as electricity, gas and water. The large metropolitan areas such as Los Angeles, San Diego, Long Beach, San Francisco and Sacramento are members. Also, the association is well represented by small rural communities throughout the State. The association has a vital interest in the state water program and is pleased to provide the committee with its views on some of the difficult problems being studied.

The association wishes to discuss two major items: (1) the granting of a preference to public agencies in the purchase of water and power and (2) the pricing

of these commodities With respect to the first item, the California Municipal Utilities Association over the years has repeatedly supported the preference provisions of federal law. Likewise it favors the application of those principles to the California water program A brief statement of the association's position was set forth in a resolution adopted at its annual convention 1957 It reads

"1 That electric power and water developed at projects of the State should be disposed of in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles;

"2 That preference in the sale of such power and water developed at such projects should be given to public agencies,

"3 That this Association urges the Legislature of the State of California to enact legislation which will incorporate the principles set forth herein"

This committee of course knows that the essentials of the federal preference law are included in the State Central Valley Project Act which appears as Section 11626 of the Water Code. However, the association would invite the committee's attention to the fact that the language of this section leaves one obvious uncertainty which we believe should be clarified The section grants a preference "in case of equal or equivalent offers" This may well be interpreted as opening the door to competitive bidding for both water and power In the association's view this would nullify the whole philosophy of the preference law which is designed to distribute the benefits deriving from public expenditures to the general public through nonprofit local and state public agencies Moreover, the association feels this is not the kind of preference which was intended It believes it was intended that the State should fix a price for the commodities available from state projects after which public agencies should be given a prior right to purchase In any event this is the type of preference which the association supports

With reference to pricing, the association believes that prices should be established for municipal and industrial water and power and irrigation water which will repay with interest the full amounts allocated to those functions over the repayment period It believes that no one commodity made available from a state project should be used to subsidize another—directly or indirectly By the term "indirectly" the association refers to the matter of cost allocations The amounts allocated to the various functions should reflect only the contribution to each function from each project and no more Costs clearly identifiable with a particular function obviously should be allocated to that function For example, irrigation canals should be allocated to irrigation. Joint costs should be allocated on an impartial basis avoiding any efforts to assign costs to that function based on the top price attainable for that commodity in the market This is particularly important with respect to municipal and industrial water and power It is here that there may be a tendency to "over allocate" in order to effect an indirect subsidy

Although there are other aspects of the water program of great importance to the association, these have not yet been discussed by the members and as yet no position has been taken Following the annual convention to be held the first of next year, the association may be able to advise you of its attitude on other problems

(Transcript of November 6, 1959, page 361)

STATEMENT OF JOHN R. TEERINK

Department of Water Resources

At previous hearings in Quincy, Redding, Bakersfield, San Luis Obispo, Los Angeles, San Diego, and San Francisco, a representative of the Department of Water Resources has appeared before and submitted a statement to the committee in response to the committee's request The department's statements have included answers to specific questions asked by the committee in letters to the department The questions have dealt with many aspects of financing, operating, and management of the state water facilities in its various service areas Today's statement primarily concerning the service areas in Fresno, Kings and Tulare Counties will, when combined with previous statements, compose a general picture and description of the physical situation and of the department's findings and plans as regards the state water facilities

A substantial growth of population in Fresno, Kings, and Tulare Counties is envisioned over the foreseeable future if the necessary economic base can be pro-

vided. Since the agricultural areas in the eastern portion of the counties are largely developed for irrigation, most of this population expansion would be urban in character However, the initial areas of project water use on the west side of the San Joaquin Valley are for the most part presently utilized as dry land pasture with few permanent residents These areas are therefore expected to show a relatively large population increase with the advent of irrigation water service and subsequent intensification in land use The population in these project service areas is expected to be predominantly rural in character.

The projected rate of population growth by counties for the period ending in 2020 is as follows:

Year	*Fresno*	*Kings*	*Tulare*	*Total*
1950	277,000	47,000	149,000	473,000
1960	376,000	53,000	153,000	582,000
1970	487,000	78,000	176,000	741,000
1980	695,000	102,000	225,000	1,022,000
1990	1,180,000	140,000	345,000	1,665,000
2000	1,520,000	192,000	500,000	2,212,000
2010	1,860,000	275,000	720,000	2,855,000
2020	2,200,000	410,000	980,000	3,590,000

The present economy of the three counties is based primarily upon the production of agricultural commodities with petroleum production and light manufacturing being of secondary importance. Assuming that the basic employment pattern of the three counties parallels that of the Central Valley as a whole, over one-third of the manufacturing labor force is estimated to be engaged in processing farm products originating locally. Also it is estimated that over one-third of the employees in wholesale trade activity are engaged in assembling and packing agricultural products and almost an equal proportion of the transport workers are engaged in hauling agricultural commodities.

The significance of agriculture in the present level of economic activity in the three counties is readily apparent. Although the future outlook indicates that they will show an overall rising trend of urbanization with the passage of time, agriculture is still expected to constitute their economic mainstay over the long-term future. Provision of a water supply adequate to maintain the present level of irrigated agriculture as well as permit its further expansion is therefore considered essential if the previously indicated future growth potential is to be realized

As a general rule, it has been determined that for each person engaged in the basic extractive industries such as agriculture and petroleum production and processing in the Central Valley, two additional persons are engaged in associated transportation, construction, trade, services, and public administration activity A total of seven people are thereby assured a livelihood It has been further determined that the equivalent of one full-time agricultural job is provided by each 20 irrigated acres Therefore, in terms of a water requirement of three acre-feet per irrigated acre, it follows that each 60 acre-feet of project water could be considered to provide three jobs and economic support for seven persons

The initial economic effect of project irrigation water service on the service area under consideration will be generally limited to lands which presently have no water supply. Therefore, it is likely that project water at the outset will make possible the creation of new farming enterprises. Thereafter, as project water deliveries increase, service will largely be on a supplemental basis with project water serving to maintain present levels of irrigated farming

Our present estimates indicate average payment capacities for the service areas in Fresno, Kings and Tulare Counties for which project water is contemplated to fall within a range of $12 to $15 per acre-foot, measured at canalside In deriving these values, provision has been made for an incentive allowance which is considered adequate in the light of the varied nature of farm operations characteristic of the area Provision has also been made for costs which will be incurred in conveying and distributing water from the aqueduct to farm headgates

Prospective service areas in Fresno, Kings and Tulare Counties include both organized agencies and presently unorganized lands The largest organized entity within this service area is the 1,165,000-acre Kings River Conservation District in Fresno and Kings Counties which includes some 23 individual irrigation districts, reclamation districts, water storage districts, water ditches, and individual farms

and ranches. Lands irrigated in 1958 in this area amounted to 938,000 acres In addition to this agency, there also are portions of three other agencies which are primarily in the presently indicated service area of the federal San Luis Project but portions of which extend outside that area and which could receive water from the state project A reappraisal of the federal service area boundary by the U. S. Bureau of Reclamation might change this situation The concerned agencies are the Westlands Water District, the Panoche Water District, and the San Luis Water District.

The foregoing four organized entities embrace a total of 1,340,000 acres in the three counties which could be served water from this combined federal-state aqueduct system Irrigated acreage in this area amounted to 1,024,000 acres in 1958.

The unorganized lands occur for the most part along the fringes of the service area in western Fresno County, southern Kings County and southwestern Tulare County. In total, they account for a relatively small portion of the potential area for project water service.

As pointed out in the earlier part of this statement, there will be a future demand for water on presently undeveloped and unorganized lands in Fresno, Kings and Tulare Counties Contacts with these areas have been very general in nature with no detailed contract discussions.

In the presently organized Kings River Conservation District a comprehensive study of land use and water supply has been conducted This has been a co-operative investigation with the district following an agreement between that agency and the Department of Water Resources. The results of this study indicate there will be a demand for over 1,000,000 acre-feet of supplemental water for the district by the year 2000. Discussions have not as yet advanced to terms of contractual obligations.

(Transcript of November 6, 1959, page 380)

STATEMENT OF JOE APPLETON
Southern Ventura County Water Association

Received by Mail, October 26, 1959

The Southern Ventura County Water Association, though not a political entity, is greatly concerned with the ultimate success of the Feather River Project and the delivery of project water to the Oxnard Plains area, as well as the entire County of Ventura.

Ventura County, though one of the more seriously deficient water areas in the State of California, will not have, under the existing plan, any direct service connection within the county to the state project, which could be a serious disadvantage to us.

Ventura County's water problem is now in the hands of a variety of entities, each concerned with its local problems and in many instances, widely divergent in general objectives.

Obviously, an organization with the longevity of three months cannot have all the answers to all of the questions you have provided for answer, nevertheless, we should like to co-operate to the best of our ability and give you our views relative to your questions wherever possible.

On the basis of total repayment of the project cost by the water and power users, it would appear on the surface impractical if not impossible to make such a formula work if a provision of acreage limitation were written into the project. Family sized farms under today's economy is vastly different than that which was economically feasible 20 or 30 years ago We feel no limitation should be imposed provided that costs, insofar as practical, will be borne by the ultimate users.

It has been our understanding since the father of the State Water Plan, Robert Edmonston, Sr, made his first presentation to the Legislature that this project was for the protection of our economic structure as well as the development of our economic future of the State of California. A policy of providing water to a select group of users could not possibly assure a successful project. The large land holders in Ventura County are few; however, their financial support through the purchase of project water would be of great importance in the ultimate unit cost factor

We do not foresee the need or desirability of entering into a (local) power distribution program

We believe that power, like any other commodity that is made available for purchase by a governmental agency, should be sold to the highest bidder without prejudice or preference. We further advocate that all revenues derived from the sale of power should be allocated to repayment of the cost of the project.

With the present number of unknowns relating to the available quantity of water at any given terminus point, and without any formula for the determination for the cost of said water at said point, to answer this question (on the quantities and prices shown in Bulletin 78), would be comparable to buying a pig in a poke A sound pricing policy formula must first be developed and presented to the areas of import Upon receiving such a formula from the State Department of Water Resources, we feel that contracting agencies within the county, or the county will be favorable to negotiating a purchase contract with the State of California

There is financial capacity within our area for construction of distribution facilities

We think the area of the Oxnard Plain has a tax base present and anticipated of size and stability to warrant its guarantee of costs

Either as a municipal water district or as a part of a county water authority it would appear mandatory that a given water supply be guaranteed before the public could be asked for a favorable vote on a bond issue to finance the construction of facilities for the transmission of Feather River water This is a practical matter

The answer to (the question of escalation of rates) could only be made after presentation of the contract specifying such terms and conditions as are outlined in the question, in far greater detail than are herein described; however, limitations should be imposed on such escalator clauses, again as a practical matter

STATEMENT OF JOHN THEODORE

Lassen County

Received by Mail, October 23, 1959

In response to your request of August 21 my board makes the following recommendations:

At the outset (recreation) will have no appreciable effect upon our economy However, after a period of time it will enhance the economic growth of this area and bring about a certain stability not now existant With a lagging economy, and a slight decrease in population, any factor such as recreation inevitably will increase the economy of Lassen County.

The operation and maintenance of the recreational features should properly be handled by local district or public agency The needs of the community are local and by handling this matter at the local level greater economic benefits can inure to the community in which the facility is located

Inasmuch as this county has had no experience in connection with this (recreation) type of a facility, it is impossible to make any concrete suggestions concerning the same However, any business, including recreation, should attempt to be self-sustaining and not to be dependent upon tax levies entirely for its existence Therefore, the collection of admission fees, lease of lands for private development and other similar fund raising programs should be developed toward the end of either repaying for the cost of the construction or for maintenance and operation after construction is completed.

If, however, a feasible agreement could be worked out between local and state and federal or two of these agencies for contribution towards the development and construction of such facilities the same should be explored

However if the State or other agencies assist the local agency in the construction of a facility then admittedly a contract for reimbursement over a long term basis should be negotiated unless, however, the facility establishes hydroelectric power plants which in themself could pay the initial cost

There are no known agencies or co-operatives in this area interested in purchasing hydroelectric power from a state project However, there has been some indication that state authorities have been contacted in connection with the Allin Camp Reservoir in the northern part of Lassen County for the sale of water

No dogmatic and unequivocal answer can be given to (the question of acreage limitations) It is felt that the size of acreage should depend upon climatic conditions, length of growing season and soil productivity in determining limitation of acreage

In closing, this board recommends to the Interim Committee that they request that the Governor call a special session to clarify specific questions regarding Senate Bill No 1106 and the $1,750,000,000 bond issue

STATEMENT OF A. K. HILL
Calleguas Municipal Water District

Received by Mail, October 23, 1959

The Calleguas Municipal Water District, comprising approximately 175,000 acres of land in the southeast part of Ventura County with an irrigable area of over 80,000 acres, is in dire need of a supplemental water supply Of this acreage, only 25,000 acres are irrigated at the present and 3,500 acres are in municipal-type developments.

Declining water tables, poorer quality water (total dissolved solids 1,300 ppm to 2,700 ppm), abandonment of wells, and inadequately irrigated crops all bear mute testimony that something must be done if the present development of the area is to survive Further, more and more people are taking up residence within the district Their selection of this area as a place to live is due no doubt to the many excellent attributes it possesses, but the water supply problem is becoming more critical as a result.

Due to this pressing water situation, the Calleguas District has taken steps to develop local supplies to permit the present and some future development to survive until water is available to the county from Northern California

The directors of Calleguas favor a countywide organization to contract with the State for water service to Ventura County. However, at present not such organization has been formed and without such a county unity, Calleguas may in all probability contract directly with the State for water service from Northern California.

On the basis of local contracting agencies having to repay the State for the capital costs of the proposed water service facilities, including interest on the bonds, it is believed that there should be no acreage limitation imposed However, if an irrigation subsidy is made possible from revenues derived by the sale of power, some form of limitation could be considered, whereby large landowners receiving water for lands in excess of 160 acres would be required to pay an additional amount equal to the subsidy. For the encouragement of family-sized farms, each local contracting agency could determine some form of subsidy to landowners irrigating 160 acres or less, the subsidy to be met by charging a higher rate to the large landowners This problem should be solved by each local contracting agency.

The area within this district is adequately served by the Southern California Edison Company (and does not wish to purchase power from the State).

Surplus project power developed by the State should be sold at the bus bars to public power utilities or public entities in order to obtain the maximum revenues and insure the least cost of operation and maintenance and minimum construction obligations

Until a form of contract is prepared and the conditions known, it would be unwise to state a willingness to contract for the amounts of water outlined in Bulletin 78 This district in all probability will require more water than the amounts shown in Bulletin 78 The price for water service to Ventura County as shown in said Bulletin 78 was evidently determined on the basis of a slow build-up over the 50 year payout period Present and future estimated growth is much larger than estimates used in the bulletin, with the phenomenal predicted growth in the south and eastern parts of Ventura County with a corresponding water use It appears that the water rates should be comparable to similar service to the M W D. at Balboa terminal (Approximately $40 per acre-foot)

There has been no county program devised to bring water into Ventura from the proposed terminal at Balboa Boulevard Should the main water service facilities be constructed by the county to serve the major areas, there would be available financial ability However, countywide participation seems doubtful and if the Calleguas District has to finance the construction facilities, there would be some question as to our present ability

This district is currently making a study to determine the feasibility of importing water into Ventura County from the M W D of Southern California Location of the main line across the San Fernando Valley is being planned so that when water is available from the state project it could tie into that line and utilize the same facilities

Taxes on the entire district (both secured and insecured) would guarantee repayment (Present assessed valuation $61,000,000; estimated assessed valuation 1970—$185,000,000.)

The board of directors of this district have not as yet set the policy as to how imported water and water service facilities within the district will be repaid. However, under the Municipal Water District Act, payment could be made in one of three ways (1) taxes; (2) revenues from water sales and (3) combination of taxes and water sales.

A form of contract stating quantity of water and costs to be incurred by the district and related terms would be needed before an election could be held committing the district electorate to repay distribution facilities.

The water supply provisions outlined in a contract should assure a continuity of such service over the life of the repayment period. This repayment period should include the repayment period of the local distribution facilities as well as the state project. Repayment to be made over a 50-year period. Should there be an overall water shortage, there is need to include a proration clause in the contract guaranteeing an equal proration to all users including the areas of origin.

Escalation of water rates to cover increases in future operating and maintenance costs could be set out at 5 or 10 year intervals in a provision of the contract. A board should be established to govern and set the O and M rates equitably to all users within the project. The contracts should also contain a clause whereby the rates would be changed (either increased or decreased) due to costs of construction of additional facilities providing water to the Delta pool for distribution among the various contracting agencies. There should be no penalty imposed upon areas requiring supplemental supplies at a later date.

University of California, Davis, California
Giannini Foundation of Agricultural Economics

CURRENT TRENDS ON CALIFORNIA FARMS [1]

THE FAMILY FARM CONCEPT

The term, "family farm," has meaning only in the management sense, the family is the typical and most usual management unit in American agriculture. "Family farm" is misleading to indicate physical farm size; it tends to generate and perpetuate erroneous and harmful misconceptions. There is no regular and consistent relationship between the number of acres in an efficient farm and family management capacity. The number of acres varies widely according to land and other resource characteristics, kinds of products, geographic location, market outlets, capital available, amount and kind of education and experience of family members, and other important factors.

Family farms in the United States include a range from the subsistence unit, to the highly efficient commercial farm. Most of the *20 percent* of American commercial farms that produce *80 percent* of the products marketed are "family farms", so, too, are those included in the remaining *80 percent* of all farms that produce about *20 percent* of products marketed. Trends throughout the United States during the past 20 years have included sharp declines in all farms and in the 80 percent group of noncommercial farms, gains in percentage importance of commercial farms, increased average farm acreages, and tremendous gains in mechanization and output per worker. These trends continue today, and *tomorrow's efficient farm will be larger and more mechanized than that of today.* Corporation farms produce a relatively small percent of farm products marketed, and all outstanding stock in an important number of these corporation farms is held by members of one family. Thus many such farms are family management units.

The price-cost relationships that have prevailed during most of the period since the end of World War I continue to exert powerful pressures on farmers to improve efficiency. Adjustments in the future, as during the past 20 years, will include increasing mechanization, acres per farm, and output per man in order to obtain adequate total farm net incomes in spite of declining farm prices, and increases in many cost items. Thus differences among farms and farmers in farm acreages per farm and other physical characteristics for an efficient farm may widen. Certainly, the usefulness of acres alone as a measure of an adequate family farm is not likely to improve above its present unreliable status.

[1] Trimble R. Hedges, Giannini Foundation of Agricultural Economics, Davis, 30 November 1959. (Prepared at the request of Director George L. Mehren for use by Legislative Analyst's Office and Assembly Interim Committee on Water.)

FARM PRICES, COSTS, EARNINGS, AND EFFICIENCY

United States and California farms have increased in size throughout the present century, the trend has accelerated during recent years This is true regardless of whether we measure in acres, other physical characteristics, or dollar magnitudes United States farms increased from an average of 174 acres in 1940 to 242 acres in 1955 California farms average 230 acres in 1940, and 307 acres in 1955 Numbers have decreased for both, from 6 1 millions in 1940 to 4 8 millions in 1955 for the United States, and from 132 6 thousands in 1940 to 123 0 thousands in 1955 for California Commercial farms gained more than all United States farms in size, the average for them in 1955 was 310 acres. Commercial farms with $5,000 or more in annual sales also gained in actual numbers, while the total of all farms decreased.

During the period 1940 through 1955 the relative importance of census-defined "commercial farms" in total marketings has gained tremendously, those with $5,000 or more in annual sales accounted for 79 percent of all United States farm product sales in 1955. Census data for 1955 also indicate that California annual sales for 89,000 commercial (out of 123,000 total) farms distributed as follows according to significant farm characteristics.

Commercial class	*Value of products*	*Number of farms*	*Average value of land and buildings (thousand dollars)*	*Percentage of total value of product*	*Percentage of total expenditure for hired labor*
I	$25,000 and over	18,225	217	74	79
II	10,000-$24,999	20,125	68	15	11
III	5,000- 9,999	18,825	41	6	5
IV	2,500- 4,999	15,697	30	3	2
V	1,200- 2,499	12,922	25	1	1
VI	250- 1,199	3,452	20	1	2
		89,246		100	100

If scientific discoveries and improved technology have been the means whereby farmers have been able to increase farm size and output per worker, then the competitive economy and the price-cost squeeze have operated to stimulate and even to force these adjustments No question should remain that unfavorable farm product selling prices bear heavily on farmer earnings Twenty years of ruinously low farm prices between the two world wars, climaxed by the existing government price and income support programs, speak for themselves The problem remains unsolved; actually, the downward trend in farm earnings that began in 1952 and has continued since, except for 1956 and 1958, is worsening Farmers will receive lower returns in 1959 than in 1958, and still smaller earnings are expected in 1960 Increased prices for the goods and services that farmers buy and use in producing their products has aggravated the farm price declines and generated the price-cost squeeze. Farm operators, caught between the two, find their earnings dropping each year

There is little possibility that a lessening of the price-cost squeeze will occur, and permit farm incomes to improve markedly during the next several years Farmers have found it impossible to exert effective influence on their selling prices, either individually or collectively Even the government price support programs have failed to resolve farm price and income difficulties Two facts largely explain this impasse: (a) consumers' stomachs are relatively inelastic—they can hold only limited quantities, and expanded purchases as market prices drop, therefore, offer only limited support, and (b) farming is a highly competitive industry in which no controls yet tried have proved effective for limiting production to levels that the market will take at the established price supports

Since farmers can't control their selling prices, they concentrate on cost and volume, the other two factors that jointly regulate net earnings These latter two are directly related, to the extent that the farmer can increase volume produced while holding costs at the former level, or at least not allowing them to increase in the same proportion as production, he can lower costs per ton, box, or other yield unit. Success in this effort means higher farm earnings—if selling prices do not decline, or buying prices rise, too much At any rate, this universal effort by commercial farmers to reduce costs per unit of product largely explains the tremendous changes in California and United States agriculture during the past 20 years Farmers have com-

pletely reorganized their operations in their attempts to meet market conditions and improve their production efficiency.

Farm earnings differ from those of any other major industry in that the proprietor—the farmer—is simultaneously laborer, capitalist, and manager. His earnings, therefore, actually include three elements: wages, interest on his investment, and a managerial return. The latter two commonly are lumped together as "profits," after deducting from net farm income an allowance for the value of the farm operator's own. This triple status for farmers permits those who are willing to do so to accept below market rate returns for one or more of their functions, sometimes for extended periods. Historically, many farmers have done just this; they have continued to farm even though the profits remaining after allowing themselves the same rate of wages that they pay hired workers actually represent little or no return on their investments. Quite regularly capital earnings are less than they could get for this money if they loaned it out, or invested it in stocks or other securities. Thus they receive wages equivalent to hired farm laborers, interest on their capital at less than the going market rate, and nothing for management as such! Farmers do this because they hope for better returns in the future, because of the difficulty in finding a market for their land and equipment, for lack of alternative occupations, or for other reasons. The sharp drop in numbers of farms and farmers during the past 20 years evidences that many are not willing, or able, to continue such substandard earnings permanently. It is important, too, that many farmers do not own the land that they operate; they rent or lease it from year to year or on longer term leases. This fact helps explain why more people have not left farming. Land held by estates or nonoperating owners may remain in production for long periods, even though rents do not leave enough after taxes and other costs to equal alternative earning opportunities for the capital invested. The tenant operator may fare somewhat better than the landlord who owns the real estate under these arrangements; it may be better for the tenant to rent than to own, and thereby to obtain a higher return on his capital than if he had it in land.

Farmer efforts to increase efficiency follow a clearly defined pattern. This includes substituting power and machinery for human energy, expanding farm size, applying more effective crop and livestock technology, improving land productivity, and increasing crop and livestock yields per acre or per head. More mechanization includes both developing new machines to perform tasks formerly done by humans, and increasing the power applied in farm operations. Both shifts lead to gains in output per worker, and to reductions in the number of men needed in farming. By the same token, they increase the acres of land, or the numbers of livestock, that one man can handle, and, hence, bring strong pressure to increase farm size, while reducing their numbers.

CALIFORNIA FARM EARNINGS BY MAJOR PRODUCTS AND SYSTEMS

Even the large highly commercialized farms in California are, for the most part, receiving unsatisfactory earnings compared with capital returns in alternative uses. The general situation is that smaller units fail to return the operator wages equal to those he might earn at unskilled labor, ignoring any profits to pay for his capital and management! At best, they return but a small margin over wage equivalent earnings. Larger farming operations can spread their fixed costs over a greater volume of production and obtain other economies that enable them to show positive returns, after allowing for the value of the operator's own labor at the going rate of farm wages. Most large farms, however, show profit percentages that compare unfavorably with alternative earnings on high grade securities. The farm family who operates a sizable farm does have, however, the advantage of more dollars of income to meet living and savings needs. This, of course, does not change the fact that they might obtain still larger amounts by transferring their farm capital investments into higher paying uses, and selling family labor and managerial ability in other markets.

Cotton and rice represent exceptions to the generally unsatisfactory farm earnings situation under 1958 and 1959 price and cost conditions. This advantage reflects more favorable prices, under government support policies, and already is sharply reduced for cotton, at least, under the announced 1960 program. Undoubtedly, if data were available, we would find that farmers producing certain other products also have a preferred position, but this finding would not change the general earnings picture. The government, parenthetically, has little choice in reducing the price supports for cotton; 1959 levels require an eight-cent subsidy for each pound that the U. S. exports in regular commercial channels! The following table based on 1956-1958 conditions indicates the relationship between farm size and earnings for

selected California farms producing the crops that represent about one-fifth of the State's total farm production value:

	Acres in farms					
	80	*160*	*320*	*640*	*1,280*	*2,560*
Cotton						
Profit	1,868	8,188	24,635	44,995	25,358	55,619
Percent	2 71	5.94	9 51	9 10	4 40	4.75
General Crop						
Profit	—1,996	—1,519	838	6,714	13,324	36,270
Percent	—3 82	—1 54	45	1 86	1.96	2.63
Rice						
Profit	--	--	15,213	31,792	60,516	124,980
Percent	--	--	12.46	12 86	12 58	12 95
Wheat						
Profit	--	--	—1,256	657	3,359	4,474
Percent	--	--	—1.65	.43	1 14	.77
Barley						
Profit	--	--	1,331	647	3,790	8,267
Percent	--	--	1 75	42	1 28	1.42

It is important to note that the "profit" entry in this table represents the remainder after deducting a $2,800 annual allowance for the value of the operator's own labor from the *net farm income* (the calculations provide for subtracting depreciation in determining net farm income).

A somewhat earlier study, based on 1952-1956 conditions, includes comparative acre net returns *to the operator*, after subtracting all fixed costs and variable expenses for both real estate and operating items. An allowance for the value of the operator's labor has not been considered; it still must be covered out of the net returns. Cotton, with a net return to the operator's labor and management of $147 per acre, again ranked the highest among the field crops Freestone peaches shipped to the eastern market exceeded cotton returns with $192 per acre, but Emperor ($17 per acre) and Thompson seedless (—$6 per acre) grapes proved less profitable than most of the field crops.

Thus the second study yields results quite consistent with the first. Farmers cannot usually plant all their acres to one more profitable alternative—for soil- and climate-oriented, as well as market, and administrative reasons An example: The cottongrower with a 40 percent of cropland limitation, must operate a farm with 250 acres of irrigated crops in order to plant 100 acres of cotton Similar relationships exist for most of the more profitable crops, including the freestone peaches, for a wide variety of reasons The typical farm, therefore, includes considerable acreages of less profitable crops, along with the preferred higher-paying enterprises.

FARMERS INCREASE FARM SIZE TO REDUCE PRODUCTION COSTS PER UNIT

Increased output per man-hour is the only effective weapon that farmers have to combat the price-cost squeeze It is important both in itself, and as a means to larger volume and size of business Higher output per man-hour always means providing more power and larger equipment per man, and usually means that the actual wage per man-hour also must rise. The gain results from increasing the output more than the combined costs of man and machine rise But the new total cost per pound of cotton, ton of sugar beets, or hundredweight of milk now includes different components. "Overhead" or fixed costs are important, and must be covered if the apparent gains from higher performance per man are to be real, and if the operator is to be able to replace the added machinery when it wears out, and thus, to remain in business

Recent studies indicate that power and machinery investments on California crop farms require large amounts of initial capital and, therefore, involve heavy annual fixed costs for depreciation; also, in terms of alternative earnings opportunities, interest on investment Initial costs on cotton farms for power and machinery alone at 1955 prices ranged from $16,000 for 80-acre units, to $200,000 for 3,000-acre farms. Average operating investments ranged from $10,000 to $121,000 for these same farms The cost advantage of increasing size becomes evident with a glance at values per acre for both the investments and the annual fixed costs on these farms The smallest unit, 80 acres, had an *average* investment of $90 per acre, with associated annual fixed costs of nearly $25 per acre for power and machinery Com-

parable values for the 3,000-acre farm with a much more complete and efficient line of equipment, were $39 and $10, respectively It is important that most of these savings occurred between 80 and 1,000 acres, in fact, except for harvesting equipment (not owned on 80- and 160-acre farms), considerable cost reductions were obtained with the 320-acre unit

In addition to the cost savings, farms large enough to own modern effective equipment also gain from the added yield or quality advantages accompanying such tools Rice farmers, for example, cannot expect to obtain competitive yields without power units large enough to prepare the seedbed and build levee checks effectively

Marketing economies for many farm products also result from increasing farm size above the minimum Such advantages may come from being able to ship under an individual label for such products as grapes, or merely being able to offer a large enough volume to obtain price or service concessions from an assembler, as some livestock producers find it possible to do

Larger operators also make savings on the other side of the marketing coin, in purchasing their supplies These savings, although perhaps amounting to only 1 cent on a gallon of fuel, become important when applied to all items and to the entire volume of business

A large number of other less obvious items contribute to the greater profitability of the larger family farm unit under favorable price-cost conditions, and to its ability to survive under less optimum conditions Among these are more complete resource use, better matching of unit capacities, more effective command over labor and other services when needed, greater capacity to obtain capital, ability to attract and keep high grade workers, and more freedom and flexibility in adjusting and matching special abilities and requirements among resources and enterprises

The net result of these compelling forces now in the process of reshaping California and U S agriculture is evident in the continuing trend toward larger and more efficient (low production cost) units We may expect this shift to continue

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON WATER
November 2, 1959

HONORABLE HARVEY O BANKS, *Director*
Department of Water Resources
1120 N Street, Sacramento, California

DEAR HARVEY During the past few months our committee staff has been reviewing a number of the department's recent bulletins to ascertain the methodology utilized in forecasting water uses for project planning and design purposes At the same time, the committee's current series of hearings have inquired of prospective contractees if they are willing to contract for the quantities of water at the rates shown in Bulletin 78 You will also recall the Study on Economic and Financial Policies for State Water Projects places major emphasis on market evaluation of a project I am sure we all appreciate that thorough consideration of these matters is most important because the size of project facilities to be constructed, cost allocation, rate schedules and, of course, the ability of project beneficiaries to repay their costs, are dependent upon them Our committee activities, to date, have tended to focus upon a number of problem areas concerning which the department's views would be most helpful These problem areas have been numbered in the paragraphs below

I. Use of present agricultural water supplies for future urban needs.

Bulletin 70 Orange County Land and Water Use Survey, on page 12, comments that between 1950 and 1957 the population of Orange County has increased approximately three times from 216,000 to 610,000 Table 14, page 51, of the same bulletin indicates that net water use for Orange County has remained almost constant at about 240,000 acre-feet per year through the period 1926 to 1957, which is approximately 30 years Bulletin 70 points out that irrigated agriculture in Orange County has tended to be replaced by urban and industrial use of the land and the water supply provided for it This has apparently resulted in no really significant change in Orange County net water use for 30 years and would appear to be of great significance Table 14 also shows substantial supplemental water requirements currently being met by imports from the Metropolitan Water District concurrent with extensive replenishment of ground water basins The depletion or replenishment of ground water does not, however, alter the significance of a relatively stable long-term net use of water.

We have compared the above data with projections for importation of water contained in Bulletin 78 Table 5, page II-25, shows an estimated future reduction in Orange County agriculture from 97,000 acres in 1957 to zero acres in 2020 and a reduction of almost 80,000 acres by the year 1980 Bulletin 70 shows that per acre use of water for agriculture averages annually about 2 5 acre-feet per acre (page 44) and Bulletin 78 shows about two-tenths of an acre-foot as the estimated water use per capita per year in Southern California Thus, the water presently used by agriculture on each acre in Orange County will support about 12 people This multiplied by the 80 000 acres projected to be freed from irrigation use by 1980, would mean that water is available on the basis of past and present patterns of development to support 960,000 more people, which is a major portion of the projected population increase of 1,208,000 in Orange County by 1980, as shown on page II-20 of Bulletin 78 No new agricultural acreage is projected The above calculation does not seem to support the forecast in Bulletin 78, page II-36, of the magnitude of 263,000 acre-feet of imported water needed in Orange County by 1980

Orange County seems to be typical of the pattern of expansion and change from agricultural to urban land use in Southern California Bulletin 78 indicates the same situation may exist in the Santa Barbara service area (page VIII-16) and in the Ventura area (page VIII-171), while Bulletin 61 shows the same situation in San Diego County The summary on page II-26 of Bulletin 78 shows for the entire south coastal area a reduction from 491,000 net acres of irrigated crops in 1957 to 275,000 in 2020 This reduction in use of water by 216,000 acres, on the basis of 12 persons

per acre, would provide a water supply for about 2,500,000 people. Substantial amounts of this reduction in agriculture occur in early years of project operation when such reductions could have an important effect on the build-up of project water use.

The department's forecasting methodology is stated on page II-27 of Bulletin 78. "Total water use requirements were estimated by applying appropriate values of unit water use to the population and irrigated acreages" Page 94 of Bulletin 61 indicates that available dependable supplies are deducted from the estimated uses to secure the quantities to be imported Theoretically, this deduction would seem to make the necessary appropriate allowance for agricultural water supplies which will eventually serve urban populations However, the apparent divergence between net water use data in Orange County and the department's estimate of future use in Bulletin 78 would indicate that some reconciliation is needed The "net water use" concept appears to be of considerable importance as a double check on estimated future water use Although Bulletin 70 uses this concept, it is not used in either Bulletins 78 or 61.

II. Validity of "ultimate" recreation use in computing benefits.

Bulletin 59-2, Appendix A, sets forth the anticipated recreational use of the proposed Upper Feather River Development and appears to be the basis for computing those project recreation benefits Page 57 of the above bulletin states "Principles and standards (for planning recreation features) were applied in measuring potential recreation use, using a general land use planning approach, similar to that used by the Department of Water Resources in estimating irrigable lands and irrigation benefits" Page 65 and 68 set forth the standards used in estimating the amount of recreational development which might occur around the project sites, as well as the use factors assumed for each type of recreation facility.

This approach to recreation evaluation primarily itemizes those facilities which might be built upon suitable land around the project. It is then assumed that these facilities will have a pattern of use consistent with experience at other locations This use pattern, when multiplied by a benefit factor, gives the total recreation benefit These data seem to be "ultimate" or "saturation" computations rather than attempts to evaluate the probable use at a given time, that it, the market for project recreation As in the case of the department's land use studies in Bulletins 61 and 78, there appears to be a tendency to assume that because land and water are present, the use of the land and water will be automatic, other limiting factors notwithstanding We are somewhat concerned about the value and validity of evaluating recreation benefits on an "ultimate" basis (year 2050) as contained in Bulletin 59-2, Appendix A, as a tool in project formulation and scheduling of construction.

III. The influence of price on the quantity of agricultural water purchased.

In Bulletin 61, the influence of price was evaluated by computing the residual income (or ability to pay) of agricultural lands for water priced at $15 and $40 per acre-foot While this refinement recognizes a relationship of price to demand and its subsequent effect on the size of water supply needed and is an advancement over previous methodology, it still seems to fall short of a true market analysis because it uses residual income. Residual income, as pointed out on page 82 of Bulletin 61, is a ceiling amount which irrigators may be able to pay for project water. But residual income also either holds constant or ignores other cost factors that the farmer can alter which are actually flexible and may be changed by causes beyond his control Instead, it projects the future based upon a present condition even though our nation's agriculture is in a condition of major change and, in many instances, crisis

The most serious deficiency of residual income is that it presumes landowners and irrigators will be willing to pay the water prices specified and will desire to purchase the water as offered merely because a showing is made that they might be able to afford to do so This may be likened to assuming that 20,000,000 people in the United States will purchase automobiles during the next year merely because they have incomes of $5,000 per year or more from which they can squeeze out a monthly payment of $75 for a car No manufacturer judges his market on this basis for he knows that mere ability to purchase a product does not assure the purchase. The matter to be determined is not *ability to pay* but *willingness to pay*

In any geographical area where an irrigation project develops new land and particularly in these instances where the Bureau of Reclamation has controlled land ownership by purchase or condemnation and utilized the homestead technique for

settlement, there may be validity in the residual income approach for estimating the use for project water (and, of course, under reclamation law, what the irrigators will not pay generally can be charged to taxpayers or other project beneficiaries). In Southern California a much more complex situation exists with intense local competition for the use of land, capital and goods for many other purposes, most of which have no relationship to agriculture or project residual income. Unless the estimates of agricultural water uses computed by the residual income approach have been adjusted by an arbitrary factor, which does not appear from reading Bulletin 78, the estimates would appear to be computed *maximum uses* and not probable *purchases* The residual income approach severs the relationship between supply and demand but these are so close in our economic order that they cannot normally be considered separately. Their effect will be felt in some manner such as exclusion of lands from service, inability to pay project costs, reduction in quantity of water to be taken and other contract negotiation problems

The department's methodology in placing major emphasis upon supply appears to be derived from the "ultimate requirements" approach used in Bulletins 1, 2 and 3 since major emphasis in estimating irrigation use is placed upon a fixed quantity, represented by the amount of land judged usable under circumstances in which the effect of time is minimized. *The result is a water use projection which has the appearance of great accuracy supported by detailed computations However, it secures this appearance by overlooking the inherent demand variables of willingness to purchase water, competition in uses of capital, land and goods, technological and farm market changes and the uncertainty surrounding all future conditions.*

IV. The selection of aqueduct capacities.

In Bulletin 61 the aqueduct capacity was assumed to "be approximately midway between the values derived for the two assumed selling prices therefore" In other words, after evaluating by residual income the uses of water at $15 and $40 per acre-foot, a midpoint was selected (page 102). The validity of such a midpoint is not discussed. Bulletin 78 does not indicate what method was used in relating price to quantity in establishing aqueduct capacity other than to state that the "estimate of economic demand for imported water developed herein reflects the cost-price relationship assumed for purposes of the investigation and, also, the individual factors peculiar to each service area which would tend to stimulate or inhibit the use of imported water" (Page II-34)

We are unable therefore to evaluate just how the cost-price analysis based upon residual income has influenced the selection of aqueduct capacity. Similarly, there is no indication how the amounts of water projected to be used in different service areas, as shown on page II-33 of Bulletin 78, were derived from each decade. An understanding of the derivation and reliability of these quantities is particularly important in the first two decades of project operation when major revenue deficiencies may occur because of the presence of some excess capacity in the project facilities In this regard, we understand that the San Diego County Water Authority did not follow the department's recommendations in Bulletin 61 when it selected the size of the second aqueduct which it is now building This naturally raises the question of the policies the department will use in selecting the final size of the San Joaquin-Southern California Aqueduct as well as in the staging of its construction

V. Length of forecast periods.

Methodology also becomes increasingly critical and the results less reliable when the period of time involved in the estimates extends for many years into what must inevitably be an unknown era. Page 29 of Bulletin 61 postulates a 40-year period for estimating future water uses. However, a 60-year period is used in Bulletin 78. The reasons for using different time periods is not stated in the bulletins

To the best of our knowledge, no major studies of economic factors have been made by the federal government, industry or institutions in which it was felt possible to make a precise delineation of future economic events for periods in excess of 20 or 30 years Even such 20- or 30-year studies as have come to our attention are highly qualified with respect to the last years of the projection

VI. Limitations of population projections.

We have mentioned in III, above, the problems of estimating what lands will be irrigated compared to the lands which *might* be irrigated Similar problems arise in the population projections in Bulletin 78 They are prepared by competent authorities and presumably are the best available at this time yet they can neither be proved or disproved. Many future events may prove them to be in error. For example, the

birth rate has been shown by experience in the past two decades to have been influenced substantially by conditions which were not predicted Because population projections for 60 years in the future are actually the major basis for estimating water use in the south coastal area, these water use estimates may only be as valid as the population projections Standing primarily by themselves in Bulletin 78 as the major basis for projecting urban water use, these population data may constitute a rather tenuous basis, even if the best available basis, upon which to size project facilities and it may be advisable to make this point clear

VII. Economic basis for growth in the south coastal area.

The major economic growth of the south coastal area has occurred in the past two decades and is substantially attributable to wartime and national defense expenditures If the presently high rate of national defense expenditures were to be drastically curtailed, the south coastal area might even have difficulty in maintaining its existing economy However, the water use estimates in Bulletin 78 are projections of further tremendous growth which surely would imply continually increasing expenditures for national defense if this growth is to be achieved This may occur during the next few years but there is also currently evident a considerable pressure to stabilize or reduce defense expenditures Major international events are occurring with this as an objective On the other hand, other events may increase the rate of defense expenditures In the long run, we all hope that defense expenditures will stabilize and preferably be reduced, otherwise the peoples of the world are due for many unhappy years Thus, it would appear that peace in the world may remove the continually increasing defense expenditures presumably included in forecasts in Bulletin 78 and with them some of the stimulus for extremely rapid growth in Southern California (A detailed study of these matters entitled "The Impact of Federal Government Activities on California Economic Growth, 1930-1956" by Sterling Brubaker, is most informative on this point)

VIII. Allowances for contingencies.

Bulletin 78 includes many allowances for contingencies Such allowances by themselves do not necessarily increase the accuracy of the projections, although they may be justified on occasion Frequently they may lead to a pyramiding of errors It may be noted that most of the allowances are seemingly in the direction of greater water use and correspondingly larger capacity of facilities Downward adjustments in figures are relatively infrequent although there are several such as in Bulletin 78, page 39 Following are some of the allowances and "safety" factors which have been noted

A Loss of water to an area is assumed from the continued and increased use of ocean sewage outfalls (Bulletin 61, page 58, and Bulletin 78, pages II-8 and II-29)

B No allowance is made for return to ground water or reuse of agricultural water in Bulletin 61, pages 62 and 63 In Bulletin 78 allowance was made (Page II-31)

C Saline conversion has not been considered as a feasible alternative source to imported supplies even though Bulletin 78 water use projections involve a period of 60 years in the future (In this regard Bulletin 78, page II-11, states "Nor is there any reason to expect that it will become competitive in cost in the foreseeable future" It may also be noted that desalinization of Salton Sea water is evaluated by Bulletin 78 to include pumping costs to the coastal area instead of use in the Whitewater-Coachella area into which area Northern California waters are proposed to be imported beginning in 1990 Bulletin 78, page VII-13, shows irrigation benefits from the use of imported water in the San Diego area which are the same as the $150 benefit per acre-foot chosen to represent urban use of imported water in the south coastal area The urban benefit figure is stated (page VII-16) to be "somewhat less than presently estimated minimum future cost of demineralizing ocean water")

D The immediate replenishment of underground basins with Colorado River water to provide a future interim supply has not been considered

E A wide range of daily per capita use of water ranging from 140 gallons in San Diego to 225 gallons in the Upper Santa Ana River Basin and Antelope-Mojave areas has been assumed to continue

F Although it may not have been possible in the work done to date, there is no evidence that imported quantities of water have been regulated against local resources with particular regard to reducing peaking capacity required in

transmission facilities (except possibly in San Diego, Bulletin 78, page II-39 and 40)

G Full mobilization of Camps Pendleton and Elliott have been assumed or else civilian use of the lands (Bulletin 61, pages 88 and 92)

H The occurrence of a series of wet water years could reduce the amounts of imported water purchased (Bulletin 78, page II-39)

I No allowance is noted for possible construction of federal projects or additions to their service areas particularly in the San Joaquin Valley around the Friant-Kern Canal

J Emergency storage is proposed on pages 126 and 127 of Bulletin 61 in addition to all the other factors above

In summary, the enumeration of the above eight items is not intended to imply that any particular bulletin is deficient in citing or bypassing them Rather, they are noted in order to ascertain whether their exploration may result in clarification of the department's methodology and in advances which can improve the basic projections of water use, as well as provide some public understanding of the difficult problems involved If we have drawn any faulty conclusions from our work to date, we would appreciate being properly advised

The committee's interest in evaluating the department's methodology and approach to analysis of project markets stems from many factors some of which have already been cited in the opening paragraph of this letter In addition, we also recognize that if the State does not require signed contracts before design capacities are fixed and project construction begins, the market analysis becomes the only basis for project formulation and sizing It, therefore, may assume supreme importance

Your comments on the eight items discussed in this letter would be most helpful and appreciated If a letter reply can be prepared by the end of November, it will be of the most assistance to us

Sincerely yours,

CARLEY V PORTER, Chairman
Assembly Water Committee

DEPARTMENT OF WATER RESOURCES
SACRAMENTO, December 2, 1959

HONORABLE CARLEY V PORTER
Chairman Assembly Interim Committee on Water
State Capitol, Sacramento, California

DEAR MR PORTER This will acknowledge your letter of November 2, 1959, which presented a series of questions concerning this department's studies as presented in Bulletins Nos 61, 70, and 78 We have reviewed your questions and statements with great interest, and have prepared the attached discussion of our studies in response to the itemized questions

While the attached analysis discusses the specific subjects covered in your letter, I would like to emphasize that Bulletin No 78 is *not* a feasibility report on the San Joaquin Valley-Southern California Aqueduct System Also, Bulletin No 78 contains only a summary of the many investigations and studies that were performed and, therefore, much of the detailed material involved in answering your letter will be published in the appendixes to this bulletin

If there are any matters which are inadequately covered herein, or if you desire information on other phases of our studies, we shall be glad to assist you in these matters.

Very truly yours,

(Signed) HARVEY O BANKS, Director

SUBJECT NO. 1. USE OF PRESENT AGRICULTURAL WATER SUPPLIES FOR FUTURE URBAN NEEDS

Orange County water use as shown in Bulletin No 70, increased only slightly during the period 1948-57, the shift in water use from agricultural to urban application was much more prominent Net water use in the county, however, is expected to increase substantially in the future Beyond population increases of greater degree than decreases in irrigated agricultural acreage, there are other factors which will tend to increase net water use in the future Briefly noted, these factors are increases in applied urban water use (from 166 gallons to 206 gallons per capita per day from 1960 to 2020), increased loss of ground water recharge due to the shift

from agricultural to sewered urban use, and a slight decrease in water use per acre by irrigated agriculture because of a shift in cropping patterns in the future.

Contrary to the statements in the letter of November 2, 1959, net agricultural water use in Orange County is not 2 5 acre-feet per acre per year, but is estimated as 1 43 acre-feet per acre in 1948 and 1.37 acre-feet per acre in 1957, or an average of 1.40 acre-feet per acre per year This net water use may be calculated from a comparison of the net agricultural water use shown for 1948 and 1957 in Tables 13 and 12, respectively (on pages 49 and 48 of Bulletin No. 70), to the gross irrigated agricultural land use for the same years, as shown in Table 8 (on page 35 of Bulletin No 70). Thus, at an urban net water use rate of roughly 0.2 acre-foot per person, each acre of irrigated land shifted to urban use would support the water requirements of seven persons, rather than 12 as you state in your letter. Multiplied by the loss of acreage projected between 1957 and 1980, 78,600 acres, this shows that a total of 550,200 persons could be supported in their water requirements by the shift from the irrigated acreage, which is less than one-half of the population increase projected for 1980.

Water use factors, as applied to Orange County, apply in principle to other coastal areas in southern California, such as Santa Barbara, Ventura and San Diego Counties It should be noted that, generally, water use for irrigated agriculture in coastal areas is substantially less than for intermediate and inland valleys. A figure of 2 5 acre-feet per acre for net water use for irrigation would be much more applicable to the latter than to the coastal areas. Lower water use, therefore, means that less people can be supported in their water requirements by a shift from irrigation to urban use

The "net water use" concept, used in Bulletin No. 70, was also used to compute future water requirements for southern California areas in Bulletins Nos. 61 and 78. A reading of the entire topic, *Water Requirements*, in Bulletin No. 78, pages II-27 to II-33 will show the net water use concept was used. The methodology will appear more clearly in Appendix D of Bulletin No. 78, "Economic Demand for Imported Water" Bulletin No 61 describes the method used for calculating future water demands on pages 58-64 inclusive, which equates with the net water use concept.

In conclusion, it may be said that the net water use concept calculates the net water requirements needed by the area at each time period, by applying the appropriate net water use values to projected population and irrigated agricultural crop types It thus takes into account the shift from agricultural water use to urban use.

SUBJECT NO. II. VALIDITY OF ULTIMATE RECREATION USE IN COMPUTING BENEFITS

There are two separable problems implied in your questions on this particular subject. The first relates to the technique of estimating future recreation use based upon land capacity, and it has a corollary problem which relates to the validity of decision on the capacity of a given facility to sustain or to attract recreation use The second separable problem relates to the likelihood that ultimate recreation use at any given facility actually would approach the saturation of available capacity, and it also has a corollary problem which relates to the possible swamping of the water-associated recreation market by the construction of successive units of The California Water Plan

The first problem, the technique of estimating future use based upon capacity, requires comparison of existing recreation resources to the probable resources available upon construction of reservoirs with appropriate recreation development. Planning agencies involved in recreation work have adopted fairly uniform criteria for estimating the capacity of land and water to support recreation uses. These criteria consider such things as useable area, soil type, terrain, and tree growth, and the types of recreation use and development which would make best use of the resource While these criteria may change in the future, depending upon population pressure and the availability of recreation, the allowable increase of recreation capacity will lag behind recreation demand These conditions will cause recreation planning and operating agencies to take restrictive measures in some cases of overuse, and to take promotional measures to influence a shift of recreation demand to facilities with available capacity.

The statement of the problem in the letter from Assemblyman Porter indicates that it is understood that the estimated use of recreation facilities has been based upon the ultimate capacity of the facilities However, in estimating the more pertinent figure, which is the average annual use, the Department of Water Resources

has adopted a use development curve which approximates the most conservative development curve of the population projection, which is a straight line between today's population and the population at the year 2020 In Bulletin No. 59-2, Appendix A, the use development curve employed in the economic analysis of the Upper Feather River recreation facilities is even more conservative than the straight line, being depressed in the early years and only reaching a percentage of saturation capacity at the year 2020. This ultraconservative use of development curve assures that the estimates of benefits from recreation facilities are lower than will actually occur. In addition to this conservatism, a reducing factor varying between 50 percent and 80 percent is applied in order to reduce further the estimates of benefit from these recreational facilities.

In the economic analysis of recreation benefits to be derived from water projects, the recreation use during the period of economic analysis (generally 50 years) is a function of the amount of use and the distribution through time of this use In the analyses carried out by the department a use development curve has been used which approximates a straight line This is considered conservative because the population itself is growing in a more rapid manner than is shown by a straight line on a graph. Also, the compounding effects of the standard of living, including leisure time and disposable income, will influence the population to demand more and more recreation per capita as time progresses

The second separable problem, regarding the assumption that saturated use would actually occur at any facility, has been, in part, the reason that the department has discounted the concept of "ultimate" at any specified year in the future Instead, a stipulated period of years amounting to the period of economic analysis is used in evaluating the costs and benefits of a facility

The assumption that saturated use would occur at any facility is based upon the experience of the Division of Beaches and Parks at existing recreation facilities throughout the State and upon the apparent lag of these and other public recreation facilities in keeping pace with the expanding outdoor recreation demand exerted by the growing population of the State. As an example of this, the State parks along the South Fork of the Eel River have shown a consistent increase in use through the past 10 years This increase is not related nearly so closely to the population of the State nor to the standard of living as it is to the actual increase in capacity of the facilities In other words, the capacity of these facilities rather than the demand has tended to limit their use

In other parts of the State, the United States Forest Service has experienced the same distribution of recreational use, based upon capacity, and many Forest Service facilities are used at more than 100 percent of capacity for a large part of every recreation season. It is true that there are some recreation facilities at reservoirs which do not experience capacity use A good example of this is at Pardee Reservoir, where the East Bay Municipal Utility District has installed recreation facilities in co-operation with the Wildlife Conservation Board Recreational use at Pardee since it has opened has been disappointingly small. This is no doubt due to the restrictions against water contact sports and to the poor quality of fishing which have influenced people to choose other not too distant reservoir recreation facilities

The other end of the spectrum of use might be seen at Cachuma Reservoir near Santa Barbara. This reservoir, although restricted against water contact sports, is used very heavily and on most weekends during the summer recreation facilities are filled to approximately 120 percent of capacity. Similar or better facilities are too far distant. Another example of exceedingly heavy use is at Folsom and Nimbus Reservoirs, where the recreation facilities are the limiting factor on use of some types The boat ramp, for instance, is not used at capacity; but the sanitary, picnicking, and other day use facilities are used heavily. There are no camping facilities installed there yet.

These instances are cited to demonstrate that present demand for public outdoor recreation facilities is ahead of the available supply. It might also be noted that both the National Park Service and the United States Forest Service have far-reaching programs intended to increase the capacity and quality of the recreational facilities in an effort to overtake the demand It is acknowledged by both of these agencies that the expected results of these two programs will be inadequate by the end of their planned period.

An additional problem related to the prediction of recreation use and recreation benefit from water projects is the possible swamping of the recreation market by the construction of successive units of The California Water Plan. This possibility is recognized in our planning and economic analysis and is discounted on the same

general grounds that are used to assure conservatism in our estimates of recreation use That is, the Water Development Program will, of its very nature, never exceed the rate of growth of the recreation market in this State By the end of the period of project analysis, say 50 years or by the year 2010, the probable recreation demand in this State will be so large as to require not only full development of all newly constructed reservoirs, but also a renewal of the recreational facilities at the older reservoirs and an expansion of other facilities away from the reservoirs themselves

SUBJECT NO. III. THE INFLUENCE OF PRICE ON THE QUANTITY OF AGRICULTURAL WATER PURCHASED

Payment capacity, as defined in Bulletin No 78, corresponds with the definition given in Bulletin No 61, and was said to represent a residual income to the farmer for incentive to farm and for payment of water charges In contrast to Bulletin No 61, however, residual income (or payment capacity) determinations in Bulletin No 78 included as an imputed cost of production a charge for management, equal to 10 percent of the gross farm income This amount is well in excess of actual rates charged for management of farms, and thus allows a return to the farmer in the nature of an incentive to farm

The management charge allowed to the farmer, plus a 5 percent return to invested capital and an allowance for the operator's labor, represents the total return to the farmer (as net farm income) for his farming operations, and amounts to a return of 15 to 20 percent, or more, to the farmer's equity investment Such a return is considered to be adequate for the general farming risks involved

Under the method used, as stated above, some allowance was given for incentive to farm as an imputed cost of production Thus, residual income, providing for payment of water charges and for incentive to farm, is a true means of comparing the cost of water with the maximum ability to pay for it Using this method, ability to pay must, rationally, equate with willingness to pay

Individual demand for irrigation water is quite inelastic, e g, an incremental increase in water cost will not effect a proportional incremental decrease in water use by the farmer, since there are no effective substitutes for the water. The farmer must pay for the cost of the water he needs or, in the alternative, quit farming altogether or shift his production to dryland farming Dryland farming is not a practical alternative because

(1) The shift does not appreciably reduce invested capital or fixed costs,
(2) Fixed costs are generally so high as to preclude but a small per-acre income on a dryland farming basis,
(3) Irrigated farm acreages are usually not sufficient to produce an ample farm income on a dry-farm basis, and
(4) The risks involved are even greater than in irrigated farming

Complete cessation of agricultural production therefore remains as the only logical alternative. This has been taken into account in projection of irrigated agriculture in each specific area under study by projecting only those crop patterns that can afford to pay the full cost of water that will serve them, and will provide a return of 15 to 20 percent on invested capital as an incentive to farm

On a rational basis, therefore, the water user must be willing to pay for water at any price up to the point where the necessary return to justify farming risks is impaired Under the mode of analysis used for Bulletin No 78 studies, the return to the farmer on his investment, exclusive of residual income considerations, was found to be generally in the range of 15 to 20 percent This is deemed to be reasonable with respect to the risks involved and compares favorably with many other types of businesses and manufacturing enterprises Thus, it is felt that the ability to pay, expressed as residual income, is equivalent to the maximum willingness to pay for water, and any water cost less than the residual income would result in a further return to the farmer in excess of the fair return already reserved for him

The failure of the method of determining residual income to account for changes in cost factors, technological changes or market conditions is not fatal to the method It cannot be refuted that agriculture is constantly changing, but the changes that occur, in prices, costs and yields, are interdependent, and react with one another over the long term For example, decreases in unit costs of production, brought about by increased yields or more efficient cultural methods, generally bring about lower prices for the products grown History has shown that the relationships between prices received and costs of production, although subject to some degree of fluctuation, are fairly stable over time, and it can be shown that there has been no

general upttend in the ratio of prices received to prices paid by farmers The period used as a base in residual income analysis, 1952-56, is felt to be indicative of the price-cost ratio that will prevail in the future The conclusion is that despite trends in production, prices and technological advance, margins between income and production costs will remain relatively the same Economic theory supports this conclusion The ability to use this concept obviates the use of speculation as to the future changes in economic conditions and cultural practices with respect to agriculture

The competition for land and capital from nonagricultural uses was taken into account in the projection of irrigated agriculture for each area under study It was conceded that urban and industrial uses of land and capital would take precedence over any agricultural use Thus, before irrigated agriculture was contemplated, the total land requirements for urban and industrial use were projected for the areas under consideration The remaining irrigable lands were considered available as an upper limit for irrigated agricultural development Depending upon the various conditions affecting rate of growth, crop adaptability and residual incomes (payment capacities), agricultural acreages were projected on the available land to varying degrees of development commensurate with time and the exigencies of the area Thus it is felt that the acreage projections appearing in Bulletin No 78 and the water demands derived therefrom are well grounded as representative of probable purchases of water rather than ultimate maximum use possibilities

It should be noted that competition in the demand for goods did not enter into acreage projection considerations. Goods used in agricultural production do not generally compete with urban uses. Further, no shortage of basic goods is projected for the future to the exclusion of their use by agricultural producers

It should be stressed that the procedure used in determining residual income (payment capacity), crop acreage projections and water demands for Bulletin No 78 was not based on methodology presented in Bulletin Nos 1, 2 and 3 The fundamental factors used in arriving at payment capacity, acreage projections, and water demands for a specific area were

(1) Yields, prices received and costs for agricultural production,
(2) Residual income of individual crops (payment capacity), reserving from such a net farm income to the farmer,
(3) Land available for irrigation use, after projected urban and industrial land uses have been satisfied,
(4) Considerations of soil and climatic conditions, the proposed cost of water, probable future markets for crops, and probable rate of development over time, and
(5) Determination of crop projections, as limited by the above considerations, and agricultural water demands and residual income (or payment capacity) of the area under study from the crop projection obtained, as will be outlined in Appendix "D" of Bulletin No 78 (See Subject No IV, below)

As mentioned before, willingness to purchase water has been taken into account, at least to the extent of reserving an adequate net farm income from the derived residual income (payment capacity), competition in the uses of land and capital have been accounted for by projecting agriculture only in irrigable areas not required for urban or industrial use, and technological and farm produce market changes have been eliminated from consideration because of the concept which recognizes that the price-cost ratio in agriculture is one likely to persist into the future

In conclusion, it is felt that the irrigated crop projections and the agricultural water demands derived therefrom are logically based upon the ability and willingness of agricultural users to pay for water that will be delivered for such use, and that the projections fairly represent an economically sound supply and demand relationship

SUBJECT NO. IV. THE SELECTION OF AQUEDUCT CAPACITIES

As stated in your letter, Bulletin No 61 reported the selection of the capacity for the Second San Diego Aqueduct at the midpoint between the estimated demands for water at prices of $15 and $40 per acre-foot. Further, your letter indicated that the validity of such a midpoint was not discussed

While the validity of the procedures, as such, was not discussed, the paragraphs of page 101, Bulletin No 61, state some of the reasons why either of the two values would be subject to error The assumption basic to any such study and which was subsequently made for the Bulletin No. 78 studies, i.e., the relationship between cost

of service and price charged for such service, had not been made at the time the Bulletin No 61 studies were completed and this is indicated on page 101 thereof. Therefore, an average of two estimates of future water use would be statistically less subject to error than either of the two estimates, each based on different pricing conditions

The validity of this average of the two demands became apparent subsequent to the publication of Bulletin No 61 after the price equals cost relationship was assumed for further studies The average of the $15 and $40 water prices is $27 50, while Bulletin No 78, on page II-5, indicates that the weighted cost of Colorado River and northern California waters in the service area of the Metropolitan Water District would be about $30 per acre-foot

Both the San Diego County Water Authority and the Metropolitan Water District appear to concur in the projections of demand for water in Bulletin No 61, as the Second San Diego Aqueduct, now nearing completion, is sized in its initial reach in canal section at 1,000 cubic feet per second as recommended in the report The lower reaches are being constructed with about one-half the capacities recommended for the initial stage of the pipe line portions of the aqueduct, but it is our understanding that this choice was based on the amount of local financial resources available for expenditures for facilities, rather than on a belief that the recommended capacities were too high

As stated in your letter, Bulletin No 78 did not specifically indicate the methods used in relating water price to demand and in projecting the growth in demand over time in each service area These procedures will be discussed in Appendix "D" to Bulletin No 78, now being readied for printing, and, with respect to irrigated agriculture, consisted of the application of the factors stated on page II-23

Briefly, the projection of acreage in irrigated agriculture, which is basic to the water demand estimates for each service area, consisted of the following progressive steps

(1) Determination of the extent and character of lands adapted to irrigated agriculture;

(2) Compilation of a list of crops adaptable to the land classes and climate of the area,

(3) Tentative projections of cropping patterns based on studies of present and historical cropping patterns;

(4) Upper limits of acreages by crops estimated through using results of studies of the market demand for products of irrigated agriculture of the types employed in the projected crop pattern,

(5) Using tentative projections of cropping patterns, computation of residual income available for payment of water charges and incentive to farm for each crop in pattern,

(6) Estimation of net revenue and anticipated net return to the investment in the farm for each crop, with those crops and lands in the tentative projection that did not produce sufficient returns to compensate for the risks involved being eliminated,

(7) Final selection of the land areas and cropping patterns that will provide sufficient return (or incentive) to justify the necessary investment and compensate for the risks involved, and

(8) The rate of change in irrigated agriculture from present levels to the projected levels of development made, based on studies of existing and planned local organizational structures and policies and general pattern of water development, with principal weight given to the magnitude of the farming incentive, or the return to invested capital

The last five foregoing steps comprise a process of progressive modification of the originally selected rough pattern of irrigated acreage, eliminating otherwise suitable acreages upon which incentive to farm would not be sufficiently large to stimulate development

SUBJECT NO. V. LENGTH OF FORECAST PERIODS

As stated in your letter, a 40-year period of investigation was used in the studies reported in Bulletin No 61 while a 60-year period was used for later studies as reported in Bulletin No 78 Your letter states that the reasons for using different time periods was not stated in the bulletins

Page 29 of Bulletin No 61 includes a statement that a 40-year period was selected because it was considered to be of sufficient length to (1) provide a basis for estimating long-term trends in water use and (2) permit proper economic comparison of several alternative plans of aqueduct construction It was further stated on page 29 that the 40-year period had no significance with regard to the useful life of facilities nor with regard to the availability of future imported water supplies

The requirements of financing were not analyzed in connection with the studies reported in Bulletin No. 61, but for the later report, Bulletin No. 78, the department did devote much time to financing requirements and financial analyses As the aqueduct facilities could not be completed into southern California prior to 1970, and a 50-year repayment period has been tentatively adopted, it was believed that any analysis of water requirements should extend through the end of the repayment period, which would be the year 2020, and would result in a 60-year period of investigation The department recognizes that projections for this period of time do not have as great a degree of reliability as those made for shorter periods of time, and so states on page II-1 of Bulletin No 78 The text, on page II-1 goes on to state that " sound planning dictates that aqueduct facilities considered for near future service be constructed in a manner that is not in conflict with, but rather in furtherance of, probable long-term needs"

To fulfill this requirement, most engineering studies involving massive public works projects of this nature have required long-range projections of those factors influencing their operation The Metropolitan Water District of Southern California prepared estimates of population and water requirements of its area and surrounding areas for about 50 years into the future These are shown in a report entitled 'Colorado River Aqueduct-Water Demand of Member Cities, 1934" The Department of Water and Power of the City of Los Angeles is continually refining water demand studies and population projections, extending them 40 years into the future for its areas. It has also made similar studies for all areas in southern California

On a national level, the federal government has made two studies of economic growth extending more than 20 years, one being to the year 2010 and the other to the year 2020 The Office of Business Economics of the United States Department of Commerce prepared a special analysis of the Deleware River Basin for the Philadelphia district of the Corps of Engineers. This study is scheduled for release in December, 1959, but this department has obtained advance information on the results and conclusion thereof. The national projections of population were made for this study by the Census Bureau and correlate almost exactly with the department's projection, with the difference in the year 2010 being about 1 3 percent out of 375 millions.

The San Francisco office of the Crops of Engineers is also engaged in engineering studies requiring long-range forecasts, and have arranged with the Office of Area Development, United States Department of Commerce to make the necessary studies through the year 2020 In this case, the Census Bureau was again called upon to prepare population projections of the nation and California for this 60-year period, while the Office of Area Development made the analyses of economic growth, and localized the population growth projected in and around the San Francisco Bay area Preliminary studies were completed about one year ago, but have not been released as yet by the Corps of Engineers.

Other instances of the long-range projections of population and economic growth are available to the department and we would be glad to review all of them with you if it is desired

SUBJECT NO. VI. LIMITATIONS OF POPULATION PROJECTIONS

Due to space limitations in Bulletin No. 78, a full discussion of the population projections was not possible As stated in your letter, these projections do form the major basis for estimating future water use in Southern California, and are therefore highly critical For this reason, the department devoted a considerable time to this phase of the investigation and retained the best men available as consultants on this matter After completing the investigation, it was our conclusion that the projections may actually be conservative within the framework of the assumed future conditions. This conclusion can only be reached through a complete analysis of all the data entering into the projections, which data will be published in Appendix "D" to Bulletin No. 78. These studies are available for review in the event that you desire them prior to publication

SUBJECT NO. VII. ECONOMIC BASIS FOR GROWTH IN THE SOUTH COASTAL AREA

The considerations discussed in this section of your letter were of great concern to our department in judging the validity of the estimates of future population Accordingly, an investigation of the economic basis for Southern California's future growth was made and extended through the year 1980 A very brief reference is made to this study on page II-22 of Bulletin No 78, and it will be covered in detail in the forthcoming Appendix "D." As special consultants on this phase of the studies, the department retained Dr E T Grether, Dean of the Graduate School of Business, University of California In addition to his services, the department consulted with the officers and staffs of the following organizations Federal Reserve Bank of San Francisco, Bank of America, Security-First National Bank; Occidental Life Insurance Company of California; Prudential Insurance Company, the Pacific Telephone and Telegraph Company; the General Telephone Company, Lockheed Aircraft Company, Douglas Aircraft Company; California Bank; Stanford Research Institute, Standard Oil Company of California; Kaiser Steel Company, Southern California Gas Company, General Petroleum Corporation, International Business Machines Corporation, Columbia-Geneva Steel Division of the United States Steel Corporation, and many others

Through the advice, opinions, and comments received through these organizations, and through the assistance of the department's consultants, the department prepared projections of the economic development of the United States, California, and Southern California, using employment figures as a basis of projection The detailed projections indicate that the Southern California region can expect an increase in the percentage of its labor force in manufacturing, and that the present ratio of this manufacturing labor force engaged in aircraft manufacturing of about 25 percent will decrease by 1980 by about 50 percent Sectors of manufacturing that have the greatest potentials for growth in Southern California include fabricated metals, precision instruments, machinery, electrical machinery, furniture, and textiles Employment in these sectors is expected to increase at a rate greater than total manufacturing employment, but most sectors of employment are estimated to experience numerical increases

While a certain percentage of this employment is predicated on the continuation of sizable federal expenditures in the field of national defense, the economic levels projected are based on a decline in the size of the nation's armed forces from present levels Even so, the continuation of military preparedness as a national policy over the ensuing 20 years appears to be extremely probable, and it is probable that the department would have underestimated future water requirements of the area if it had discounted these aspects of the area's economy.

In connection with the importance of these expenditures to the area's economy, it may be well to recall the employment experience of Southern California in 1946-47 During this time, employment in the aircraft industry fell drastically but the area's economy did not suffer a corresponding decline

SUBJECT NO. VIII. ALLOWANCES OF CONTINGENCIES

Your letter states that most of the allowances for contingencies in Bulletin No 78 are in the direction of greater water use, and some of these were noted However, there were many factors investigated that would operate in the opposite direction, and some of these are listed on page II-38 of Bulletin No 78 It is planned to more fully discuss all of these items in the forthcoming Appendix "D" of Bulletin No 78, and a summary of these conditions that would create demands for water higher than projected follows

(1) Pricing differentials set up by local agencies favoring agricultural water users within each service area would increase the demand for water. These pricing differentials exist in the Southern California coastal plain through the Metropolitan Water District, and it appears likely that other service areas will adopt similar measures If these occur, water demands will increase substantially

(2) A continuation of the inflationary trend of the past 60 years would result in the repayment of any facilities constructed within the near future with inflated dollars, thus decreasing the actual cost to users as calculated at this time As agricultural water use will be closely tied to the cost of water, any change in economic conditions favoring these users will result in increased water use

(3) Many projections of the population of individual counties in Southern California, which have recently been completed by local agencies, indicate that there is a high probability for future populations therein greater than those of our median projection Indeed, if the population of Southern California reaches those levels indicated by the department's high projection of population by 1990, which approximates the projections made by local interests, the increased demand for imported water therein would be about 340,000 acre-feet per year

(4) The present overdraft on ground water in coastal Los Angeles County is about 200,000 acre-feet per year It was assumed in the studies that this overdraft, plus those occurring in other areas throughout Southern California, would continue after Northern California water is available, but would gradually diminish over the ensuing 10 to 30 years to negligible amounts If these overdrafts are halted now, and there is strong evidence that the overdraft in coastal Los Angeles County will soon be eliminated, there would be a substantial increase in the demand for imported water The department has estimated that elimination of overdraft in coastal Los Angeles County would advance the date of full utilization of the Colorado River supply to 1966, and would increase demands for Northern California water by 240,000 acre-feet per year in 1970-71

(5) It was assumed that there would be construction of local water development projects in San Luis Obispo, Santa Barbara, and Ventura Counties, resulting in the addition of nearly 160,000 acre-feet annually to local water supplies in these areas If these local projects, which place large financing problems on the local areas, are not constructed, the capacity to deliver imported water must be increased by 160,000 acre-feet annually

In addition to the conditions enumerated here, there were other factors evaluated that would have a tendency to increase water requirements over those presented in Bulletin No 78 However, it is believed that the projections of water demand presented in the report follow a median line between the two sets of conditions that may cause increases or decreases therein

In regard to the special allowances that were listed in your letter, the following discussion may aid to clarify the questions which are thereby raised

Item A Prior to making an assumption as to increased use of ocean sewage outfalls, the department made a survey of the informed opinion in every city in coastal San Bernardino and Riverside Counties, as well as that of water districts in this area, the regional water pollution board, and the Orange County Water District The results of this survey indicated by a large margin that local persons were convinced of the inevitable construction of an ocean outfall sewer, extending inland even to Redlands and beyond The persons contacted appeared to desire that actions be taken to postpone as long as possible any necessary construction, but felt that the physical necessity for such a facility may require construction as early as 1970 The department estimated that construction of ocean outfall sewer would not occur until 1985, and that all urban areas in the area would not connect thereto until 2010 Thus, this assumption appears conservative and, in fact, does not have much influence on the staging of facilities to be built under Senate Bill No 1106 which was predicated on demands for water through 1985

Item B The physical conditions of drainage and the location and extent of ground water basins in coastal San Diego County prevent much of the return flows from irrigation operations being susceptible to recapture In many areas these flows enter very shallow aquifers which are highly saline These "perched" waters occur widely throughout the area and generally have been found to be not usable In addition, much of the water use in coastal San Diego County will occur within 10 miles of the ocean, and return flows therefrom will not have an opportunity to enter usable ground water basins before discharging into the ocean In the studies reported in Bulletin No 78, no allowances were made for the use of return flows from water use where similar conditions exist in other areas in Southern California

Item C Costs for imported water become more or less fixed when an aqueduct system, such as contemplated in Bulletin No 78, is built and operating Capital costs and interest charges do not increase although operation and maintenance may increase Under these conditions, future water costs will not vary to any great extent, thereby providing water for future water users at

costs comparable to those at the time of construction By comparison, the estimated cost of sea-water conversion at $140 to $600 per acre-foot is more than three times as great as any figure quoted on page II-5, Bulletin No. 78, for water at the aqueduct in the various areas. The sea-water conversion costs of $140 to $600 per acre-foot do not include costs associated with the water transmission or distribution system or pumping costs The estimate of $600 per acre-foot is a probable average for present costs for conversion of sea water while the estimate of $140 per acre-foot is a very optimistic projection of a future cost that may be attainable at the present rate of advancement in the techniques of sea-water conversion

Any future increases in construction costs will affect both methods of deriving supplemental water; therefore, the only possible equalizing factor will be advances in technology which will lower unit costs of converting the water.

Local interests in the Whitewater-Coachella area have indicated that they are not interested in obtaining water from the desalinization of Salton Sea water. Conversion costs of about $140 per acre-foot plus the cost of a transmission system precludes any use by this area of this water supply in the foreseeable future.

Irrigation benefits of $150 per acre-foot for San Diego County were based upon cropping patterns which include very substantial acreages of avocados. This area has the best avocado growing conditions in the United States, and for that reason, it was assumed that avocado acreages would expand with the future markets projected for this fruit.

The urban benefit of "somewhat less than presently estimated minimum future cost of demineralizing ocean water" was established arbitrarily at a figure which was estimated to be the point where urban growth might be impaired should higher water costs become prevalent

Item D The department presented a summary statement of its findings on economic demand for Northern California water to the California Water Commission at a public meeting in Los Angeles on December 5, 1958. The data presented at this meeting included more information on the water demand studies than are reported in Bulletin No 78, and a copy of the department's data, which was presented at that time, is transmitted herewith On pages 42 and 43 of this statement is presented the results of an analysis which the department made on the immediate replenishment of underground basins with Colorado River water, as it suggested under this item of your letter. It was concluded that the net effect of such a course of action, if the many legal and engineering problems could be solved and the replenishment began immediately, would be to eliminate the overdraft that would otherwise occur in the area prior to the time when Northern California water would physically be available Thus, while such a course of action would be highly desirable, it would not solve Southern California's water supply problems after 1970

Item E. Unit water use by individual communities in Southern California has historically exhibited a wide range of values between certain of the communities In an attempt to determine what, if any, parameters cause this variation in unit water use among communities, data extending back to 1930 were collected on over 40 cities in Southern California, covering water production, population, precipitation, temperatures, and personal incomes. In addition, the effects of levels of industry and water costs on unit water use were evaluated This study will be covered in Appendix "D" of Bulletin No. 78, and is briefly referred to on page II-27 of Bulletin No 78

It was concluded, after analyzing these data, that the two major parameters influencing unit water use are: (1) those climatic conditions evidenced in mean daily temperature data, and (2) the levels of personal income in cities. By projecting the probable future condition of all parameters and using their correlation with unit water use, values of unit water use were projected and are as summarized on page II-28, Bulletin No 78 Naturally inherent in these projections are present differences in the levels of per capita water use, which will continue under the assumed future conditions

Item F In most service areas in Southern California, it was assumed that the use of imported water would require facilities designed to handle monthly peak requirements that would be separate from local supply facilities This assumption does not result in increased imported water demands inasmuch as a higher cost for water results from including facilities to meet peaking requirements than would otherwise be required.

During contract negotiations with the various service agencies, certain of the agencies may desire to meet their water peaking requirements from local resources, thus reducing the capacity in state facilities for which repayment must be made. In this eventuality, the department would be more than willing to make the required reductions in aqueduct capacity, and to pass the savings along to the local agencies concerned with the reduction It must be emphasized that the possibility for such mutual action by the state and local agencies does not result in the present projections of water demands at higher levels than would be expected, rather, the converse results are to be expected

Item G. The assumed full mobilization of Camps Pendleton and Elliott, mentioned in this item, add about 14,000 acre-feet, or 2 percent, to the annual water requirements of coastal San Diego County 30 years hence The addition of this comparatively small amount is believed warranted from the special water conditions of San Diego County which severely limit the amount of water that may be obtained locally under emergency conditions Thus, in the event that mobilization would occur and no provisions were made in the aqueduct for these demands, the local water supplies probably would not be adequate to carry any required ground water overdraft during the period of mobilization.

It is also possible that the federal government may open these lands for private ownership and/or use, as was referred to in Bulletin No. 61 Several thousand acres are now being farmed by lessees on the lands at Camp Pendleton, and continual sales of portions of Camp Elliott have occurred between World War II and now. Therefore, there is strong precedent for the assumptions made in regard to future water use at these military reservations

Item H As mentioned in this item, the occurrence of a series of wet water years could reduce the amounts of imported water purchased However, it should be realized that this reduction would only apply to those particular wet years, and, over a long-term period, times of particularly dry weather would cause demands for water greater than projected

As the projections of water demands are based on long-term mean conditions of climate, the annual variations of demands from those projected, which are a result of variations in weather conditions, will be in balance over the entire study period

The current extended period of subnormal precipitation in Southern California illustrates that consideration of the effect of a series of wet years only on water demands would lead to serious deficiencies in necessary water supplies Due to these drought conditions and procedures of operation of reservoirs, the City of San Diego is realizing less than a third of its potential local water supplies, thus increasing its dependence upon imported supplies at this time.

Another factor that could diminish the effect of a series of wet water years on project revenues would be the rate structure that is adopted for water contracts. The two-part rate structure which was recommended to your committee by Mr. Peterson of the City of Los Angeles Department of Water and Power and others at committee hearings in Los Angeles and San Diego on October 20 and 21, 1959, would protect the State from any decline in revenues below the level necessary to meet its obligations in connection with the state water facilities

Item I. It is stated in this item that no allowance has been made for either possible construction of federal projects or additions to their service areas, particularly in the San Joaquin Valley around the Friant-Kern Canal However, comparison of the Division of Water Resources' 1955 report on the Feather River Project with Bulletin No 78 will indicate that the State's service area has been reduced in the latter report in the San Joaquin Valley by omission of the area to be served by the federal San Luis Project, which was part of the State's service area in the earlier report Also, in preparing Bulletin No 78, recognition was taken of probable federal developments in estimates of local water supplies and probable extent of the State's service area in Kern and Ventura Counties This resulted in deleting the Arvin-Edison Water Storage District from the Kern County Service Area, increasing the local water supplies in the Kern County Service Area by 120,000 acre-feet annually due to federal water deliveries (see Table 2, page II-14, Bulletin No. 78), and increasing the local water supplies in Ventura County by 30,000 acre-feet annually through construction of the federal Calleguas Project

While the department recognizes that the federal government may compete for service area in the San Joaquin Valley with the State, it is believed that the allowances that have been made provide adequate protection to the State

Item J In any water production and conveyance system, provision must be made for some amount of emergency storage, which would provide for continuation of water deliveries in the event any catastrophe, such as an earthquake, explosion, or natural failure, causes the extremely lengthy conveyance facilities to be unable to continue operation While the addition of emergency storage to the state water facilities is necessary to assure continuation of deliveries under most any eventuality, it will not increase the annual delivery capacity of the facilities

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STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, November 27, 1959

HONORABLE CARLEY V PORTER
1701 East Compton Boulevard,
Compton, California

Inclusion of Lands In Water Districts—No 876

DEAR MR PORTER You have requested a brief summary* of the legal principles involved with respect to the inclusion of lands in water districts which are authorized to levy assessments

The basis for the inclusion of land in a water district and the assessment of such land for district purposes is the benefit which will accrue to the property (*Palo Verde Irrigation District* v *Seeley*, 198 Cal 477), and the determination of the boundaries of such a district is a determination of the lands which will be benefited (*In re Madera Irrigation District*, 92 Cal 296)

However, the fact that some property outside the district will be benefited incidently does not render assessment proceedings void as to those assessed (*In re Madera Irrigation District*, supra) On the other hand, in the absence of an abuse of discretion or arbitrary action, land may be included in a district and assessed even though it will not receive direct benefits (*Miller & Lux* v *Sacramento & San Joaquin Drainage District*, 276 U S 129) An incidental or indirect benefit, such as resulting from the improvement of neighboring and surrounding land and the consequent increase in value of all lands within the district, is sufficient to justify such inclusion and assessment (*Los Angeles County Flood Control District* v *Hamilton*, 177 Cal 119, *Santa Barbara County Water Agency* v *All Persons*, 47 Cal 2d 699)

In determining whether certain land will be benefited by inclusion in a district, the special use to which it is put is not to be considered, but rather any use to which the land may reasonably be put (see *Howard Park Company* v *City of Los Angeles*, 119 Cal App 2d 515)

The boundaries of a district may be fixed by the Legislature itself (*Los Angeles County Flood Control District* v *Hamilton*, 177 Cal 119), or it may provide by general law for the formation of districts and delegate to a board, commission, or tribunal the power to determine what lands should be included (*Fallbrook Irrigation District* v *Bradley*, 164 U S 112, *In re Madera Irrigation District*, supra, *In re Orosi Public Utility District*, 196 Cal 43)

The general rule is that a hearing on benefits must be afforded at some time before land is finally burdened by an assessment (*Miller & Lux* v *Madera County*, 189 Cal 254; *Turpey* v *McClure*, 190 Cal 593, *Palo Verde Irrigation District* v *Seeley*, supra, *In re Madera Irrigation District*, supra, *In re Orosi Public Utility District*, supra) However, when the Legislature has itself created a district, it has finally and conclusively determined the fact of the benefits to the land included in the district and the owner has no constitutional right to any other hearing thereon (*Fallbrook Irrigation District* v *Bradley*, supra, *People* v *Sacramento Drainage District*, 155 Cal 373, *Los Angeles County Flood Control District* v *Hamilton*, supra) It is assumed that the Legislature took such evidence and made such inquiry as was necessary in order to determine whether or not the property included in the district would be benefited and the property owners are conclusively

* This summary has been based to a great extent upon material appearing in Volume 40 of California Jurisprudence 2d, pages 401 to 415, inclusive If more detailed information is desired as to the legal principles involved in this matter, it is suggested that reference be made to said material

presumed to have been heard through their representatives in the Legislature (*Miller & Lux* v. *Madera County*, supra, *Turpey* v *McClur*, supra, *Barber* v *Galloway*, 195 Cal 1; *In re Orosi Public Utility District*, supra; *Santa Barbara County Water Agency* v. *All Persons*, supra) The finding of the Legislature will not be reversed by the courts unless palpably arbitrary or grossly unequal (*Miller & Lux* v *Sacramento & San Joaquin Drainage District*, 182 Cal 252, *Santa Barbara County Water Agency* v *All Persons*, supra).

Very truly yours,

RALPH N KLEPS,
Legislative Counsel
By RAY H. WHITAKER,
Deputy Legislative Counsel

STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, November 17, 1959

HONORABLE CARLEY V PORTER,
1701 East Compton Boulevard
Compton, California

State Recreation Policy—No 608

DEAR MR PORTER

Question No. 1

You have submitted a copy of a letter making certain statements relative to the policy of the State as to recreation and have asked us to comment on the accuracy of the statement contained therein in connection with state water development projects

Opinion and Analysis No. 1

The writer of the letter quotes, among other things, Section 233 of the Water Code, as added by Chapter 2047 of the Statutes of 1959, which reads as follows

> "233 No plans or proposal for authorization of a project for construction or operation by the State shall be submitted to the Legislature by the Department of Water Resources unless the plans or proposal includes (1) the comments and recommendations, if any, of the Department of Fish and Game and (2) provision for any water or facilities necessary for public recreation and the preservation and enhancement of fish and wildlife resources that the Department of Water Resources determines to be justifiable in terms of statewide interest, and feasible, as a nonreimbursable cost of the project"

The following statement is then made in the letter

> "It is evident, therefore, that the current legislation in effect clearly states that the Legislature is of the opinion, and has determined a policy that recreational features shall be constructed on a nonreimbursable basis by the State"

It must be noted that this is a statement of the writer's conclusion concerning policy, rather than law Confining ourselves to the requirements of the statutes, as we must, we find no statutory provision that recreational features must be constructed on a nonreimbursable basis Section 233 of the Water Code merely requires state project authorization reports submitted to the Legislature by the Department of Water Resources to include provision for any water or facilities necessary for public recreation and the preservation and enhancement of fish and wildlife resources that the department determines to be justifiable in terms of statewide interest, and feasible, as a nonreimbursable cost of the project It should be noted that the section does not provide that such costs *shall be* nonreimbursable Thus, in our opinion, this section does not constitute a statutory requirement that the cost of recreational features of state projects be constructed by the State on a nonreimbursable basis

Question No. 2

You have asked whether there is any provision of state law established by Chapter 1762 (S B 1100) of the Statutes of 1959, or by the provisions of the Water Code governing the Central Valley Project (Pt. 3 (commencing at Sec 11100), Div 6, Wat C 1, regarding the reimbursability of recreational features of state water development projects

Opinion and Analysis No. 2

We have examined the statutes referred to above and have found no provision regarding the reimbursability of recreational features of state water development projects

Very truly yours,

RALPH N KLEPS,
Legislative Counsel
By RAY H WHITAKER,
Deputy Legislative Counsel

LAW OFFICES OF O'MELVENY & MYERS
LOS ANGELES 13, December 1, 1959

HON CARLEY V. PORTER
Chairman, Assembly Interim Committee on Water
1701 East Compton Boulevard
Compton, California

DEAR MR. PORTER: In your letter of October 5, 1959, you ask several questions about Senate Bill No 1106 They are searching questions To answer them fully would be a tremendous task The daily pressure of business limits the amount of time which can be spent on public matters We can, however, express some ideas which may be helpful to you.

In your letter you mention "the credit of the State" Before proceeding to the questions we think it would clarify the discussion to comment upon the meanings of this term. In the strict sense the term "credit of the State" means its financial standing, i e, its income and the taxable resources which will enable it to pay its debts.

Sometimes, however, we hear the term "credit of the State" used by a speaker who is not referring to the State's financial standing but to the supply of California bonds This looser use of the term requires some explanation

Due to rapid growth, the State of California and the local agencies therein have been required to sell large amounts of bonds to finance ever increasing needs for public improvements This has created an oversupply Investors do not wish to load their portfolios with bonds bearing California names Many of them will not purchase additional bonds from California unless the yield is unusually attractive

Thus, when we hear comments that the credit of the State of California has been impaired we must realize that the speakers are probably not referring to the ability of the State to repay, but rather to the oversupply of California bonds relative to other well-known market names For example, the self-supporting veterans bonds are said to increase the interest rates of California name bonds This is because of oversupply.

With this distinction in mind we turn to your questions.

1 Are bond purchasers likely to require agreement on sales contract provisions before bonds can be sold?

The proposed $1,750,000,000 water bond issue is only a step in the broad plan for the development of California water resources This one step, however, is itself a tremendous undertaking Its size has attracted attention in financial circles all over the country It is recognized that for such large amounts of bonds to be sold it will be necessary to attract investors in the East and Midwest Such investors realize that the State will probably continue to sell other bonds They must be shown that the credit of the State will support the incurring of so much debt Assuming that sufficient security can be shown, the marketing of such large amounts of California bonds will aggravate the oversupply problem. This makes it imperative to do everything possible to facilitate the marketing of the water bonds and to avoid injury to other needed bonds, such as the school bonds

Bond buyers are familiar with general obligation bonds which local public agencies (such as cities, municipal water districts, municipal utility districts, public utility districts) have issued for water purposes The issuing agency in its official statement often sets forth its estimated revenues and shows that taxes will not be levied This presents a much stronger bond issue than one to be paid only from taxes

Presenting a bond issue supported by revenues as well as payable from taxes has advantages Being a stronger issue it enables bidders to bid somewhat lower interest rates Under some laws the self-supporting nature of the bonds enables this debt to be deducted on the debt statement in computing the debt limit Even where the laws do not permit such a deduction, it seems to be general practice for underwriters in making their own computations to deduct self-supporting bonds The

result of deducting self-supporting bonds is that other nonself-supporting issues can be sold on the general credit

Selling bonds on a self-supporting basis is not easy. Bond buyers are justifiably skeptical To some extent the experience with estimates on large issues, such as the toll road revenue bond issues, has not been satisfactory The huge size of the water bond issue will make prospective bidders even more cautious It will be necessary to show that water will be delivered in areas which can make payments sufficient to retire the bonds These estimates must be based upon realities This means that contracts must be drafted and executed The hard questions of agricultural subsidy, public power preference and recapture must be answered by facts, not promises

Thus, the answer to your question is clearly yes, if the bonds are to be sold on the best possible terms

2 Must or should there be any special provisions in the project sales contract because of the relationship of these contracts to the bond covenant and project revenues under Senate Bill 1106? If so, what might these provisions be?

The act itself requires certain provisions to be set forth in the contracts For example, Section 12937 provides in part:

> " . . each such contract shall recite (i) that it is entered into for the direct benefit of the holders and owners of all general obligation bonds issued under this chapter, and (ii) that the income and revenues derived from such contracts are pledged to the purposes and in the priority herein set forth "

The act also provides that

> "The department, subject to such terms and conditions as may be prescribed by the Legislature, shall enter into contracts for the sale, delivery or use of water or power, or for other services and facilities, made available by the State Water Resources Development System with public or private corporations, entities, or individuals "

We understand that the department believes it has ample statutory authority so that no further terms and conditions need be prescribed by the Legislature Perhaps by now the department has published memoranda on this point which might show other provisions which should be in the contracts to comply with the applicable laws

A real danger is that the contracts will contain provisions regarding water rights The act states a neutral position on water rights, saying:

> "The enactment of this chapter shall not be construed as creating any right to water or the use thereof nor as affecting any existing legislation with respect to water or water rights, except as expressly provided herein, nor shall anything herein contained affect or be construed as affecting vested water rights "

With respect to the highly controversial "watershed protection" provisions (Wat C 11460 et seq) the act assumed a neutral position, saying·

> "Any facilities heretofore or hereafter authorized as a part of the Central Valley Project or facilities which are acquired or constructed as a part of the State Water Resources Development System with funds made available hereunder shall be acquired, constructed, operated, and maintained pursuant to the provisions of the code governing the Central Valley *Project, as said provisions may now or hereafter be amended* " (Emphasis added)

There is some fear that the watershed protection provisions and other recapture statutes will be written into the contracts, and that as soon as bonds are sold such contract provisions would become binding upon all the public agencies contracting with the State and could not be changed for the life of the bonds A strong argument could be made that such provisions are unauthorized, because they circumvent the Legislature's declared policy of neutrality Likewise such provisions would prevent the Legislature from amending certain parts of the provisions regarding the Central Valley Project in violation of the above quoted legislative declaration.

3 Do the bond purchasers have any rights to project revenues, i e , could the bond purchasers require project pricing policies which would return their investments?

Project revenues are pledged to the purposes set forth in the act "and such pledge shall inure to the direct benefit of the owners and holders of all general obligation bonds issued under this chapter "

After the payment of maintenance, operation and replacement the revenues must be used for the payment of principal and interest on the bonds issued pursuant to the act and then in order of priority, for the other purposes set forth therein Should the revenues be diverted to an unauthorized purpose, bondholders could sue,

provided the State consented It is noteworthy that this pledge ties up the revenues so tightly that additional bonds cannot be issued on a parity This pledge also raises a problem of constitutionality under Section 15 of Art XIII of the California Constitution which gives the support of the public school system and the State University a first lien upon all State revenues

While the act requires the department to enter into contracts, it does not require any particular pricing policies If pricing is such that no revenues are available for bond service the bonds would have to be paid from other state revenues

4 Depending upon your responses to the above questions, are the water bonds authorized by Senate Bill 1106 really general obligation bonds or are they a combination of general obligation bonds and revenue bonds?

The bonds are general obligation bonds One of the distinguishing features of revenue bonds is a requirement enforceable by the bondholders that the issuing agency maintain rates sufficient to maintain and operate the system and service the bonds There is no such requirement as to the water bonds The revenues, to the extent collected, merely constitute additional security for the bonds

Very truly yours,

JAMES WARREN BEEBE
for O'MELVENY & MYERS

BANK OF AMERICA
SAN FRANCISCO HEADQUARTERS
SAN FRANCISCO 20, CALIFORNIA, October 20 1959

MR CARLEY V PORTER, *Chairman*
Assembly Interim Committee on Water
Sacramento, California

DEAR CARLEY It is a pleasure to hear from you I will do my best to answer the several questions raised in your letter of October 5, 1959, as follows·

1 Are bond purchasers likely to require agreement on sales contract provisions before bonds can be sold?

Answer No Municipal bond buyers are primarily concerned with credit and price As long as the full faith and credit of the State backs the bonds, there would be no basic concern as to prior agreement on sales contract provisions

2 Must or should there be any special provisions in the project sales contract because of the relationship of these contracts to the bond covenant and project revenues under Senate Bill No 1106?

Answer Yes

3 If so, what might these provisions be?

Answer To the extent that the contracts will be in force during the life of the bonds and that revenues will be applied as set forth in Sec 12937 (b)

4 Do the bond purchasers have any right to project revenues, i e, could the bond purchasers require project pricing policies which would return their investments?

Answer The bond purchaser should have the right to expect project revenues would be applied, as set forth in Sec 12937 (b) However, as stated in Question 1, the basic credit of the State is of concern to the bond purchaser, rather than project revenues As an improvement on credit and market acceptance of the water bonds, the greater the degree of self-support, the more attractive the bonds in the eyes of an investor However, I believe that the cost of water to users must be competitive and that they should not be expected to pay for flood control and other multipurpose benefits which might increase rates beyond the capacity of water users to pay

5 Depending upon your responses to the above questions, are the water bonds authorized by Senate Bill No 1106 really general obligation bonds or are they a combination of general obligation bonds and revenue bonds?

Answer Bonds are general obligation bonds with application of revenues derived from the works constructed somewhat similar to the Veterans' Welfare Program and San Francisco Port Authority Development

I hope the above answers the questions in the manner intended Should you have any further question, please let me hear from you. Kindest regards

Sincerely,

ALAN K BROWNE, Vice President

RESOLUTION ON WATER
Adopted by the Second Convention of the California Labor Federation, AFL-CIO, San Diego, August 10-14, 1959

RESOLUTION NO. 81

WHEREAS, The distribution of irrigation water in California is one of the most basic and vital problems, and

WHEREAS, The California Labor Federation, AFL-CIO, under the leadership of Secretary Neil Haggerty, has consistently taken sound, liberal and vigorous action to prevent water projects, either state or federal, from falling under monopolistic control of corporate farm interests; and

WHEREAS, The California State Legislature, during its 1959 Regular Session, did pass the California Water Resources Development Bond Act which provides for a bond issue of $1,750,000,000 to be used by the Department of Water Resources for the development of water resources of the State; and

WHEREAS, The California Water Resources Development Bond Act, shall be submitted to the people of the State of California for ratification at the next general election, to be held in the month of November, 1960, and

WHEREAS, Neither the water bond program approved by the Legislature, nor any other state law makes any provisions whatsoever for protecting taxpayers from the monopolization of benefits and the enrichment of large landholders, and

WHEREAS, The State also lacks policies on the distribution of hydro-electric power generated by units of the state system, on how project costs shall be allocated to project beneficiaries, on the pricing of irrigation, domestic and industrial waters, on the expenditure of state funds for development of recreational facilities at reservoir sites, and on the determination of economic and financial feasibility of various units of the state water bond program, and

WHEREAS, Without these policies, and protections against speculation, monopoly and unjust enrichment in the distribution of water benefits, it will be impossible for the public to vote intelligently on the proposed $1.75 billion water bond program, therefore, be it

Resolved, That the second convention of the California Labor Federation, AFL-CIO, commend Secretary Haggerty, his staff, the Federation President and other leaders of the Federation for their forthright action on water legislation, and be it further

Resolved, That the delegates pledge their full support of these actions and encourage Secretary Haggerty and other Federation leaders to continue their fight to prevent the corporate farm interests from gaining complete control of our state government, agricultural pursuits and economic life for generations to come via state or federal water projects, and be it further

Resolved, That this convention, in declaring labor's inability to support the California Water Resources Development Bond Act without necessary protections and qualifications in state policy, hereby calls upon the Governor of the State of California to convene the Legislature in special session prior to the 1960 General Election for the specific purpose of (1) enacting anti-speculation, anti-monopoly and enrichment protections, patterned after federal reclamation law, or protection at least equal in strength and in purpose, and (2) enacting policies and legislative criteria covering the above-mentioned gaps in state law, and be it further

Resolved, That this convention instruct the Secretary-Treasurer to do everything in his power to secure in water project authorization bills and other measures establishing water agencies with proprietary functions, provisions

1 Guaranteeing the right of self-organization,
2 Guaranteeing the rights of collective bargaining for employees involved in the operation, maintenance and repair of the project, and
3 Providing for "prevailing rate" in the construction, modification, reconstruction and alteration of the project, and be it further

Resolved, That this resolution be forwarded to Governor Brown and such other persons as the Secretary-Treasurer shall deem necessary to secure its implementation

October 13, 1959

To. *Members of the Assembly Interim Committee on Water and Senate Fact Finding Committee on Water*

Before both the Assembly Interim Committee on Water and the Senate Fact Finding Committee on Water, there has been testimony presented by some witnesses that users of recreation benefits on state-developed water facilities should pay part or all of the capital costs allocated to the recreation factor of a multipurpose project. Some of the witnesses have not gone this far but have testified that, at least, the operating expenses of recreational facilities developed by the State should be paid for by recreation users.

In an attempt to determine whether there was any feasibility to the testimony of these witnesses and, incidentally, no specific facts and figures that I know of in support of their position have been developed by them, I took it upon myself to inquire of the State Department of Natural Resources, Division of Beaches and Parks, to ascertain certain facts with particular regard to the operation by the State, of the Folsom Lake State Park.

There is, I would imagine, as much recreational use of the facilities at Folsom Lake by the general public as there would be at any state reservoir to be built in the future by the State as a part of its state water facilities Therefore, I felt knowing the answer to some questions regarding Folsom Lake State Park would help in determining whether or not the position of these witnesses was feasible

The total capital investment of the State of California at Folsom Lake State Park as of June 30. 1959, was $3,092,958 consisting of $1,806,092 for land purchased in fee, and total development costs, including roads, parking, launching ramps, development of a picnic area and other miscellaneous developments amount to $1,286,866. Specific costs are identified as follows:

Picnic sites (tables and picnic stoves)	$37,311
Sanitary facilities	110,244
Roads	367,392
Parking and boat launching facilities	446,788

During the last fiscal year, 1958-59, the annual operating costs totaled approximately $200,000 There are, at present, no camping sites as areas suitable for this type of activity are still under acquisition Therefore, no expenditures have been made in this regard Revenue for the 1958-59 fiscal year approximated $30,000

I am informed by the Division of Beaches and Parks that with the completion of additional facilities and the opening of new areas, it is anticipated that revenue might be increased It is estimated by the division that approximately $50,000 annually will be collected during the next year of operation

I have attached hereto a breakdown of statistical information which includes capital outlay, maintenance and operation, revenue and use of the state park. This information was all supplied to me by the Division of Beaches and Parks.

Yours sincerely,

EDWIN L. Z'BERG

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF BEACHES AND PARKS
FOLSOM LAKE STATE PARK

STATISTICAL INFORMATION

Expenditures and data	*Total*	*Period* 1956-57 F. Y.	1957-58 F. Y	1958-59 F. Y.
Capital Outlay				
Real Property				
Fee title	$1,805,090	$156,560	$658,160	$990,370
Acreage—fee title	932.25	127 77	315 62	488 86
Acreage—leased (Submerged or water surface, 11,590 acres)	15,690	15,690	---	---
Development	1,286,866	34,646	659,727	592,493
Maintenance and operation	---	121,052	180,176	197,216
Revenue: *				
Picnicking (parking no fee to date)	16,841 50	---	3,859	12,982 50
Boat launching	18,223	---	2,764 50	15,458 50
Camping (facilities not available to date)				
Concessions	2,275 79	81.41	828 18	1,366 20
Totals, Revenue	$37,340.29	$81 41	$7,451 68	$29,807 20
Use.				
Visitor Days				
Picnicking	1,183,346	251,029	351,028	581,289
Boating (all uses)	143,033	26,000	50,258	66,775
Camping (not permitted until facilities available)				
Sightseeing ** (estimated)	1,950,000	395,000	555,000	1,000,000
Totals, Attendance	3,276,379	672,029	956,286	1,648,064

* Fees for picnicking and boat launching are collected at developed areas only (Beal's Point and Granite Bay)
** Sightseeing includes those people visiting the park areas for swimming and fishing Currently, there is no charge for this type of park use

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City of Bakersfield
September 22, 1959

The Honorable Chairman and Members
Assembly Water Committee
Bakersfield, California

GENTLEMEN: We were recently informed of a proposal to create a series of "Conservancy Districts" in connection with the California Water Plan Up to the present time, the information we have received has been so sketchy that we are not prepared to properly analyse the proposal

But we can discuss principles!

Until there was a plan which proposed to treat California as *one State*, there was no acceptable water plan Various groups which espoused only the desires of their particular areas succeeded for years in preventing the adoption of any plan which did not meet with their approval in every detail. Adoption of the California Water Plan was a notable accomplishment, in that it considers only what is best for the State of California.

The economy of every part of the State will be favorably affected It does not seem to us to be reasonable for arbitrary political boundaries to be set up which say, in effect, that "benefit begins here" or "benefit stops here." Rather, we believe that water is a statewide problem, the solution of which can only be on a statewide basis, and that each of us should assume our equitable share

We *are not* convinced that operation of the California Water Plan will require subsidy. That is a matter which will be determined by the facts, when they are all in and analysed. It is our understanding that an exhaustive cost study is underway, to

reasonably forecast the delivered cost of Plan water This will tell half the story The other half is the economic limit beyond which farmers cannot afford to buy water There is suspicion in some quarters that certain testimony on that subject may have invaded the field of fiction We venture no opinion on that.

We *are* convinced that, subsidy or no subsidy, orderly economic development of California cannot long proceed without solving the water problem, and we are further convinced that it would be a grave error to establish a new set of single-purpose artificial political subdivisions in the State

Respectfully submitted,

C. LELAND GUNN
City Manager

A STATEMENT OF POLICY DEFINING THE TERM "UNJUST ENRICHMENT" AS APPLIED TO SERVICE AREAS OF THE CALIFORNIA WATER PLAN AND RECOGNIZING A PRINCIPAL OF ACREAGE LIMITATION TO BE APPLIED TO SUCH AREAS

The term "unjust enrichment" means that persons owning or controlling large areas of land receiving water from facilities of the California Water Plan shall be enriched by being allowed to purchase unlimited amounts of water to service their holdings either for agriculture or industry, thus allowing them greatly to increase private agricultural or industrial production with water supplied by public moneys, and the term "unjust enrichment" shall also apply when such landholders who are receiving unlimited supplies of public waters in such areas shall become enriched from the renting or selling of their lands at prices greatly increased above the value of the land before such unlimited supplies of water were available

Therefore, it is recommended to this committee that it shall recognize that unjust enrichment is a direct result of large landholders receiving unlimited amounts of water and that it shall be the recommendation of this committee to the legislature that for the best interests of the people of California legislation should be enacted to prevent unjust enrichment by limiting the acreage of areas which shall be allowed state project water

It might be pointed out that lands within the service areas of state project water will naturally increase in value because of their increased production potential In the selling of such lands there will be enrichment to the seller, but as long as such enrichment is not the result of landholders being allowed unlimited amounts of water, it shall not be deemed unjust

It is further urged that in respect of this policy this committee shall recognize the following basic Principle of Acreage Limitation and recommend its acceptance as a basis for legislation preventing unjust enrichment, to wit

No person who wishes to farm in an area serviced by state project water should be denied the opportunity of making a family living as a result of other members of the project service area using water in excess of the amount necessary for a family's livelihood

Such a policy is indispensable for justice to water users *because such water is a limited natural resource and when a limited resource is made available to citizens by public moneys, such a resource must be divided to provide as many families as possible with livelihood*

Under Federal Acreage Limitation Law only 160 acres owned by one person can receive water from a federal project Exceptions to this law have been made when the water recipient has paid interest on irrigation costs (the so-called Washoe formula) or when the landholders in the service area have paid for the original cost of the project

Such exceptions are unwarranted and unfair because they allow some people to use a disproportionate share of a *limited resource* which belongs to all the people of a state and has originally been made available by all the people of the United States

Water supplied by a state project for farming purposes should always be limited according to the *basic policy of family sufficiency* and in realistic terms of acreage because such water is a *limited resource* Paying the interest on the project supplying state water or paying off the original cost of the project should in no way change the basic policy of limitation because such actions in no way affect the fundamental principle that *water as a basic, limited resource must be divided as equally as possible among the citizens seeking to use it for livelihood*

Limited water resources shall be apportioned first for livelihood and secondly for profit. Those seeking no limitation for the agricultural use of state project water are placing the use of water for profit ahead of the use of water for livelihood. Such a selfish, short-sighted policy is not in keeping with those principles of justice and equality in the American heritage that have always affirmed first the sacredness of the citizen's right to pursue happiness, and secondly his right to property. Consequently, it is therefore urged that for the sake of justice and the welfare of the people of California, this committee shall encourage all measures to prevent any minority's concern for profit from interfering with any majority's right to pursue happiness.

(Signed) CHARLES B. GARRIGUS
33d District Assemblyman
Fresno County

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ASSEMBLY INTERIM COMMITTEE REPORTS

1959-61

VOLUME 26 NUMBER 2

THE DELTA POOL

A REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON WATER

TO THE CALIFORNIA LEGISLATURE

(House Resolution No. 13, 1960)

MEMBERS OF COMMITTEE

CARLEY V PORTER, *Chairman*

PAUL J. LUNARDI, *Vice Chairman*

BRUCE F ALLEN
JACK BEAVER
CARLOS BEE
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JOHN L E COLLIER
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EDWIN L Z'BERG

January 2, 1961

Published by the

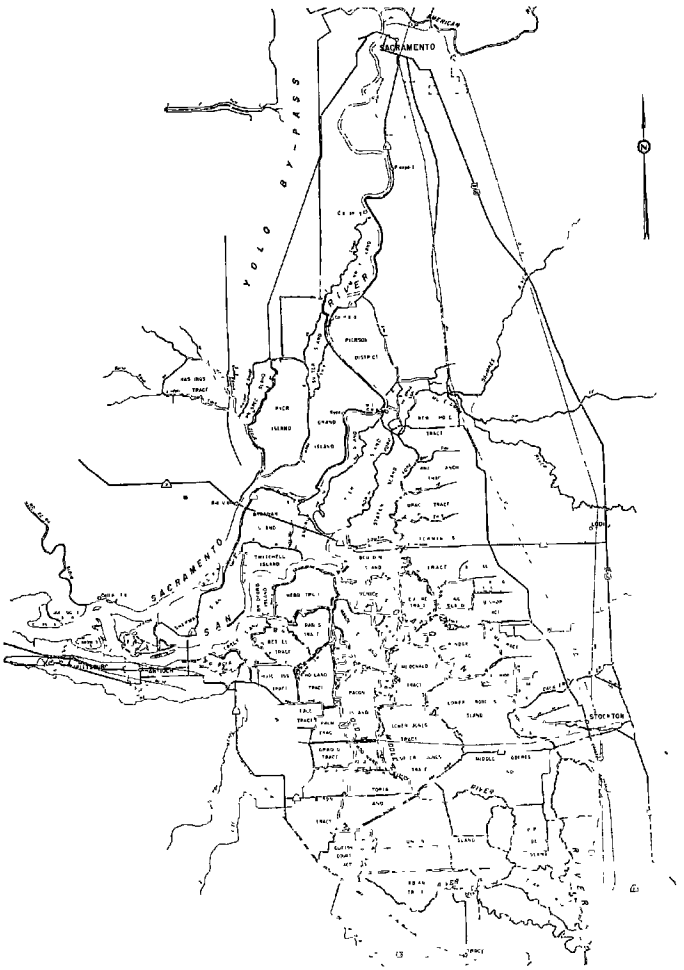
ASSEMBLY

OF THE STATE OF CALIFORNIA

RALPH M BROWN
Speaker

CARLOS BEE
Speaker pro Tempore

ARTHUR A OHNIMUS
Chief Clerk of the Assembly


SACRAMENTO
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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER

January 2, 1961

HON RALPH M. BROWN,
Speaker of the Assembly
MEMBERS OF THE ASSEMBLY
State Capitol, Sacramento, California

GENTLEMEN The Assembly Interim Committee on Water submits herewith its report on the Delta Pool This report and the hearings which preceded it were authorized by House Resolution No 13, 1960.

Pursuant to House Resolution No 13, which directed a comprehensive study of the Delta problems, your committee has considered all known factors. It has attempted to assess the problems it has found and to recommend the most appropriate action in each instance

As more fully set forth in the body of the report, your committee has concluded that the Delta area should be added to the San Francisco Bay Model of the U S Corps of Engineers at Sausalito to permit certain joint studies of the Bay and the Delta by the Department of Water Resources and the U S Corps of Engineers The committee also recommends that a Delta Study Commission, patterned somewhat after recent federal experience in the southeastern states and Texas, be established to develop a comprehensive solution to the problems of the Delta confronting the State in constructing the Delta Water Project as part of the state water facilities

With respect to the Delta Pool Concept, which is an important part of the water sales contracts being negotiated between the State and its customers, your committee concluded that the Delta Pool Concept should be limited to pooling at the Delta to provide an export water supply and to replenish the Delta Pool Further, the committee concluded that the method of computing the price of water at the Delta Pool should be restudied by the department, and the consideration given to making it more responsive to savings in the Delta Pool investment and to minimizing the burden of costs on both the project customers and the General Fund In making these recommendations the committee does not intend to adversely affect the terms of the contract executed on November 4, 1960, by the Department of Water Resources and the Metropolitan Water District of Southern California.

Your committee wishes to express its appreciation to the numerous organizations, state agencies and private citizens who have contributed generously of their time and talents The chairman and the committee

wish to thank the Legislative Counsel Bureau and the office of the Legislative Analyst who have provided staff services to the committee

Respectfully submitted,

(signed)

CARLEY V. PORTER, Chairman
PAUL J. LUNARDI, Vice Chairman
Assembly Water Committee

JACK A. BEAVER
CARLOS BEE
FRANK P. BELOTTI
(with reservations)
*JOHN L E COLLIER
PAULINE L. DAVIS
(with reservations)
MYRON H FREW
CHARLES B. GARRIGUS
ERNEST R GEDDES
FRANK LANTERMAN
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LLOYD W LOWREY
EUGENE G NISBET
JACK SCHRADE
HAROLD T. SEDGWICK
BRUCE SUMNER
JOHN L WILLIAMSON
EDWIN L Z'BERG

* I do not support any part of this report that will alter in any way the Metropolitan Water District of Southern California-State of California contract that is presently agreed upon

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THE DELTA POOL

INTRODUCTION

In its report of February 1, 1960, entitled "Economic and Financial Policies for State Water Projects," the Assembly Interim Committee on Water gave only brief consideration to the concept of a Delta Pool Without having made any detailed study of the pooling concept or of the problems of the Delta itself, the committee felt it was unable to draw significant conclusions on the matter. Therefore, it recommended that the Delta Pool be the subject of a special study. During the 1960 Budget Session the committee sponsored Assembly House Resolution No 13 which directed that the "subject matter of the Delta Pool and all problems related to it" should be studied and a report submitted to the Assembly

The committee's work on the Delta has essentially encompassed two facets (1) a study of the physical problems in the Delta, and (2) a study of the concept of operating the Delta as a physical and financial pool to secure the supply of water needed for export by the State Water Facilities

The committee's study of the Delta involved the following hearings and activities

Date	*Location*	*Subject*
May 3, 1960	Delta	Tour of the Delta area
May 4, 1960	Oakland	Testimony from Department of Water Resources on Delta Water Project and the Delta Pool Concept
June 27, 1960	Martinez	Testimony from Delta Counties on local problems in the Delta
June 28, 1960	Berkeley	Testimony from U S Corps of Engineers and Department of Water Resources on various Delta problems
July 18, 1960	Santa Monica	Testimony on various aspects of contract problems which partially relate to the Delta Pool Concept as included in contract drafts
July 19, 1960	Santa Monica	
Sept 13, 1960	Portola	
Sept 14, 1960	Sacramento	
Sept 15, 1960	Sausalito	Tour of the U S Corps of Engineers Bay Model and work session
Oct 5, 1960	Riverside	Testimony on Weber Foundation Studies including proposals for solution of Delta problems.
Nov 14, 1960	Monterey	Work session
Nov 15, 1960	Monterey	Work session

The problems of the Delta involve many complex engineering and technical matters which are beyond the capacity of a legislative committee to analyze or to deal with technically The hearings held by the committee were designed to give a comprehensive view of the Delta problems and to determine the State's success in solving its Delta problems as well as to recommend actions to resolve remaining problems Therefore, the committee has not attempted to evaluate or make recommendations on various conflicting technical proposals for the development of the Delta and the San Francisco Bay area

THE DELTA AND ITS PROBLEMS

Geographically, the Delta is the confluence of the Sacramento and San Joaquin Rivers where they empty into the eastern part of San Francisco Bay [1] Other smaller streams such as the Mokelumne, Cosumnes and Calaveras Rivers flow into the Delta from the East The Delta itself is a criss-crossing pattern of rivers, sloughs, interconnecting channels and drains, which form more than 50 islands ranging in size from a few to several thousand acres

The Delta islands are composed of gradations of fine silts and peat lands which lack the desired stability to provide a base for the construction of levees and other flood control structures The organic soils in some portions of the Delta have subsided 18 feet below sea level The historic rate of subsidence is an average of one foot every four years

The islands of the Delta are exclusively devoted to intensive agricultural use In spite of technical problems with seepage, drainage, subsidence, and intrusion of saline waters, the Delta islands constitute some of the richest farm lands in the State Much of the land ownership is in large tracts The original condition of the Delta was a marshland, but since its reclamation large sections of it still remain suitable only for dwellingless farms

There are approximately 1,100 miles of channels and water ways in the Delta which make the area a unique and valuable site for recreation, consequently, the Delta is highly prized by boat owners, fisherman and water sports enthusiasts The economic importance of recreation in the area is already large and promises to become even greater There are thousands of small boats in the area and many thousands more have access from the Sacramento River and San Francisco Bay. In addition to its importance for recreational boating, the Delta is the salt water entrance to the deep-water channel for the Port of Stockton The U S Corps of Engineers is currently constructing a similar deep-water channel which will terminate in a new port just west of Sacramento The Delta is, therefore, also important as a commercial navigation facility.

At the western edge of the Delta in the Pittsburg-Antioch area, an important complex of large industries has located, partly because of the availability of large quantities of fresh water These industries view with alarm the increasing tendency for saline waters to intrude farther into the Delta during the low flow summer periods and to raise the salinity of the waters in the western Delta beyond their tolerance standards

In the southern part of the Delta is the Tracy pumping plant of the Central Valley Project which was constructed by the Bureau of Reclamation to pump Delta waters into the Delta-Mendota Canal for delivery in the San Joaquin Valley The bureau's Shasta Dam on the Sacramento River stores water during the periods of high flow for release during low flow periods to serve the bureau's customers along the Sacramento River and to provide sufficient water in the Delta for the Tracy pumping plants In order to pass this fresh water from the Sacramento River to the Tracy pumps, the water must move the length of the Delta and still retain its quality. To do this the bureau must provide sufficient

[1] A legal definition is contained in Section 12220 of the Water Code

water from the Sacramento River both to supply the pumps and at the same time to push back the saline waters in the western part of the Delta which the Tracy pumps tend to draw into the Delta through their pumping action

In past years the Bureau of Reclamation has provided an inflow into the Delta of approximately 3,300 second-feet during the summer which was generally considered sufficient to maintain a high quality water in the Delta for the bureau's pumps and the farmers and industries in the Delta In the last few years the bureau has reduced this inflow to approximately 1,500 second-feet which is sufficient to maintain the quality of water at the Tracy pumping plant but which apparently will permit the intrusion of sufficient saline waters from San Francisco Bay to adversely affect the industries and irrigated agriculture in the western Delta [2]

Since the Delta waters are already used by industries in the western Delta, by agriculture on the Delta islands, by the Central Valley Project in the San Joaquin Valley, and, in the future, will be delivered from the State's project into San Diego County, the quality of the water in the Delta is of utmost importance Quality is no problem during the rainy season when flows are high, but as the flows diminish in the summer, increasingly larger proportions of the flows are diverted upstream from the Delta for prior use by industries, irrigators and municipalities Along the Sacramento River this diverted water is returned to the River as sewage effluent or irrigation drainage of reduced quality The Central Valley Project normally diverts all the flows of the San Joaquin River at Friant Dam. During the summer months only low quality waste waters from irrigation drainage or municipalities may reach the Delta from the San Joaquin River The Delta is, therefore, largely dependent for a water supply during the summer upon storage releases of water from the Central Valley Project or State Water Facilities, which releases are primarily made for export purposes

As both the San Joaquin Valley and the Sacramento Valley develop, the waste water problem will increase to the point that in the San Joaquin Valley first, and later in the Sacramento Valley, special master drains will some day be required to remove the poor quality water from the Valleys and bypass the Delta A drainage system to serve the San Joaquin Valley has been included in the State Water Facilities Releasing drainage water into the San Francisco Bay may add other new problems in the Bay

The Delta is also the epicenter of a very special complex of problems related to water rights The Delta is the point at which natural flows converge by following the stream channels of the Central Valley. At this point all waters which are not previously stored or consumed or not used at the Delta pass out to the ocean and are lost to further use. The construction of a storage or diversion project on any stream or tributary of the Delta will reduce the remaining quantities of natural flows still entering the Delta California's water rights law requires

[2] There is disagreement between the Delta interests and the Bureau of Reclamation on the obligation of the bureau to protect the Delta from salinity intrusion Because this is a matter of federal law, federal policy and perhaps contractual arrangements to pay for the benefits received, the committee has only noted the problem

a permit to pump water from the Delta Similarly, a permit is also required to store water on, or divert water from, a stream tributary to the Delta or from any other unappropriated source in California

The watersheds of origin statute in the Water Code prohibits the State Water Facilities and the U S Central Valley Project from securing a permit for a firm water right because

> " a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein "[3]

This statute was enacted to ensure that an area where water originates would have a first right to the use of the water Thus both the yield of a storage project to provide a Delta export supply and the quantities of surplus water naturally available in the Delta are subject to diminution by the construction of future upstream projects or increased diversions of water any place in the Central Valley Under these legal limitations, water available for export from the Delta will someday be diminished to the extent that new projects to replenish or resupply the Delta will be required These new projects might be constructed either on tributary streams of the Delta or on north coastal streams from which tunnels could divert the water into the Central Valley streams to flow into the Delta The need to construct projects to replenish the Delta means that the future cost of an export water supply at the Delta will probably increase

A final problem arising from replenishing the Delta is the need to pool or average out the costs of replenishing the Delta water supplies among the users The Delta is also a likely place to pool or spread any surplus project benefits

It is no overstatement to conclude that the complex of problems briefly outlined above is unprecedented in California water resources development Consideration of the progress being made in resolving these problems is the object of the remainder of this report It is necessary to consider first the physical problems of the Delta

THE DELTA WATER PROJECT

One of the first steps in resolving the physical problems of the Delta is the preparation of a plan to (1) solve the local problems already existing in the Delta, (2) assure that the Delta will hydrologically function properly as a source of export water for the State Water Facilities, and (3) compensate for any difficulties arising from 1 and 2 above To do this, the Department of Water Resources has evolved a tentative proposal for a Delta Water Project which was presented to the committee in Oakland on May 4, 1960

The most recent description of the project is contained in the pamphlet entitled "The Delta and the Delta Water Project" published by

[3] Water Code Section 11460 There is some question whether the federal government will voluntarily observe this law A further factor of importance is the operating agreement of May 16 1960, between the Department of Water Resources and the Bureau of Reclamation providing for a sharing between the two agencies of the unappropriated waters reaching the Delta

the Department of Water Resources dated January 1960.[4] The department plans to construct a series of gates or river control structures at points located along the rivers and main channels of the Delta. These structures would prevent the intrusion of salt water from the San Francisco Bay beyond the control structures and would reduce the quantity of water wasting into San Francisco Bay to repel salinity. However, the western part of the Delta beyond the control structures would be opened to increased salinity intrusion. Along with the control structures would be constructed 250 miles of master levees on which a system of roads could be built. The control structures and levees would convey the high quality waters of the Sacramento River through the east-central portion of the Delta to the pumping plants in the southern part of the Delta. The master levee system would restrict the winter flood flows of up to 600,000 second-feet to a few master channels and would protect many islands from floods by closing off most of the small drains, sloughs and channels surrounding them. Closing off the smaller channels would require that substitute drainage and water supply facilities be constructed to serve those lands closed off. Extensive small craft transfer facilities and fishways would be required to preserve recreation and fishery values. The department estimated the preliminary cost to be about $83,000,000. First construction was scheduled to begin in 1962 and the last units would not be completed until 1982.

At the committee's hearing in Martinez, the department's proposal met substantial opposition from many local interests in the Delta.[5] Representatives from Contra Costa County expressed varying degrees of opposition or dissatisfaction with the department's proposal. One of the most pointed objections was that the control structures are located too far east and upstream in the Delta. Contra Costa proposed instead a Chipps Island barrier to the west of the Delta which would make the whole western portion of the Delta fresh water instead of saline as in the department's proposal.

San Joaquin County representatives expressed either reservations or lack of sufficient information to concur in the department's proposal. Sacramento County expressed reservations and specified certain objectives which the county felt should be achieved by the Delta Water Project.

In general, the recreation, fisheries and water sports interests were opposed to closing many of the smaller channels. The Port of Stockton and the Sacramento-Yolo Port Authority opposed the construction of any barriers which would impede ship movements into their ports through the Delta. Some Delta interests expressed a preference to be left alone. The Delta Counties and local governments expressed concern about approximately $30,000,000 of the Delta Water Project costs for roads and local improvements which the Department of Water Resources had indicated might be allocated to them for payment. The

[4] A report on "Feasibility of Construction by the State of Barriers in the San Francisco Bay System" was published by the Water Project Authority in March, 1955. In March, 1957 the Department of Water Resources published Bulletin No. 60, "Interim Report on the Salinity Control Barrier Investigation" which contained the forerunner of the Delta Water Project. The Delta Water Project is included in the list of authorized projects contained in Senate Bill No. 1106 (Burns-Porter Water Bond Act) and is, therefore, the Delta portion of the State Water Facilities.

[5] Details of the hearing may be found in the transcript of Martinez hearing, June 27, 1960, which was mimeographed by the committee.

department has subsequently stated that it is restudying the Chipps Island barrier, and promised that it would not construct any facilities chargeable to local government unless their construction is desired by local government.

Many of the Delta interests are confronted with a dilemma Some strongly opposed the Delta Water Project, but others strongly stressed the need for action because of the seriousness of the problems they face These local interests naturally have their own particular problems foremost in mind, but the general tone of their testimony seemed to indicate that it is not clear to them how their problems can be accommodated in an overall solution to the Delta problem, and this seems to be the essence of their dilemma.

The committee also felt from the testimony that the department's planning approach places too much emphasis upon presenting the department's solutions to problems rather than consulting with local interests to achieve mutual understanding and co-ordination of effort The committee recommends that appropriate legislation be enacted to require local consultation and co-operation in the department's planning work.[6]

In general the committee concludes, without attempting to judge the technical adequacy of the department's planning work, that the department does not now have a solution to the problems of the Delta which is acceptable to the Delta interests

THE DELTA IN ITS BROADEST CONTEXT

After studying the local problems of the Delta and local attitudes toward the Delta Water Project, the committee turned to the broader picture of the Delta as a part of the State Water Facilities, as a part of the greater complex of San Francisco Bay problems, and as a subject of important responsibilities of several federal agencies In this context the problems of the Delta take on an entirely different perspective

It has already been pointed out that the Delta is the focal point of the water transportation and pumping operations of the Central Valley Project by means of the Cross-Delta Channel and Tracy pumping plants. The bureau's customers along the Delta-Mendota Canal and those areas being served by the bureau's Contra Costa Canal are already intensely interested in the Delta As the bureau adds new customers in the San Luis service area and the State signs up customers in the South Bay Aqueduct service area and along the San Joaquin Valley-Southern California Aqueduct, these customers too will be vitally interested in the Delta They will have much in common with the interests of the large industries in the Pittsburg-Antioch area of Contra Costa County and the farmers in the Delta

Judging from the above, the problems of the Delta are neither local nor isolated, but directly or indirectly concern most of the water interests of the State This conclusion cannot be escaped irrespective of exactly which projects are built or which areas are served with water from the Delta

[6] The committee formally voted to prepare a directive to the department that it follow a formula of local co-operation in its planning work A concurrent resolution was first discussed by the committee but subsequently a statute was suggested Transcript of June 27, 1960, page 221

The Delta is a part of the greater body of water known as the San Francisco Bay The Delta and any major physical changes affecting it have varying relationships to recreational and commercial navigation in San Francisco Bay. The flows from the Delta carry silt into San Francisco Bay and influence the formation of shoals and dredging problems The interaction of tide stages and flood peaks determines the flood control problems of the Delta and the eastern part of the Bay The flushing action of flood peaks as they sweep into San Francisco Bay and the quality of the Delta outflow condition aquatic life in the Bay area Finally, and perhaps most important, the location of any barriers to saline intrusion can be determined only after full analysis of the possible locations of barriers throughout the San Francisco Bay itself The above brief mention of the Delta in relationship to the San Francisco Bay shows that the Delta is directly related to the solution of some of San Francisco Bay's important problems

The desirability of constructing a system of bay barriers and whether these control structures or barriers should be located in the Delta as proposed by the Department of Water Resources or elsewhere is not resolved Many thoughtful persons propose a more costly and comprehensive set of barriers than is included in the department's Delta Water Project [7] The location of bay barriers is included in more extensive studies being made by the San Francisco District of the U S Corps of Engineers at the San Francisco Bay Model located in Sausalito This model of the Bay hydrologically duplicates problems of the Bay to permit intensive study in miniature form The model does not, however, include the Delta At various times in the past two years the Department of Water Resources, the Corps of Engineers, and other interested agencies have discussed the desirability of co-operation between the State and the Corps of Engineers to add the Delta to the Bay Model, but such action has not yet been taken The model can be expanded, the space is available and the phasing out of certain studies by the Corps of Engineers creates an opportunity to join the efforts of the Department of Water Resources and the Corps of Engineers to make a fully comprehensive and complete analysis of the Delta problem

The committee recognizes that extensive exchange of information takes place between the Department of Water Resources and the Corps of Engineers and that relations between the two agencies are good However, the department is proceeding with analytical studies of the Delta problems while the corps is proceeding with model studies of the Bay It does not serve the public interest to continue these activities without joining them fully to achieve the maximum returns from the expenditure of public funds and the best possible co-ordination of answers and recommendations The committee knows of no opposition

[7] The plan of the late John Reber and the Weber Foundation studies both propose an elaborate multiple purpose system of barriers in the heart of the San Francisco Bay Interest in the Reber plan is generally credited with having brought about the present Bay Model studies of the U S Corps of Engineers The earlier report of the Water Project Authority (see note 4, above) rejected barriers in San Francisco Bay in favor of more limited control structures in the Delta However, the U S Corps of Engineers is studying several locations for bay barriers by means of its Bay Model at Sausalito The results of the corps work will not be published until December 1961 In the meantime the department's Delta Water Project control structures have incurred opposition, as already discussed in this report, and the department is restudying the Chipps Island barrier which the Corps of Engineers is also studying

to this proposal and strongly recommends that such action be undertaken immediately.[8]

A review of the Water Code, appropriation bills and other legislative pronouncements might indicate that the Department of Water Resources has the responsibility for solving all the problems of the Delta. However, upon taking a broader view of the Delta's problems, the committee found that such responsibility cannot and does not exist. The department is the nucleus agency around which cluster various studies by other state agencies. For example, fisheries studies are being made by the Department of Fish and Game and the University of California and the Central Valley Regional Water Pollution Control Board are participating in water pollution studies of the San Francisco Bay and the Sacramento River. Some state agencies have independent statutory authorities and interests. Among these agencies are the Department of Public Health, the Department of Fish and Game, and the Division of Beaches and Parks.

In the San Francisco Bay Model studies there is a similar cluster of federal agencies contributing to the work of the Corps of Engineers.[9]

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[8] The attitude of the Corps of Engineers on adding the Delta to the Bay Model is set forth below.

"Honorable Carley V. Porter, Chairman
Assembly Interim Committee on Water
California State Legislature
Room 2115, State Capitol
Sacramento, California

"DEAR MR. PORTER:

"With reference to your letter of 1 November 1960 and supplementing my letter of 24 October 1960, please be advised that within the limits of existing authorities the Corps of Engineers will be glad to co-operate with the State of California in any studies that it may require. If the State desires model studies of the Sacramento-San Joaquin Delta be accomplished at our Sausalito facility, is willing to bear all added costs attendant therewith and can delay the testing program so as will not interfere with our own schedules, we will most certainly lend all possible assistance in that endeavor.

Regulations covering work to be performed by this office for other agencies require specific approval by the Office of the Chief of Engineers. Such authority will be requested if and when it appears that the study is definitely desired. In addition, funds to cover the total estimated cost of the work or an initial increment of the estimated cost based on an approved schedule of payment must be deposited with the installation performing the work (San Francisco District) before any obligation or expense in connection with the work is incurred. When funds are being deposited on an approved schedule, no obligations or expense will be incurred in connection with the work in excess of funds on deposit.

"Our testing program at Sausalito is currently scheduled for continuation through fiscal year 1963. Thus, although model construction could be initiated prior to that time, results of studies of Delta salinity and water transfer problems could not be foreseen for about two years thereafter or 1965 at the earliest.

"Construction of the model extension would require about 12 months, and could begin as early as December 1961. Hydraulic and salinity verification would require an additional 12 months and, assuming our own testing program is sufficiently advanced and personnel are available, might be accomplished during the period December 1962 through December 1963. Delta tests could then be initiated in January 1964 and conservatively would require 16 months to complete.

"Although detailed estimates have not been prepared, it is possible that the cost of such a program would be of the same general order as operation and construction of a separate model at the Vicksburg Waterways Experiment Station, or roughly $275,000. This, of course, does not include the cost of procuring basic physical data required for construction and verification.

"If the foregoing schedule is within State requirements and you should so desire, I will request the San Francisco District to prepare detailed time and cost schedules.

"Very truly yours,

"R. G. MACDONNELL
"Brigadier General, USA
"Division Engineer."

[9] Mr. Reuben Johnson of the San Francisco District testified on this point on pages 66 and 67, transcript of June 28, 1960:

"From the Department of Commerce we have asked for an economic projection of the Bay area as to its development up to the year 2020. That report

Some of these federal agencies have their own statutory responsibilities which clearly supersede state authority in such matters as navigation, national defense implication of bay barriers or funding of a federal contribution to flood control in the Delta.[10] In fact, the Bureau of Reclamation, by virtue of its operation of the Central Valley Project, already has an operational and proprietary interest in the Delta which the State cannot alter. The Corps of Engineers Sacramento District also has a prime interest in Delta flood control problems. Thus in both the Delta and the San Francisco Bay the federal agencies have interests, constitutional powers and operating responsibilities that the State cannot disregard.

At the local level the Delta counties, most notably Contra Costa and San Joaquin Counties, have spent substantial sums for engineering studies, gathering data and economic analyses of their Delta problems. Within the Delta counties there are many reclamation districts, water districts, associations, land owners, industries, boat operators, and recreationists who have interests in the Delta.

Viewed in this full perspective it is apparent that the solution to the Delta problems is not in the hands of one agency. Even with all the studies being made, the large sums being spent and the hard work of so many agencies and individuals, an important link is missing. There is no mechanism for the comprehensive solution of the Delta problems in the Delta's broadest context.

DELTA STUDY COMMISSION

Because of the wealth of federal, state and local agencies working on the Delta problems or having responsibilities in the Delta, establishing any type of a co-ordinating committee which would provide representation for each agency and interest seems unworkable. Perhaps as many as 30 or 40 representations would be required on the co-ordinating committee. Such a large group could not function effectively. In addition, any solution to the Delta problems which achieves agreement among all interests, but which is technically deficient, may be worse than no solution. Difficult as it may be to achieve agreement among all interests, the engineering, water quality, legal and fishery problems are equally as difficult and some are unique.

The committee feels that a Study Commission consisting of at least seven members could provide the machinery to solve the Delta prob-

is just coming out now in July and it has some very interesting information in regard to how this Bay area consisting of nine counties are going to develop from the standpoint of growth and population and economic development. We have also contracts with the Public Health Service in regard to pollution in the Bay as their use might affect the pollution both within and without barriers, how the population is going to progress as time goes on in connection with the population growth. The Fish and Wildlife Service is also making a study of the fish and wildlife aspects of barriers. They are concerning themselves primarily with barriers and, of course, that does include the effect in the Delta area.

"We also have called in the Department of Agriculture for studies on the use of marsh and tidelands for agricultural purposes if they were reclaimed, the evaporation and transpiration of fresh water lakes and several other features that they have supplied information on, and we have also utilized the expert services of the United States Geological Survey and also the Bureau of Reclamation."

[10] No dikes or other obstructions to the navigable capacity of the waters in the Delta or in the San Francisco Bay could be constructed by the State without the approval of the Chief of Engineers and the Secretary of the Army (See 33 U.S.C.A. 401 and 403). The powers of the United States with respect to controlling the navigability of waters are derived from the commerce clause (Cl. 3, Sec. 8,

lems [11] Appointment to the commission should be based upon specific qualification requirements such as contained in the Water Code sections for selecting members of the State Water Rights Board A reasonable breakdown of the qualifications of the seven members might be as fol-

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Art I) of the United States Constitution and are supreme over any powers of a state (Art VI, U S Constitution)

[11] A study commission has been established by Congress to deal with complex, multi-agency problems in the southeastern states (see U S Study Commission for South Carolina, Georgia, Alabama and Florida, page 1224, hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, Eighty-sixth Congress, Second Session, Part 1, Civil Functions, Department of the Army) and in Texas (see U S Study Commission for Texas, same source, page 1232)

The two U S study commissions differ from the proposal for a Delta Study Commission in that (1) both have substantial budgets to pay for work which is not being done by existing federal or state agencies, (2) both are organized upon the basis or representation, because in the case of the Texas Study Commission, full representation can be achieved by appointing only 16 members, (3) the problems appear to be less difficult technically than in the Delta and more nearly like the usual work in comprehensive planning, and (4) the states involved do not have the initiative or the special interest that California has in its Delta, which Delta lies within the State's borders

The following material is quoted from the budget justification of the U S Study Commission for Texas (page 1233 of above source)

"The U S Study Commission—Texas was established in August 1958 to make a comprehensive, integrated, and co-operative investigation, study, and survey in connection with—and in promotion of—the conservation, utilization, and development of the land and water resources of the Neches, Trinity, Brazos, Colorado, Guadalupe, San Antonio, Nueces, and San Jacinto River basins and intervening areas in Texas The commission is further charged with formulating and submitting to the President for transmission to the Congress a basic, comprehensive, and integrated plan of land and water resources development for this area

"The original legislation provided for a commission of 14 members, 13 of whom were appointed by the President on December 18, 1958 Amendatory legislation enacted in 1959 increased the membership of the commission to 16 Two members were appointed by the President on December 3, 1959, leaving only one commissioner, who will represent the Texas Board of Water Engineers, still to be appointed The 15 commissioners who have been named are the chairman, who was appointed from the entire area, six from federal departments and agencies having jurisdiction in land and water resource planning, and one from each of the eight river basins

"The legislation creating the U S Study Commission—Texas represents a new approach to land and water resource planning Under the authority given the commission there are, for the first time, no inhibitions or restrictions on full consideration of all possibilities in the formulation of a development plan for the area The approach thus far has worked well, and the desire for a collaborative effort by all state and federal agencies concerned with land and water resource planning in the area has been realized Many state and local agencies and interests are co-operating actively and wholeheartedly in the collection, submission, and analysis of data essential to sound planning

"Appointment of six commissioners from federal departments and agencies has brought to the commission a vast store of knowledge, experience, and skill from the regular departments and bureaus of the federal government The work of the commission is being expedited by the availability of the resources and facilities of these agencies and by the co-operation which has been given it in carrying out its assignment The commissioners from federal agencies, by reason of their special status, are free to bring to bear on the overall problem all of the knowledge and experience which they have acquired through many years of service, without being subject to any limitations imposed upon their agencies by law or regulation They are in a position to point out clearly any conflicts or inconsistencies among the laws and procedures regulating the agencies

"Beyond this, the legislation and the procedures governing the study which this commission has been directed to make brings into the planning for the first time, as equal partners, representatives of the state and local agencies This is proving of great assistance to the commission and should contribute immensurably to the usefulness, soundness, and acceptability of the development plan which the commission expects to submit to the President and the Congress

"The commission held eight meetings during 1959 in Houston, Texas where it has established its headquarters It is directing its efforts toward completion of its report within three years from the date of its organization meeting in Houston on January 5, 1959 When this assignment is completed, the commission automatically will pass out of existence Its status thus is different from that of other federal agencies which have submitted plans of a similar nature in the past It will have no responsibility for construction It will have no incentive to seek authorization and adoption of the plan it will submit in order to stay in business and establish another construction bureau in the federal structure Although it is expected that the commission's report will recommend the construction of certain control

lows two engineers, one water rights attorney, one water quality specialist, an economist specializing in navigation and recreation, a fisheries biologist and a lay person as chairman. A membership of seven commissioners seems to be the minimum necessary to include the technical fields of knowledge required At the same time it is perhaps as large as any working group should be in order to function effectively

The Delta Study Commissioners should expect to devote at least half time to this work and should be given a clear mandate to complete their work within a specified period of about two years after which the Study Commission would automatically be terminated

It is apparent from the large sums of money already being expended by federal, state and local agencies, that there is no deficiency in funding or staffing for technical studies and gathering of data [12] The primary duty of the Study Commission, therefore, must be to analyze, compare, and integrate prior studies and the work now being done so as to define an objective around which a comprehensive, compatible solution can be formulated. The commission need not have an independent staff, but should request federal agencies and direct state agencies to modify their studies, eliminate duplication and co-ordinate their approaches to provide a compatible end result It may be that the com-

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works, it will be the responsibility of others to work out the refinements of design, to construct them, and to operate them

"The work plan of the commission may be divided into three stages The first involves the review, collection, study, and analysis of data The second will require the formulation of alternative development plans for the individual river basins and intervening areas The third will involve the formulation of alternative, integrated, area-wide plans, the selection of the plan to be recommended, and the preparation of the commission's report

"The commission has determined that its staff will be kept small but will be composed of highly qualified, objective professional people It now consists of 20 highly qualified engineers and conservationists, and six administrative personnel It is anticipated that the staff will not exceed 50 including consultants and part-time personnel

"Although much of the work will be performed for the commission by other agencies, particularly in the first and second stages, it will be carried out in close collaboration with the commission's own staff which will be responsible for co-ordination, checking on progress of the work, and the monitoring of commission policy In order that the commission's assignment may be completed as expeditiously as possible, first-stage planning work has been initiated and pressed as vigorously as staff recruitment and availability of funds permit

"Generally, the duties of the staff are to take a fresh, objective look at all of the procedures currently being used by the planning agencies, and, where necessary, to determine alternative methods for accomplishing the same purposes, to review, analyze and study basic data and reports that are currently available and to assist the commission in filling any gaps or deficiencies that exist in these data, in formulating alternative development plans, and in preparing its report

"The commission's greatest organizational problem has been to devise means of utilizing not only the results of earlier studies and the data gathered and accumulated at various places around the State, but also the know-how that had been developed particularly in some of the major federal agencies This problem was solved by the establishment of two types of committees, a planning co-ordinating committee and a number of collaboration groups Functionally, these committees provide channels for maximum co-operation and participation in the commission's work by all federal and state agencies concerned with land and water resource planning in the study area"

[12] For example, the Department of Water Resources has budgeted for fiscal year 1960-61 the following expenditures for work related to the Delta

Salinity Control Barrier	$275,611
Delta Levees Investigation	57,199
Western Delta Studies	83,613
Staging and Programming*	361,893
Central Valley Operation*	137,095
Sacramento Valley Seepage Investigation*	93,726
San Joaquin Valley Drainage Investigation*	426,872
Sacramento River Water Pollution Survey	283,571
Trial Distribution Sacramento River*	147,079
Sacramento-San Joaquin Water Supervision*	209,805

* Only a part of this money will be spent in the Delta

mission should have a small amount of money to pay for any work that cannot be covered by existing agencies, but such a need should be minor

The State should leave the way open for federal participation in the Delta Study Commission, possibly by sharing the costs or permitting the federal government to select several of the commissioners However, securing authorization for federal participation from Congress will take time and cause delays Since the concept of the Delta Study Commission is one of membership based upon knowledge and skills rather than representation, the need for federal participation actually may be more desirable for reasons of harmony than it is essential to the functioning of the commission

The Delta Study Commission should hold public hearings to inform the public and Delta interests of the technical considerations the commission finds which limit or condition solutions to the Delta problems Hearings should also be held to receive statements from all local and statewide interests on their problems and desires as they relate to the Delta The purpose of the hearings should be to mutually acquaint the commissioners, the public, the local and statewide interests and all involved agencies of government with both the technical limiting conditions on Delta solutions and the desires of the Delta and other interests This exchange of information should clarify the issue and encourage agreement through an understanding of each other's problems as well as the extent to which individual problems and local desires can be resolved within the overall framework of a comprehensive, technically competent solution of the Delta problems At the completion of its work, the Study Commission should prepare a report with a recommended program which will, as nearly as possible, resolve all differences.

The Study Commission should devote its energies to constructive analysis and comprehensive solutions of the Delta problems To do this, it should be assisted in gathering and interpreting information, or securing information not now available, by a group of liaison members Each liaison member should be appointed by and should represent one of the principal agencies or groups interested in the Delta There would probably be 30 or 40 liaison members who could be organized by the commission into subject matter groups to meet with the commissioners The duties of a liaison member in most cases would not be full time and would require that only part of his time be devoted to Study Commission activities The work of the liaison members and the commission's hearings should be the media by which the Delta interests and governmental agencies communicate with the commission The liaison members and the hearing process compensate for the fact that a study commission based upon representation would be unwieldy and lacking in the necessary technical skills to be effective

The State's water program, and indeed progress on many water problems in the Central Valley, depends heavily upon a solution to the Delta problems The committee, therefore, recommends the addition of the Delta to the San Francisco Bay Model which, in itself, will be a major move in co-ordinating the Delta work of state and federal agencies, and the establishment of a Delta Study Commission as the only

presently ascertainable constructive steps which hold potential for the solution of the intricate, inter-related problems of the Delta The report and the recommendations of the Delta Study Commission must result in a solution to the Delta's problems which will protect the interests of all parties, meet the technical requirements, be within the existing requirements of law, be financially feasible and merit the support of all federal, state, and local agencies of government

THE DELTA POOL CONCEPT

The Department of Water Resources has developed the Delta Pool Concept as a means of handling many difficult financial problems involved in operating the Delta as a physical pool from which the State Water Facilities secure their water Data on the Delta Pool Concept has not been set forth in detail by the department but certain principles are contained in the department's water service contract signed by the Metropolitan Water District of Southern California on November 4, 1960

As a minimum the department's pooling concept involves combining (1) certain allocated costs for water conservation features at the Oroville Dam and Reservoir which store water to supplement those natural flows which are already available at no cost in the Delta, with (2) costs of certain features of the Delta Water Project designed to protect the water in transportation across the Delta or salvage water now used for salinity repulsion On top of this minimum pooling the department has also added (3) certain allocated costs of the San Luis Dam and Reservoir amounting to about $115,000,000, and (4) the costs of Grizzly Valley and Frenchman Projects on the Upper Feather River Eventually the department will add costs of (5) such other projects as may be constructed in the future to replenish water supplies in the Delta, including (6) any local upstream projects constructed as part of future major storage projects

These six pooled costs are to be met by revenues received from the sale of water and power at or above the Delta A $2 per acre-foot power credit is added, which is equivalent to the so-called surplus power revenues at Oroville A separate surcharge equivalent to the power credit is added to lands in single ownership exceeding 160 acres as part of the charge for moving water from the Delta to the point of use These costs are proposed to be repaid by a Delta Water Charge based on average costs which, during the repayment period, will return all costs minus the power credit A single price is paid for water by all the State's customers receiving water from the Delta or from any state project upstream from the Delta The Delta Water Charge is expressed in the contract by a complex mathematical formula [13]

The Committee considered three basic principles involved in the Delta Pool Concept The first was the department's distinction between transportation and conservation facilities The department's concept of the Delta Pool is that it includes the facilities required to conserve water for export plus all other facilities not a part of the aqueduct delivery system Facilities required to transport water are included

[13] The computation of the Delta Water Charge and the formula to be applied are contained in Article 22 of the contract the department signed with the Metropolitan Water District dated November 4, 1960

in a transportation charge which covers the principal, interest, operation, maintenance and replacement costs of aqueducts, pumps, tunnels, etc., used in the transportation of water from the Delta The transportation charge paid by each water purchasing agency is based directly upon the costs of its individual service The department's distinction between conservation and transportation appears to be too broad a classification for good contact administration and has led to difficulties when the resulting classification varied from the facts

For example, at the committee's May 4 hearing in Oakland the department explained that because the Delta Water Project salvages certain flows now used for salinity repulsion and also transports water across the Delta, it is a conservation facility The department further explained that the San Luis Dam and Reservoir with 2,100,000 acre-feet of storage is a transportation facility. The committee had considerable difficulty in understanding this approach Subsequently in Berkeley on June 28, the department presented a revised analysis which showed that all the State's costs of approximately $115,000,000 for San Luis Dam and Reservoir and related aqueduct and pumping plants were charged to the Delta Pool as conservation facilities These San Luis costs were also added to the Delta Pool in the contract signed with the Metropolitan Water District by means of definition of the Delta Pool contained in Article 22(e)

As a result the department now classifies all State Water Facilities from San Luis Dam and Reservoir to Frenchman Dam inclusive as conservation facilities, except for the South and North Bay Aqueducts [14] The South Bay Aqueduct water users, however, protested to the committee that if San Luis Dam and Reservoir is a conservation facility and is not to be paid for directly through the transportation charge but is to be charged into the Delta Pool, so should the Del Valle Dam and Reservoir on the South Bay Aqueduct, since it fulfills a similar role

Other unusual results occur from the classification The State's customers along the Feather River below Oroville and at the Upper Feather River projects will pay a price for water which includes the San Luis Dam and Reservoir, the Delta Water Project and also the cost of pumping water into the San Luis Reservoir The price charged these customers has no relationship to the cost of the service they get. In fact, testimony presented to the committee at Portola by the department indicates that irrigation revenues from the Frenchman project will repay only about one-third of the Frenchman construction costs allocated to irrigation [15] The remaining two-thirds will not be repaid by Frenchman water users but will represent a subsidy through the operation of the Delta Pool

[14] Any reference to conservation facilities and their costs should be understood to exclude all facilities designated for, or costs not allocated to water supply purposes such as flood control, navigation, fisheries, etc

[15] In testimony contained on page A-168 of the committee's report, "Economic and Financial Policies for State Water Projects," February 1, 1960, the department informed the committee that about 55 percent of the $2,500,000 costs for the Frenchman Project would be allocated to irrigation, or $1,375,000 In testimony contained on page 18, transcript of September 13, 1960, the department stated "* * * the Frenchman Project service area with a yield now estimated at 9 400 acre feet * * * would produce a gross annual revenue at $3 50 per acre foot of $33,000 * * * Over a 50-year period * * * this would amount to a repayment of $420,000 of capital cost * * *" This is a repayment of about one-third

The committee has been unable to find a logical basis for classifying all project facilities as either conservation or transportation facilities Certain facilities may be either transportation or conservation or a combination of both, irrespective of the department's overall classification The department's arbitrary classification, when used as the basis of a pricing system, defeats the principle that beneficiaries should pay for the services they receive and creates a category of project customers who pay for water on a basis which has little relationship to their costs While this may be financially advantageous to some customers it is equally disadvantageous to others and tends to obscure any subsidies which may occur Later in this report, the committee suggests a more limited approach to pooling and the problem of classification of facilities

The committee, as a second matter, made an effort to ascertain whether the facilities proposed to be included in the Delta Water Charge are equally required at this time or whether some of them might be delayed or reduced in scope in a manner beneficial to all The water pumped from the Delta during the first years of project operation involves no cost at the Delta prior to diversion and the only expenditures for regulation will be below the Delta [16] The committee attempted to determine why the department proposed to charge for unregulated water at the Delta in the early years of project operation and why any reduction of capital expenditures for the Delta Pool facilities in the early years of project operation does not reduce the department's Delta Water Charge

The report of Charles T Main, Inc, clearly states that the completion of Oroville Dam is not necessary for water supply purposes until 1982, and that constructing it before then will introduce financing problems [17] Under these circumstances a delay in Oroville would certainly reduce the initial investment in the Delta Pool facilities and, therefore, might reduce the initial cost of the Delta water but this would be at the expense of flood control The committee consequently attempted to find out from the U S Corps of Engineers and the Department of Water Resources what steps might be taken to provide alternate or interim flood control along the Feather River because it felt that a delay in constructing Oroville Dam for water supply should not result in a delay in providing flood control However, work on planning an interim, low-level, flood control dam at Oroville which could be later built to full size had not progressed to the point that a decision on this and other possible alternatives could be made The

[16] The Director of Water Resources informed the committee, page 395, transcript of November 6, 1959, "The problem I think * * * involves these unregulated surplus waters (in the Delta) Were we not to attempt to conserve these waters, even though they may not be a completely firm supply in the accepted sense of the term, the water which would in those cases be sent to Southern California would be much more expensive than the figure that we have quoted because the water which we conserve from this unregulated surplus hasn't cost anybody anything up to the point of diversion from the Delta It is free at that point We firm that up with regulated releases from the upstream storage" If upstream storage is not needed for water conservation until 1982 as indicated by Charles T Main, Inc, then the initial water supplies at the Delta should cost nothing The necessary regulation is provided at San Luis for the San Joaquin Valley-Southern California Aqueduct and at Del Valle for the South Bay Aqueduct Costs of these reservoirs are clearly related to the customers they serve

[17] See Final Report of Charles T Main, Inc, dated October, 1960, pages 9-1 and 3-2

economic problem remaining for decision is whether the costs to the water users for conservation features at Oroville which are not needed until 1982 outweigh the abandonment costs involved in building an interim, low-level flood control dam at Oroville

The committee's hearings on the Delta Water Project, as already discussed, indicated that the present scope and nature of the Delta Water Project is not acceptable to the Delta interests and the department has stated that the Delta Water Project is subject to some curtailment, the amount of which is presently unknown This report has already pointed out that the department's proposal to include $115,000,000 of the construction costs of the San Luis Dam and Reservoir and portions of the Delta to San Luis Aqueduct in the Delta Pool as conservation costs charged to all water users seems questionable A reassignment of these costs seems logically desirable The details of its effect on water users is not now known and needs analysis The committee concludes, therefore, as a logical proposition, that some major but presently undefinable reassignment of costs, reduction in scope or delay in construction of the facilities to be included in the Delta Pool can be made by the department

Costs incurred at the Delta include annual principal and interest payments for the bonds issued to construct whatever facilities are included in the Delta Pool and operation, maintenance and replacement charges for such facilities To the extent that these costs are not covered by the revenues received from the Delta Water Charge, the deficiency must be made up by borrowing from the General Fund to cover principal and interest The department has arbitrarily established an interim Delta Water Charge of $3 50 to give a uniform price for water during the first years of project operation After 1970 the Delta Water Charge is to be based upon actual costs computed by the department according to a complex formula which averages the actual costs for each year over the 80 year bond repayment period [18]

Data presented by the department to the committee indicates that there will be a deficiency in the Delta Water Charge of approximately $60,000,000 during the first eleven years of project operation This deficiency will result in borrowing from the General Fund in varying amounts from approximately 50 cents up to $106 per acre-foot of water delivered

Because of indications that the scope of the department's proposed Delta Pool facilities could be reduced and that major General Fund borrowing is contemplated by the department, the committee made an attempt to evaluate the effect on the Delta Water Charge during the first years of project operation if minimum Delta Pool facilities were built and the price for water were based on the actual annual costs for principal, interest, operation, maintenance and replacement The results as computed by the department showed a substantially reduced actual cost for water at the Delta The cost was under $1 in a number of early years and then rose to a peak of $25 35 in 1969 after which it declined again This method gave a Delta cost of $20 59 per acre-foot of water

[18] Article 22(c) of the contract dated November 4, 1960

delivered in 1968, or General Fund borrowing of $17 09 per acre-foot assuming a price of $3 50 per acre-foot, compared to the department's Delta Water Charge of $3 50 plus a General Fund borrowing of $85 or a total of $88 50 in the same year

The lower cost per acre-foot in the committee's actual cost approach is probably due to minimizing the facilities to be included in the Delta Water Charge The method of computing the price for water really makes little difference so long as it returns annually in full the costs which the State incurs and in the long run these costs are controlled by the investment made The department's pricing formula is really a ceiling until 1970; and because thereafter it is an average, it bears no relationship to the annual costs the State must somehow meet during the initial years of project operation The committee's actual annual cost approach serves to clarify the true costs including General Fund borrowing The department's approach facilitates including large capital investments in the Delta Water Charge on the basis that they will eventually be paid out by the project It should be pointed out that the resulting interim borrowing from the General Fund is an added expense to the taxpayers The committee concludes that the method of computing the Delta Water Charge should be restudied and consideration given to making it more responsive to savings in the Delta Pool investment and to minimizing the burden on both the project customers and the General Fund

A third concern of the committee in the Delta Pool Concept arises from the spreading of the so-called Oroville surplus power revenues to reduce the price of water at the Delta [19] It is clear from the testimony of the Department of Water Resources that the Delta Pool as envisioned by the department will require borrowing from the General Fund in an amount of $60,000,000 during the first eleven years of project operation Even under the favorable conditions which the committee evaluated some General Fund borrowing will exist but will be minimized If the demand for water is less than the department estimates, the department's estimate of borrowing from the General Fund may increase It should be understood that whenever the revenues from water sales do not cover the true Delta Pool costs, the use of so-called surplus power revenues to further reduce the price for water only diverts the power revenues to the benefit of the water users to reduce water prices instead of being used to repay project costs

If the construction of Oroville is delayed as recommended in the Interim Report of Charles T Main, Inc, or an interim flood control project is constructed at Oroville, there will be no power revenues during the first two decades of operation Under these circumstances any reduction in the Delta Pool Charge based upon so-called surplus power

[19] The department proposes to spread the so-called surplus power revenues from Oroville evenly over each acre-foot of water sold at the Delta price The State will have no customers who do not pay at least the Delta price Therefore the Delta Pool is not essential to spreading these power revenues, because all customers benefit equally for each acre-foot of water purchased Power revenues are actually received in the proportion that annual water purchases bear to the so-called surplus power revenues available in any given year Subparagraph 30(c) of the contract establishes the amount of the surplus power revenues at $2 per acre foot until the beginning of power generation at Oroville at which time the rate is to be recomputed according to a formula provided

revenues, will not be funded by power revenues, but will only increase the borrowing from the General Fund [20]

In summary, the committee feels that the concept of a Delta Pool should be limited to spreading the costs and revenues involved in providing water at the Delta for export purposes The justification for financial pooling lies in averaging out the costs of water at the Delta for all of the State's customers served from water physically pooled at the Delta This is necessary because the physical pooling of water at the Delta makes it either impossible or unreasonable to isolate costs for each customer. In addition, the inability of the State to secure a firm water right because of the prior rights given to areas of origin by state law means that a project cannot in the long run be tied to a specific source of water but must operate with a replenishable pool

The committee recommends that the Delta Pool Concept should include only pooling of water at the Delta for export and providing replenishment of the Delta Pool If this is done, it is immaterial whether San Luis Dam and Reservoir is classified as a conservation or transportation facility. The important consideration is that it serves only those customers south of San Luis and its costs should, therefore, be borne entirely by them and not spread over customers north of the Delta who receive no service or benefit from San Luis The Delta Pool should both physically and financially be limited to those who directly secure a water supply from the Delta and should include only the Delta Water Project and upstream storage facilities needed to supply water to the Delta. Customers upstream from the Delta should pay for only the costs of the facilities which serve them Any surplus power benefits can be spread as desired based on the quantity of water purchased by each customer wherever located.

[20] It may be noted that other General Fund borrowing may also be required Thus, there may be deficiencies in revenues from the transportation charge to cover the actual annual costs of the transportation facilities Since the department proposes that contracts be secured covering only 75 percent of the costs of the transportation facilities before construction is begun, it is possible that up to 25 percent of the annual costs of the transportation facilities will have to be borrowed from the General Fund for an unknown period of time This borrowing could reach as much as $25,000,000 per year, that is, 25 percent of the aqueduct revenues shown on page 36 of the Final Report by Dillon, Reed and Company, Inc, the financial consultants working with Charles T Main, Inc The contract signed with the Metropolitan Water District includes the 75 percent advance signup requirement in Article 17(d).

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Report of the

Assembly Interim Committee on Constitutional Amendments

TO THE CALIFORNIA LEGISLATURE

(House Resolution 326, 1959)

MEMBERS OF THE COMMITTEE

JOHN A BUSTERUD, *Chairman*

DON A ALLEN, Sr, *Vice Chairman*

TOM BANE
WALTER I. DAHL
HOWARD J. THELIN
VINCENT THOMAS
JOHN C. WILLIAMSON

STAFF

JOHN G. GUNNELL, *Committee Intern*

BLANCHE FLANERY, *Committee Secretary*

November 15, 1960

Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

HON RALPH M BROWN
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. WILLIAM A MUNNELL
Majority Floor Leader

HON JOSEPH C SHELL
Minority Floor Leader

ARTHUR A OHNIMUS
Chief Clerk

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LETTER OF TRANSMITTAL

SACRAMENTO, November 15, 1960

HON. RALPH M BROWN,
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento

GENTLEMEN: Pursuant to House Resolution No. 326, adopted June 18, 1959, the Assembly Interim Committee on Constitutional Amendments herewith submits its final report on revision of the California Constitution.

Respectfully submitted,

JOHN A BUSTERUD, *Chairman*
DON A ALLEN, *Vice Chairman*
TOM BANE
WALTER I DAHL
HOWARD J THELIN
VINCENT THOMAS
JOHN C WILLIAMSON

FINDINGS AND RECOMMENDATIONS

1 The California Constitution is in need of fundamental revision in regard to both substance and form The document contains much obsolete and obsolescent matter that should be deleted and is burdened with restrictive and lengthy provisions of a statutory nature that might well be transferred to the law codes since there is little justification for their inclusion in the State Constitution

2 Since the needs of the State dictate that constitutional reform is a problem to be immediately reckoned with, it is recommended that the Legislature submit to the people at the General Election in 1962, a constitutional amendment proposing the deletion of various obsolete matter

3 Overall revision by means of a constitutional convention is not a feasible undertaking at the present time This method can be effectively employed only after an extensive program of preparatory research and publicity, and the cost of a convention is prohibitive since there is no assurance that the proposed changes would be adopted by the people Also, the convention process is objectionable to many groups since it subjects the entire document to possible change without adequately safeguarding the determination of controversial issues such as reapportionment However, despite these difficulties, revision by means of a convention merits further study since future circumstances may prove more favorable for its implementation

4 After a careful study of the experience of California and other states in the area of constitutional reform, it appears that at the present time the task of revision could best be undertaken by a continuing program directed toward proposing revisions of individual areas of the Constitution which could be submitted to the people in the form of amendments

5 It is recommended that as a first step in such a program that the Legislature submit to the electorate a revision of Article VI (the Judicial Article) of the Constitution which would

a Delete obsolete and inconsistent provisions
b Eliminate detailed procedural provisions
c Vest complete rule-making authority in the Judicial Council
d Require that all judicial appointments be subject to the approval of the Commission on Judicial Appointments

6 It is suggested that the Legislature consider, as a possible means of facilitating constitutional simplification, the creation of an organic law code to which might be transferred certain provisions of the present constitution that are of a statutory character.

7 Finally, after a careful review of the constitutional procedures relating to the convention process and the proposal and adoption of the legislative and initiative amendments, it would appear that at the present time there would be little or no value in effecting any substantial changes in these procedures.

However, in order to increase constitutional flexibility regarding constitutional change and to make possible the use of such new techniques as changing conditions may warrant, it is recommended that the present prohibition against legislative proposal of revision, imposed by court interpretation, be eliminated by amending Article XVIII so as to permit the Legislature to submit an entire revision to the people.

JOHN A BUSTERUD
WALTER I. DAHL
HOWARD J THELIN
VINCENT THOMAS

I concur with the above findings and recommendations with the exception of 5 (d).

DON A. ALLEN
TOM BANE
JOHN C. WILLIAMSON

I

INTRODUCTION

The Assembly Standing Committee on Constitutional Amendments was constituted as an Interim Committee in accordance with the provisions of House Resolution 326 of June 18, 1959. The committee was "assigned the subject matter of the State Constitution, and all matters relating thereto," and was "authorized and directed to ascertain, study and analyze all facts" relating to the subject assigned During the legislative session the committee normally directs its attention to specific subjects which come before the Legislature in the form of proposed constitutional amendments However, throughout the past interim period the committee has concentrated its efforts on a consideration of the question of a possible revision of the California Constitution

Prior to holding its first hearing, the committee studied the form and substance of the State Constitution, the history of its evolution, past attempts to revise the document, the experience of other states in the area of constitutional reform, and the publications of various organizations such as the Model Constitution drafted by the National Municipal League In addition, the committee requested opinions from the Legislative Counsel on various matters pertaining to revision and established liaison with the Citizen's Legislative Advisory Commission which, at the request of the Assembly, was currently conducting a study of Article XVIII of the State Constitution [1]

At public hearings held in San Francisco on January 29, 1960 and in Los Angeles on February 10-11, 1960, the Committee received testimony on the following questions·

1 Does our State Constitution need revision?
2. What specific areas most need revision?
3 What is the most desirable method of revision?
4 Would it be desirable to make the amending process, especially in regard to the initiative, more difficult?

Appearing before the committee were the Legislative Counsel, the Chief Deputy Attorney General; a number of political scientists; a law school professor; representatives of the California State Bar; the California State Chamber of Commerce, the League of Women Voters, and other interested citizens

The Committee, after considering the general subject of Constitutional revision, subsequently undertook an intensive study of Article VI (the Judicial Article) of the Constitution In view of the continuing concern of such groups as the Judicial Council and the California State Bar with the provisions of this article, the committee was presented with a favorable opportunity to examine as a pilot study a specific and representative portion of the Constitution in order to determine what might be accomplished in regard to Constitutional revision in California.

[1] *H R* 278, June 5, 1959

The third hearing was held in Los Angeles on September 28, 1960, in conjunction with the annual convention of the California State Bar. The subject matter of this hearing was confined in general to the discussion of the possible revision of Article VI and, more specifically, to the consideration of whether the Governor's power regarding judicial appointments should be limited by requiring that all such appointments be subject to the approval of the Commission on Judicial Appointments

At its fourth and final hearing held in San Francisco on October 18, 1960, the committee received additional testimony regarding the revision of Article VI and the problem of judicial appointments During these last two hearings on the Judicial Article, the committee heard statements from a representative of the Judicial Council, the Attorney General of California, judges, law school professors, the California State Bar, political scientists, and practicing attorneys

In submitting this report the committee recognizes that the Constitution embodies traditions and principles of democratic government that rightly belong in the State's organic law and which must be preserved by any program of revision In addition, the committee is mindful of the problems, both political and technical, involved in attempting a revision of the California Constitution We recognize that it is not an easy task to overcome established trends of constitutional development and to reconcile the need for reform with the interests of those who have through the years gained constitutional protections for their interests in the form of detailed provisions However, despite these difficulties, it is the opinion of this committee that the ability of California to contend with her future problems will depend to a great extent on the content and spirit of her Constitution and that the present document is in need of a fundamental review

II

THE HISTORY OF CONSTITUTIONAL REVISION IN CALIFORNIA

THE CONSTITUTION OF 1849

When California was ceded to the United States in 1848, the government consisted of the rule of a military governor supplemented by local remnants of the Mexican system This arrangement proved satisfactory until a wave of immigration, following the discovery of gold in 1849, strained the existing civil order and brought the demand that Congress provide an adequate government for the new territory When Congress, divided on the slavery question, failed to pass the necessary legislation, the *de facto* Governor, General Bennet Riley, in response to the demands of the people, called a convention to meet in Monterey in September, 1849, to establish an effective government.

The delegates met on September 4, 1849, and voted to establish a state government under a written constitution Relying heavily on the constitutions of other states as models (especially those of Iowa and New York) the convention drafted a document remarkably well adapted to meet the existing needs The new document was ratified by the people on November 13, by an overwhelming vote, and after a long congressional battle, California on September 9, 1850, was admitted to the Union under the Monterey Constitution [1]

THE CONSTITUTION OF 1879

The Constitution of 1849 endured for only 30 years Although it was a short document with few restrictions on the Legislature, it was, in many respects inadequate to meet the requirements of the rapidly developing state since it neglected such important areas as the subject of finance Many amendments were proposed between 1849 and 1879 but only three were adopted The Legislature proposed the calling of a constitutional convention in 1859, 1860, and 1873, but on each occasion the proposal was rejected by the electorate [2]

This 30-year period was one of rapid economic change and social discontent By 1879 the population was 17 times as large as in 1849 and independent mining, which had previously supported most of the economy, had been displaced by agriculture and large-scale corporation mining. There was friction between capital and labor, stock market speculation had ended in a crash, businesses were failing, agricultural areas were suffering from drought, unemployment was widespread, and the government, especially the Legislature, was held in low esteem. Emerging from this unrest were forces, represented by such groups as

[1] Bancroft, H H, *Works*, Bancroft & Co, San Francisco, 1882-1890, Browne, J R, *Report of Debates in the Convention of California, 1849*, Washington, D C, 1850, Goodwin, C, *Establishment of State Government in California*, Macmillan Co, N Y, 1914, Hunt, R D, *Genesis of California's First Constitution*, Johns Hopkins Studies in Historical and Political Science, 1931

[2] Ch 221, Stats 1859, Ch 343, Stats 1860, Ch 503, Stats 1873-74

the Granger movement and the Organized Workingman's Party, which clamored for reform [3]

The Legislature again submitted the question of calling a convention to the people in 1877, and the proposal was ratified The 1878 Legislature passed the enabling act and the convention met in Sacramento in September of that year. Among the delegates were 10 Democrats, 11 Republicans, 51 Workingmen, and 77 nonpartisans. One hundred twenty of the delegates were elected from the counties and eight from each of the four congressional districts [4]

When the convention met, the subject matter of the Constitution was divided among 23 committees which were to submit draft proposals to the convention as a whole Although many reforms were considered by the convention, the main issues around which the debates centered were taxation, large corporations, and the problem of Chinese labor [5] The convention, after adopting a revised Constitution, adjourned on March 3, 1879, and despite strong opposition, California's new fundamental law was ratified by the people on May 7, 1879.

Among the most significant features of the new document were the restrictions placed on the power of the Legislature by the incorporation of detailed provisions dealing with specific subjects and interests. Also, the judicial system was reorganized, the activities of corporations were limited, the tax system was reformed, a procedure was devised for granting charters to cities and counties, and an entire article was devoted to the discriminatory regulation of the Chinese.

The new Constitution neither cured the ills of the times nor did it bring ruin to the State as the proponents and opponents had argued However, there can be little doubt that the document was adopted in a time of extreme economic and social crisis and reflects the distrust of representative government that was prevalent at the time of its adoption

PROPOSALS FOR A CONSTITUTIONAL CONVENTION SINCE 1879

In 1897 the Legislature voted to submit to the people the question of calling a constitutional convention, but the proposition, which appeared on the ballot in the general election of 1898, was defeated by a vote of 65,007 to 42,556 [6] Since 1900 there have been only eight regular sessions of the Legislature in which at least one proposal for the submission of the convention question has not been introduced, and in a number of sessions several such proposals have been considered [7] Of the proposals introduced into the Legislature since 1900 calling for a referendum on the convention question, only four (1913, 1919, 1929, 1933) have received the necessary two-thirds majority and have been sub-

[3] Swisher, C B, *Motivation and Political Technique in the California Constitutional Convention, 1879-79*, Pomona College, 1930

[4] *Ibid*

[5] Willis, E B, and Stockton, P K, *Debates and Proceedings of the Constitutional Convention of 1879*, Sacramento, 1880, 3 vol

[6] *Senate Concurrent Resolution No ½*, Feb 11, 1897, *Statement of the Vote, 1898*

[7] *Final Calendar of Legislative Business*, 1899 to 1959, Sacramento

mitted to the people, and of the four that were submitted, three were rejected.[8]

1914	442,687—180,111
1920	428,002—203,240
1930	585,089—263,683 [9]

In 1933, the Legislature passed a concurrent resolution by a vote of 64-0 in the Assembly and 29-9 in the Senate, recommending that the people vote on the question of calling a convention to revise the Constitution.[10] The resolution appeared on the 1934 general election ballot as Proposition Eight Among the 23 ballot measures that year were several controversial proposals which apparently overshadowed the proposition since it received little publicity There was only slight discussion of the measure in the press and although there was an argument "for" the proposition in the list of ballot measures promulgated by the Secretary of State, there was no argument "against"

Despite the lack of attention devoted to the proposition, the electorate voted affirmatively on the question, 705,915 to 668,084, thus creating a popular mandate for calling a constitutional convention [11] However, the 1935 Legislature failed to pass the necessary legislation to assemble the convention and no subsequent Legislature has seen fit to take any action on the matter

The proposition contained a provision that if an affirmative vote was received the convention would be called three months after the general election, which would have been on February 6, 1935. Since the new legislature did not convene until January 7, 1935, it would have been impossible to pass the enabling legislation, hold the election for the delegates, and assemble the convention in less than a month Yet it is probable that a failure to meet the three-month limitation would not have nullified the mandate if both legislative and popular feeling had been strongly in favor of constitutional revision. Although it may be possible for the Legislature to invoke the 1934 mandate and convene a convention at any time, such action, since the measure has been forgotten by the people, would be ill-advised and probably futile without decisive popular sentiment in favor of doing so. Also there is no guarantee that such action would not be enjoined by the courts [12]

THE 1929 CONSTITUTIONAL COMMISSION

In addition to the proposal for a convention, the 1929 Legislature passed a bill authorizing the Governor to appoint a 15-member commission to investigate the need for revision and to advise the Governor on the need for calling a convention A sum of $5,000 was appropriated for the commission.[13]

The commissioners appointed by the Governor were prominent men representing a variety of interests within the State A five-man technical staff, including the Legislative Counsel, was employed to assist

[8] *A C R 17*, Feb. 1, 1913, *S.C A 10*, Jan 23, 1919, *S C A 5*, Jan 14, 1929
[9] *Statement of the Vote*, Secretary of State, 1914, 1920, and 1930
[10] *A C R 17*, Jan 17, 1933, *Assembly Journal*, March 22, 1933, p 1346, *Senate Journal*, April 12, 1933, p. 1463
[11] *Statement of the Vote*, Secretary of State, 1934
[12] Since the courts have generally construed the provisions of Article XVIII to be mandatory rather than directory, it is possible that the courts would give a strict interpretation to the clause requiring action by the Legislature "at the next session" after the ratification of the convention question by the people
[13] *S B. 561*, January 17, 1929

the commission which was organized into nine committees to study various aspects of the Constitution [14]

The report of the commission which included a draft of a revised constitution was submitted in December, 1930 The proposed revision, which aimed at improving the form of the Constitution without radically altering substantive provisions, reduced the document from 65,000 to 27,000 words by deleting obsolete provisions, eliminating inconsistencies, and omitting statutory detail In addition to general simplification some of the significant changes embodied in the proposed document were A provision for making the initiative more available by requiring a definite number of signatures on a petition rather than a percentage, but requiring less signatures on a petition for initiative law than for a constitutional amendment, the elimination of all mention of executive officers except those elected by the people, and a provision, similar to the Federal Constitution, whereby the judicial power would be vested in a Supreme Court and such other courts as the Legislature might establish

The final report stated that the Constitution had been drafted in an era in which the people had lost confidence in their legislature and courts and that frequent amendment had been necessary to overcome the restrictions that were placed on the government The report further found that

> "So far as the substance of the Constitution is concerned, we find it to be a logical record of the struggle of the people to preserve their rights We find in it adequate provisions preserving the natural rights of the people to protection in their persons and property. We find in it a general frame of government under which the State has prospered and been efficiently governed We find that it embodies the principle of home rule in local and municipal affairs, for which the people have so long struggled. We find in it provisions by which the people have reserved to themselves powers by which they are enabled to control legislation, and by which the people have insisted that they themselves should establish the principles upon which they are to be taxed
>
> "When it comes to the form of the Constitution, we find that its constant amendment has produced an instrument bad in form, inconsistent in many particulars, loaded with unnecessary detail, encumbered with provisions of no permanent value, and replete with matter which might more properly be contained in the statute law of the State Your commission is unanimously of the view that it needs revision " [15]

Since the legislative proposal for a convention was defeated before the work of the commission was completed, the commission recommended that the Legislature propose an amendment which would permit the Legislature to submit an entire revision to the people However, the Legislature failed to act on the recommendation, and there is no evidence that the final report was ever given serious consideration subsequent to its submission to the Legislature and the Governor.

[14] Aikin, C., "The Movement for Revision of the California Constitution The State Constitutional Revision Commission," *American Political Science Review*, May 1931

[15] *Report of the California Constitutional Commission*, Dec 1930

THE JOINT INTERIM COMMITTEE ON CONSTITUTIONAL REVISION, 1947-1949

After World War II, several states turned their attention toward a revision of their outdated constitutions In California, after the failure to agree on a proposal for calling a convention, the Legislature adopted a concurrent resolution appropriating $50,000 for a Joint Interim Committee on Constitutional Revision to prepare "a draft of a revised Constitution appropriate for use in case revision as a whole is effected and a series of drafts of the several parts of the Constitution appropriate for use in case the needed changes are effected by amendment. . "[16]

Assemblyman Alfred W Robertson was elected chairman of the committee which, with the aid of the Legislative Counsel, established headquarters in Santa Barbara and appointed Dr Norris J. Burke as general counsel and co-ordinator An advisory committee was also appointed consisting of over 200 members including experts in the field of constitutional revision, educators, two ex-governors, surviving members of the 1929 commission, and representatives from every politically active organization and interest group in the State The subject matter of the Constitution was divided among 10 subcommittees composed of members of the advisory committee, with the chairmen and vice chairmen appointed from the interim committee[17]

The first plenary meeting of the committee and its advisory group, held in Santa Barbara on October 29-30, 1947, was attended by over a thousand citizens and addresses were offered by Governor Warren, ex-Governors Young and Olson, Chief Justice Gibson of the California Supreme Court, Fred B Wood, the Legislative Counsel, and others At the end of the session the general counsel was instructed to prepare revision drafts of the areas of the Constitution being studied by each subcommittee[18]

Realizing that under the present provisions of the Constitution it was impossible for the Legislature to submit a revised Constitution to the people, a second plenary meeting was held on February 23-24, 1948, to consider the possible proposal of an amendment which would empower the Legislature to submit an entire and co-ordinated revision However, there was strong opposition to the proposal among several members of the advisory committee and the measure was defeated[19]

By October 1948 the general counsel had presented revision drafts to each subcommittee, but in nearly every instance the members voted to limit consideration to the possible deletion of obsolete material In view of the prevailing sentiment, Burke drew up lists of obsolete and obsolescent provisions for the consideration of the committee

The third and final meeting of the committee and its advisory group was held in Santa Barbara on November 18-19, 1948 Acting on a

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[16] 4 *C R* 89, June 12, 1947

[17] "Final Report of the Joint Interim Committee on Constitutional Revision," *Assembly Journal*, March 28, 1949, pp 1473-1480

[18] *Santa Barbara Press*, Oct 30, 1947, *Minutes of Second Meeting of Joint Interim Committee on Constitutional Revision*

[19] *Minutes of the Third Meeting of the Joint Interim Committee on Constitutional Revision*

motion of a member of the advisory committee, it was voted that work of the committee be confined to the deletion of obsolete matter. The arguments against revision were that there was no popular demand for changing the basic principles of the Constitution, that by the process of amendment the Constitution had become a modern document, that there were no generally acceptable reasons advanced for changing the substance, that seeking revision for brevity's sake is not a valid argument, and that the present Constitution had been thoroughly adjudicated

From the list of obsolete provisions that were approved for deletion at the final meeting, the committee drafted several constitutional amendments which were adopted by the Legislature and subsequently ratified by the electorate The amendments reduced the Constitution by approximately 14,500 words [20] No action was taken by the Legislature on a recommendation by the committee that the number of signatures on an initiative petition proposing a constitutional amendment be increased from eight to 12 percent of the total votes cast for Governor at the preceding election

The final report quoted in part the findings of the 1929 Commission and stated that, "In view of the findings of that commission and the present findings, we recommend that the Legislature take no action looking toward the calling of a constitutional convention inasmuch as we are convinced that such action is unwarranted and unnecessary." [21]

CONCLUSION

Since 1949, proposals for revision have been introduced at nearly every session of the Legislature Students of political science and other groups of respected citizens, such as the League of Women Voters, have continually stressed the need for revision and have worked toward that end In 1959 the Assembly of the California Legislature adopted a resolution directing the Citizens' Legislative Advisory Commission to study the problems and methods of constitutional revision in California, and in a preliminary report submitted to the Legislature in April, 1960, the commission stated that the State Constitution "is in need of a fundamental review" [22]

The history of the movement for constitutional revision in California demonstrates that, although there has been no overwhelming public sentiment in favor of revision, there has been a continuing and legitimate interest in modernizing our fundamental law It was a recognition of this need for revision that prompted the Legislature to vote, nearly unanimously, for the creation of the 1929 Commission, the submission of the convention question in 1934, and the Joint Committee of 1947. The failure of these attempts to effect substantial revision did not result from the discovery of the reality that the need for revision did not exist, but rather from failure to discover that the politics of revision are as real a problem as the need

[20] *Statement of the Vote*, Special Election, 1949
[21] "Final Report," op cit
[22] *H R 278*, June 5, 1959, *Second Progress Report to the Citizens of California*, September 1960, p 30

III

CONSTITUTIONAL REVISION IN OTHER STATES

MISSOURI

After 1922 no state actually adopted a new constitution until Missouri, whose Constitution had been originally adopted in 1875, effected revision by means of a convention in 1945 By 1944 the Missouri Constitution had become the third longest in the country

The 1875 Constitution contained a provision requiring a referendum on the question of holding a convention every 20 years A convention held in 1922-23 proposed many changes in the document, but only six were ratified by the people Since this failure was attributed to the lack of an informed electorate, several citizens' groups conducted a widespread campaign in favor of revision prior to the required submission of the convention question in 1942, and the proposal was ratified by an overwhelming majority

In accordance with the old Constitution, the delegates to the convention were equally divided among the major political parties, and this bipartisan method of nomination and election helped to reduce political conflict The convention, which was in session a little over a year, voted in favor of submitting a new Constitution.

The proposed Constitution was strongly supported throughout the state by both political parties, the newspapers, and various private interests and, when submitted to the people, the new document was ratified by a majority of over 100,000 voters in February 1945.

GEORGIA

By 1944 the Georgia Constitution of 1877 had been amended 301 times In 1941 alone, 70 amendments were proposed, of which 69 were adopted.

In 1943 the Legislature passed a measure establishing a Commission to study the Constitution and submit a report, including either proposals for amendment or a new constitution The commission consisted of the Governor, the Attorney General, the State Auditor, the President of the Senate and three members appointed by the President, the Speaker of the House and five members appointed by the Speaker, one Justice of the Supreme Court appointed by the court, one judge of the Court of Appeals appointed by the court, and eight members appointed by the Governor [1]

After holding several public hearings, the commission, which was divided into seven subcommittees to study various aspects of the Constitution, voted to submit a new Constitution The Governor, the President of the Senate, and the Speaker of the House were appointed by the commission to act as a final committee on revision, and a draft of a new Constitution was submitted to the Legislature in January of 1945. The commission was in actual session a total of only 14 days [2]

[1] Council of State Governments, *Book of the States*, 1943-44, 1945-46

[2] Saye, A P, *Records of the Commission of 1943-1944 to Revise the Constitution of Georgia*, 2 vol, Atlanta, 1946

After making a number of changes, the Georgia Legislature approved the new Constitution which was subsequently adopted by the electorate on August 7, 1945 [3]

NEW JERSEY

The New Jersey experience with constitutional revision was unique in two respects First, the problem, unlike that of many other states, was not a long and heavily amended constitution, but rather a short, outmoded document with an amending process that made constitutional change extremely difficult Second, New Jersey employed a variety of methods before a revision was finally effected

In 1940 a group known as the New Jersey Committee for Constitutional Convention, composed of labor organizations, women's groups and other interests, began to agitate for constitutional revision This group, with the help of the Governor, persuaded the 1941 Legislature to establish a seven-member commission to study the question of revision.

The commission, in 1942, presented the Legislature with a draft of a new Constitution which was referred to a joint committee for study. After holding extensive public hearings, the committee recommended that revision be postponed until after the war [4]

The continued efforts of the proponents of revision resulted in a referendum, held in 1943, on the question of authorizing the Legislature to submit a revised Constitution The proposal was ratified, but when the Legislature submitted a new Constitution at the 1944 election, it was rejected by the electorate [5]

In 1947, the Legislature, on the recommendation of the Governor, submitted to the people the question of calling a convention, but the proposition, which was ratified by the electorate, contained the stipulation that such a convention would not change the existing basis of legislative representation and that the convention would complete its deliberations within three months In view of the preparatory work accomplished during previous revision attempts, the convention was able to produce a draft within the specified period, and the new Constitution, which was supported by both major parties, was ratified by the people in November, 1947.[6]

NEW CONSTITUTIONS—HAWAII AND ALASKA

Since the task facing these two territories was the creation of a Constitution rather than the revision of a document in which various interests had through the years gained protections, their problems were considerably less than those of existing states Also, popular sentiment in favor of statehood gave impetus to the movement for producing a sound and workable Constitution

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[3] *Book of the States*, 1945-46. "Georgia's Proposed New Constitution," *American Political Science Review*, June 1945, pp 459-463

[4] Miller, W, "Report of New Jersey's Constitutional Commission," *American Political Science Review*, Oct 1942, pp 900-906

[5] *Book of the States*, 1945-46

[6] Baisden, R N, *Charter for New Jersey, the New Jersey Constitutional Convention of 1947*, Trenton, 1947

In anticipation of becoming a state, Hawaii voted in 1950 to hold a convention, and the new Constitution drafted by the convention was adopted by the people the same year.[7]

The Alaska Legislature in 1955 authorized the holding of a constitutional convention and directed the Alaska Statehood Commission to establish a program of preparatory research. The research, conducted by the State Public Administration Service, was available for the delegates when the convention convened in November. The new Constitution, which was produced by the convention in approximately three months, was ratified by the people in 1956.[8]

CONCLUSION

During the past two decades over half the states have directed their attention to the task of constitutional reform, and each year additional states are taking a hard look at their fundamental law. Although thus far only three states have succeeded in effecting a total revision, several such as Tennessee, have made substantial improvements in their Constitutions, and new techniques have been evolved for dealing with the problem of revision in a modern and dynamic society.

Recognizing the continuing need for revision of State Constitutions, the United States Commission on Intergovernmental Relations reported in 1955 that:

> "State Constitutions restrict the scope, effectiveness, and adaptability of state and local action. These self-imposed constitutional limitations make it difficult for many states to perform all of the services their citizens require, and consequently have frequently been the underlying cause of state and municipal plans for federal assistance. Most states would benefit from a fundamental review and revision of their Constitutions to make sure that they provide for vigorous and responsible government, not forbid it."

The experience of other states demonstrates that, despite the problems involved, constitutional revision is a feasible undertaking. Although it might be argued that the circumstances were particularly favorable in these states, since most of the major interest groups advocated revision, it must be remembered that in each case the political climate within which revision was finally accomplished was established only after a long program of research and public education. In New Jersey, despite the urgent need for revision, it took seven years of continued effort to produce a new Constitution, but the result was a document that is a model in both substance and form.

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[7] *Book of the States*, 1952-53.

[8] *Ibid.*, 1958-59.

IV

THE NEED FOR CONSTITUTIONAL REVISION IN CALIFORNIA

California has the distinction of possessing the second longest Constitution in the United States Although length need not necessarily be an evil, neither should it be equated with progress The latter view, however, has sometimes been expressed A little over a decade ago a leading California newspaper, commenting on a movement for constitutional revision stated that California had grown great under the Constitution of 1879 and that 256 amendments had kept the document up to date At present the amendments number well over 300 and the Constitution has expanded from 20,000 words in 1879 to over 75,000 words today.

A political scientist testifying before the committee on the excessive length of the Constitution stated that

> " . Although not in itself an argument for revision, it should be noted that the California Constitution is often cited by political scientists as an extreme example of an overlong and excessively detailed statement of 'fundamental law' A State Constitution, like the national Constitution, should be a reasonably short, concise and readable statement establishing (1) basic political concepts, (2) an outline of the organizational framework of government, and (3) a set of limitations on governmental powers An 80,000-word document is not necessary to fulfill these purposes It can serve only to confuse and confound the citizen who, looking for an understanding of his government, is faced by a maze of verbiage characterized in part by obsolescence, outright irrelevancies and even in a few cases, contradictions The present length of the California Constitution therefore, we would contend, presents a *prima facie* case for revision "

Surely the character of a Constitution must be suspect when such a plethora of amendments are required to keep it "up to date," and it might be properly maintained that California has grown great not because of her Constitution, but in spite of it

The Constitution of 1879 was the product of an era which was suspicious of representative government, and the document was permeated with detailed restrictions on the exercise of legislative, executive and judicial powers Rather than limiting their task to establishing the basic principles of government which characterized the convention that drafted the Federal Constitution, the framers included numerous provisions better left to statutory enactment and the dictates of common law, there was little distinction between fundamental and transitory issues The detailed character of the 1879 Constitution has necessitated frequent amendment to keep pace with the changes within the rapidly growing State Although some of the amendments have been substantive in nature, such as the adoption of the initiative, referendum and recall in 1911, the majority have been concerned with

subjects normally left to the discretion of legislatures The yearly submission of unco-ordinated amendments to deal with specific and pressing issues has never been adequate to maintain an intelligible and consistent Constitution The result has been a document replete with obsolete and contradictory provisions, amendment has necessarily led to further amendment and it would appear that the process of keeping "up to date" has, at the same time been a process of infinite regress

In an article published in 1956, Phil S Gibson, Chief Justice of the California Supreme Court, stated that the State Constitution is

> " cumbersome, inelastic and outmoded . It is not only much too long, but it is almost everything a Constitution ought not to be It contains a great deal of outmoded matter, some of which is so deeply imbedded in sound and functioning provisions that the obsolete language cannot be excised without rewriting entire sections Many of its provisions are inconsistent, and a number are duplicates It is further burdened with unnecessary detail and encumbered with regulations that should be contained in the statute law Certainly there is a need for simplification and improvement of our fundamental law "[1]

Unfortunately, the aura of reverence that is rightly attached to such fundamental principles as the Declaration of Rights extends, in California, to provisions of only limited interest and application Nearly every conceivable subject of legislation surrounds the provisions relating to the framework of government and consequently the public is not wont to making a distinction between the essentials and the patchwork of statutory matters Various interests have managed to insert their "sacred cows" and the most extraneous matters have assumed the dignity of the Constitution

Appearing before the committee, Richard R. Rogan, Chief Deputy Attorney General, stated

> "The written Constitution is an American institution As it is the heart and epitome of our traditions and culture it is held, as it should be, in the greatest of reverence and respect In undertaking to revise, we seek to discover what is constitutional in nature and what are the fundamental concepts and what is worthy of this lasting reverence On the other hand, and for other disposition, we seek to discover what is transitory and fluctuating in character and what we should change as economic, social and political conditions change These matters, in other words, which we class as statutory, have no proper place in the Constitution."

The following statement is typical of the views of political scientists regarding the distinction between constitutional and statutory matter:

> "The expansion of the California State Constitution reflects to some extent the increased demands placed upon state government growing out of the social, economic and political problems posed by the ever-continuing industrial and social evolution which could not have been anticipated in 1879. We refer to the growing role of the state as a partner in social and economic activities which

[1] *Southern California Law Review*, July, 1956, p 389

less than a century ago were the exclusive domain of private enterprise In some cases, too, social and economic policies have been written into the constitution to *escape judicial nullification.*

"The majority of the new articles, sections and clauses, however, deal with matters that are neither fundamental nor permanent. They are statutory rather than constitutional in nature. Their content should more properly be found in legislation. The people and their government constantly have to consider revision at the polls of constitutional provisions that are transitory and obsolete. It is no reflection on the competence of California voters to suggest that they may not always understand the implications of proposed constitutional amendments and hence have difficulty in voting intelligently on the numerous proposed amendments that appear on every statewide ballot. The number of proposed amendments on each ballot is in itself enough to discourage careful study and consideration

"We wish here to reiterate the belief of the framers of the national Constitution in representative government This belief carries with it the corollary that the legislative body is fully competent to carry on the law-making function The people properly participate in the constituent function when they are called upon to pass on the alteration or revision of the principles and basic framework of republican government A constitution of excessive length and detail breaks down the important distinction between the constituent and the law-making functions.

"There is general agreement among political scientists on three basic criteria of a successful state constitution (1) It should deal only with the fundamentals of government and its functions; (2) it should be stable; and (3) it should be flexible The Constitution should provide the ground rules of the political decision-making process. Its provisions should not become the battleground for contending groups within the state, as has become the case in California The fundamental rules and principles controlling government should be sufficiently stable that the government's relationships to the individual, and the relationships of one part of government to another, can be known with some certainty. Flexibility is necessary to permit the government to operate effectively under changing conditions How can stability and flexibility be reconciled? First, by drafting a short constitution which deals only with fundamentals which should not require frequent change."

Although most witnesses favored revision, there was some dissenting testimony James Mussatti, General Manager of the California State Chamber of Commerce, stated that

"The California State Chamber of Commerce is opposed to any general revision of the California State Constitution By process of amendment, it has become a modern document with respect to present-day concepts of good, modern state government Our State Constitution should be long enough to protect the liberties of the people of our State, and we should not make a fetish out of mere size, form or simplification. Our Constitution has been

thoroughly adjudicated by the courts and a revised constitution would necessitate thousands of cases involving constitutional interpretation."

Dr. Charles Aikin, Chairman of the Department of Political Science at the University of California at Berkeley, commented that:

"I think it is an excellent Constitution despite what may be described as weaknesses It reflects our history, the material that is there, is there because California doesn't want it changed."

However, witnesses appearing before the Committee were nearly unanimous in the view that the California Constitution was in need of fundamental revision Burnham Enersen, President of the California State Bar Association, stated that "The simple fact is that the entire text of our Constitution should be reorganized, overhauled, condensed and simplified "

After a two and one-half year study of the Constitution and the need for revision, the League of Women Voters reached the following conclusions:

"Following a variety of routes, League after League reached the same conclusion. That the California Constitution is in need of major revision The League feels that California needs a much simplified Constitution, to enable state government to meet state problems efficiently, with flexibility, and with responsibility clearly fixed.

"The present Constitution places a heavy burden on the voter to carry out his responsibilities as a citizen. He must vote on ballot measures often covering highly specialized or technical matters, and after he has made a decision he is in no position to keep track of how his decisions are working out in practice. The voter is given responsibility through his constitutional decisions for many matters which ought to be in the hands of legislative and executive officials of the state

"By the same token, the many statutory provisions in the Constitution withhold from the Legislature its power, and in consequence, its responsibility to legislate in many important areas The Constitution now encumbers rather than guides our elective representatives Unfortunately, our Constitution effectively ties our legislators' hands For example, legislators know only too well that over one-quarter of California's budget is earmarked by constitutional provisions

"Prompt action on the part of the Legislature to meet constantly changing conditions in this complex state of California is often impossible because the Constitution sets up so many restrictions that laws must frequently wait until the long, tedious process of amending the Constitution can be achieved.

"We learned in the process of studying state constitutions that a good constitution should be adaptable to changing conditions. It should, therefore, not be a highly detailed document but rather a body of fundamental laws primarily, which can be supplemented as is necessary by statutory law A constitution should contain the basic principles of government, and the governmental framework. One need only look at the Constitution of the United States to see

a clear example of a document which sets forth simply the fundamental laws of the land and the machinery for putting those laws into effect

"The California Constitution, unhappily, bears almost no resemblance to the federal charter We have the second longest constitution of the fifty states—a Constitution which runs to some 70,000 words, or the size of a modern novel We have a document which has been amended over 300 times in the course of its 80 years' history, as contrasted with 22 amendments in over 180 years for the United States Constitution

"When a constitution has been amended as often as California's, there must be a reason, and that reason is not hard to find Our Constitution, lengthy when originally written, has become a vast welter of innumerable details spelling out provision after provision Most of these provisions should logically be a part of statute law.

"Since almost everything gets put into our Constitution, everything that requires the slightest change must ultimately appear before the voters as an amendment to the Constitution Consequently, such election finds the voter faced with a lengthy ballot This patchwork method of trying to keep the Constitution up-to-date is expensive, tedious and highly inefficient The printing costs in connection with ballot measures run to a quarter of a million dollars at every election "

CONCLUSION

After studying the California Constitution and in view of the testimony received at public hearings the committee concluded that the detailed nature of the document has resulted in inflexibility, decreased responsibility, constitutional instability, and obsolete and contradictory provisions The inclusion of statutory matter has rendered the State's fundamental law incapable of adapting to a changing environment except by constant amendment which necessarily results in constitutional instability Detailed and restrictive provisions have prevented the Legislature and other organs of government from effectively dealing with emergent problems and, in turn, by withholding power, the Constitution has decreased the responsibility of the state government. Finally, in a situation where constitutional amendment becomes the only recourse for meeting current needs, it is impossible to maintain high standards of structure and form within the document The result is obsolete, repetitive and contradictory provisions

It is a vain hope that the Constitution will cure itself As amendment is added to amendment, the prospects of achieving a viable constitutional document grow dimmer. The only solution is to undertake a program of substantial revision and simplification designed to establish a document that embodies the basic principles and structure of government, protections for individual rights, and little else In the words of Justice Cardozo, "A constitution states, or ought to state, not rules for the passing hour, but principles for an expanding future "[2] Once the California Constitution is restored to the traditional status of organic law, there will be little need for continuous amendment

[2] Cardozo, B N, *The Nature of the Judicial Process*, New Haven Yale University Press, 1921

V

METHODS OF CONSTITUTIONAL REVISION

GENERAL

The California Constitution provides three legal methods for change (1) legislative proposal of amendment, (2) initiative proposal of amendment, and (3) the constitutional convention [1]

Usually a distinction is made between "amendment" and "revision" Although important changes are often effected by means of amendment, this method normally refers to changes of a specific nature and limited scope while revision implies a broader and more substantive change In a state such as New Hampshire where the Constitution provides for only one method of change, amendments proposed by convention, there is little distinction between amendment and revision However, when a Constitution such as that of California provides separate procedures for effecting amendment and revision, a more absolute distinction is implied

THE CONSTITUTIONAL CONVENTION

The California Constitution refers to only one method of "revision" Under Section 2 of Article XVIII, if two-thirds of the members elected to each house of the Legislature "shall deem it necessary to revise" the Constitution, they may recommend that the people vote at the next general election on the question of calling a convention Although the Constitution does not prescribe how this is to be done, it would appear that the recommendation would have to be in the form of a concurrent resolution passed during a general session [2]

In the event of an affirmative vote (the majority of those voting on the question) on the referendum, it becomes the duty of the Legislature to provide by law at the next session, which would be a regular session, the procedures for calling the convention and the election of delegates However in 1935 the Legislature failed to follow the popular mandate and did not provide the enabling act, and there was no legal method by which the Legislature could be forced to act Thus, legislative implementation is a necessary part of the convention process under Section 2, although in some states such as Missouri, the procedures for constituting the convention are set forth in such detail that the provision is virtually self-executing.

The delegates, the number of which may not exceed that of both houses of the Legislature, are required to be chosen in the same manner and have the same qualifications as members of the Legislature, and the delegates must meet in convention within three months after their election and at such place as the Legislature may direct With respect to

[1] Article XVIII Article IV, Section 1

[2] Article 4, Section 2a limits the matters that may be considered in the budget session, and in view of the provisions of Article V, Section 9, it would appear that the resolution could not be passed in a special session unless the subject was included in the Governor's proclamation convening the session

the election of delegates, the phrase "in the same manner, and have the same qualifications, as members of the Legislature" would appear to incorporate all constitutional and statutory requirements governing the election of legislators, such as the partisan direct primary and general election procedures

Although the Constitution which is drafted by the convention is required to be submitted to the people at a special election provided by law, there would appear to be no bar to holding such an election concurrently with a regular election [3] The manner in which the new document is to be submitted, i e , as a whole, as a series of separate proposals, or as a whole with the stipulation that the proposals be voted on separately, is determined by the convention Finally, a majority of all votes cast in the special election is necessary to adopt a new Constitution.

Since the Constitution is silent regarding many of the details concerning the establishment of the convention, it is clearly within the power of the Legislature to provide in the convention act for such matters as the exact number of delegates, compensation of delegates, location of the convention, manner of filling vacancies, and necessary appropriatons

In recent years several states have made use of the limited or restricted convention Normally, a convention will have plenary power in regard to proposing a new Constitution, but the courts in several states have held that if the convention question, when submitted by the Legislature and approved by the people, contains the stipulation that an affirmative vote is a vote for a convention restricted to or prohibited from the consideration of a certain subject or subjects, the convention is bound by popular mandate and an area of authority has been expressly withheld by the people [4]

However, in light of previous court decisions in this State, it is doubtful that this reasoning would be followed by the California courts The California Supreme Court has expressed the view that both the people and the Legislature are bound by constitutional limitations regarding constitutional revision, that a revision may be accomplished only by a convention as expressly prescribed in Article XVIII, and that such a convention "is freed from any limitations other than those contained in the Constitution of the United States" [5]

REVISION BY AMENDMENT

On two occasions the California Supreme Court has held that amendment and revision are mutually exclusive procedures and ruled against legislative and initiative amendments that were so broad in scope as to amount to a revision In regard to legislative amendments the court stated:

> "Article XVIII of the Constitution provides two methods by which changes may be effected . . . one by convention . . . for the express purpose of revising the entire instrument, and the other

[3] *Vela* v *Huberty* (1934) 1 Cal 2nd, 466

[4] *Gaines* v *O'Connell* (1947), 305 Ky, 397 *Cummings* v *Beeler* (1949), 189 Tenn, 151, *Staples* v *Gilmer* (1945), 183 Va, 613

[5] *Livermore* v *Waite* (1894), 102 Cal, 113, *McFadden* v *Jordan* (1948), 32 Cal 2nd, 330

through the adoption by the people of propositions for specific amendments It can be neither revised nor amended except in the manner prescribed by itself

"The Legislature is not authorized to assume the function of a constitutional convention, and propose for adoption by the people a revision of the entire Constitution under the form of an amendment The significance of the term 'amendment' implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed "

The court reaffirmed its position in 1948, this time in regard to initiative amendments, and stated

"Each situation involving the question of amendment, as contrasted with revision of the Constitution must, we think, be resolved upon its own facts A case might, conceivably, be presented where the question would be close and where there would be occasion to undertake to define with nicety the line of demarcation "[6]

Thus it may be concluded that an entire revision may not be proposed by a single constitutional amendment and that any one amendment may not be so broad as to amount to substantial revision However, there would appear to be no legal obstacle to the proposal of an amendment embodying a revision of an entire article or specific area of the Constitution, or to the submission of a series of amendments at succeeding elections aimed at an eventual total revision.

Such a program of piecemeal, but yet co-ordinated, revision is currently being undertaken in New York In many respects the problems of New York regarding constitutional revision were analogous to those of California For several years New York has been searching for a solution to the problem of what has been termed a "runaway" Constitution—a document that has expanded from 3,000 words in 1777 to over 45,000 at present

In 1956 a 15-member commission was directed to conduct preparatory research in the event that an affirmative vote was received on the question of calling a constitutional convention which, under the terms of the Constitution, must be submitted to the people every 20 years Although there was general agreement that revision was necessary, there was no consensus that a convention was the best method, and the proposal was defeated Subsequently, the Legislature in 1958 created a special committee to study the problem and submit proposals for revision The committee initiated several studies, but was disbanded when the Chairman, Nelson A Rockefeller, resigned to assume the office of Governor However, Governor Rockefeller recommended that the Legislature create a body to carry on the committee's work and in 1959 a Temporary State Commission on Revision and Simplification of the Constitution was established The commission was directed to make ". . . a comprehensive study of the Constitution with a view to proposing to the Legislature the initiation of such revision and simplification as the commission deems desirable "[7]

[6] *Livermore* v *Waite* and *McFadden* v *Jordan*, Op Cit
[7] Ch. 4 of the Laws of 1959

The commission established two subcommittees, one on local government and one on simplification (which studied the report on an inter-law school study completed in 1958), and the report of the commission was submitted to the Legislature and Governor in December, 1959. The report contained a complete revision of three articles and ten proposals for the simplification of other provisions One article was reduced from 3,453 to 373 words[8] The 13 proposals were submitted to the 1960 Legislature in the form of amendments and 10 were approved and referred to the 1961 Legislature for second passage as required by the Constitution.

REVISION BY CONVENTION

The report of the New York Commission stated that:

> "It might seem that the way to undertake the task of constitutional revision is by an over-all rewriting at one time, a single stem to stern revision But we must recognize the fact that the accumulated detail in which the Constitution abounds, the shape and form of the document to which the experts in government have become accustomed, have generated habits of thinking about the Constitution. It is not easy overnight to change the course of years and satisfy the concerns of those who take comfort in the constitutional details about the spheres of their special interests "

Essentially, California faces these same problems in regard to revision Although a complete revision, which under the present terms of Article XVIII would have to be effected by means of an unrestricted constitutional convention, has much to commend it, it is not always a practicable undertaking

The convention is the most traditional method of state constitutional revision and has been made available in every state either by constitutional provision or by judicial interpretation. Also the convention, because of the high degree of popular participation, is often considered the most democratic method of constitutional reform However, the convention, especially in a large state such as California, is at best a long, cumbersome, and costly process which does not always favorably lend itself to the prevailing political, economic, and social situation At the very least, revision by convention would entail several years work and the expenditure of several million dollars with little assurance that the final product would be accepted by the electorate A convention presupposes, as with the case of Missouri, a long period of preparatory research and an informed electorate with few or no reservations about the need for revision Since a convention subjects the Constitution to unlimited change, the people, especially in a state where various interests have gained constitutional protections, are hesitant about supporting such a venture And, as the history of California has demonstrated, the Legislature is traditionally reluctant to help constitute a body over which it has little or no control This is especially true when the solution to such controversial issues as reapportionment is outstanding Finally, when attempting to revise a

[8] New York Legislature, *First Step Toward a Modern Constitution, The Temporary Commission on the Revision and Simplification of the Constitution,* Legislative Document No 58, Dec 31, 1959
New York Legislature, *Inter-Law School Committee Report on the Problem of Simplification of the Constitution,* Legislative Document No 57, 1958

Constitution as detailed and complicated as that of California, it might well be argued that the task becomes essentially a technical problem that could best be undertaken by experts rather than convention delegates

Despite these difficulties the constitutional convention still remains the most universally accepted method for the creation and revision of written Constitutions, and although a convention may not be suited to meet the present need for revision in California, it merits further study since future circumstances may prove more favorable for its implementation

CONCLUSION—A PROGRAM OF REVISION FOR CALIFORNIA

Obsolete Matter

One of the first considerations in undertaking constitutional reform is the removal of obsolete and contradictory provisions and a general clarification and improvement of the form of the document These matters are relatively noncontroversial and steps in this direction could be taken either independently or as part of a general program of revision.

Since the needs of the State dictate that constitutional reform is a problem to be immediately reckoned with, it is the opinion of this committee that a constitutional amendment proposing the deletion of various obsolete matter should be submitted to the people at the general election in 1962

General Revision

However, improvements of above nature alone do not constitute a genuine revision Imperfections such as obsolescence and repetition are merely the outgrowth of a more basic constitutional imperfection, viz, the inclusion of detailed provisions of a statutory nature which results in the need for constant amendment Thus, simplification is the foundation of an adequate revision

To succeed, revision must be approached in a practical manner Not only should a program of revision aim at producing the best possible Constitution, but it should also employ the method that offers the best hope of success A revision undertaken in a doctrinaire manner, oblivious to political realities and technical difficulties, is doomed to failure

The recent experiences of other states, whose problems are comparable to those of California, demonstrate a trend away from over-all "stem to stern" revision by means of a convention, in fact, Missouri stands alone as a recent example In Georgia, although a complete revision was adopted, the commission's proposals were subjected to an intensive examination by the Legislature before being submitted to the people In New Jersey revision was possible only by means of a limited convention which, even then, relied heavily upon work previously accomplished by a commission and by the Legislature Other limited conventions, even considerably more restricted in scope than that of New Jersey, have been recently employed in Rhode Island, Virginia, Kentucky and Tennessee

Recently many states have created small specialized bodies to study the problem of revision and make recommendations for change. Several witnesses appearing before the committee suggested this approach for

California Testifying before the committee, Frank C Newman, Professor of Law at the University of California, stated

> "As to the method of revision, it seems desirable that proposed amendments be submitted to the Legislature, and then to the voters, after interested groups have made their recommendations I believe that a good deal could be accomplished if we had an advisory group with the duty of recommending simplification and given the funds needed to have able draftsmen I think that a group of experts working with a wise commission could come up with a set of proposals that the Legislature and the voters would find acceptable I do not see why it is not appropriate to consider various articles in this fashion I think that we would avoid one of the great defects of conventions, which is log-rolling
>
> "By simplification I mean more than removal of obsolete material and more than codification I think it would be important not to declare to such a body that it must not touch substance The test of the need for revision should be a determination that certain wording in the Constitution is blocking activity that is in the public interest "

Although only Georgia has successfully employed a commission to effect revision of its constitution, New York is apparently making considerable progress with this method, and the increasing use of bodies of this nature is indicative of the growing importance of this technique in constitutional reform Commissions and similar bodies are usually created by the Legislature and/or the executive to study a state's constitution and submit proposals for revision The complexity of modern constitutions has created a need for concentrated and expert study in the area of revision Prior to 1900 only five states used such a device, but since 1900, 38 commissions have been employed in 21 states Between 1957 and 1958 eight states established constitutional commissions

After considering the experience of California and other states in the area of constitutional reform, it would appear that at the present time and under the present limitations of Article XVIII, revision could best be accomplished by a continuing program directed toward preparing revisions of individual areas of the Constitution The task should be undertaken by a specialized body created by the Legislature, such as a Constitutional Commission or Legislative Committee, which should submit proposals for revision to the Legislature After appropriate study and after such changes as it might deem necessary, the Legislature should, in turn, submit the proposals to the people at succeeding elections in the form of constitutional amendments

Organic Law Code

One of the most salient problems involved in a program of constitutional simplification is the elimination of what might be termed statutory matter Probably the greatest factor in the failure of the 1929 Commission and the 1947 Joint Committee to effect substantial revision was the disagreement among various interests as to which provisions were properly "constitutional" and which were properly "statutory " Not only does the elimination of such material pose a political problem,

but a technical problem as well since many matters now regulated by constitutional provisions would have to be re-enacted into statute law in the event of a revision

The Legislature might well consider, as a possible means of facilitating constitutional simplification and revision, the creation of an Organic Law Code to which might be transferred certain provisions of the present constitution that are of a statutory nature such as many of the provisions relating to taxation, bond issues, etc. The status of such a code could be intermediate between statutory and constitutional law, and the provisions of the code would be subject to change only by a concurrence of two-thirds of the members of each House of the Legislature and the approval of the Governor Such a code, which would have greater flexibility than the Constitution but yet would be on a plane somewhat higher than ordinary statutes, might go a long way toward assuaging the anxieties of various vested interests who fear constitutional change

Amendment of Article XVIII

Submission of a Revision by the Legislature The use of commissions and other expert bodies in attempting to revise state constitutions is often predicated on the assumption that the Legislature possesses the power to submit a revised constitution to the people Unlike California where the courts have held that a prohibition against such action is implied in the Constitution, and unlike Missouri where the Constitution explicitly forbids revision except by methods contained in the document, most state constitutions do not exclude legislative proposal of a revision. The recent Constitution of Hawaii specifically vests such power in the Legislature

The work of the 1929 commission and the work of the 1947 joint committee, at least in its early stages, was directed toward the formulation of an entire and co-ordinated revision but under the present constitutional proscription, it was impossible to present such a revision to the people Both of these bodies recognized this difficulty The final report of the 1929 commission recommended that an amendment be adopted which would allow the Legislature to submit an entire revision and further stated that·

> "With our proposed revision before it, the Legislature, after proper public comment has been made thereon, should be able to prepare a revision which would meet with public favor. We cannot see why the Legislature is not as competent to make a revision as would be a constitutional convention. After all, it is not so important who should submit the revision as it is that it shall be along lines which will meet with public favor The vote of the people is the controlling factor. . . Our revision can be subjected to criticism by public bodies generally, and thus the Legislature can have the benefit not only of our work, but criticism of it, and may take all the time that is necessary to effect a satisfactory revision "

There would appear to be no sound reason why the people's representatives should not be authorized to submit a revised constitution to the electorate if at any time it should appear that revision could

be best accomplished in this manner Although, except for the convention, no specific method of effecting overall and co-ordinated revision, such as revision by a commission, has been so well proven as to warrant its incorporation in the State Constitution, and thus far no other state has done so, a provision providing for legislative proposal of a revision would increase the flexibility of Article XVIII and allow for the utilization of such new techniques as changing conditions might warrant

To allow the Legislature to propose a complete revision, whether drawn up by a commission, legislative committee, or other such body, would not violate any principles of the democratic process Revision by this method would insure that the proposals would be subjected to the scrutiny of the people's representatives, that the proposals would be considered in the public forum of the Legislature where interested parties could be heard, that a two-thirds vote of each house of the Legislature would be necessary before such a revision could be submitted to the electorate, and finally that the revision would be adopted only after referral to the people for their approval

Thus, it is the recommendation of this committee that the present prohibition against legislative proposal of revision, imposed by court interpretation, be eliminated by amending Article XVIII so as to permit the Legislature to submit an entire revision to the people.

Amending Process

Although a constitution which contains a difficult amending process, such as that of New Jersey before 1947, will normally have few amendments, there would appear to be no absolute connection between the number of times a constitution has been amended and the ease of the amending process

There are several state constitutions, as old or older than that of California, which contain amendment provisions no more stringent or less stringent but yet which have less than one-third the number of amendments Furthermore, if compared with the amending process of other states, Section 1 of Article XVIII does not appear to provide an exceptionally easy procedure Section 1 requires that an amendment be proposed by a vote of two-thirds of the members of each house during one session and that a majority of the electors voting on the proposition is necessary for ratification Only a relatively few constitutions contain provisions requiring passage by two sessions of the legislature or more than a simple majority of those voting on a measure for ratification, and in several states less than a two-thirds vote of each house is required for the proposal of an amendment

Although it might well be argued that the ease with which the Constitution may be amended has contributed to the use of the amending process for the insertion of protections for special interests, proposals for restricting the amending process fail to recognize that there are more fundamental factors that have contributed to the constant amendment of the Constitution The answer must be sought in the detailed and statutory nature of the document itself and in the State's particular social, political, and economic structure.

The detailed character of the Constitution requires today, as in 1879, a flexible and readily available amending process to keep pace

with rapidly changing conditions However, if at some future time a thorough-going revision and simplification of the Constitution should be accomplished, certain alterations in the amending process might well deserve consideration since a more rigid amending process would contribute to maintaining the basic character of the new document

The above would hold true for recommendations that have from time to time been advanced regarding changes in the procedures for proposing and adopting initiative amendments Whatever merit these proposals might have in regard to the principle of the initiative and its particular use in California, they would appear to have little relation to the immediate problem of effecting constitutional simplification Initiative amendments have accounted for less than 7 percent of the total number of amendments that have been adopted

The Convention

If compared with the convention provisions of other State Constitutions, Section 2 of Article XVIII appears to be neither unduly restrictive or ambiguous Most State Constitutions require, as does Section 2, a two-thirds vote of each house of the Legislature for the submission of the convention question to the people, that a majority of the electors voting on the question is necessary for the adoption of the proposition; that the Legislature provide by law for convening the convention; that the Constitution drafted by the convention must be submitted to the people; and that a majority of those voting on the measure is necessary for ratification

Since the convention process has never been fully implemented since 1879 and since there have been no court decisions specifically clarifying the procedures for establishing a convention, there are certain problems involved in interpreting the language of Section 2, especially in regard to the selection of delegates Also, since under the provisions of this section a convention cannot be implemented without legislative action, the Legislature can, as in 1934, fail or refuse to convene the convention.

To overcome these difficulties would involve amending Section 2 so as to provide such detailed procedures that all possible ambiguities would be removed and that the provisions would become self-executing Even if this were possible, it would render the convention process extremely inflexible It would appear that such matters as establishing the exact procedures for selecting delegates, providing necessary appropriations, and other details concerning the convention should properly remain a legislative function in order to insure maximum constitutional flexibility

It is significant that neither the 1929 Commission nor the 1947 Joint Committee made any recommendations for changing the present method of establishing a convention, and recent developments in constitution-making among the states do not bear any evidence of a trend toward more detailed convention procedures

It is the opinion of this committee, after a careful review of the constitutional procedures relating to the convention process and the proposal and adoption of constitutional amendments, that at the present time there would be little or no value in effecting any substantial changes in these procedures

VI

ARTICLE VI (Judicial Article)

GENERAL

During the first two public hearings, many witnesses pointed to Article VI as an area of the Constitution that was in need of basic revision. Since this article is substantially free from constitutional details delineating spheres of special interest, it presents a favorable opportunity to approach the problem of revision on a rational and relatively non-controversial basis But, although the Judicial Article has been less subject to the pressures of various interest groups than other areas of the Constitution, it is, nevertheless, in most respects, typical of our lengthy and inflexible fundamental law and is encumbered with detailed, obsolete, and inconsistent provisions The detailed provisions of this article have given rise to 62 amendments since the adoption of the 1879 Constitution

The Judicial Council and the California State Bar have traditionally been concerned with Article VI and have continually made recommendations for the improvement of the administration of justice. In a report to Governor Goodwin J Knight in 1956 concerning the condition of judicial administration in California, the Honorable Phil S Gibson, Chief Justice of the California Supreme Court and Chairman of the Judicial Council, stated that on the council's current agenda of study projects was a "study of the entire Judicial Article of the California Constitution directed toward the elimination of obsolete and restrictive matter which now hampers the modernization of court structure and procedure " In an article published in the same year, the Chief Justice advocated a program of revision that would eliminate obsolete and procedural matters, restate and simplify remaining provisions, and make necessary substantive changes.

In a statement before the committee in San Francisco, the President of the California State Bar Association testified that:

> "Article VI is the article with which our legal profession is most directly concerned This article contains some 26 section headings and a great many subsections Like the other articles, it has been amended frequently For example, two amendments were adopted by the people in 1956, both for the purpose of authorizing the Judicial Council to fix the time when a decision of the District Court of Appeal should become final These amendments are a good illustration of the cumbersomeness of our Constitution Surely the establishment of appropriate time factors for the operation of the appellate process in our courts is a matter for legislative action or for delegation by the Legislature to the Judicial Council It should not be necessary to ask the people to consider a matter of such relatively minor procedural detail and have to vote upon it at a general election. . . .

"Because of its original length and its frequent amendment, Article VI is now badly in need of rearrangement. Also, it contains much obsolete material and some material which should not be in the Constitution at all."

Professor Arvo Van Alstyne, Professor of Law at UCLA, appeared before the committee in Los Angeles and commented as follows:

"The judicial article of the Constitution is in need of revision Numerous provisions in Article VI are anachronistic or simply of no present force and effect Much of the judicial article is occupied with provisions dealing with the structure, organization, and jurisdiction of the various courts The bulk of these matters should be omitted from the Constitution and replaced by general authorizations for legislative enactments relating thereto The present procedures to make needed changes in the judicial system, via constitutional amendments, are neither efficient nor necessary. Such matters are usually of such a nature as to be difficult for the lay voter to adequately understand They are technical matters with which lawyers and legislators are not only conversant, but equipped by specialized training and experience to evaluate. Their resolution is more appropriately a matter for legislative concern. Furthermore, flexibility and the capacity to meet changing needs in our rapidly changing world would seem to be desirable qualities for an effective system for administering justice Such flexibility can better be found in the vesting of lawmaking authority in the Legislature than in the electorate through the medium of constitutional amendment The Constitution, of course, should retain the basic structural provisions and authorizations for legislative action, but the details properly should be left to legislative delineation, preferably with some form of liaison or recommendatory participation by the Judicial Council."

Similar views were expressed by Professor Donald P. Kommers, a political scientist, who has devoted considerable study to the problems of the state court organization and judicial administration·

"In the last 10 years there have been major drives to overhaul the judicial articles of the state constitutions of Arkansas, Delaware, Florida, Illinois, Texas, New York, Connecticut, Tennessee, Minnesota and Wisconsin, to mention more outstanding examples Moreover, the judicial articles of the constitutions of Hawaii, Alaska, New Jersey and Puerto Rico, all recently drafted, are models that should be imitated by California

"In revising the judicial article of the California Constitution some very basic principles should be kept in mind First, it is the nature of a Constitution to embody a very broad political framework and basic principles of government. Never should a Constitution be so detailed in its provisions as to hamstring future generations in meeting their public responsibilities, and one of the greatest of these responsibilities is seeing that justice is administered economically, efficiently, and without delay. The inadequacies of many state judicial systems have been attributed to the fact that details of court organizations and administration have been

frozen into State Constitutions A related principle is that the judicial article should be flexible so as to give the legislature the widest possible latitude in providing the proper organization and administration of the judicial system in order to meet the ever-expanding and rising demands of modern justice "

THE DELETION OF OBSOLETE MATTER

A beginning was made in this area in 1956 when an amendment, recommended by the Judicial Council, was adopted that removed a superseded salary schedule and eliminated the section dealing with the Supreme Court Commission (which had been abolished after the creation of the District Courts of Appeal) However, there is still much obsolete and obsolescent matter that should be deleted, such as the prominent examples listed below

Section 2

The provision of this section which relates to the Supreme Court sitting in departments, although possibly not unequivocally obsolete, is clearly obsolescent This provision, adopted in 1879 and designed to serve a function similar to the present District Courts of Appeal, provides that the Supreme Court may divide itself into two departments to hear separate cases and establishes a procedure whereby certain such cases may be referred to the court sitting in bank With the establishment of the District Courts of Appeal in 1928, the practice of sitting in departments was essentially terminated and this provision appears to serve no useful purpose at present

Section 3

Provisions of this section, last amended in 1928, referring to the election and terms of office of Supreme Court Justices and the manner of filling vacancies have been susperseded by Section 26 adopted in 1934

Section 4A

This section contains provisions regarding the election of justices to the District Courts of Appeal which, similar to the provisions of Section 3, have been superseded by Section 26

The language in this section added in 1928 designating the counties comprising the appellate districts and the number of divisions in each is now obsolete since the Legislature, in 1941, exercised its power under this section to redistrict

The clause in this section that provides that statutes "regulating appeals to the Supreme Court shall apply to the district courts . . . until the Legislature shall provide otherwise" should be removed since the Legislature has provided that such appeals will be regulated by the Judicial Council Also, the clause maintaining the status of officers and terms of office of the district court justices as they existed prior to 1928 is no longer necessary

Section 15

This section of the 1879 Constitution provided that no judicial officer except justices of the peace and court commissioners could receive to their own use any fees or perquisites of office An amendment adopted

in 1911 removed the exception for justices of the peace except for those then in office This "saving clause" pertaining to justices now serves no purpose. Also it is doubtful if any court commissioners are now paid on a fee basis and if this should be verified by subsequent study, that exception should also be deleted

Section 21

Although this section provides that the Supreme Court Clerk shall be appointed, there is an unnecessary "saving clause" designed to protect, until the expiration of their term, clerks holding office prior to the adopting of this provision

Elimination of Detailed Provisions

An adequate revision of Article VI should undertake to eliminate much of the inflexible and detailed language pertaining to court organization, jurisdiction and procedure A step was made in this direction in 1956 when an amendment was adopted which removed from Section 4C its unrealistic time limitations on petitions for hearing in the Supreme Court and provided that the time for filing and acting on such petitions should be regulated by rules adopted by the Judicial Council The judicial article contains many requirements of a similar nature that should be eliminated from the Constitution and implemented at the discretion of the Legislature or the Judicial Council. (See Appendixes I and II.)

Substantive Changes

A significant improvement in the California judicial system was made in 1950 when an amendment, sponsored by the Judicial Council and supported by the bench and bar, was adopted which provided for inferior court reorganization At the past general election two other amendments were adopted which made substantive changes in Article VI

The first of these amendments increased the membership of the Judicial Council, formerly composed entirely of judges, by providing for the inclusion of an additional municipal court judge, four members of the State Bar, and one member from each house of the Legislature. This change has made the council more representative and has formalized its ties with the Legislature and the State Bar who are intimately connected with the judicial system In addition the amendment provided for the appointment of an administrative director to assist the council and its chairman The importance of such an office has been demonstrated by the experience of the federal government as well as several states

Finally, in regard to the removal of judges, this measure establishes as an effective alternative to such cumbersome and rarely invoked procedures as impeachment, recall, and removal by the Legislature, a Commission on Judicial Qualifications with the power to recommend to the Supreme Court the removal of judges for willful misconduct in office, persistent failure to perform their duties, or habitual intemperance. The commission was also given the power to recommend involuntary retirement because of permanent disability

The second amendment adopted in November 1960 eliminated the situation whereby the district courts did not normally have appellate

jurisdiction over cases tried in municipal or justice courts The measure provided that the district courts should have jurisdiction in such cases to the extent and in the manner provided by law and consequently if an appeal is taken to the district court, the State Supreme Court could review the case under its transfer power Formerly, cases could have conceivably been appealed to the United States Supreme Court without an opportunity for review in the California appellate courts

Despite the significant improvement that has been made in the judicial system by these amendments, there are other possible reforms that demand attention

Rule Making

Until recent years state constitutions have vested the power to regulate practice and procedure in the legislature The result, in many instances, was detailed, inflexible, and obsolescent statutes that have inhibited the judicial process In order to insure clear and flexible rules, recent constitutions, following the precedent set by the United States Supreme Court's Federal Rules of Civil Procedure established in 1938, have placed rule-making power in the hands of the appropriate judicial authorities It would appear that establishment of rules of practice and procedure is a judicial function since their formulation should be the responsibility of those most clearly connected with the administration of justice

For many years the Judicial Council in California has supplemented the statutes regarding rules of practice and procedure in accordance with its power to adopt such rules that are not inconsistent with law In 1941 the Legislature gave the council authority over all rules governing appellate practice and in 1955 the council was given the power to make rules regarding pretrial conference procedure If rule making is properly a judicial function, there is no reason that it should be subject to legislative control, and the Judicial Council and the State Bar have supported the view that complete rule-making power over all practice and procedure should be vested in the council. In 30 states the courts have complete rule-making authority in civil procedure, and 22 states have extended this power to the field of criminal procedure as well.

Judicial Appointments

During the course of its study of the judicial article, the committee devoted considerable attention to the important problem of the selection and qualifications of judges In this regard the committee concentrated, principally, on the present method of selecting superior and municipal judges and whether this method could be improved by requiring that gubernatorial appointments to these courts be subject to the approval of the Commission on Judicial Appointments

Although several of the older state constitutions provide for the appointment of judges in a manner similar to the federal system, the early 19th century marked the beginning of a trend toward the popular election of judges for relatively short terms, and this method is followed in a majority of the states today. However, in 1934 following widespread dissatisfaction among the states with systems of popular election, California became a leader in judicial reform by adopting

Article 26 which provides for gubernatorial appointment of appellate court judges subject to the approval of the Commission on Judicial Appointments and requires that a judge periodically run "against his record" in an uncontested election Article 26 also provides that counties may adopt this system for the selection of superior court judges, but thus far no county has done so

Although, in theory, superior and municipal court judges are elected by the people, the overwhelming majority have gained their seats by gubernatorial appointments to vacancies caused by death or retirement, and normally there is little opposition to their election when their term expires The Holbrook Report published in 1955 stated that in Los Angeles County only 8 of 78 superior court judges were originally elected to office, and of 39 municipal court judges, all but one had been appointed [1]

There are few limitations on the Governor's power to appoint superior and municipal court judges other than such general requirements that the appointee be a United States citizen and qualified to practice law This lack of an effective screening process prompted the State Bar and the Judicial Council to recommend to the 1957 Legislature that the membership of the Commission on Judicial Appointments be increased and that superior and municipal court appointments be subject to the approval of the commission. This proposal, advocated in the report of the Joint Judiciary Committee on the Administration of Justice, was subsequently introduced in the 1957 session, but the proposal was not adopted by the Legislature [2] Recently the Judicial Council and the State Bar have formulated, as part of a long-range program for the improvement of the administration of justice, a proposal designed to improve the present system of selecting superior and municipal court judges The measure would provide that all vacancies would be filled by gubernatorial appointments, that all such appointments be subject to the approval of a body such as the Commission on Judicial Appointments or the Commission on Judicial Qualifications, and that appointees be assured of at least two years in office before being required to stand for election This proposal would place a check on the Governor's present unqualified power of appointment and would be consistent with the requirement in a number of states that such appointments be approved by an independent body Also, it would give an appointed judge an opportunity to prove himself before his record is presented to the electorate

Although at present there are no provisions for screening superior and municipal court appointments, an informal arrangement has evolved whereby the Governor normally submits the name of a prospective appointee to the State Bar in order to determine the individual's qualifications However, it appears that this system has serious inadequacies which may inhibit a proper evaluation as well as prejudice the interests of the appointee Goscoe Farley, representing the State Bar, appeared before the committee and testified as follows·

[1] *A Survey of the Metropolitan Trial Courts of the Los Angeles Area*
[2] Senate of the State of California, *Partial Report of the Joint Committee on the Administration of Justice*, May 1959, SCA 14 as originally introduced, March 4, 1959, and ACA 47, April 29, 1959

"If a vacancy occurs in the superior or municipal court, the Governor fills that vacancy by appointment The appointee must run at the next general election It is seldom that he is then not elected, which may indicate that they are all very good, but the fact is they have almost no opposition The reason I mention this is to point up the great importance of the Governor's appointments. At least 90 percent of our judges on the superior and municipal courts owe their seats to appointment by the Governor and it has been estimated that usually a governor, after two full terms, has appointed about half of the members of the two trial courts If we had a governor who was prone to make poor appointments, he could fill up half the bench with such appointments, and so we in the State Bar have proposed that these appointments be screened by a commission

"It has been the practice of the last three governors—Warren, Knight and now Brown—to submit names of prospective appointees to the state bar and request that the Board of Governors advise him whether in their opinion it is a satisfactory appointment, i e, whether there is anything derogatory in the background or a defect in the experience of the person under consideration The State Bar is proud to have assisted the Governor, but the present system is not satisfactory

"The system is not satisfactory because of the fact that the Governor desires that the individual's name be kept confidential which prevents an adequate investigation; the Board of Governors meets only once a month for three days and thus there is not time for an extensive check, there is no assurance that the Governor will request the opinion of the Bar or that the Bar's recommendation will be followed, and finally, the individual normally is not informed that he is under consideration and is not given an opportunity to answer any charges that might be made against him during the course of the investigation

"We propose that you take away this closed door proceeding The present Commission, which has been in effect for 20 years or more, has open hearings regarding appointments to the appellate courts and if any charges are made, the person under consideration can be present Also the Commission system serves a preventive function since an attorney who has some blemish would not allow his name to be submitted because he would know that it would come out publicly "

Many of the witnesses appearing before the committee stated that, as a minimum standard, Superior and Municipal Court appointments should be subject to the approval of the Commission on Judicial Appointments or a body serving a similar function However, Stanley Mosk, Attorney General for the State of California, opposed the commission plan He testified that

"As a member of the current Commission on Judicial Appointments, I find the most difficult problem we have is to ascertain the standards by which we can evaluate prospective appointees to the appellate courts Fortunately, our problem is a relatively easy one, for Governors generally designate appellate court judges with

particularly distinguished legal and judicial backgrounds, men whose identity, work, public record, are all a matter of clear public and professional recognition But I conceive it a most difficult, and I submit, probably an impossible task for a commission such as ours, to determine the capabilities of trial court judges. The significant difficulty is that these appointees, for the most part, will not have had judicial experience One by one, we can shoot holes through probable standards by which the commission could evaluate nominees for the trial courts "

As a possible alternative to the commission, Assemblyman William Biddick, Jr proposed that the present arrangement between the Governor and the State Bar might be formalized and strengthened by providing

1 That the names of all prospective Municipal and Superior Court appointees be submitted to the State Bar but that the recommendations of the bar would not be binding on the Governor,

2 That the State Bar be given sufficient funds to provide an adequate system for investigating prospective appointees,

3 That the statistics regarding the number of names submitted to the bar and the number of times the bar's recommendations are followed by the Governor be published, but that the names of the prospective appointees would not be divulged

Such a plan, he suggested, would improve and regularize the procedure for evaluating an appointee while retaining the principal features of the present appointive system

Several witnesses testified that although providing that appointments be subject to the approval of the commission would be a substantial improvement, it would be more desirable to adopt a version of what is popularly known as the Missouri Plan This method was first recommended by the American Bar Association in 1937, and proposed that judges be appointed from a list of nominees submitted by an agency composed of judges and laymen In 1940 Missouri adopted a variation of this plan whereby the Governor appoints judges from a list of three names submitted by a non-partisan nominating commission composed of judges, lawyers and laymen Such a system has been proposed in California on several occasions and was studied by the Joint Judiciary Committee in 1957 but it was decided that because of executive opposition, such a plan was politically impracticable and that a "movement for its adoption now would be inopportune "[2] However, among leading authorities on judicial administration it is the consensus of opinion that some variation of this plan is desirable and most recent Constitutions have embodied either a variant of this system or the Federal plan of appointment "with the advice and consent of the Senate "

CONCLUSION

It is the opinion of this committee that the Legislature should propose, as a first step toward constitutional reform in California, a revision of Article VI which would be submitted to the people for their approval

[2] *Partial Report of Joint Judiciary Committee*, Op Cit, p 36.

An adequate revision should embody the ideals of simplicity, clarity and flexibility necessary for a sound and efficient judicial system. Although important changes have been effected during the last decade and although improvements are continually being proposed, revision can be best accomplished from the perspective of the entire article It is the opinion of this committee that such a revision should·

1. Delete obsolete and inconsistent provisions.
2. Eliminate detailed procedural provisions
3. Vest complete rule-making authority in the Judicial Council
4. Require that all judicial appointments be subject to the approval of the commission on Judicial Appointments

APPENDIX I

THE JUDICIARY

SHELDEN D ELLIOTT
Director, Institute of Judicial Administration, and
Professor of Law, New York University

1. GENERAL

Although basically similar in many central respects, the judiciary articles of State Constitutions, together with those of the United States and the Commonwealth of Puerto Rico, vary widely in scope and complexity of detail They range from Connecticut, with its three brief sections, to Louisiana, the largest of all, with approximately 100 sections Next to Connecticut in comparative brevity follow Massachusetts, Vermont, Maine, Rhode Island and New Hampshire, in that order These six New England states reflect, in their organic provisions, the early tradition of simplicity and lack of restrictive limitations in defining their respective judicial departments The virtue thereof is demonstrated in recent legislatively enacted reforms in Connecticut, wherein the 1959 General Assembly swept away a minor court system that had proliferated piecemeal since the seventeenth century, and in lieu thereof created 44 state-maintained circuit courts to supplant a congeries of 168 locally supported trial tribunals.

At the other end of the spectrum, next to Louisiana in length and complexity, and at a somewhat respectful distance, follow the judiciary articles of Maryland, New York, Florida and California True, judicial reforms have been achieved, notably in California and Florida, but they have required the cumbersome, delaying and expensive process of constitutional amendment through voter approval The November 1958 experience in Illinois, where a proposed new judicial article, having finally passed the legislature on the third successive biennial effort, and having received a decisive majority of favorable votes at the general election, still fell slightly short of the constitutionally required total number of votes, shows the difficulties involved A test case pending in the Illinois courts to determine the validity of the vote computation serves to emphasize the complications of delay, expense and uncertainty of the amendment process

In general, therefore, a constitutional judiciary article should be brief and concise, embodying only the barest essentials necessary to guarantee a sound and efficient judicial system Implementing details should be left to the Legislature and to the appropriate judicial authorities These virtues are illustrated in the four examples of modern constitutional provisions included in the Appendix They are also exemplified in Article VI of the Model State Constitution of the National Municipal League, as revised in 1948, and in other proposals now pending or in the process of preparation

The basic essentials are hereinafter discussed, with consideration given to various possible alternatives where tenable differences exist

2. COURT STRUCTURE AND ORGANIZATION

Typically, the opening section of a judiciary article declares where the judicial power is vested, namely, in the courts comprising the judicial establishment Thus, in Connecticut it is "vested in a Supreme

Court of Errors, a superior court, and such inferior courts as the General Assembly shall, from time to time, ordain and establish " Puerto Rico states it even more briefly· "The judicial power of Puerto Rico shall be vested in a Supreme Court and in such other courts as may be established by law " Probably the modern trend in constitution-making, in accord with the older Connecticut form, is to specify the top appellate court, usually nowadays the "Supreme Court," and a trial court of general jurisdiction—Superior Court, Circuit Court, or District Court—followed by "and other courts established by the legislature" (or "by law") To limit the latter to "inferior" courts would preclude the legislative authority from creating intermediate appellate courts should the latter prove to be necessary or desirable as was the case in Florida However, the Puerto Rican approach allows full flexibility to create intermediate appellate, general trial, and lower courts by legislative action

In any case, it is desirable to specify, as does the Alaska Constitution, that "The courts shall constitute a unified judicial system for operation and administration " The Puerto Rico Constitution goes even further by declaring unification "for purposes of jurisdiction," thereby permitting even greater flexibility within the court system as a single integrated entity

To identify its position at the top of the judicial structure, the Supreme Court is declared in Alaska to be "the highest court of the State" and in Puerto Rico "the court of last resort," and comparable provisions are found in many other constitutions It is also customary to specify the composition and membership of the Supreme Court " the Chief Justice and____Associate Justices " To permit possible enlargement to meet future needs, and at the same time to prevent the Legislature from itself adding judges where there is no such need, the Puerto Rico and Alaska articles provide that the highest tribunal may be enlarged only "by law upon the request of the supreme court " The size of other courts should be left to legislative authority

3. JURISDICTION

In most states the tendency to spell out in constitutional detail the substantive as well as the geographical jurisdiction of courts has needlessly rigidified their functions and has prevented or retarded adaption to meet changing needs In some states, the mandatory appellate jurisdiction of courts of last resort has resulted in a growing and uncontrollable caseload and mounting backlogs

Modern constitutional provisions accordingly avoid specifying jurisdictional details, and leave these to legislative enactment For example, the Hawaii article merely states that "The several courts shall have original and appellate jurisdiction as provided by law"—a striking parallel to the older provision of Connecticut that "the powers and jurisdiction of [the] courts shall be defined by law "

It is probably preferable, however, in the interest of constitutional clarification of status, to delineate as does the Alaska judiciary article, in addition to reciting that "The jurisdiction of courts shall be prescribed by law," the further provisions that "The supreme court shall be the highest court of the State, with final appellate jurisdiction," and "The superior court shall be the trial court of general jurisdiction."

The traditional power to issue prerogative writs, such as certiorari, mandamus, prohibition, quo warranto and habeas corpus, is inherent in the courts unless expressly proscribed Hence it is unnecessary to specify such authority in the Constitution

4. SELECTION, TENURE AND QUALIFICATIONS OF JUDGES

The matter of judicial selection and tenure presents one of the most controversial and difficult areas of constitutional draftsmanship, so wide is the variety of organic law on the subject Federal judges are nominated and appointed by the President, subject to the advice and consent of the Senate, and hold office (except for certain special courts) for life or "during good behavior " This method also prevails in Massachusetts and New Hampshire In New Jersey, judges of the Supreme Court and superior courts are appointed initially for seven-year terms, and on reappointment are given life tenure during good behavior Hawaii limits the terms of appointed Supreme Court justices to seven years, and of circuit court judges to six years In Puerto Rico, as in the federal system, Supreme Court justices are appointed by the executive, with senatorial advice and consent, and hold office during good behavior, other judges are similarly appointed, but their terms are "fixed by law " In Connecticut, Rhode Island, South Carolina, Vermont and Virginia, some or all of the judges are elected by the Legislature

Popular election of state judges for relatively short terms was an innovation of the "Jacksonian Revolution" of the early 19th century, and still prevails in a large majority of the states Terms of office vary from 2 to 21 years for appellate judges and from 2 to 14 years for trial court judges, the median for both groups being six years In some states, particularly in the West, election of judges is on a nonpartisan basis, but in the others they are subject to political designation and partisan election

Dissatisfaction with the latter method has generated a strong movement for some mode of judicial selection that combines the virtues of an appointive system with certain limitative safeguards California in 1934 amended its Constitution to provide for gubernatorial appointment of appellate court judges, subject to approval of a special commission on qualifications, the appointee thereafter to be subject to periodic submission to the people for his retention in office on the basis of his record alone rather than in contest with an opposing candidate

In 1937 the American Bar Association endorsed the following plan as a substitute for the direct election of judges

> WHEREAS, The importance of establishing methods of judicial selection that will be most conducive to the maintenance of a thoroughly qualified and independent judiciary that will take the state judges out of politics as nearly as may be, is generally recognized, and
>
> WHEREAS, In many states movements are under way to find acceptable substitutes for direct election of judges;
>
> Now therefore be it resolved, by the House of Delegates of the American Bar Association that in its judgment the following plan offers the most acceptable substitute available for direct election of judges,

(a) The filling of vacancies by appointment by the executive or other elective official or officials, but from a list named by another agency, composed in part of high judicial officers and in part of other citizens, selected for the purpose, who hold no other public office

(b) If further check upon appointment be desired, such check may be supplied by the requirement of confirmation by the state senate or other legislative body, of appointments made through the dual agency suggested

(c) The appointee after a period of service should be eligible for reappointment periodically, or periodically go before the people upon his record, with no opposing candidate, the people voting upon the question, "Shall Judge Blank be retained in office?"

Missouri in 1940 adopted a modified version of this plan, establishing nonpartisan nominating commissions composed of equal numbers of lawyers elected by the state bar and nonlawyers appointed by the Governor, with the top judicial officers as chairmen of the respective commissions Terms of commission members, other than the chairman, are fixed by the Supreme Court, and are staggered so as to prevent the Governor, during his single term, from controlling the selection of all nonlawyer members Each commission nominates three candidates for each judicial vacancy, and the Governor appoints one of the persons so nominated Thereafter the appointee comes before the voters on the question of his retention in office, as in the California and American Bar Association plans

The Alaska judiciary article embodies a variant of the plan, designating the nominating commission as the Judicial Council, its three lawyer members to be appointed by the governing body of the State Bar and its three nonlawyer members appointed by the Governor subject to confirmation by the Legislature in joint session, with the Chief Justice of the Supreme Court as chairman. The council nominates two or more candidates for each judicial vacancy

The American Bar Association or Missouri Plan is gathering increasing adherence among the states seeking an improved method of judicial selection It was approved by the voters of Kansas in November 1958 for the selection of Supreme Court justices, and a comparable proposal has recently been passed by the 1959 Iowa Legislature.

One problem posed by the plan is the selection of lawyer members of the nominating body If the state has an integrated bar, as do more than half of the states today, the official and all-inclusive status of the lawyer group permits their participation in designating the lawyer-commissioners If there is no integrated bar, however, the unofficial status of voluntary bar associations would present possible legal questions as to their representative authority In such circumstances, the designation of lawyer members of judicial nominating commissions might be more properly a function of the Supreme Court or of its Chief Justice

A further problem lies in the choice of the appointing authority The National Municipal League's former proposal contemplated an elected Chief Justice who would in turn appoint, from among the Judicial Council's nominees, the persons to fill judicial vacancies. Tradition, however, weighs heavily in favor of having the chief executive,

rather than the chief judicial officer, as the ultimate appointing authority In light of these considerations, therefore, the choice would appear to be between (1) a variant of the American Bar Association, Missouri and Alaska plans and (2) direct appointment by the Governor, either for life, or for a fixed term, subject to senatorial confirmation. If the latter alternative method is adopted, it would be advisable to provide, as does the Hawaii article, that "No nomination shall be sent to the senate, and no interim appointment shall be made when the senate is not in session, until after 10 day's notice by the Governor."

Eligibility qualifications of judicial candidates should not be constitutionally restricted to such a degree that the available choices are unduly restricted New Jersey, Hawaii, and Puerto Rico specify admission to the bar at least 10 years prior to judicial appointment Alaska requires that "supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law" Certainly, admission to the bar is an essential qualification, but further limitations might well be left to legislative action or to the discretion of the judicial nominating commission

In the matter of judicial salaries, the judiciary article should leave full freedom for the Legislature to provide both basic compensation and subsequent increases Protection should be provided, as in the constitutions of most jurisdictions, against diminution of judicial salaries during term of office, with the possible reservation, as in Hawaii and Alaska, that any reduction could only be "by general law applying to all salaried officers of the State" Clearly there should be no constitutional restriction against increasing judges' salaries during their respective terms Otherwise there will be inequitable results, as in several states today, whereby incumbent judges are serving at lower salaries than their colleagues who have been selected following the enactment of judicial salary increases

An important incident of judicial service is the provision for retirement The median specified age for compulsory or optional retirement in present-day judicial systems is 70 years, and there is an increasing trend to make retirement at the age-limit mandatory rather than optional Also gaining increasing recognition, as exemplified in the judiciary articles of New Jersey, Hawaii, Puerto Rico and Alaska, is the provision that judges shall be entitled to retirement benefits or pensions as provided by the Legislature Most of the states, by legislative action, have prescribed retirement benefits not only for judges but also for their widows and surviving dependents

Typical of most judiciary articles is a provision that a justice or judge shall not, while holding judicial office, engage in the practice of law, hold office in a political party, or hold any other office or position of profit in the federal, state or local government Also typical, at least in the modern view, is a provision that any judge who files for another elective public office, forfeits his judicial position Such provisions are desirable and necessary to assure that a judge's allegiance to his primary function will not be diverted by possible conflicting interests. However, for judicial officials at the lower court level, it has been argued that a rigid prohibition against engaging in law practice would preclude the availability of judicial services in communities where the

volume of court business does not warrant the designation of a full-time judge The solution, as demonstrated in Connecticut, may be to allow sufficient constitutional flexibility so that the Legislature may shift from local part-time judges to full-time judges on circuit, as the feasibility thereof becomes adequately demonstrated

5. REMOVAL OF JUDGES

Traditional methods for the removal of judges, both federal and state, have centered on the basic, but seldom-used, power of impeachment Even in the modern constitutions of New Jersey, Puerto Rico, and Alaska, the tradition is preserved. However, because of its cumbersomeness and the burden it imposes on legislative bodies at the expense of their other and more pressing duties, impeachment, at least of judicial officers, should give way to other methods. One of these, as provided in many states, including Hawaii, is by two-thirds concurrent vote of both houses of the Legislature. New Jersey, in addition to impeachment, provides that superior court and county court judges are "subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law."

Although removal is a proper device in case of malfeasance in office, some provision should also be made for the retirement of judges for incapacity. Typical of this modern view is the wording in the New Jersey, Hawaii and Alaska constitutions that when a justice (or judge) is "so incapacitated as substantially to prevent him from performing his judicial duties," the Governor shall, on certification of an appropriate body, "appoint a board of three persons to inquire into the circumstances" and the Governor may, on their recommendation, retire the justice (or judge) from office In New Jersey, the initial certifying body is the Supreme Court; in Hawaii it is "a commission or agency, authorized by law for such purpose", and in Alaska it is the Judicial Council Alaska, however, limits the applicability of such involuntary retirement procedure to justices of the Supreme Court, and provides that for other judges, removal shall be by majority vote of the Supreme Court, on notice and hearing, and after initial recommendation by the Judicial Council. Puerto Rico provides that judges of other courts than the Supreme Court may be removed by the latter "for the causes and pursuant to the procedure provided by law "

All things considered, the Hawaii provisions seem to offer the greatest merits of simplicity, potential effectiveness and nonencroachment on the normal judicial duties of the highest appellate tribunal.

6. JUDICIAL COUNCILS AND JUDICIAL CONFERENCES

Unless the Judicial Council is to be vested with specific administrative and supervisory duties with respect to the court system, as it is in California, or is to constitute the commission for nomination of candidates for judicial appointments, as in Alaska, there would appear to be no need for establishing or maintaining it in the constitution In some states, as in New York and New Jersey, the trend has been to supersede judicial councils by judicial conferences, patterned somewhat on the Judicial Conference of the United States in composition and functions Flexibility for the creation, enlargement, or alteration of such advisory bodies is much better achieved by leaving it to legislation rather than to constitutional prescription.

7. COURT ADMINISTRATION

New Jersey's success in the efficient handling of its judicial business since 1947 has been largely attributed to the provisions of Section VII of its judicial article, designating the Chief Justice of the Supreme Court as the administrative head of all the courts, authorizing him to appoint an administrative director, and to assign superior court judges to divisions or parts of the superior court, as well as "to transfer judges from one assignment to another, as need appears" Herein lies a key prerequisite of a modern judicial system

Hawaii and Alaska have comparable provisions, the former being most direct and succinct Section 5 of the Hawaii Judiciary Article states·

> "The Chief Justice of the Supreme Court shall be the administrative head of the courts He may assign judges from one circuit court to another for temporary service. With the approval of the Supreme Court he shall appoint an administrative director to serve at his pleasure"

Alaska offers a possible improvement in the wording of the second sentence by authorizing the assignment of judges "from one court or division thereof to another for temporary service," thereby permitting their temporary assignment to higher or lower courts as the need may arise, as well as to courts at the same level.

Experience in the federal system since the establishment of the administrative office of the United States courts in 1939, reinforced by New Jersey and the now nearly 20 other jurisdictions having similar offices, has amply demonstrated the wisdom of providing an administrative director for the court system His office should be established by the Constitution and his appointment by, as well as his responsibility to, the Chief Justice should be directed by organic law

8. RULE-MAKING

The power to regulate practice and procedure has been allowed, until recent years, to remain primarily in the hands of the legislatures Cumbersome, needlessly-detailed, outmoded and inflexible practice acts and procedure codes have been a frustrating deterrent to improving and modernizing the machinery of justice

The promulgation of the Federal Rules of Civil Procedure by the United States Supreme Court in 1938 pointed the way to efficient and simplified methods Courts and judges are better equipped than legislatures to know the needs of practice and procedure, and to provide for adjustments to meet those needs as they arise

Following the lead of the federal experience, the framers of the New Jersey Constitution of 1947 expressly directed the Supreme Court, in Section II of the judicial article, to "make rules governing the administration of all courts in the State, and, subject to law, the practice and procedure in all such courts" Puerto Rico goes even further and requires the Supreme Court to adopt rules not only of civil and criminal procedure, but also of evidence The rules, however, are to be submitted to the legislature, with power in the latter "to amend, repeal or supplement any of said rules by a specific law to that effect."

The accelerating trend among the states to adopt rules of practice patterned on the Federal Rules of Civil Procedure, and, to a slower

degree, of the later Federal Rules of Criminal Procedure, gives emphasis to the desirability of placing procedural rule-making power in the highest court of the state With respect to rules of evidence the issue is more debatable, since legislative dominance in this field is more deeply entrenched and more stoutly defended

If, however, the power over practices and procedure is properly a judicial one, there is no need to make it either "subject to law" or subject to legislative approval or amendment The Supreme Court is the proper body to determine the boundary between procedural and substantive law and is, in fact, the only body that can ultimately do so For this reason, the language of the Hawaii Constitution, vesting full authority in the highest court, has much to commend it It reads, in Section 6 of the Judiciary Article

> "The Supreme Court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedures and appeals, which shall have the force and effect of law."

If, for reasons of compromise or expediency, some limitation is deemed desirable, the following language, from Section 15 of the Alaska Judiciary Article, could be added: "These rules [and regulations] may be changed by the Legislature by two-thirds vote of the members elected to each house "

9. TRANSITIONAL PROVISIONS

To prevent interruption or delay in the handling of judicial business during the period of transition from a pre-existing court system to a new one, as well as to protect incumbent judges from possible ouster and to provide for the orderly transfer of records, equipment and personnel, there should be adequate provision for continuity and readjustment These provisions should not, however, because of their necessarily temporary nature, be made a part of the judiciary article itself. Rather, they should appear in either the general "Schedule" article of the new Constitution, or in appropriate transitional legislation

In any case, they should include (1) absorption of incumbent judges into the new courts; (2) continuance of their salaries at undiminished levels, (3) transfer of pending actions, proceedings or appeals, and the records pertaining thereto, to appropriate courts in the new system; (4) transfer of records, seals, papers and documents to appropriate courts or depositaries, and (6) transfers of non-judicial personnel, court facilities and funds, as may be required

10. CONCLUSION

From the foregoing analysis and exemplification, it should not be too difficult to arrive at a consensus on the basic elements of a model judiciary article for a State Constitution Differences of opinion there will necessarily be, and perhaps no more so than on the thorny question of judicial selection and tenure Even the latter, however, can be reduced to a fairly limited choice between appointive and a combination of selective-appointive-with-periodic-referendum methods. Whatever the choice, the essential goals should be simplicity, clarity, and flexibility.

Appendix A

CONSTITUTION OF THE STATE OF NEW JERSEY

ARTICLE VI JUDICIAL

Section I

1. Courts, in general; legislative control over inferior courts

The judicial power shall be vested in a Supreme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

Section II

1. Supreme Court, in general

The Supreme Court shall consist of a Chief Justice and six Associate Justices Five members of the court shall constitute a quorum When necessary, the Chief Justice shall assign the Judge or Judges of the Superior Court, senior in service, as provided by rules of the Supreme Court, to serve temporarily in the Supreme Court In case the Chief Justice is absent or unable to serve, a presiding Justice designated in accordance with rules of the Supreme Court shall serve temporarily in his stead.

2. Supreme Court, appellate jurisdiction

The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution

3. Supreme Court, rules; admission to practice law; discipline of persons admitted

The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted

Section III

1. Superior Court, in general

The Superior Court shall consist of such number of Judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to rules of the Supreme Court

2. Superior Court, jurisdiction

The Superior Court shall have original general jurisdiction throughout the State in all causes

3. Superior Court; Divisions, in general

The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division Each division shall have such Parts, consist of such number of Judges, and hear such causes, as may be provided by rules of the Supreme Court

4. Superior Court; Divisions, power and functions

Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and functions of the other division when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined

Section IV

1. County courts, jurisdiction

There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law.

2. County courts; judges, in general

There shall be a Judge of each County Court and such additional Judges as shall be provided by law, and they shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas

3. County courts; judges, jurisdiction

Each Judge of the County Court may exercise the jurisdiction of the County Court

4. County courts; alteration of jurisdiction, powers and functions

The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered by law as the public good may require.

5. County courts; legal and equitable relief

The County Courts, in civil causes including probate causes, within their jurisdiction, and subject to law, may grant legal and equitable relief so that all matters in controversy between the parties may be completely determined

Section V

1. Appeals to the Supreme Court

Appeals may be taken to the Supreme Court.

(a) In causes determined by the Appellate Division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court,

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the County Courts and the inferior courts, and

(e) In such causes as may be provided by law

2. Appeals to Appellate Division of Superior Court

Appeals may be taken to the Appellate Division of the Superior Court from the Law and Chancery Divisions of the Superior Court, the County Courts and in such other causes as may be provided by law

3. Original jurisdiction of Supreme Court and Appellate Division of Superior Court

The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review

4. Review by Superior Court in lieu of prerogative writs

Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

Section VI

1. Justices of the Supreme Court and judges of other courts; appointment

The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the Superior Court, the Judges of the County Courts and the judges of the inferior courts with jurisdiction extending to more than one municipality No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor

2. Justices of the Supreme Court and judges of the Superior and County Courts; eligibility for office

The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall each prior to his appointment have been admitted to the practice of law in this State for at least ten years.

3. Justices of the Supreme Court and judges of the Superior Court; term; retirement; pensions

The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior Such Justices and Judges shall be retired upon attaining the age of seventy years Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the Superior Court shall be made by law.

4. Justices of the Supreme Court and judges of the Superior and County Courts; impeachment; removal

The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted The Judges of the Superior Court and the Judges of the County Courts shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Justices of the Supreme Court, and judges of the Superior and County Courts; incapacity to perform duites; retirement; pensions

Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court, Judge of the Superior Court or Judge of the County Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office, on pension as may be provided by law.

6. Justices of the Supreme Court and judges of the superior court; salaries; practice of law or other gainful occupation

The Justices of the Supreme Court and the judges of the superior court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment They shall not, while in office, engage in the practice of law or other gainful pursuit

7. Justices of the Supreme Court and judges of the superior and county courts; ineligibility for other public office or position

The Justices of the Supreme Court, the judges of the superior court and the judges of the county courts shall hold no other office or position, of profit, under this State or the United States Any such Justice or judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office

Section VII

1. Chief Justice of the Supreme Court, in general; administrative director

The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an administrative director to serve at his pleasure

2. Chief Justice of the Supreme Court; assignment and transfer of superior court judges

The Chief Justice of the Supreme Court shall assign judges of the superior court to the divisions and parts of the superior court, and may from time to time transfer judges from one assignment to another, as need appears Assignments to the appellate division shall be for terms fixed by rules of the Supreme Court

3. Clerk of Supreme Court; clerk of superior court

The Clerk of the Supreme Court and the clerk of the superior court shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law

Appendix B

CONSTITUTION OF THE STATE OF HAWAII

ARTICLE V THE JUDICIARY

Judicial Power

SECTION 1. The judicial power of the State shall be vested in one Supreme Court, circuit courts, and in such inferior courts as the legislature may from time to time establish The several courts shall have original and appellate jurisdiction as provided by law

Supreme Court

SECTION 2 The Supreme Court shall consist of a chief justice and four associate justices When necessary, the chief justice shall assign a judge or judges of a circuit court to serve temporarily on the Supreme Court In case of a vacancy in the office of Chief Justice, or if he is ill, absent or otherwise unable to serve, an associate justice designated in accordance with the rules of the Supreme Court shall serve temporarily in his stead

Appointment of Judges

SECTION 3 The governor shall nominate and, by and with the advice and consent of the Senate, appoint the Justices of the Supreme Court and the judges of the circuit courts No nomination shall be sent to the Senate, and no interim appointment shall be made when the Senate is not in session, until after 10 days' public notice by the governor

Qualifications

No justice or judge shall hold any other office or position of profit under the State or the United States No person shall be eligible to such office who shall not have been admitted to practice law before the Supreme Court of this State for at least 10 years Any justice or judge who shall become a candidate for an elective office shall thereby forfeit his office

Tenure; Compensation; Retirement; Removal

The term of office of a Justice of the Supreme Court shall be seven years and that of a judge of a circuit court shall be six years They shall receive for their services such compensation as may be prescribed by law which shall not be diminished during their respective terms of office, unless by general law applying to all salaried officers of the State They shall be retired upon attaining the age of 70 years They shall be included in any retirement law of the State They shall be subject to removal from office upon the concurrence of two-thirds of the membership of each House of the Legislature, sitting in joint session, for such causes and in such manner as may be provided by law

Retirement for Incapacity

SECTION 4 Whenever a commission or agency, authorized by law for such purpose, shall certify to the Governor that any Justice of the Supreme Court or judge of a circuit court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a board of three persons to inquire into the circumstances and on their recommendation the Governor may retire the justice or judge from office

Administration

SECTION 5 The Chief Justice of the Supreme Court shall be the administrative head of the courts He may assign judges from one circuit court to another for temporary service With the approval of the Supreme Court he shall appoint an administrative director to serve at his pleasure

Rules

SECTION 6 The supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law

Appendix C

CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO

ARTICLE V THE JUDICIARY

§ 1. [Judicial power; Supreme Court; other courts]

The judicial power of Puerto Rico shall be vested in a Supreme Court, and in such other courts as may be established by law

§ 2. [Unified judicial system; creation, venue, and organization of courts]

The courts of Puerto Rico shall constitute a unified judicial system for purposes of jurisdiction, operation and administration The Legislative Assembly may create and abolish courts, except for the Supreme Court, in a manner not inconsistent with this Constitution, and shall determine the venue and organization of the courts.

§ 3. [Supreme Court as court of last resort; composition]

The Supreme Court shall be the court of last resort in Puerto Rico and shall be composed of a Chief Justice and four Associate Justices The number of Justices may be changed only by law upon request of the Supreme Court

§ 4. [Sessions and decisions of Supreme Court]

The Supreme Court shall sit, in accordance with rules adopted by it, as a full court or in divisions All the decisions of the Supreme Court shall be concurred in by a majority of its members No law shall be held unconstitutional except by a majority of the total number of Justices of which the court is composed in accordance with this Constitution or with law

§ 5. [Original jurisdiction of Supreme Court]

The Supreme Court, any of its divisions, or any of its Justices may hear in the first instance petitions for *habeas corpus* and any other causes and proceedings as determined by law

§ 6. [Rules of evidence and of civil and criminal procedure]

The Supreme Court shall adopt for the courts rules of evidence and of civil and criminal procedure which shall not abridge, enlarge or modify the substantive rights of the parties The rules thus adopted shall be submitted to the Legislative Assembly at the beginning of its next regular session and shall not go into effect until 60 days after the close of said session, unless disapproved by the Legislative Assembly, which shall have the power both at said session and subsequently to amend, repeal or supplement any of said rules by a specific law to that effect.

§ 7. [Rules of administration; Chief Justice to direct administration and appoint administrative director]

The Supreme Court shall adopt rules for the administration of the courts These rules shall be subject to the laws concerning procurement, personnel, audit and appropriation of funds, and other laws which apply generally to all branches of the government The Chief Justice shall direct the administration of the courts and shall appoint an administrative director who shall hold office at the will of the Chief Justice

§ 8. [Appointment of judges, officers, and employees]

Judges shall be appointed by the Governor with the advice and consent of the Senate Justices of the Supreme Court shall not assume office until after confirmation by the Senate and shall hold their offices during good behavior The terms of office of the other judges shall be fixed by law and shall not be less than that fixed for the term of office of a judge of the same or equivalent category existing when this Constitution takes effect The other officials and employees of the courts shall be appointed in the manner provided by law

§ 9. [Qualifications of Justices of Supreme Court]

No person shall be appointed a Justice of the Supreme Court unless he is a citizen of the United States and of Puerto Rico, shall have been admitted to the practice of law in Puerto Rico at least ten years prior to his appointment, and shall have resided in Puerto Rico at least five years immediately prior thereto

§ 10. [Retirement of judges]

The Legislative Assembly shall establish a retirement system for judges Retirement shall be compulsory at the age of seventy years

§ 11. [Removal of judges]

Justices of the Supreme Court may be removed for the causes and pursuant to the procedure established in Section 21 of Article III of this Constitution Judges of the other courts may be removed by the Supreme Court for the causes and pursuant to the procedure provided by law

§ 12. [Political activity by judges]

No judge shall make a direct or indirect financial contribution to any political organization or party, or hold any executive office therein, or participate in a political campaign of any kind, or be a candidate for an elective public office unless he has resigned his judicial office at least six months prior to his nomination

§ 13. [Tenure of judge of changed or abolished court]

In the event that a court or any of its divisions or sections is changed or abolished by law, the person holding a post of judge therein shall continue to hold it during the rest of the term for which he was appointed and shall perform the judicial functions assigned to him by the Chief Justice of the Supreme Court

Appendix D

THE CONSTITUTION OF THE STATE OF ALASKA

ARTICLE IV. THE JUDICIARY

Judicial Power and Jurisdiction

SECTION 1 The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature The jurisdiction of courts shall be prescribed by law The courts shall constitute a unified judicial system for operation and administration Judicial districts shall be established by law

Supreme Court

SECTION 2 The supreme court shall be the highest court of the State, with final appellate jurisdiction It shall consist of three justices, one of whom is chief justice The number of justices may be increased by law upon the request of the supreme court

Superior Court

SECTION 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges The number of judges may be changed by law

Qualifications of Justices and Judges

SECTION 4 Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law

Nomination and Appointment

SECTION 5 The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council

Approval or Rejection

SECTION 6 Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a non-partisan ballot at the first general election held more than three years after his appointment Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year

Vacancy

SECTION 7 The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself

Judicial Council

SECTION 8 The judicial council shall consist of seven members Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session Vacancies shall be filled for the unexpired term in like manner Appointments shall be made with due consideration to area representation and without regard to political affiliation The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State The judicial council shall act by concurrence of four or more members and according to rules which it adopts

Additional Duties

SECTION 9 The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law

Incapacity of Judges

SECTION 10 Whenever the judicial council certifies to the governor that a supreme court justice appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a board of *three persons to inquire into the circumstances, and may on the board's recommendation* retire the justice Whenever a judge of another court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the judicial council shall recommend to the supreme court that the judge be placed under early retirement After notice and hearing, the supreme court by majority vote of its members may retire the judge

Retirement

SECTION 11 Justices and judges shall be retired at the age of seventy except as provided in this article The basis and amount of retirement pay shall be prescribed by law Retired judges shall render no further service on the bench except for special assignments as provided by court rule

Impeachment

SECTION 12 Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

Compensation

SECTION 13 Justices, judges, and members of the judicial council shall receive compensation as prescribed by law Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State

Restrictions

SECTION 14 Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States the State, or its political subdivisions Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position

Rule-making Power

SECTION 15 The supreme court shall make and promulgate rules governing the administration of all courts It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts These rules may be changed by the legislature by two-thirds vote of the members elected to each house

Court Administration

SECTION 16 The chief justice of the supreme court shall be the administrative head of all courts He may assign judges from one court or division thereof to another for temporary service The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at his pleasure and to supervise the administrative operations of the judicial system

APPENDIX II

DRAFT ARTICLE VI—JUDICIAL DEPARTMENT

By Donald P Kommers
Los Angeles State College

1. JUDICIAL POWER

The judicial power of the State shall be vested in a Supreme Court, District Courts of Appeal, Superior Courts, and in such other courts as the Legislature may from time to time establish

2. JUDICIAL COUNCIL: MEMBERSHIP

There shall be a Judicial Council It shall consist of one Justice of a District Court of Appeal, two judges of the Superior Courts, and one Judge from the courts of limited jurisdiction, assigned by the Chief Justice of the Supreme Court to sit thereon for terms of four years Three attorney members shall be appointed for six-year terms by the governing body of the organized State Bar Three non-attorney members shall be appointed for six-year terms by the Governor subject to confirmation by a majority of the Senate All vacancies shall be filled for unexpired terms in like manner Appointments shall be made with due consideration to area representation and without regard to political affiliation The Chief Justice shall be the eleventh member and the Chairman of the Judicial Council No act of the Council shall be valid unless concurred in by six members

3. JUDICIAL COUNCIL: DUTIES

The Judicial Council shall be granted general superintending control over all courts in the State It shall have the power to make or alter rules relating to pleading, practice, and procedure in all courts It shall make all other rules pertaining to the general administration of State courts The Judicial Council shall also provide for the assignment of any judge to another court of a like or higher jurisdiction in order to expedite judicial business and equalize the work of judges The Council shall perform all other duties assigned by law

4. SUPREME COURT

The Supreme Court shall be the highest court of the State and shall have final appellate jurisdiction in all causes arising under this Constitution and the laws of this State, with such exceptions, and under such regulations as the Legislature shall make The Court shall consist of a Chief Justice and no less than six Associate Justices The Court may sit in departments or en banc

5. DISTRICT COURTS OF APPEAL

There shall be District Courts of Appeal, the number, organization, and jurisdiction of which shall be prescribed by law

6. SUPERIOR COURTS

There shall be in each of the organized counties, or cities and counties, of the State, a Superior Court The Superior Courts shall be the trial courts of general jurisdiction and shall have appellate jurisdiction in such cases arising in inferior courts as may be prescribed by law

7. TERMS

Justices of the Supreme Court and District Courts of Appeal shall be selected for terms of twelve years, Judges of Superior Courts for terms of six years, and all other judges for terms and in a manner prescribed by law

8. VACANCIES

Whenever a vacancy shall occur in the office of the Justice of the Supreme Court, Justice of a District Court of Appeal, Judge of a Superior Court, or judge of an inferior court with jurisdiction extending to an area containing a population of more than 40,000 inhabitants, the Governor shall fill such vacancy by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the Governor by the Judicial Council Judges of other courts shall be selected in a manner, terms and with qualifications prescribed by law

9. RETENTION OR REJECTION

Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any incumbent judge above named may file with the officer charged with the duty of certifying nominations for publication in the official ballot a declaration of candidacy for election to succeed himself. If a declaration is not so filed by any judge the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided. If such a declaration is filed his name shall be submitted at said next general election. If a majority of the electors voting upon such candidacy affirm his retention such person shall be elected to said office If a majority of those voting reject his retention he shall not be elected, and may not thereafter be appointed to fill any vacancy in that court If a vacancy arises in this fashion the office shall be filled by appointment as herein provided

10. ELIGIBILITY

The Justices of the Supreme Court, Justices of the District Courts of Appeal, and Judges of the Superior Courts shall each prior to his appointment have been admitted to the practice of the law in this State for at least five years. The Legislature may prescribe additional qualifications

11. COMPENSATION

Justices, judges, and members of the Judicial Council shall receive compensation as prescribed by law Compensation of justices and judges shall not be diminished during their terms of office.

12. INCAPACITY

Whenever the Judicial Council shall certify to the Governor that it appears that any Justice of the Supreme Court, Justice of a District Court of Appeal, or Judge of a Superior Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances, and, on their recommendations, the Governor may retire the Justice or Judge from office, on pension as may be provided by law

13. IMPEACHMENT

Justices of the Supreme Court, Justices of the District Courts of Appeal, and Judges of Superior Courts shall be subject to impeachment according to the procedures prescribed by law All other judicial officers may be subject to removal from office by the Judicial Council for such causes and in such manner as shall be provided by law

14. RETIREMENT

The Legislature shall provide by general law for the retirement of justices and judges The basis and amount of retirement pay shall be prescribed by law. Retired justices and judges may render further service on the bench by special assignments that the Judicial Council may provide

15. RESTRICTIONS

Justices of the Supreme Court, Justices of the District Courts of Appeal, and Judges of the Superior Courts, while holding office, may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions

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CALIFORNIA LEGISLATURE

FINAL REPORT AND RECOMMENDATIONS OF THE CITIZENS LEGISLATIVE ADVISORY COMMISSION

to the

JOINT COMMITTEE ON LEGISLATIVE ORGANIZATION

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CITIZENS LEGISLATIVE ADVISORY COMMISSION

MAX EDDY UTT, *Chairman*

March, 1961

LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
CITIZENS LEGISLATIVE ADVISORY COMMISSION
SACRAMENTO, March 17, 1961

California Legislature, 1961 Regular Session, and Joint Committee on Legislative Organization
State Capitol, Sacramento

Attention, Assemblyman Augustus F Hawkins
In re: Citizens Legislative Advisory Commission Report

GENTLEMEN Transmitted herewith is the "Report and Recommendations of the Citizens Legislative Advisory Commission to the California Legislature" bearing date of March 9, 1961 Included in said report are matters which have been under study by the Commission since our last report made a year ago

The first matter covered under the heading of "Constitutional Revision" is the report of the Commission in response to House Resolution 278 adopted June 5, 1959, pursuant to which the Commission was directed to study and report on the "legislative procedures, ways and means, and techniques which should be used to secure a revision of the State Constitution * * " As one of the items of the study in this field the Commission received and gave consideration to an extended analysis of "State Constitutional Revision in California" prepared by Dr Ernest A Engelbert in cooperation with the Bureau of Public Administration of the University of California, and with the assistance of Mr John G Gunnell, who has been serving as a Legislative intern Dr Engelbert, as you know, is the Secretary of our Commission The analysis, consisting of 106 pages, with Appendix, bearing date of January 1961, is available in our files and copies have been transmitted to the members of the Joint Committee on Legislative Organization

That part of the report and recommendations under the heading "Legislative Reference Services for the California Legislature" has been developed in response to the request made in February of 1960 by the Joint Committee on the Legislative Reference Library that the Citizens Legislative Advisory Commission undertake an "objective and thorough analysis of the problem of creating a reference service which will meet the requirements of the California Legislature," including a study and appraisal of the Legislative Reference Library operation which was established in 1958 in response to earlier recommendations of this Commission For a discussion of the development of the Legislative Reference Library in California and its background, and of similar operations in other states, you are referred to a report made to the Commission by its subcommittee on Legislative Aids and Services entitled "Legislative Reference Services for the California Legislature" dated February 1961, which report was printed and has been distributed to members of the Joint Committee on Legislative Organization

The third matter covered by the report transmitted herewith bears the title "Civil Service Status of Personnel of the Legislative Analyst's Office." This item is a follow-up in connection with the study and recommendations previously conducted by the Commission dealing with the responsibilities and administration of the Legislative Auditor.

In September of 1960 there was printed and distributed to each member of the Legislature and to the public generally a summarization of the work accomplished by the Citizens Legislative Advisory Commission since its organization in 1957. This was entitled "Second Progress Report to the Citizens of California." A reading of said Second Progress Report to the Citizens of California, coupled with a reading of the current report and recommendations now transmitted, we believe will provide ample evidence for the members of the Legislature that the Commission which they created, has borne abundant fruit. We are indeed grateful that a substantial part of the work of the Commission has been recognized by acceptance and implementation in the rules of the Legislature and in statutes and constitutional amendments dealing with its procedures. When one compares those recommendations of our Commission which have been adopted and made effective by the Legislature with work done in similar fields elsewhere, we are extremely proud that our work has been accepted in substantially all important respects. There still remain several of our recommendations which have not been adopted, but as to these we still have hope for their acceptance.

The members of the Commission have especially enjoyed, and have been honored, by the close cooperation and assistance from all members of the Joint Committee on Legislative Organization and those who have served from the Legislature as liaison members of our seven subcommittees. On behalf of the Commission, thanks and appreciation are extended to each of these members of the Legislature and to all who have assisted us. Also, on behalf of the Commission, a special word of appreciation goes to our Secretary, Dr. Engelbert, who has served not only as Secretary but as coordinator and supervisor of research in connection with many of our studies. Much of his work has been without compensation. Its excellent quality is reflected in the many reports and recommendations based thereon with which you are familiar.

Under existing statutory provision the life of this Commission will expire after the end of the 1961 Regular Session of the Legislature. It is the hope of all members of the Commission that the work which has been done will continue to be of benefit and that the test of time will prove its worth.

Very truly yours,

MAX EDDY UTT, *Chairman*

Report and Recommendations of the

CITIZENS LEGISLATIVE ADVISORY COMMISSION

to the California Legislature

March 9, 1961

CONSTITUTIONAL REVISION

Introduction

In 1959, the Assembly of the California Legislature adopted a resolution directing the Citizens Legislative Advisory Commission to study the problems and methods of state constitutional revision in California The resolution instructed the commission to make a report to the Assembly on the subject at the 1961 session of the Legislature

The commission began its work in late 1959 by undertaking a review of the history of constitutional amendment and revision in California On the basis of preliminary findings it concluded in a report to the Legislature in April 1960 that the State's Constitution "is in need of a fundamental review " However, the commission saw the process of constitutional revision as a formidable undertaking and recommended that "the study and analysis of the Constitution should be undertaken in stages so that a logical and practical program for change can be proposed " As a first step the commission proposed that the study of revision should begin with an analysis of the amendment and revision procedures of the Constitution found in Article XVIII with a view toward making the provisions of that article as effective as possible It also proposed that alternative methods of revision or amendment should be explored

The proposed study was assigned to the commission's Committee on Constitutional Revision for which the committee staff prepared an extensive background report analyzing the history, problems and methods of the constitutional revision During the course of the study, the committee maintained liaison with the Assembly Interim Committee on Constitutional Amendments, the Legislative Counsel and other groups with interest or knowledge in the area of constitutional revision

The committee's study revolved around these major questions (1) Should the amendment provisions of the Constitution be revised? (2) Should the procedures for initiating a constitutional convention be changed? (3) Should the issue of calling a constitutional convention be submitted periodically to a vote of the people? (4) What alternatives to the constitutional convention should be provided for constitutional revision? (5) What actions should be undertaken by the Legislature in moving forward with constitutional reform?

On the basis of the committee's study and commission deliberations, the following findings and recommendations are presented

The Amendment Provisions of the California Constitution

The California Constitution has been amended more frequently than any other state constitution except that of Louisiana, since 1879, 323 amendments have been dopted Despite the fact that there probably would have been fewer amendments if the amendment procedure had been more difficult to implement, there does not appear to be any direct cause and effect relation between the number of amendments and the ease of the amending process

In California approximately 93 percent of the amendments that have been adopted have resulted from legislative proposals Yet California's constitutional provisions for legislative proposal of amendments are similar to those of most other states Many state constitutions which are as old as that of California and which have amendment provisions that are no more difficult have less than one-third the number of amendments Thus it would appear that the primary causes of amendment in California reside not in the character of the amending process but in the nature of the Constitution itself and in the State's particular political, social and economic structure

Finally, the amendment procedures contained in the Constitution present few procedural difficulties Each step of the amending process for both legislative and initiative proposals has been thoroughly adjudicated by the courts and the frequent exercise of the amending power has left few ambiguities regarding its implementation

Therefore, it is our conclusion that at the present time there is little justification for revising the procedures for legislative and initiative proposal of amendments as set forth in Article XVIII and Article IV of the Constitution If at some future date a revision of the Constitution is effected the problem of whether or not to restrict the amending process might well merit consideration depending on the nature of the revised document However, the present Constitution which has been rendered relatively inflexible by the inclusion of detailed provisions, many of which might well be termed statutory in nature, requires a flexible and readily available amending procedure to meet the needs of the State's rapidly changing environment To increase the restrictiveness of the amending process within the present Constitution would, we believe, impede rather than facilitate the process of government in California

The Convention Provisions of Article XVIII

No constitutional convention has ever been called under the provisions of the present Constitution Therefore, it is difficult to make a definitive evaluation of the convention procedures as set forth in Section 2 of Article XVIII since these have never been implemented or substantially adjudicated

Article XVIII presently says nothing about the convention process except that delegates shall be chosen in the same manner as Members of the Legislature and not exceed the total membership of that body in number The Legislature, therefore, has considerable freedom to establish various conditions for the convention's operation Also the Legislature can refuse to set the convention process in motion as was the case in 1934 when the Legislature failed to call a constitutional convention after the people had voted affirmatively on the question

To make the convention process self-executing and thereby obviate the need for legislative implementation would mean that detailed procedures would have to be written into the Constitution To date there has been insufficient experience with the self-executing convention process to know how it would work in actual practice A carefully developed plan might provide public protection against abuses by the Legislature, but, given changing conditions, detailed procedures set forth in the Constitution might become unwisely restrictive The trend in recent Constitutions has been toward giving the state legislatures more, rather than less, discretion in determining the basic arrangements for a constitutional convention

At present there is ambiguity concerning the selection of delegates to the convention Though a majority of state constitutions provide, as does the California Constitution, that delegates shall be chosen "in the same manner" as members of the Legislature, it is questionable whether this phrase would be construed by the Legislature and the courts as extending to the use of legislative districts as the basis of delegate nomination To substitute a more specific procedure for the present provision would remove ambiguities but, at the same time, would render these sections more inflexible

Thus we conclude that at this time it would be undesirable to amend Article XVIII for the purpose of incorporating more specific provisions dealing with the convention process More problems of interpretation might be raised if this were done than would be solved

Periodic Submission to the Voters of the Issue of Calling a Constitutional Convention

A number of states (9) have provided in their constitutions that the question of calling a convention should be periodically submitted to the people at intervals ranging from 7 to 20 years Although a number or arguments can be made for such a provision, the fact remains that there is no guarantee that the Legislature will implement a public mandate for a convention This is borne out by the California experience of 1934 when the Legislature failed to call a constitutional convention after the people had voted affirmatively This incident serves to emphasize the fact that under the present provisions of Article XVIII there is no way in which the Legislature may be forced to comply with the public's decision

We conclude, therefore, that it would serve little purpose at this time to add to the Constitution a provision for automatic submission to the voters of the issue of revision

Alternatives to the Constitutional Convention for Revision

Despite the fact that a constitutional convention has not been held in California since 1897, there is little to support the view that the convention should be eliminated as a method of constitutional reform The convention is recognized in every state as a traditional method for the creation and revision of written constitutions On the other hand, there appears to be little reason to exclude alternative methods for conducting an entire revision as long as the final decision as to whether or not to adopt such a revision rests with the electorate

Article-by-Article Revision

There would appear to be no legal objections under the present Constitution to the use of the amendment process for the purpose of revising the Constitution article by article Although the courts have held that an amendment may not be so broad in scope as to constitute an overall revision, it would appear, under present legal interpretations, that the amending process could be employed to revise limited areas of the Constitution Experts could be drawn upon to revise an entire article in the form of an amendment which could be submitted by the Legislature to the people for ratification

However, there is much to support the argument that an adequate revision could be effected only in terms of an overall revision and that because of the interrelated structure of the Constitution a complete revision would be feasible only from the perspective of the entire document Despite the value of the methods that might be employed within the scope of the present amendment provision, the fact remains that Article XVIII provides only one method for effecting an entire and coordinated revision—the constitutional convention

Legislative Revision of the Constitution

The increasing use of methods such as the constitutional commission to effect revision reflects a trend among the states to recognize legislative proposals for constitutional revision as an alternative to the convention The Constitutions of a number of states do not prohibit the legislature from conducting a revision and submitting it to the people, and the Hawaii Constitution specifically vests this power in the legislature There are several reasons for this development

First, experience in other states as well as California has demonstrated that a convention is not always a practical undertaking, even when there is a recognized need for revision Not only are convention delegates subject to the same political pressures as members of legislative bodies, but especially in a large state, establishing a convention is necessarily a long, cumbersome and difficult process The pressures of vested interests who fear change and the reluctance of legislators to create a body over which they have little or no control often prevent implementation Moreover, the cost of electing and providing for other necessary expenditures makes the convention a formidable financial undertaking which, along with preparatory research and publicity, may cost several million dollars in a large state Also, there is little assurance that the final product of a convention will be adopted by the people

Second, in recent years the people have demonstrated increasing faith in the value of legislatures as deliberative bodies Legislative proposals for constitutional revision do not violate democratic principles, particularly since the recommendations of the legislature must be approved by the people

Third, permitting the legislature to propose a revision makes possible the use of techniques best suited to a particular time and a particular set of political circumstances It affords the best means for securing the services of constitutional experts and other competent individuals who could be relatively free from outside pressures and appointed on a nonpartisan basis

Finally, the cost of drafting a revision under legislative direction is usually less than the cost of a convention and should the proposed revision be rejected by the legislature or the electorate, the loss would not be as great The experience of New Jersey and other states has demonstrated that even if the particular proposals are not adopted, the research accomplished may well furnish the groundwork for a future revision

Previous constitutional study groups in California have recommended that Article XVIII should be amended to permit the Legislature to submit a partial or entire revision to the people and during the public hearings on constitutional revision conducted by the 1960 Assembly Interim Committee on Constitutional Amendments, testimony was offered recommending that the Constitution be amended to permit the Legislature greater freedom in submitting proposals for revision

In view of the increasing recognition of revision by the Legislature as an alternative to a constitutional convention and in view of the recommendations and findings of previous studies of constitutional revision in California, it is our conclusion that Article XVIII of the California Constitution should be amended to permit the Legislature to submit to the people a revised Constitution or a revision of any part thereof

Recommendations for Legislative Action

Since the determination of the need for constitutional revision is primarily a legislative responsibility, it is our conclusion that the Legislature should initiate a careful study of the subject matter content of the Constitution during the 1961 session It is the recommendation of this committee that such a study be undertaken by a commission established by statute and composed of a balanced membership including members of the Legislature, gubernatorial appointees and public representatives This commission should be instructed to study the Constitution in whole or in part and empowered to make recommendations for a total or partial revision Necessary appropriations should be provided to enable the commission to employ an adequate technical staff and to defray other costs of the study

Under the present provisions of Article XVIII the work of the commission could be transmitted to the delegates of a constitutional convention for their study and action If Article XVIII were amended as proposed in the preceding recommendation, the Legislature would have the authority to submit directly to the people for ratification such recommendations of the commission as it deems desirable

LEGISLATIVE REFERENCE SERVICES FOR THE CALIFORNIA LEGISLATURE

Introduction

During recent years various committees of the California Legislature have given considerable study to the improvement of legislative aids and services. One of the areas of increasing concern has been the adequacy of reference and research services for legislators In February 1960, the Joint Committee on the Legislative Reference Library requested that the Citizens Legislative Advisory Commission undertake "an objective and thorough analysis of the problem of creating a ref-

erence service which will meet the requirements of the California Legislature" The committee also asked for an investigation of the Legislative Reference Library to determine whether it might provide the framework for a broadened base of reference service operations

A report was prepared by the staff of the Citizens Legislative Advisory Commission in response to the joint committee's request The study involved (1) an examination of the functions and operations of the Legislative Reference Library, (2) a review of legislative reference services in other states, and (3) an evaluation of legislative reference needs in California The following recommendations have been drawn from this report

Recommendations

1 *Organization and Functions of the Legislative Reference Library*

To function effectively as a legislative service agency, the Legislative Reference Library should be administratively separated from the State library and operated solely under the jurisdiction of the Legislature The functions of the Legislative Reference Library should remain as set forth in the resolution for its establishment; namely, (a) to serve as a depository for library materials useful to the legislative process and (b) to provide reference and research services to legislators and legislative staff To provide a designation more in keeping with its functions, the Legislative Reference Library should be renamed the Legislative Reference Service

2 *The Administrative-Legislative Reference Service of the State Library*

The Administrative-Legislative Reference Service should be retained as a division of the State Library to provide library and reference services for state administrative agencies and to maintain liaison with the Legislative Reference Service of the Legislature The outstanding resources of the State library and the excellent services of its various technical divisions should continue to be made available to Members of the Legislature and staff through the Administrative-Legislative Reference Service of the State Library

3 *The Role of the Joint Committee on Legislative Organization*

In order to maintain close contact and surveillance, the Joint Committee on Legislative Organization should establish a subcommittee to supervise the Legislative Reference Service The full committee's responsibilities should include the following

(a) Selection of the director with the approval of the Legislature
(b) Appointment of such other staff personnel as may appear necessary
(c) Formulation and approval of the budget
(d) The maintenance of appropriate liaison with other legislative committees and research agencies
(e) The preparation of an annual report to the Legislature which would review and evaluate the activities of the Legislative Reference Service.

4 *Library Functions of the Legislative Reference Service*

The Legislative Reference Service Library should be a basic depository for legislative materials which should be available to legislators, legislative staff, and persons who are engaged in some aspect of research and study of legislative activities The library should continue to be developed as rapidly as feasible with suitable facilities To improve present operations, the recommendations previously made by the Citizens Legislative Advisory Commission should continue to be carried out, namely·

"(a) The legislative rules should be amended to make the Legislative Reference Library the basic depository for all official proceedings and reports, printed and typewritten as well as tapes

"(b) The rule of both the Senate and the Assembly should be amended to require that all official files of both standing and interim committees should be deposited in the Legislative Reference Library at the close of each session or upon the expiration of the committee The staff of the library should be instructed to contact chairmen and staff of former committees, the Legislative Analyst, the Legislative Counsel, and other legislative agencies to secure files and documents in order to provide as complete a chronological record of the activities of legislative committees as possible Arrangements should be worked out to protect the confidentialness of documents where necessary

"(c) The Legislative Reference Library should establish and maintain a central index for all legislative documents The index should list libraries or other services where legislative documents are located, if they are not available in the Legislative Reference Library

"(d) The library should be provided with sufficient funds to enable it to secure and maintain current basic reference volumes to provide an effective quick-answering service for legislators and staff

"(e) The Legislative Reference Library should maintain a file of local newspaper clippings such as is now maintained in other legislative reference libraries to provide background and interpretative information on previous legislative actions"

5 *Reference and Research Functions*

The reference and research services now being furnished by the Legislative Reference Library should be broadened and extended The following improvements should be undertaken

(a) The Legislative Reference Service should become the central source of information for all nonfiscal and nonlegal legislative research activities It should maintain a current record of research being conducted under the auspices of the Legislature In addition, it should maintain a file of research projects being undertaken by other public and private research agencies on topics which are under study by the Legislature

(b) Within the limits of available personnel and resources, the service should provide quick reference information and undertake

short-term nonfiscal and nonlegal research projects for individual legislators or legislative committees. The data or reports should be provided in the form which the legislator requests and where legal may be maintained confidential For long-term research projects, or projects calling for highly specialized personnel, the Legislative Reference Service should endeavor to place the legislator or legislative committee in contact with the appropriate University bureau or research agency which might be prepared to undertake the assignment

(c) The director and the staff of the Legislative Reference Service upon request should furnish information and advice to the Joint Committee on Legislative Organization and the respective House Rules Committees concerning nonfiscal and nonlegal legislative research needs and the merits of specific research projects

6 *The Directorship*

The Legislative Reference Service should be headed by a director who is professionally qualified in the field of legislative reference work and research As has been noted above, the director should be appointed by the Joint Committee on Legislative Organization subject to the approval of the Legislature He would hold office at the pleasure of the joint committee The director should have responsibility under the supervision of the joint committee for all activities of the Legislative Reference Service The successful establishment of the service will be, to a great extent, dependent on securing a director who is highly qualified The director should have a status comparable to that of the Legislative Counsel and Legislative Analyst.

7 *Staffing*

The Legislative Reference Service should be staffed with personnel selected on the basis of qualifications and merit It should be encouraged to work in close cooperation with standing and interim committees As the Citizens Legislative Advisory Commission has noted the service

"would constitute a small pool of trained personnel upon which committees could draw for staff Upon completion of a committee's assignment the staff member could return to the pool and work upon pool research until reassigned to another committee This procedure, if followed, would provide the opportunity to develop a high-quality permanent staff which is not now possible under present committee processes of personnel turnover Furthermore, it would provide savings by reducing the need of high-priced consultant services and the elimination of nonproductive research by poorly qualified personnel

"It is recommended that the Joint Committee on Legislative Organization establish procedures which will provide continuity in employment for qualified secretarial, administrative and research staff"

8 *Physical Location*

For ease of contact and quick service, the library and informational activities of the Legislative Reference Service should continue to remain in the State Capitol Annex close to legislative quarters If the service should outgrow its present facilities, members of the staff who are working on short-term research projects might be located elsewhere

in the building There are distinct advantages, however, in keeping the reference staff as near to the library facilities as possible

9 *Liaison With Outside Agencies.*

A major function of the Legislative Reference Service should be the development of liaison relationships with public and private research agencies located outside of Sacramento Many of these agencies, such as the Bureau of Public Administration (Berkeley) and the Bureau of Governmental Research (Los Angeles), have a distinguished collection of materials dealing with state and local government which would supplement legislative library services They also employ or have access to experts who could advise and consult with staff members of the Legislative Reference Service on various research problems Furthermore, some of these research bureaus such as the Bureau of Governmental Research in Los Angeles may be in a position to aid legislators who reside some distance from Sacramento and who do not have convenient year-round access to Capitol facilities.

10 *Legislative Research Service Relationships With the University of California*

Some special mention should be made of research relationships between the University of California and committees and staff of the Legislature The University of California is the State's major institution of higher learning specializing in research As a state institution it is obligated within the limits of its resources to serve the government of the State Over the years the University, through its departments, bureaus, and institutes, has provided much professional assistance and performed many research studies for the Legislature The University is becoming a large institution, however, and it is not always easy for legislators or staff to ascertain the types of research going on at various campuses or the qualified persons who are available Therefore, to strengthen relationships between the University and the Legislature, the University should be encouraged to designate a person who would be responsible for keeping abreast of research programs within the University that are of significance to the Legislature and who would serve as a liaison representative to the Legislative Reference Service and other agencies and committees of the Legislature Such an arrangement would go far toward enhancing the contribution which the University could make not only to the Legislature but to the entire State

CIVIL SERVICE STATUS FOR PERSONNEL OF THE LEGISLATIVE ANALYST'S OFFICE

At its meeting on April 19, 1960, the commission recommended that the Committee on Legislative Aids and Services explore the advisability of civil service status for some employees of the Legislative Analyst's office, comparable to the status of employees of the Legislative Counsel, and that the Legislative Analyst and Members of the Legislature be asked to present their views to the committee

Findings

The committee found that although the Legislative Analyst's office operates in much the same relationship to the Legislature as the Legis-

lative Counsel's office, there is a considerable difference in the function and staffing needs of the two offices Whereas the counsel was established to serve to some extent agencies other than the Legislature, the analyst and his staff operate directly under the Joint Budget Committee and are exclusively legislative employees In addition, while the staff of the counsel's office consists principally of attorneys, the operation of the analyst's office requires a staff with varied experience The joint committee has delegated to the Analyst the power to make staff appointments and prospective employees are hired on the basis of oral examinations, academic performance, experience, and other qualifications The flexibility of the recruitment procedure makes it possible to hire at various levels personnel of a high caliber and diverse professional competence without the delays of civil service recruitment procedures

Personnel attached to the analyst's office are employed on a full time basis and may receive most of the fringe benefits which are available to civil service employees such as participation in the state retirement plan Although an employee may be dismissed without appeal, the specialized nature of many of the positions, such as those which require appearances before legislative committees, requires flexibility in personnel procedures The nonpartisan character of the employment insures that job security is not threatened by political changes within the Legislature, and employees receive compensation commensurate with equivalent positions in the state civil service The relatively high personnel turnover within the office is for the most part the result of high quality staff personnel accepting more lucrative positions in other branches of state service and elsewhere

Recommendation

In view of the above findings, it is the recommendation of this committee that personnel of the Legislative Analyst's office continue to be exempt from the provisions of the Civil Service Law

CONFLICTS OF INTEREST

The commission also considered the subject of conflicts of interest for legislators and legislative employees. After due deliberation, it voted to continue study of the problem.

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CALIFORNIA LEGISLATURE

Citizens Legislative Advisory Commission and Joint Committee on Legislative Reference Library

LEGISLATIVE REFERENCE SERVICES FOR THE CALIFORNIA LEGISLATURE

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February, 1961

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I. INTRODUCTION

During recent years various committees of the California Legislature have given considerable study to the improvement of legislative aids and services [1] One of the areas of increasing concern has been the adequacy of reference and research services for legislators In February 1960, the Joint Committee on the Legislative Reference Library requested that the Citizens Legislative Advisory Commission undertake "an objective and thorough analysis of the problem of creating a reference service which will meet the requirements of the California Legislature" [2] The committee also asked for an investigation of the Legislative Reference Library to determine whether it might provide the framework for a broadened base of reference service operations

This report has been prepared for the Citizens Legislative Advisory Commission in response to the joint committee's request The study involved (1) an examination of the functions and operations of the Legislative Reference Library, (2) a review of legislative reference services in other states, and (3) an evaluation of legislative reference needs in California

The study was conducted throughout much of the year 1960 It began with a review of recent publications bearing on California legislative services The material contained in these documents, which are listed in the Appendix, provided a valuable background for much of the analysis in this report

Subsequently, meetings were held with representatives of various agencies now providing legislative assistance to the California Legislature including research personnel of legislative committees The services which these agencies provided, their inter-relationships, and their contributions to a legislative reference service were examined

Finally, interviews were held with a number of legislators of both the Assembly and the Senate The purpose of these interviews was to determine how legislators viewed their reference needs, what uses were being made of existing services including the Legislative Reference Library, and what improvements they recommended in the present system. These interviews were very useful and revealing and corroborated many of the findings of the study by The Mangore Corporation in 1958 [3]

This report does not attempt to set forth the organization and activities of the various agencies now providing services for the California Legislature These have been well described in some of the publications listed in the Appendix, notably the report entitled *Legislative Assistance* by E. F Stamford.

[1] Some of the fields of legislative interest are set forth in the *Second Progress Report to the Citizens of California*, Citizens Legislative Advisory Commission, California Legislature, September 1958 See also other publications listed in Appendix.

[2] *Progress Report*, Joint Committee on Legislative Reference Library, California Legislature, March 14, 1960, p 3

[3] *The California Legislator*, A Report to the Citizens Legislative Advisory Commission, January 1958

II. THE LEGISLATIVE REFERENCE LIBRARY

HISTORY OF THE STATE LIBRARY LEGISLATIVE SERVICE

Over a century ago, in 1850, the Legislature established a State Library in the Capitol to provide a reference source for the legislators as well as the public For the next five decades the State Library, which was located in close physical proximity to the Legislature, provided such informational services to the legislative branch as were necessary

In 1904, however, the need for more specialized legislative research assistance became recognized Ernest Bruncken, a student of Charles McCarthy who had pioneered the development of a legislative reference service in Wisconsin, was assigned the task of creating a similar unit within the California State Library The purpose of the newly established Legislative Reference Section was to provide spot information and furnish legislative materials to legislators upon request This section was redesignated the Law and Legislative Reference Section in 1919

In 1928 the State Library was moved to its present building, and the Law and Legislative Reference Section was likewise removed from the Capitol By 1931 it had become apparent that the new arrangements were not fulfilling the needs of the Legislature with respect to convenient library service In that year the State Library suggested to the Department of Finance that a branch library be established in the Capitol in order to make the facilities of the State Library more accessible to the Legislature This plan was not instituted With the period of depression and war, no other changes were to take place for another two decades

After World War II the need for improvement in legislative services again became apparent. In 1951 the State Librarian, the Legislative Counsel, and a representative from the Assembly Interim Committee on State Reorganization met and discussed plans for improving the library's service to the Legislature Although several suggestions such as the establishment of a branch library and a messenger service were considered, no action was taken [4]

During the period between 1950 and 1955, however, the State Library took steps to improve the services not only to the Legislature but to state administrative agencies In 1954 the title of the Legislative Reference Section was changed to the Administrative-Legislative Reference Section Other states and such organizations as the National Legislative Service Conference were contacted to secure advice and information on administering and stocking a reference library The records of the Administrative-Legislative Reference Section revealed that a reference service in the Capitol would probably be well received since at least 35 percent of the legislators had used the services of the section during 1956 [5]

[4] Sigel, J. A., "Evolution of the Legislative Reference Library in California," *News Notes, California Libraries*, Fall, 1959

[5] *Ibid*

ESTABLISHMENT OF A LEGISLATIVE REFERENCE LIBRARY IN THE CAPITOL

During the 1955 Session several bills were introduced concerning the problem of legislative reference and research, and an Assembly resolution was adopted which provided for a committee to study available research facilities[6] In 1957 the State Librarian requested from the Assembly Committee on Rules a "small room near the legislative chambers" to be used for a Capitol branch library The room was not granted but an additional library position to "work on legislative studies" was requested and approved in the 1957-58 Budget[7]

There were several other important developments in 1957 The first was a report to the Legislature in March by the Citizens Legislative Advisory Commission which stated that there was a large amount of existing information and research data which was available to the Legislature which would be helpful in the consideration of legislative problems but that there was a lack of communication and knowledge in regard to these resources The commission recommended that a "separate office be established to function as a source of information and to co-ordinate research material and prepare this information in such form as to be readily available to committee chairmen and members of the legislative bodies "[8]

During the same year a study published by the Bureau of Governmental Research at the University of California noted the lack of an adequate legislative research staff, the inconvenient hours of the State Library (8 a m -5 p m), the separation of the library from the Capitol and the absence of a cross-reference cataloging system The study proposed that "additional staff and a branch office in the State Capitol would go far in enabling the State Library to set up a more effective legislative reference service "[9]

A bill was introduced in the 1957 Session which would have established a "Legislative Reference Library in the State Capitol" and branch libraries in major cities throughout the State[10] Although the bill did not pass, considerable interest was aroused with respect to the creation of a reference library in the Capitol Consequently, during the same session, the Legislature, recognizing that "the availability of necessary factual information and research assistance is vital to the legislative process, and such information and assistance should be readily available and accessible," directed the Joint Committee on Rules to establish a Legislative Reference Library in the Capitol, to be staffed and operated by the State Library[11] It was concluded that the State Library was best equipped to furnish such a service and that it was consistent with its functions to do so The purpose of the Legislative Reference Library, as stated in the resolution, was to make available to the Legislature basic reference works, administrative agency reports, interim and special committee reports, and selected reports from other states

The Administrative-Legislative Reference Section of the State Library was given the responsibility for the actual operation of the Legis-

[6] H R 197, S B 1127, A B 3539, A C R 96, A C R 52.
[7] Sigel, *op cit*
[8] *Assembly Journal*, May 14, 1957, p 4552
[9] Stanford, E F, *Legislative Assistance*, Bureau of Governmental Research, University of California, Los Angeles, 1957, p 42
[10] A B 2598
[11] A C R 157, May 3, 1957

lative Reference Library. During the 1958 Budget Session it provided a consultation service which consisted of a legislative research librarian (the position created in the budget) operating out of the Legislative Counsel's office This service, which aimed at providing liaison between the legislators and the State Library and spot answer type information, answered only 20 requests during the month-long session, but it served to publicize the resources of the State Library and was well received by the Legislature However, the question of providing the necessary space in the Capitol for a branch library continued to be a problem, although it was generally agreed that such an arrangement was desirable

Upon completion of the remodeling of a number of offices in 1958 and after some office reassignments, space was made available to house the library adjacent to the Assembly Chambers The Legislative Reference Library commenced operations with the beginning of the 1959 Session Staffed by the Administrative-Legislative Reference Section of the State Library, the Legislative Reference Library began with a personnel complement of one librarian During the session two additional part-time personnel were assigned The immediate resources available to the new library, in addition to office equipment provided temporarily by the Assembly Committee on Rules, included several basic reference works such as the *Book of the States* and the *World Almanac* and a limited number of legislative reports, journals, and other publications

In February 1959, to supervise the maintenance of the Legislative Reference Library, the Legislature created a Joint Committee on the Legislative Reference Library It was instructed to:

> " * * * ascertain, study, and analyse all facts relating to the maintenance and the improvement of a reference library in the Capitol for the use of legislators, the cataloging and indexing of legislative publications, and the furnishing of library assistance to the Legislature, including but not limited to the operation, effect, administration, enforcement, and needed revision of any and all laws in any way bearing upon or restricted to the subject * * *." [12]

The committee's staff initially consisted of an executive secretary, but in September 1959, an assistant was added. On behalf of the committee, the executive director supervised the general development and maintenance of the library. During 1959 considerable equipment was purchased for the library.

The services of the Legislative Reference Library were immediately utilized by the Legislature. Between January and June of 1959 over 800 requests were received and approximately 2,000 legislators and legislative staff personnel made use of the reference materials contained in the library By the end of the session the catalogue listings of legislative reports increased to over 4,000 [13] At the end of the first year of operation over 3,500 requests had been serviced [14] At present the library is primarily a reference service although limited research tasks are performed at the request of the legislators

[12] A C R 40, February 9, 1959
[13] Sigel, *op cit*
[14] *Report of the First Year's Activities*, Joint Committee on the Legislative Reference Library, February 1, 1960

At the conclusion of the first full year of operation, general satisfaction was expressed with the operations of the Legislative Reference Library as a library. However, the Joint Legislative Reference Committee saw the need for broadening and extending the reference and research services It concluded that

> " * * * the California legislator, surrounded as he is with the complexities of a fast growing state, coupled with local problems and the tasks required of him by his constituents, needs and is entitled to a convenient, up-to-date, centralized information service "[15]

After further consideration of the problem, the committee initiated the request for the Citizens Legislative Advisory Commission to study legislative reference services for the California Legislature The committee asked the Citizens Legislative Advisory Commission to make a report available in sufficient time for consideration during the 1961 Session.

[15] *Ibid*

III. LEGISLATIVE REFERENCE SERVICES IN OTHER STATES

GENERAL

During the 20th century, the increasing number and complexity of problems confronting state legislatures and the wide range of subjects with which they must deal has occasioned the development of permanent legislative assistance agencies staffed by professional personnel California has continually been a leader in recognizing the growing need for specialized legislative assistance, and despite some gaps in this field, has established a greater variety of legislative service agencies than any other state

Among the various states, legislative service agencies have performed diverse functions· bill drafting, statute revision, budget review and analysis, post audit, and others The comprehensiveness of the services provided has varied widely. However, the oldest and most universal area of assistance has been legislative reference

THE EMERGENCE OF THE LEGISLATIVE REFERENCE SERVICE FUNCTION IN WISCONSIN

Legislative reference services, which first emerged as a function of state libraries, were instituted on a limited scale in New York and Massachusetts during the last decade of the 19th century [1]
However, the true beginning of the legislative reference movement occurred in Wisconsin in 1901 when the Legislature created, by statute, a legislative reference section in the State Library The purpose of the section was to provide a working library for legislators and to assist them in the drafting of legislation

At present the Wisconsin Legislative Reference Library, situated in the Capitol in close physical proximity to the Legislature, performs three main functions· (1) bill drafting, (2) indexing, filing, and making available information on a variety of subjects, and (3) general research A highly selective "working" library has been developed over the years which now maintains about 80,000 pieces of catalogued material which are continually kept current These include a file of clippings from various periodicals, special official and unofficial reports and studies on social, economic, and governmental problems, papers and theses prepared by university students who have used the facilities of the library in their research, and a limited number of books In addition, the library maintains a general index of books and other materials of special interest which are available through other libraries

The library employs both librarians and research workers and attempts to anticipate requests for information by maintaining a continuous search for material concerning matters of current interest Since the legislators have little time to peruse the material themselves,

[1] Leek, J H, *Legislative Reference Work A Comparative Study*, University of Pennsylvania, Philadelphia, 1925

the staff often provides summaries on various subjects, histories of areas of legislation, and *pro* and *con* arguments on legislative proposals. The scope of the research conducted by the library varies from projects requiring only a few minutes to those which extend over several weeks. Its services are available to administrative departments and the general public as well as the Legislature [2]

THE DEVELOPMENT OF LEGISLATIVE REFERENCE SERVICES

By 1925 two-thirds of the states had established legislative reference facilities, although during these early years, few approached the effectiveness of the Wisconsin experiment At present, 48 states provide some service in the form of specialized reference libraries or reference-research agencies such as legislative councils, although the adequacy of these services varies greatly in scope and quality All but four of the states have, in practice, extended the concept of legislative reference, either through the medium of one integrated agency or by the services of several agencies, to both "spot research" and more extended research reports as well as purely library reference type information [3]

THE LIBRARY OF CONGRESS

One of the outstanding legislative reference services now exists in the Library of Congress It began in 1914, when the United States Congress appropriated $25,000 for a reference service "to gather, classify, and make available . data for or bearing upon legislation, and to render such data serviceable to Congress and Committees and Members thereof" The Legislative Reorganization Act of 1946 authorized the establishment of a Legislative Reference Service as a separate division of the Library of Congress which would " . assist any committee . in the analysis, appraisal, and evaluation of legislative proposals pending before it, or of recommendations submitted to Congress, by the President or any executive agency, and otherwise assist in furnishing a basis for the proper determination of measures before the committee . (and) to prepare summaries and digests of public hearings and of bills and resolutions . . "

The general staff of the reference service is organized in seven sections history and general research, American law, economics, senior specialists, foreign affairs, government, and library services The staff includes lawyers, economists, political scientists, historians, librarians, researchers, and analysts The senior specialists are appointed in a number of important fields such as conservation, social welfare, public law, etc , and receive compensation commensurate with the highest classification for research consultants in the executive branch The service has become the principal research arm of Congress and provides spot research, drafts of speeches, answers to constituents' requests, and a variety of other services which aid the individual legislator as

[2] Toepel, M G "The Legislative Reference Library Serving Wisconsin," *Wisconsin Law Review* January, 1951
[3] Council of State Governments, *Book of the States*, 1960-61

well as the committees.[4] It also undertakes long-range studies of subjects under consideration by the Congress.

LEGISLATIVE COUNCILS

One of the most significant developments in the area of legislative assistance has been the emergence of the legislative council movement This movement was partly the outgrowth of the practical need for legislatively controlled fact-finding agencies and partly the result of the general trend toward strengthening state government which inspired the establishment of such organizations as the Council of State Governments and the National Municipal League

Although the essence of the idea of a legislative council is the formulation of legislative programs and policy, more than one-third of these bodies have developed as essentially research and reference agencies, and many perform other legislative assistance functions such as bill drafting and fiscal review. Approximately 75 percent of the states have established legislative councils or similar bodies (sometimes termed legislative research committees, joint legislative council, etc) Despite a great diversity in function and organization, council-type agencies are usually joint committees of the legislature which co-ordinate and conduct legislative research and provide continuity in the consideration of legislative problems These bodies usually maintain a permanent professional staff which collects data, conducts research, and makes impartial analyses of problems before the legislature, although some councils have depended principally on the services of existing state agencies Approximately one-half of the states which have instituted councils have followed the example of Kansas and have vested in the council recommendatory powers regarding legislative policy while others such as that of Illinois provide essentially research and reference services.[5]

CONCLUSION

Particular historical circumstances have led states to resolve the problem of legislative assistance in a variety of ways The diverse solutions that have been developed demonstrate that the problem must be dealt with in the context of the needs of the individual state and viewed from the perspective of existing services There has been no uniform pattern of development other than a continuing attempt to meet the increasing demand for more adequate research and reference services in dealing with the complexities of modern legislation

[4] Galloway, G B, *The Legislative Process in Congress*, T Y Crowell Co, New York, 1953, pp 407-409

[5] The most recent and definitive work on legislative councils is *The Legislative Council in the American States*, by W J Siffin, Indiana University Press, 1959

IV. FINDINGS

The following findings and recommendations are based upon interviews with legislators, legislative staff, and other experts, and upon an analysis of the legislative reference library and research activities elsewhere, notably in the State of Wisconsin and the Library of Congress. A number of the recommendations also follow and build upon the recommendations of the Citizens Legislative Advisory Commission set forth in the *Second Progress Report to the Citizens of California.*[1]

LEGISLATIVE REFERENCE LIBRARY

1 **Library Services.** The Legislative Reference Library is presently performing a much needed and useful function for the State Legislature With minimum staff and meager financial resources, the library has succeeded, during the two years since its establishment, in providing important research aids to legislators, legislative staff, and administrative personnel The success of the library's operations to date is reflected in the large number of service requests that have been handled and the array of documents that have been catalogued.

Despite good progress in library operations, however, much still remains to be done in developing the library's reference resources and files The legislative rules have not yet been amended to make the library the basic depository of all legislative committee reports and other official proceedings Legislative committee files are not being systematically transmitted to the library upon completion of committee activities A number of reference volumes still need to be added to the library's collection. The library's central index for legislative documents needs to be broadened and extended These improvements are essential for effective research and service to legislators, but they probably cannot be undertaken without additional personnel and financing.

2 **Legislators' Evaluation of the Legislative Library and Its Services.** On the whole, legislators who were interviewed, warmly supported the development of the Legislative Reference Library. Although some legislators and their assistants have used the service more than others, none of those interviewed believed that the service was duplicatory or nonessential

Some of the legislators, however, felt that the reference library's functions should be broadened to provide research analyses which cannot be undertaken with the present staff Several believed that the reference library should be developed to complement the research activities of interim committees and other research agencies General agreement also existed that the Legislative Reference Library might serve as a clearing house and maintain liaison with other research

[1] California Legislature, September, 1960, pp 27-30

agencies in the State which undertake projects of significance for the Legislature.

3 **Relationships Between the Joint Committee on the Legislative Reference Library and the State Library.** As has been previously noted, the Legislative Reference Library operates under the jurisdiction of the Joint Legislative Committee on the Legislative Reference Library. The executive secretary of the committee supervises the general library establishment for the committee The library services, on the other hand, are provided by the State Library The State Librarian assigns librarians to work in the Legislative Reference Library

Although relationships between the Joint Legislative Committee members and the State Librarian have been co-operative and cordial, some differences in outlook and jurisdiction between the two groups appear to exist The Joint Legislative Committee views the Legislative Reference Library as a staff agency of the Legislature responsible to the Legislature The committee, and many other Members of the Legislature, believe that Legislative Reference Library personnel should be available to provide various types of information and to undertake fact-finding and short-term research services for the legislator on a personal basis In particular, assemblymen who do not have administrative assistants look upon the Legislative Reference Library as a means of staff aid Some legislators have expressed doubt that employees of the executive branch operating under civil service regulations can function effectively and with sufficient freedom as legislative aides Legislators who hold this view also feel that it may be inadvisable to have an agency of the executive branch performing reference and research services for the legislative branch

From a different vantage point, the State Librarian and staff see the Legislative Reference Library as a less personal and more institutional service to the Legislature They believe that the best progress will be made if the librarians operate under the professional standards of the State Library Furthermore, they see the Legislature gaining many advantages from having the Legislative Reference Library administratively tied to the broader resources of the State Library The State Librarian has also been anxious to add legislative analysts to the Legislative Reference Library staff in order to provide some additional research services

4 **Staff Relationship.** The differences in outlook and responsibilities between the Joint Legislative Committee on the Legislative Reference Library and the State Librarian have led to tensions among the staff The supervising role of the Executive Secretary with respect to the Legislative Reference Library operations is unclear The librarians, as staff of the State Library, feel obligated to report to the State Librarian and not to the Executive Secretary of the Joint Legislative Committee

5 **Co-ordination of Legislative Research Services.** The entrance of the Legislative Reference Library into the reference and research service field complicates the pattern of research co-ordination for the California Legislature General legislative research is presently conducted in these major ways (1) through interim committees, (2) by the Legislative Analyst's Office, (3) through state administrative agencies co-operating with legislative committees, (4) through University

of California research bureaus and institutes, (5) by special contract with private and public agencies. No legislative committee has been assigned the responsibility for keeping track of the research which is assigned to the various agencies Furthermore, no other point of information or clearing-house exists within the legislative structure where this data can be procured.

Many undesirable consequences are resulting from the lack of co-ordination in legislative research operations

(a) Considerable research is duplicated between legislative committees and other agencies engaging in legislative research Although research on the same topics by committees and agencies with a different focus is often justified, the projects are frequently conducted in the same manner so that no new benefits are derived If legislative committees and other agencies had access to some central source of information in planning research studies, considerable sums of money could be saved

(b) A poor division of labor results among legislative research committees and agencies so that research projects are not necessarily undertaken by the unit that is best qualified by virtue of personnel or previous experience to do the work There are some data gathering operations such as conducting hearings and securing testimony that a legislative committee, for example, can do better than a university research bureau On the other hand, the research bureau might more appropriately undertake the long-range research project involving considerable library work As matters now stand, little attempt is made by the various research committees and agencies to complement each other's activities

(c) Inadequate exchange of research information is resulting in poor synchronization of legislative needs with project deadlines Projects are frequently completed after their greatest need to a legislative committee has passed, more often than not because the research agency learned of the legislative interest in the topic too late No systematic attempt is presently being made to assign projects to legislative committees and research agencies on the basis of whether the projects are short-range or long-range in nature

(d) Poor research liaison exists particularly between the legislative committees and public and private research agencies located outside of Sacramento None of these research bureaus and institutes station liaison personnel on a regular basis in Sacramento, and consequently they are not as close to legislative research needs as they might be As a result, the Legislature is losing the opportunity to more fully utilize the services of these outside research agencies They, in turn, are not as helpful to the Legislature as they could be

(e) The lack of co-ordination in legislative research activities is resulting in a considerable turnover of research staff and loss of talent Few positions with any degree of permanency are available This makes it difficult to attract high-quality personnel to legislative research positions and even more difficult to retain good people who frequently view legislative positions as transitional employment Better exchange of information among legislative research committees and agencies could foster desirable personnel reassignments when research projects are completed

V. RECOMMENDATIONS

1 **Organization and Functions of the Legislative Reference Library.** To function effectively as a legislative service agency, the Legislative Reference Library should be administratively separated from the State Library and operated solely under the jurisdiction of the Legislature The functions of the Legislative Reference Library should remain as set forth in the resolution for its establishment; namely, (a) to serve as a depository for library materials useful to the legislative process and (b) to provide reference and research services to legislators and legislative staff To provide a designation more in keeping with its functions, the Legislative Reference Library should be renamed the *Legislative Reference Service.*

2 **The Administrative-Legislative Reference Service of the State Library.** The Administrative-Legislative Reference Service should be retained as a division of the State Library to provide library and reference services for state administrative agencies and to maintain liaison with the Legislative Reference Service of the Legislature The outstanding resources of the State Library and the excellent services of its various technical divisions should continue to be made available to Members of the Legislature and staff through the Administrative-Legislative Reference Service of the State Library

3 **Joint Committee on Legislative Organization to Supersede Joint Committee on the Legislative Reference Library.** The Legislative Reference Service should be placed under the supervision of the Joint Committee on Legislative Organization, and the Joint Committee on the Legislative Reference Library should be abolished Though the Joint Committee on the Legislative Reference Library has played an important role in the establishment and operation of the Library, the transfer of these responsibilities to the Joint Committee on Legislative Organization has many advantages. It places an important legislative service agency under the immediate direction of the chief administrative committee representing both the Senate and the Assembly. The Joint Committee on Legislative Organization, through the respective House Rules Committees of which it is composed, can provide better liaison between the Legislative Reference Service and other legislative committees and agencies The Legislative Reference Service can in turn aid the Joint Committee on Legislative Organization in keeping abreast of research activities and maintaining contacts with outside research agencies such as the University of California and other institutions

4 **The Role of the Joint Committee on Legislative Organization.** In order to maintain close contact and surveillance, the Joint Committee on Legislative Organization should establish a subcommittee to supervise the Legislative Reference Service The full committee's responsibilities should include the following:

(a) Selection of the director with the approval of the Legislature.
(b) Approval of appointments of subordinate staff nominated by the director

(c) Formulation and approval of the budget
(d) The maintenance of appropriate liaison with other legislative committees and research agencies
(e) The preparation of an annual report to the Legislature which would review and evaluate the activities of the Legislative Reference Service

5 **Library Functions of the Legislative Reference Service.** The Legislative Reference Service Library should be a basic depository for legislative materials which should be available to legislators, legislative staff, and persons who are engaged in some aspect of research and study of legislative activities The library should continue to be developed as rapidly as feasible with suitable facilities. To improve present operations, the recommendations previously made by the Citizens Legislative Advisory Commission should continue to be carried out, namely:

"(a) The legislative rules should be amended to make the Legislative Reference Library the basic depository for all official proceedings and reports, printed and typewritten as well as tapes

"(b) The rules of both the Senate and the Assembly should be amended to require that all official files of both standing and interim committees should be deposited in the Legislative Reference Library at the close of each session or upon the expiration of the committee The staff of the library should be instructed to contact chairmen and staff of former committees, the Legislative Analyst, the Legislative Counsel, and other legislative agencies to secure files and documents in order to provide as complete a chronological record of the activities of legislative committees as possible Arrangements should be worked out to protect the confidentialness of documents where necessary.

"(c) The Legislative Reference Library should establish and maintain a central index for all legislative documents The index should list libraries or other services where legislative documents are located, if they are not available in the Legislative Reference Library

"(d) The library should be provided with sufficient funds to enable it to secure and maintain current basic reference volumes to provide an effective quick-answering service for legislators and staff

"(e) The Legislative Reference Library should maintain a file of local newspaper clippings such as is now maintained in other legislative reference libraries to provide background and interpretative information on previous legislative actions "[2]

6 **Reference and Research Functions.** The reference and research services now being furnished by the Legislative Reference Library should be broadened and extended The following improvements should be undertaken:

(a) The Legislative Reference Service should become the central source of information for all legislative research activities It should

[2] *Second Progress Report to the Citizens of California*, California Legislature, September, 1960, p. 29

maintain a current record of all research being conducted under the auspices of the Legislature In addition, it should maintain a file of research projects being undertaken by other public and private research agencies on topics which are under study by the Legislature

(b) Within the limits of available personnel and resources, the service should provide quick reference information and undertake short-term research projects for individual legislators or legislative committees The data or reports should be provided in the form which the legislator requests and where necessary should be maintained confidential For long term research projects, or projects calling for highly specialized personnel, the Legislative Reference Service should endeavor to place the legislator or legislative committee in contact with the appropriate University bureau or research agency which might be prepared to undertake the assignment

(c) The director and the staff of the Legislative Reference Service upon request should furnish information and advice to the Joint Committee on Legislative Organization and the respective House Rules Committees concerning legislative research needs and the merits of specific research projects

7 **The Directorship.** The Legislative Reference Service should be headed by a director who is professionally qualified in the field of legislative reference work and research As has been noted above, the director should be appointed by the Joint Committee on Legislative Organization subject to the approval of the Legislature He would hold office at the pleasure of the joint committee The director should have responsibility under the supervision of the joint committee for all activities of the Legislative Reference Service

8 **Staffing.** The Legislative Reference Service should be staffed with personnel selected on the basis of qualifications and merit It should be encouraged to work in close co-operation with standing and interim committees As the Citizens Legislative Advisory Commission has noted, the service

> "would constitute a small pool of trained personnel upon which committees could draw for staff Upon completion of a committee's assignment the staff member could return to the pool and work upon pool research until reassigned to another committee This procedure, if followed, would provide the opportunity of developing a high-quality permanent staff which is not now possible under present committee processes of personnel turnover. Furthermore, it would provide savings by reducing the need of high-priced consultant services and the elimination of nonproductive research by poorly qualified personnel
>
> "It is recommended that the Joint Committee on Legislative Organization establish procedures which will provide continuity in employment for qualified secretarial, administrative and research staff" [3]

9 **Physical Location.** For ease of contact and quick service, the library and informational activities of the Legislative Reference Service should continue to remain in the State Capitol Annex close to legislative quarters If the service should outgrow its present facilities,

[3] *Ibid*, pp 28-29

members of the staff who are working on short-term research projects might be located elsewhere in the building There are distinct advantages, however, in keeping the reference staff as near to the library facilities as possible.

10 **Liaison With Outside Agencies.** A major function of the Legislative Reference Service should be the development of liaison relationships with public and private research agencies located outside of Sacramento Many of these agencies, such as the Bureau of Public Administration (Berkeley) and the Bureau of Governmental Research (Los Angeles), have a distinguished collection of materials dealing with state and local government which would supplement legislative library services They also employ or have access to experts who could advise and consult with staff members of the Legislative Reference Service on various research problems Furthermore, some of these research bureaus such as the Bureau of Governmental Research in Los Angeles may be in a position to aid legislators who reside some distance from Sacramento and who do not have convenient year-round access to Capitol facilities It would also be desirable to station a staff member of the Legislative Reference Service in Los Angeles who could maintain contacts in that region, who could provide some reference service for the great number of legislators living in that area, and who could relay, as may be necessary, legislative requests for service to the Sacramento office

11 **Legislative Research Service Relationships With the University of California.** Some special mention should be made of research relationships between the University of California and committees and staff of the Legislature The University of California is the State's major institution of higher learning specializing in research As a state institution it is obligated within the limits of its resources to serve the government of the State Over the years the university, through its departments, bureaus, and institutes, has provided much professional assistance and performed many research studies for the Legislature The university is becoming a large institution, however, and it is not always easy for legislators or staff to ascertain the types of research going on at various campuses or the qualified persons who are available Therefore, to strengthen relationships between the university and the Legislature, the university should be encouraged to designate a person who would be responsible for keeping abreast of research programs within the university that are of significance to the Legislature and who would serve as a liaison representative to the Legislative Reference Service and other agencies and committees of the Legislature Such an arrangement would go far toward enhancing the contribution which the university could make not only to the Legislature but to the entire State

VI. CONCLUSION

Over the years the State of California has developed an outstanding array of services to aid legislators. Agencies such as the Legislative Counsel and the Legislative Analyst provide legal and fiscal services that are unsurpassed in any other state However, the lack of well-developed general research and reference facilities constitutes a major need in the present system of legislative assistance The improvement and broadening of the functions of the Legislative Reference Library, as proposed in this report, would supplement the services of existing agencies without duplicating or infringing on their field of activity. A comprehensive and well-organized legislative reference service would go far toward increasing the effectiveness of the legislative process in California.

VII. APPENDIX

RECENT PUBLICATIONS ON STATE LEGISLATIVE SERVICES

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