

Tunnel Vision Part Two: Rivers in Peril

How Jerry Brown's plan to build two giant water tunnels, along with legislation in Congress, could ultimately spoil the last of Northern California's wild and scenic rivers.

By Robert Gammon
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California is blessed with some of the most beautiful rivers in North America, and none is more breathtaking than the Merced. From its headwaters in Yosemite National Park, the river gradually grows larger before it cascades over two world-famous waterfalls — Nevada and Vernal — and then flows past El Capitan and Bridalveil Fall in Yosemite Valley. Once it leaves the park, the Merced begins its one-hundred-mile journey to the Sacramento-San Joaquin River Delta and San Francisco Bay. But a portion of the Merced is now in jeopardy of being destroyed, and if that were to happen, it could ultimately lead to the decimation of Northern California's last remaining unspoiled rivers.

California Congressmen Tom McClintock, a conservative Republican, and Jim Costa,



a moderate Democrat, are co-sponsoring a bill in the House of Representatives that would remove the federal wild and scenic designation on a section of the Merced River west of Yosemite National Park, thereby stripping it of federal protections. The legislation, HR 934, is backed by the Merced Irrigation District, a water agency representing agricultural interests in the Central Valley that want to expand its large dam on the Merced River, but can't — unless Congress lifts the wild and scenic status.

But the McClintock-Costa bill would do much more than help a water district enlarge its reservoir and ruin a portion of a majestic river. If passed by Congress, it would set a national precedent. The federal government has never before removed a wild and scenic designation on a river. The designation is considered to be one of the nation's most important and powerful environmental regulations, and protects many California rivers from being further dammed up and diverted.

The McClintock-Costa bill also has a decent chance of passing both houses of Congress — if it gains the backing of Democratic US Senator Dianne Feinstein, who has a long history of siding with agricultural interests over the environment in California. HR 934 has cleared House committees and is awaiting a vote from the full chamber, where it's expected to pass along party lines thanks to the Republican majority. And if Feinstein throws her weight behind the bill, it could win approval in the Democratic-controlled Senate as well.

Moreover, environmentalists worry that if Congress lifts the wild and scenic designation on the Merced to help agricultural interests, then the same thing could happen to other Northern California rivers. "Wild and scenic — that's the strongest designation that we have," said Jon Rosenfield of the Bay Institute. "If we're willing to remove that for one irrigation district, who's going to stop us from doing that to another river?"

Paid Advertisement In recent years, in fact, two of the most powerful water districts in the state — Westlands Water District, which represents Big Agriculture in the San Joaquin Valley, and Metropolitan Water

District, which serves 19 million customers in Southern California — have been pushing to remove a state wild and scenic protection from the McCloud River near Mount Shasta so that Shasta Lake can be made larger and more water can be sent south.

But the big water prize in California is the major rivers on the North Coast — including the Eel, the Smith, and the Trinity — that are protected by wild and scenic designations. Those rivers contain millions of acre-feet of water that could be diverted. And pressure to dam up those rivers is sure to increase in the decades to come, environmentalists say, because of demands for more water due to climate change, population increase (especially in arid Southern California), and the explosion of fracking — an oil and natural gas extraction method that requires massive amounts of freshwater.

Currently, Big Agribusiness and powerful water interests in California are not only blocked from accessing North Coast rivers because of their wild and scenic designations, but they're also stymied by the state's water conveyance system, particularly the Delta. The fragile estuary serves as a natural barrier to those who want to move more freshwater

from Northern California to the San Joaquin Valley and Southern California.

That barrier, however, may soon go away as well because of Governor Jerry Brown's plan to build two giant water tunnels underneath the Delta (see "Tunnel Vision Part One: Delta in Peril," 6/12). Although Brown's plan does not propose sending more freshwater south than the state does now, the huge water tunnels would have the capacity to do so. In fact, records and interviews show that the tunnels could easily accommodate both the extra water created by damming up more of the McCloud River and from diverting millions of acre-feet of water from the North Coast.

"If you build this infrastructure," said Jeff Miller of the Center for Biological Diversity, referring to the giant water tunnels, "at some point, it's going to be used to its max."

State records show that, by the late 1950s, California water officials had developed plans to build a series of dams on the Eel River system on the North Coast and send about 2.3 million acre-feet of water — the equivalent of about 750 billion gallons — south each year. The plans represented the continuation of a mindset that

had dominated California water policy for decades: namely, that rivers are resources that should be exploited. This viewpoint fueled a dam-building spree throughout the state and the nation during the first half of the 20th century.

But the environmental movement that spawned in Northern California in the 1960s gave rise to a different ethos: that rivers are vital natural ecosystems that should be protected, and that dams erected to divert water for agriculture, cities, and suburbs had pushed numerous fish species to the brink of extinction. By the late Sixties, much of mainstream America had begun to embrace this viewpoint as well. And so in October 1968, then-President Lyndon Johnson signed into law the National Wild and Scenic Rivers Act.

Since then, Congress has designated more than two hundred rivers nationwide as wild and scenic. However, it took more than a decade of letter-writing and hard work by environmental groups before California's major North Coast rivers — including the Eel, Smith, and Trinity — received protection under the Wild and Scenic Act in 1981.

And of those three, only the

Smith is truly wild. It's the last major undammed river in the state. It begins in the mountains that straddle the California-Oregon border and wends through a spectacular canyon of old-growth redwoods in Del Norte County on its way to the Pacific Ocean near Crescent City. Congress also protected all of the Smith's tributaries. "People worked for years to get the Smith River designated as wild and scenic," noted Don Gillespie of Friends of Del Norte, a grassroots environmental group.

As for the Eel and Trinity, state and local water agencies erected some dams on them before they received wild and scenic protection (although the water diverted from the Eel River system is not shipped south). The Eel snakes through Humboldt County's towering redwoods, along Highway 101, on its way to the ocean near Eureka. And the Trinity begins in the snow-capped peaks near Mount Shasta before its meandering trek to the Pacific.

Hundreds of miles away, the Merced River received its wild and scenic designation in two stages — in 1987 and 1992 — for different portions of the river. The 1992 designation, signed by then-President George H.W. Bush, protected the lower section of the river,

west of Yosemite National Park. Inside the park, the river is completely unspoiled, but outside of it, the Merced was dammed several times, and the 1992 designation protected sections of the river that are still wild.

One of those dams is just 22 miles outside of Yosemite. Lake McClure is a massive reservoir created by the Exchequer Dam and owned and operated by the Merced Irrigation District. Although the reservoir typically holds about 500,000 acre-feet of water — the equivalent of about 163 billion gallons — the Merced Irrigation District and the agricultural interests it represents in the eastern Central Valley want more.

They're proposing to raise the height of Exchequer Dam in order to trap additional Merced River water in Lake McClure. But doing so would require flooding a section of the river that is protected under the Wild and Scenic Act. As a result, the irrigation district and its influential customers have been lobbying to remove the wild and scenic designation from that portion of the river.

In 2011, Republican Congressman Jeff Denham introduced a bill in the House to lift the designation. At the time, Denham's district included

Exchequer Dam. His bill won approval in the House last summer on a vote 232 to 188, mostly along party lines, with Democrats voting against. The legislation, however, stalled and then died in the Senate.

As a result, McClintock — a conservative politician from Southern California who had moved to the Sierra foothills, won election to the House, and whose district now includes Exchequer Dam (because of redistricting) — introduced HR 934 earlier this year. It's nearly identical to Denham's 2012 bill. In addition, Costa, a pro-agriculture Democrat representing the San Joaquin Valley, agreed to co-sponsor McClintock's bill, thereby giving it bipartisan credentials.

Environmentalists expect that HR 934 will win approval in the Republican-dominated House, but the odds of it passing the Senate are not as strong — unless Feinstein signs on to it or strikes a compromise with her House colleagues on mutually agreeable language. "The wild and scenic designation will be difficult to defend if Feinstein supports [HR 934]," noted Ron Stork of Friends of the River, an environmental group that is leading the fight against McClintock's legislation.

A representative from Feinstein's press office did not respond to a question as to whether she plans to back HR 934, but she's been quoted by some news outlets over the past year as saying that she supports raising Exchequer Dam, which would be not allowed under federal law as long as the wild and scenic designation is in place.

Stork noted that Feinstein has also expressed support for giving the Federal Energy Regulatory Commission the power to decide whether to raise Exchequer Dam — and thereby carve out an exception to the wild and scenic designation. Such a move would be similar to what Feinstein did on behalf of a controversial oyster farm in Point Reyes National Seashore. In that case, she authored a bill that gave then-US Interior Secretary Ken Salazar the authority to ignore federal law and allow Drakes Bay Oyster Company to keep operating on land that had been designated by Congress to become federally protected wilderness. Ultimately, Salazar declined to set a precedent and renew the oyster farm's lease, but the issue is still tied up in the courts.

In 2009, Feinstein also assisted a wealthy grower from the San Joaquin Valley, Stewart

Resnick, along with state agribusiness interests, in an effort to extract more water from the Delta, and thus leave less freshwater for salmon and other fish. Resnick is a major player in California water politics and a big political campaign donor.

If Feinstein ultimately helps lift the wild and scenic designation from the Merced, it will destroy a picturesque yet remote section of the river that is only accessible to hikers, rafters, and boaters. "They're trying to pick off a part that is rarely visited," Stork said.

Moreover, for environmentalists and nature lovers, the precedent-setting move would be even more heart-wrenching because it likely won't provide much water to the irrigation district. District officials didn't respond to a request for comment for this story, but according to an analysis by Friends of the River, safety issues limit how much the district would be able to raise Exchequer Dam. As a result, removing the wild and scenic designation may provide no more than 12,000 acre-feet of additional water for Lake McClure, an amount that represents just 2 percent of the reservoir's normal capacity.

"They're willing to undo the

wild and scenic designation in order to increase their [water] yield by a few percent,” Stork said.

In addition, the irrigation district has yet to definitively say that it will raise the dam if HR 934 passes — perhaps because the district may not make enough money to pay for the needed construction from the small amount of water it stands to gain.

“They probably won’t build it,” Stork added. “But by then it will be too late. They would have already done the damage, set the precedent.”

If the Merced River loses its wild and scenic status, then the McCloud River in Northern California is the next likely choice. For starters, the McCloud does not have full federal protection, and instead has a lesser wild and scenic status under state law. In addition, some of California’s most powerful political players have had their sights on the McCloud for several years.

Near Mount Shasta, the McCloud features jaw-dropping waterfalls and offers great fishing, camping, and picnicking spots. It also runs parallel to the Sacramento River and flows into Shasta Lake, the state’s largest

reservoir. As a result, the McCloud plays an integral part in the state’s water conveyance system, which sends massive amounts of freshwater from Northern California to the San Joaquin Valley and Southern California.

Basically, the current system works like this: State and federal water authorities take millions of acre-feet of freshwater that sits in Shasta Lake, including water from the McCloud, and then send the water — along with additional supplies from other major reservoirs, like Lake Oroville — down the Sacramento River to the Delta. There, two giant pumps near Tracy remove the freshwater from the Delta and send it south in large canals and aqueducts.

But, currently, several factors limit the amount of water that can be shipped south. One factor is the size of Shasta Lake. If it were larger, then more water could be sent down the Sacramento and ultimately to the south. But raising the height of Shasta Dam and enlarging the reservoir would violate state law because it would flood a section of the McCloud that’s protected by wild and scenic status.

That protection, however, is by no means robust, considering

the powerful interests involved. Feinstein has repeatedly expressed support for raising Shasta Dam, and both the Westlands Water District and the Metropolitan Water District have complained loudly over the years about not getting enough water; both want to change state law to expand Shasta Lake. These water districts also have traditionally exerted an outsized influence on the state legislature, thanks to the millions they’ve spent on lobbying and donating to political campaigns.

Last December, the Metropolitan Water District’s Board of Directors voted to lobby the state legislature to raise Shasta Dam. And last week, Jason Peltier, Westlands’ chief deputy general manager and a former high-level Interior Department official in President George W. Bush’s administration, confirmed to the Express in an interview that his district also “would support the raising of Shasta Dam.”

In 2012, the US Bureau of Reclamation, which plays a major role in California water policy, released a draft report stating that raising Shasta Dam would add about 133,400 acre-feet of water to the state’s water conveyance system, and that it’s economically feasible to do so.

But some environmental groups have challenged the bureau's report and contend that taxpayers will ultimately have to pay at least a portion of the costs of expanding Shasta Lake because the additional water won't produce enough revenue due to the cheap water prices given to Westlands and Metropolitan. "It's a tremendous hoax on the taxpayers," said Tom Stokely of the California Water Impact Network. "Westlands Water District would be the primary beneficiary of the project."

Peltier said, however, that raising Shasta Dam won't be a high priority for Westlands until another roadblock to sending more freshwater south is removed: the Delta. Currently, the US Endangered Species Act and other federal and state environmental laws limit the amount of water pumped out of the Delta. Taking out too much freshwater would make the estuary too salty for endangered and threatened fish. Increasing water diversions would also result in the deaths of millions more Delta smelt, which get sucked into and shredded by the giant Tracy pumps that move the water. "There's a bottleneck in the Delta," Stokely said.

And that bottleneck is why both Westlands and Metropolitan

water districts are pushing so hard for Governor Brown's giant water tunnels plan. The twin, 40-foot-wide, 35-mile-long tunnels would be equipped with state-of-the-art screens that would help prevent fish from being shredded. As a result, more Northern California water could be shipped south if the tunnels are built — especially if there is more water to ship. And there would be more water available if Shasta Dam becomes larger and the McCloud River loses its wild and scenic protection.

But the water from the McCloud would be just a drop in the bucket compared to what's available in the untapped rivers of the North Coast.

The Brown administration has no plan to send more freshwater from Northern California to the San Joaquin Valley and Southern California. But in the decades to come, the pressure to ship more water south will intensify, especially if the state has the infrastructure in place to make it happen.

A recent climate change forecast from NASA predicted that, as temperatures increase around the globe, regions that receive a lot of precipitation will likely get wetter, while drier areas, like Southern California, will likely get drier. Even a draft

study from the state's own Bay Delta Conservation Plan, which includes the governor's giant water tunnels proposal, noted that "some areas in northern California may experience higher annual rainfall amounts and potentially larger storm events, but California, as a whole, particularly southern California, will be 15 to 35% drier by 2100."

In addition, numerous studies have concluded that climate change will result in more periods of drought, especially in arid regions — thereby creating additional pressure to ship water to Southern California. Climate change will also likely produce more heat waves, and thus magnify the demand for even more water to keep crops from wilting.

Population growth also promises to heighten water needs. California's population is expected to top 50 million people by 2050, according to the state Department of Finance. And most of that growth is projected to occur in Southern California. More people also will mean the state will need to produce more food to eat.

At the same time, California is going to need lots of water if the fracking boom expands here as it has in other states.

Fracking involves the shooting of massive amounts of water and chemicals deep into the earth in order to release otherwise trapped natural gas and oil. Each fracked well uses between five million and ten million gallons of water. Earlier this month, The New York Times reported on the increasing friction in California between Big Oil and Gas interests and Big Agriculture. And such fights likely will intensify as the competing desires for increasingly scarce water supplies grow.

These numerous pressures make environmentalists even more worried about the giant water tunnels plan. Under the governor's current proposal, the twin tunnels would ship up to 9,000 cubic feet of freshwater per second — which works out to about 6.5 million acre-feet a year — from the Sacramento River north of the Delta to the Tracy pumps. But the state is proposing to take between 4.8 million and 5.6 million acre-feet annually, because removing too much freshwater from the Sacramento before it reaches the Delta would salt up the estuary.

Nonetheless, Brown's plan also calls for building the tunnels with the capacity to take up to 15,000 cubic feet of water per second — or about

10.9 million acre-feet a year. Although diverting that much water from the Sacramento is impossible right now because there typically is not that much freshwater in the river, there could be more water in the future.

Under the state's old water conveyance plan from the late 1950s and early '60s, the North Coast rivers could produce millions of acre-feet of water to ship south if they are dammed up, too. A plan from 1957 proposed to ship diverted water from the Eel River system through a large tunnel to be built in Northern California that would connect to the Sacramento River, which would then convey the water south.

However, that old plan doesn't make practical sense today because damming up the North Coast rivers, dumping the water in the Sacramento River, and then sending it to the Delta would only result in more water flowing out to the ocean. That's because more water cannot be removed from the Delta and sent south — even if there is more water available — because of the problem of millions of fish being shredded at the Tracy pumps. "It doesn't do any good to dam them now," Stork said of the North Coast rivers, "because they can't get

the water through the Delta."

However, the governor's giant water tunnels plan would break that logjam: The tunnels would take the water out of the Sacramento before it reaches the Delta. And because the state plans to build the giant tunnels large enough to carry up to 10.9 million acre-feet of water a year, the tunnels could easily handle 2.3 million acre-feet from the Eel River system.

So why build tunnels that can carry much more water than the Brown administration plans to send south? Nancy Vogel, a representative for the California Department of Water Resources, a major backer of the water tunnels plan, said the state plans to use gravity to move the water through the tunnels — and the bigger the tunnels, the less friction there will be. "You need to have tunnels of that size to have gravity flow," she said.

Running the tunnels at full capacity would require pumping the water through the tunnels, which is more expensive, she added. But Vogel acknowledged that the tunnels would nonetheless have the capacity to handle 15,000 cubic-feet per second (CFS) of water — the equivalent of 10.9 million acre-feet a year. She said it would add about

\$1 billion in extra costs to do so. She also said in a follow-up email that increasing the amount of water shipped through the tunnels also would require a new permit-approval process.

However, building the tunnels larger than needed also will add billions to the cost of the project, thereby raising questions as to whether it makes sense to make them that big if there wasn't a possibility to use them at their full capacity. In addition, paying an extra \$1 billion down the line to run them at full capacity is not a lot of money, considering the stakes, so it's feasible that such a scenario could become reality.

Environmental groups, not surprisingly, are wary, and believe that Westlands and Metropolitan water districts are pushing for the larger tunnels in order to get their hands on more water in the future. "It is hard to imagine that the exporters would pay the additional billions of dollars to construct the 15,000 CFS tunnels ... unless the true plan and project is to operate at that level," Friends of the River wrote in a letter to federal water officials earlier this month.

Peltier of Westlands Water District said the agency has

taken no position on the proposed removal of the federal wild and scenic status on the Merced River—or of removing the designation from any other California river. However, the district does support raising Shasta Dam, which would require the lifting of a state wild and scenic protection on the McCloud River.

Moreover, people who have kept close tabs on Westlands over the years say the district has repeatedly made deceptive moves and kept its true motives under wraps in order to further its interests and those of Big Ag. In fact, Westlands owes its current prosperity to a decades-old deception.

Today, Westlands is the largest water district in the nation in terms of acreage. It includes 600,000 acres of desert land on the western side of the San Joaquin Valley that has been turned into an agricultural cash cow thanks to cheap water diverted from Northern California through the Delta. As we reported last week in part one of this two-part series, Westlands began receiving Delta water after a politician bankrolled by the district, US Representative Bernard Sisk, a Fresno Democrat, vowed to Congress in 1960 that the water would allow Westlands to become a bastion for small-

scale family farms.

However, that promise never came true. Instead, Westlands and the factory farms it represents used the huge profits that they reaped from all that water to make sure that the area has remained primarily in the hands of Big Ag. Records show that Westlands and its major growers have spent millions on lobbying and political donations over the past few decades. At the same time, the district has pocketed more than \$1 billion in taxpayer subsidies, according to an exhaustive report on the history of the irrigation district by longtime journalist Lloyd G. Carter that was published by Golden Gate University's Environmental Law Journal.

Westlands not only exerts considerable influence in Sacramento, but it also has plenty of political juice in Washington, DC. The district's primary Beltway lobbyist, Norman Brownstein, is a well-known political power broker. The late Senator Ted Kennedy once dubbed him the "101st Senator."

In 2011, Westlands spent \$160,000 lobbying Congress, and then shelled out more than double that amount — \$360,000 — in 2012, lobbying on issues relating to the US

Bureau of Reclamation and the US Endangered Species Act. The Endangered Species Act protects threatened fish in the Delta and is one the main reasons why Westlands has not received more water from the estuary.

Westlands growers also have contributed heavily over the years to Feinstein and Congressman Costa, the San Joaquin Valley Democrat who is co-sponsoring the bill to remove the wild and scenic designation on the Merced River. In 2011, Costa authored the More Water for Our Valley Act, which sought (unsuccessfully) to weaken the Endangered Species Act and ease restrictions on pumping water out of the Delta. In 2012, he teamed up with Feinstein and Republicans in a push to raise Shasta Dam. And just last month, Costa introduced the More Water and Security for Californians Act, which also seeks to weaken fish protections and increase water exports from the Delta.

Over the years, Westlands also has attempted to sway public opinion in its favor by claiming that water cutbacks from the Delta due to fish protections have caused high unemployment and widespread poverty in the western San Joaquin Valley. But according

to Carter's research, the Westlands area has been plagued by crushing poverty for decades for reasons that have nothing to do with the amount of water flowing to the area. Instead, the region's economic deprivation is primarily the result of giant factory farms employing migrant workers at rock-bottom wages. In 2008, Costa's Congressional district had the dubious distinction of being named the poorest in the nation.

Despite Westlands' ties to prominent Democrats, wealthy, hardline conservatives dominate the district's power structure. Among them is the Borba family, one of the region's largest growers. Earlier this year, Mark Borba, who operates an 8,600-acre farming operation, stirred widespread controversy after he sent obscenity-laced emails to Costa and Westlands Water District officials, referring to President Obama as "Blackie."

After news of the racial slur broke, Borba apologized and was forced to resign from a local hospital board, but the emails also revealed the extent to which some Westlands growers expect politicians to do their bidding after donating to or raising funds for their campaigns. In the 2012 election cycle, Borba contributed tens

of thousands of dollars to various political campaigns, mostly to Republicans, but also to Costa and Feinstein. He also hosted a major fundraiser last year for Feinstein, according to multiple sources. And in an email, which was obtained by the Fresno Bee, Borba revealed what he expected from her in return: "I'm tired of these [expletive] politicians waltzing through here ... telling us how tough things are ... picking our pockets for \$\$\$\$... and they [sic] returning to DC and doing nothing! Put their [expletive] careers on the line ... or step down."

In an interview, Carter said that, based on the long history of Westlands growers, it's a good bet that they have their eyes on North Coast rivers, too. "The point to make is, should we trust these people?" said Carter, who is now the president of the environmental group Save Our Streams Council. "Based on their history, I'd say, 'No.'"

To date, Feinstein has refused to comment on the Borba emails. But late last week, in an op-ed in the Sacramento Bee, she once again pushed for the expansion of Shasta Lake. She also heaped praise on the giant water tunnels plan and talked about the possibility of amending the US Endangered Species Act to allow more

water exports from the Delta.

As for McClintock, he has been quoted in press accounts as opposing the giant water tunnels plan — unless it's accompanied by more dam-building projects. His press office did not respond to questions as to whether he favors damming up the North Coast rivers. But he has been quoted repeatedly as saying that he hopes to “usher in an era of abundance” of water in California. He also supports removing the wild and scenic designation on the portion of the Merced River inside Yosemite National Park. And he has been quoted as characterizing the National Wild and Scenic Act as “truly outrageous bureaucratic red tape.”

For the past several decades, nature enthusiasts have viewed the federal wild and scenic designation as the gold standard for environmental protection. Rivers that received wild and scenic status were thought to be protected in perpetuity. But the McClintock-Costa bill, coupled with the increasing call to raise Shasta Dam and flood a wild and scenic section of the McCloud River, is providing new evidence that no environmental law is sacrosanct. And no river is safe.

At this point, it's unclear whether Feinstein will decide to back HR 934 and then shepherd it through the Senate. But even if she does, and even if the state legislature decides to lift the wild and scenic status on the McCloud, California's beautiful North Coast rivers are not necessarily doomed.

As both critics and proponents of the governor's giant water tunnels plan have noted, it makes no sense to dam up and divert the Smith, Eel, and Trinity rivers — unless the twin tunnels are built. Without that infrastructure, it would be impossible to send millions of acre-feet of additional water through the Delta and then pump it south. So while federal wild and scenic designations could certainly help keep the North Coast rivers safe, the twin tunnels may present the gravest threat to their future.

“If you construct the water tunnels,” noted Stork of Friends of the River, “then it could be politically easier” to remove the wild and scenic designations on the rivers of California's North Coast.

Correction: The original version of this story misstated the length of the proposed water tunnels. They are currently proposed to be 35 miles long -- not 39 miles as we reported. The length we reported came from an earlier proposal of the water tunnels that has since been changed by the Brown administration. In addition, Congressman Jeff Denham first introduced his bill to lift the federal wild and scenic protection on a section of the Merced River in 2011 -- not 2012.