

**A CASE FOR THE REMOVAL
OF MATILJA DAM**

MATILIJIA DAM
AND
THE VENTURA RIVER WATER DEVELOPMENT PROJECT
...AN ONGOING ENVIRONMENTAL TRAGEDY
INVOLVING MAJOR LOSSES OF
PUBLIC TRUST ASSETS

**A BRIEF HISTORICAL REVIEW, DISCUSSION AND ANALYSIS INVOLVING A
STRUGGLE BY THE GENERAL CITIZENRY TO SAVE A VALUABLE SELF-
PERPETUATING NATURAL RESOURCE AND ITS ECOSYSTEM FROM
EXTIRPATION VS. COUNTY, STATE, AND FEDERAL AGENCIES THAT
KNOWINGLY ALLOWED FOR COMPLETE EXPLOITATION AND ALMOST
TOTAL DESTRUCTION OF THE IN-STREAM VALUES OF SUCH
PUBLIC TRUST ASSETS**

BY ED HENKE

JULY 8, 1998

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Executive Summary

*"We cannot escape our history
nor can we escape our future."*

– Abraham Lincoln

*"We cannot expect to solve
today's problems with the same
level of thinking that caused them."*

– Albert Einstein*

*"Those who cannot remember the past
are condemned to repeat it."*

– George Santayana*

*Quotes given by Dr. Robert Behnke, Professor, Department of Fishery and Wildlife Biology, Colorado State University, in "Do We Learn from History?" *Trout*, Spring 1998 issue.

PREFACE

As a long-time advocate for our self-perpetuating native-indigenous cold-water aquatic resources, I became seriously motivated to undertake a critical analysis of the historical facts involving the Ventura River System Water Development Plan, and more specifically, **MATILIJA DAM**. Ventura being my old home town provided me with the necessary vested interest, motivation, and enthusiasm to undertake such a project. In light of being such an advocate, the depth of this critique should not be construed as a disloyalty to the legitimate purposes and needs of society as they pertain to water for domestic, agricultural, and industrial usage. Unfortunately, in our search for such usage, I have determined that we have knowingly strained out the many historical inherent **In-Stream Natural Values** of this River System, leaving them high and dry in favor of **total Out-of-Stream Usage**... What little remains of this river system's historical **In-Stream Values** may be lost forever unless major positive restoration efforts are immediately undertaken.

As the research process became more enlightening and the consequences of human fallibility became more ominous, I felt an intensity and motivation that compelled me to share such findings with others who may be equally motivated to help initiate some positive corrective changes and rehabilitation of a dying valuable natural resource and its entire struggling ecosystem. The complete **removal** of **MATILIJA DAM** and its gigantic pile of silt/sediment/debris will be the greatest initial contribution we can make toward restoration of the Ventura River System's historical **In-Stream Values**. Through my research and rhetorical efforts, I hope that a good measure of total rehabilitation can immediately begin. It takes a hell of a lot of inner strength to deal with remorse and despair, and much of that is required today in dealing with many of the negatives and abuses that have been afflicted upon our natural resource processes.

EMBODIMENT OF PURPOSE AND MOTIVATION

The following reflection begins in 1935, when I was eight years of age growing up in Ventura and living at 559 South Evergreen Drive. Across the street were many miles of agriculture— Mr. Seton's walnut trees and lima beans, and beyond that the Powers' Lemon Ranch. At Pierpont Bay, less than a mile away, was the old Pierpont Pier. To the south Major Max Fleischmann had his vast Las Olivas Old Adobe Gun Club, which in some years was estimated to hold up to 15,000 waterfowl. It was traditional for many town folks to hunt ducks on Thanksgiving and Christmas mornings in public shooting areas adjacent to the Old Adobe, the Santa Clara River bottom, Santa Clara River Estuary, and on the sand dunes between the estuary and the ocean. About two-thirds of the Greater Old Adobe area, consisting of many acres on the ocean end, was densely forested with willows and other trees/undergrowth. This area, which was exclusive of the waterfowl ponds, was a major habitat utilized by all forms of wildlife: crows by the hundreds, peregrine falcons, monkey-faced owls, all types of raptors, pheasants, quail, doves, cotton-tail rabbits, foxes, coyotes, possums, skunks. On the more open fringe areas outside were some additional special creatures such as tortoises, weasels, burrowing owls, white-tailed kites. Steelhead, turtles, bullfrogs, and muskrats were found on the lower end where draining fresh water from the waterfowl ponds created a small stream that exited into the Old Canal, a long, wide body of brackish water surrounded by a thick growth of tules at the neck that connected to the main Santa Clara River Estuary. Adjacent on the southeast side and running parallel was the Santa Clara River, which had great runs of large Steelhead, along with runs of immature adults 12+ inches in length... Old-timers say Salmon also frequented the Santa Clara River System. To the north and up the coast a couple of miles was the beautiful Ventura River as it exited into the sea. It had annual runs of Steelhead and, in the early days, Chinook Salmon, and possibly other Salmon species as well. A Salmon was caught in the Ventura River as late as the early 1940s.

During Steelhead Season (November 15 to February 28) half the town was on the river fishing when the fish were in. This 'happening' also took place at the mouth of the Santa Clara River. It was not uncommon to see people of various ethnic backgrounds lining up together side by side enjoying the great sport of Steelhead fishing. A real camaraderie existed and a bonding took place among people of many ethnic backgrounds, including Native American peoples. My experience with these annual events started at around age nine, and what an adventure and experience it was. I can remember seeing my first Steelhead at the mouth of the Ventura River, and at age 11 catching my first one (about 18 inches long) in the Shell Hole. What other experiences in life can you recall so vividly after 60 years? The first day of Trout Season (juvenile Steelhead mostly) was May 1, and in

- When I was a 7th grader, 13 years of age, the vice principal discharged me from school, accusing me of shooting staples with a rubber band during lunch hour. I was only guilty of shooting paper wads with a small rubber band at swallows. I didn't even know what a staple was. Fortunately, I was able to convince him of my innocence and remain in school.
- Two of our old "Ventura River Rat" (as we referred to our group) friends were John Lorenzana and William "Andy" Anderson. John recently related to me how he and Andy would get up in the early a.m. when the Steelhead were in (1940s) and set out on foot from Simpson Street and head on down to the Old Lumber Mill Hole, which was near the end of Romona Street. On many occasions they would catch their limit of 3 large adult Steelhead and always be back in time to catch the bus to high school. John was a wildlife biologist and rangeland specialist for the US Forest Service for 36 years, retiring in 1993. Note: See photos, page iv-a.
- In January of 1944, my junior year in high school, a group of us drove down to the mouth of the Ventura River during our school lunch hour in Jerry Cardiff's car with our brown bag lunches, gathering up my fly rod and bait in transit. During this lunch hour period, I was able to hook and land 3 large adult Steelhead, 24 inches to 25 inches long, with each weighing approximately 5-6 pounds. We returned to school in time to make our 5th-hour class. Note: See photos, page iv-a.
- In the winter of 1946, at age 19, my brother Ben (age 17) and I were both thrown into jail with no previous records of any kind by an over zealous CDFG enforcement officer by the name of Shebley. We were falsely accused of illegally snagging Steelhead in the Ventura River's Old Cable Hole. This citation took place while we were in the immediate visible presence of Mr. Shebley and two other officers dressed in full uniform—badges, guns, etc.—and standing approximately 30 feet away directly across the river. They were all there for over an hour. My brother had not hooked a fish, and I lost one, which was legally fished and hooked on a number 10 black fly using 4-pound test leader. The fish was lost due a drunk person fishing across from us and next to the officers. He had hooked my line and jerked the fly from the fish's mouth. I gave the drunk a verbal lashing. Within hearing distance was one of my ten future jury trial witnesses, who overheard the officers trying unsuccessfully to get the drunk to be a witness that the fish was illegally hooked. My father hired as my attorney Walter J. Fourt, who later became an Appellate Court judge. Having ten witnesses and testifying on my own behalf, I was found not guilty by jury trial, but it cost me my whole summer's savings—\$150 for attorney fees.
- That following winter, 1947, literally hundreds of very large adult steelhead began expiring in the lower 5 miles of the Ventura River. The only reasons given were low water and drought. To the general public's knowledge, no scientific analysis was ever made on a single fish. Knowledgeable people and old-timers were positive low-

water conditions were not the main contributor to the killing of all of these fish, but that some toxic substance had to be getting into the water course. Some big healthy Steelhead did make it above Foster Park and into Coyote Creek during this period. Oil field sumps were historically located very near the river's edge, with major breaks recorded. Many Steelhead caught tasted of oil. Sewage treatment facilities were also in close proximity to the river, as well as a marine sewer discharge line to the ocean near the Ventura River's mouth. (NOTE: See map page v-a, and photos v-b.)

And now today, 1998, let's take a look at what some young people in our society do for sport and recreation before and after school, and during their lunch hours ... how society and its values, heritage, and traditions, have evolved. The following are recent examples of such from my hometown area of Ventura...

- On 2/25/98, students on a high school bus were terrorized by young hoodlums with a tire iron and a baseball bat. They also unleashed a pit bull dog on the students.
- On 3/2/98, gang members burst onto a campus and cut up and bruised a 16-year-old student ... and, as of 3/2/98, **no arrests had been made!**
- An AP news release of 3/11/98 for Ventura County stated that two young intruders sneaked onto a high school campus during lunch hour and stabbed two students. This was the fourth gang-related incident on or near every campus in the county.
- Published estimates state that 2,000 young people will go through Ventura County's Juvenile Hall this year... That will be over 13% of the total population of the City of Ventura when I was growing up.

Nearly twice as many teenagers reported gangs in their schools in 1995 as they did in 1989, and the number of students victimized by violent crime increased nearly 25%, as reported by the U.S. government on 3/12/98.

Being a three-sport athlete at Ventura High and 14 years as a professional athlete, I cannot describe in words how adversely emotionally affected I was by reading the following AP release - San Diego, of April 23, 1998, which in part related the following: A 15-year-old freshman junior-varsity baseball player was assaulted and sodomized with a broomstick in the gym's locker room by three of his fellow 16-year-old teammates, who all pleaded guilty to the rape. "The sentencing judge said the school had a 'culture (of) raping type activity known by the coaching staff and thought to be acceptable...conduct by student athletes.'" What's equally disturbing is that the AP caption for this article refers to the act as: "school hazing." I can't describe the utter contempt that I feel for this whole situation and what has happened to the values, heritage, and traditions of my time compared to today. This 'school hazing' that has become 'established acceptable culture' within this specific segment of our society is well beyond my comprehension. We have all but

MYSTERIOUS AND DOCUMENTED KILLS OF LARGE, HEALTHY ADULT STEELHEAD IN VENTURA RIVER

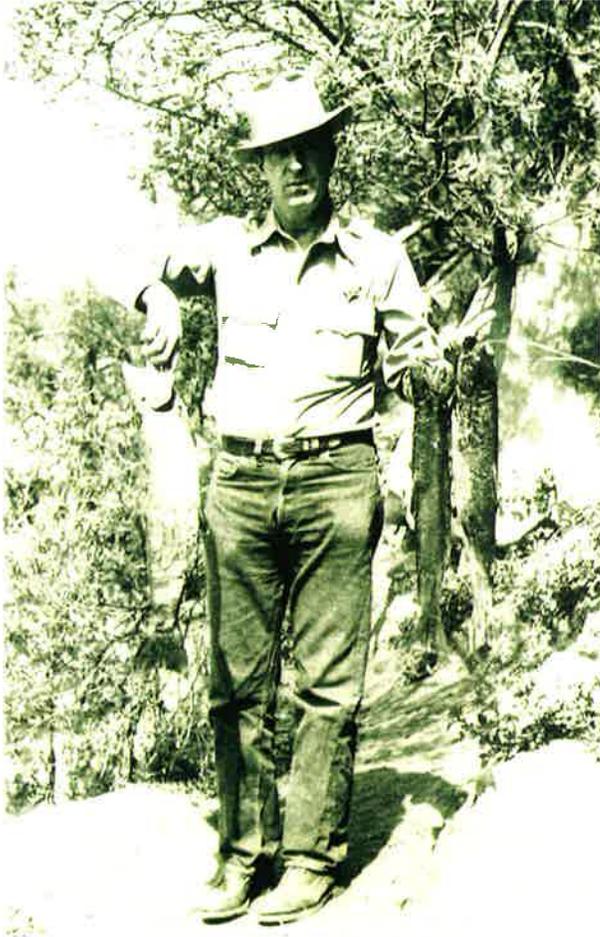


PHOTO COURTESY OF JACK GRUELL

LEFT: Noted 3/25/47 by Jack White, Ventura County Game Warden, holding 3 large adult Steelhead that expired below Foster Park in the Ventura River. Pools and banks of the river were lined with dead Steelhead over an approximately 5-mile stretch of river.

RIGHT: Noted 3/5/56 by CDFG Game Warden William McGuire, holding 2 adult Steelhead, 29", 7½ lbs., that he noted had been killed by toxic ammonia released into the Ventura River by the Shell Chemical Company. Such toxic discharges prevented any life form from existing from point of discharge to the sea, 2.5 miles.



PHOTO COURTESY OF MARGIE MCGUIRE



Photo of May 2, 1994
A short distance down the Ventura River from area shown in next photo below.



Photo of May 2, 1994 taken from the Old Highway 101 Bridge looking down the Ventura River.

PRECEDENCE FOR DAM REMOVAL

1. **THE NATIONAL PARK SERVICE HAS REMOVED MORE THAN 100 DAMS ON RIVERS AND STREAMS.**
2. **THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES HAS BEEN INVOLVED WITH THE REMOVAL OF 15 DAMS FROM WISCONSIN'S RIVERS AND STREAMS.**
3. **ON NOVEMBER 25, 1997, THE FEDERAL GOVERNMENT, FOR THE FIRST TIME, ORDERED THE REMOVAL OF EDWARD'S DAM, A HYDROELECTRIC DAM IN AUGUSTA, MAINE, TO ALLOW ANADROMOUS FISH, INCLUDING ATLANTIC SALMON, TO SWIM UPSTREAM TO THEIR HISTORICAL NATURAL SPAWNING AND REARING HABITAT. The Atlantic Salmon are like our Southern Steelhead—they don't expire following their spawning ritual and are capable of multiple spawning and reproductive runs following additional recuperation periods at sea.**
4. **IN JANUARY 1998, THE QUAKER NECK DAM IN GOLDSBORO, NORTH CAROLINA BEGAN COMING DOWN. The results of this decision will soon provide 75 miles of the Neuse River's main course and 900 miles of its tributaries that multiple species of anadromous fish historically had access to complete their spawning/reproductive cycles.**
5. **SENATOR PATTY MURRAY (D-WASHINGTON) AND REPRESENTATIVE RICK WHITE (R-WASHINGTON) WANT THE FEDERAL GOVERNMENT TO SPEND MORE THAN \$100 MILLION TO DEMOLISH 2 DAMS ON THE ELWHA RIVER IN WASHINGTON, GLINES CANYON DAM AND THE ELWHA DAM, TO RESTORE THE MAJOR LOSSES OF ANADROMOUS/MIGRATORY SALMONIDS. Secretary of the Interior Bruce Babbitt has expressed his goal of presiding over the destruction of these 2 dams. In his State of the Union address, President Clinton proposed spending \$52 million to tear down the Glines Canyon Dam.**
6. **THE GOVERNOR OF OREGON, JOHN KITZHABER, THE OREGON DEPARTMENT OF FISH AND WILDLIFE, THE NATIONAL MARINE FISHERIES SERVICE, AND OTHERS HAVE RECOMMENDED THAT THE SAVAGE RAPIDS DAM ON THE ROGUE RIVER BE REMOVED. This will allow many more thousands of anadromous/migratory Salmonids, including Coho Salmon, protected under the Federal Endangered Species Act to reach a portion of their historical spawning and rearing habitat and for smolts to successfully exit to the sea. . ON JANUARY 9, 1998, COLONEL ROBERT T. SLUSAR, U.S. ARMY CORPS OF ENGINEERS, ADVISED THE GENERAL PUBLIC OF THE CORPS' RECOMMENDED ACTION TO REMOVE/BREACH A PORTION OF A HALF-BUILT ELK CREEK DAM ON ELK CREEK, TRIBUTARY OF THE ROGUE RIVER. This recommended action to remove/breach a portion of the dam's wall was to allow the Elk Creek channel to become realigned with its original alignment and gradient. The**

The focus of this portion of the presentation will now change from amplifying on the many negative aspects resulting from ongoing changes in cultural values, heritage, and traditions to citing a very succinct example of a current real life correction in course, bringing together youth and quality adult leadership to resurrect the true meaning of stewardship and caretaker responsibilities for our natural resources. They have also extended this process to include society as a whole. The following is an article appearing May 29, 1998 in the *San Francisco Chronicle*, by staff writer by George Snyder, titled "The Fishery Kings—Trout Hatchery Spawns Environmental."

If the dusk and dawn waters of Marin's Tempe and Lagunitas lakes seem to dimple with more and bigger trout these days, there is an explanation: There really are more big fish.

Credit wildlife students from Casa Grande High School in Petaluma for 85 hefty, 2- and 3-pound rainbow trout released this month into the scenic public water supply and fishing impoundments on the northwest side of Mount Tamalpais.

The trout, surplus hatchery fish, were donations from the state Department of Fish and Game last year.

Casa Grande wildlife teacher Tom Furrer used the trout to instruct his newer students in operating the \$500,000 state-of-the-art fish hatchery that he, and successive waves of students, have built on campus with money from bake sales, donations and awards.

But as appealing as the idea of youngsters planting hatchery-raised trout might be to armchair conservationists, Furrer and his students are heir to a greater, more profound vision: that wild habitat is irreplaceable, and that hands-on, grassroots environmental stewardship is the front line in the struggle to preserve the restore what remains of the natural web of life.

"It has to do with changing perceptions and getting the kids out there in the natural world," Furrer said. "It's figuring out ways of letting them realize they can do something to help both nature and themselves." Furrer believes—as do the many North Bay teachers involved in hands-on wildlife education—that the fear of environmental disaster looms large in teenage minds already concerned about an unsure world and their place in it.

"But once they understand the subtle responsibility of environmental stewardship," he added, "the kids want to do something about it."

In 1983, Furrer's students formed the only high school chapter of the United Anglers national conservation group after deciding to restore nearby Adobe Creek. After 100 years of abuse, the once fish-filled, shaded stream was reduced to no more than a littered storm drain.

For years the group planted 1,200 trees annually. It cleaned up a stream bed and had more than 30 tons of debris trucked away. And it prodded local officials to remove spawning obstacles and an obsolete water diversion dam.

Today, Adobe Creek has at least five new miles of shaded water, and the steelhead runs are back.

On May 22, the students also released nearly 4,000 imprinted salmon fingerlings into San Francisco Bay near Tiburon, as they have for previous years. The releases have succeeded in returning a small salmon run in the Petaluma River watershed.

Steelhead and some salmon species, particularly coho, are considered endangered or threatened throughout much of their range along the Pacific Coast.

WAITING LIST TO JOIN:

Furrer's dedication — 12-hour days, seven days a week — and the enthusiasm of the 163 students in his five wildlife classes, has prompted intense local interest.

Although students have to be in one of his wildlife classes in order to join the United Anglers chapter, not every student gets one of the coveted 20 chapter slots available.

"There's a waiting list," Furrer said. "Parents with kids in elementary school are calling to reserve a spot for when they get into high school. The kids have to be 100 percent interested, take tests and go through a pretty rigorous selection process in order to join."

The intense interest, the students said, comes from a clear and growing desire among many youth to restore as much of the local ecology as possible.

"My interest in the creek project came through my family and my older sister who had been involved," said 18-year-old Casa Grande senior Mike Gold, who has been involved with the group for four years.

"It is my love for the outdoors and for fishing that makes me want to save fishery resources in the area," he said. "If we don't do it now it will be too late."

<p style="text-align: center;">OUTLINE DISCUSSION OF DOCUMENTATION</p>

1. In 1941 the Secretary of War Henry L. Stimson introduced to Congress an evaluation made by the U.S. Corps of Engineers on flood control/water storage projects for the Ventura River System as advocated by Ventura County officials, which was for dams in 4 different locations to provide for flood control and water storage. The request received a negative response by the Corps as not being cost-effective, nor would it provide the necessary flood control, and this message was delivered to Congress by Mr. Stimson. A bond issue in 1945 was passed by Ventura County voters approving the Ventura River Water Development Project. Such bond issues had been defeated on 2 previous occasions. Some citizens were concerned about the various proposed dam sites as not being safe.

2. On January 2, 1946, the Ventura County Sanitation Engineer wrote to the California State Department of Natural Resources, Division of Fish and Game advising of the City's plan to introduce high concentrations of chloride into the Ventura River through their Water Filtration Plant. The engineer posed various questions about fish life in the river and what effect the chloride might have on Steelhead runs. Response to this question was: *"I do not believe that anyone is in a position to answer your question concerning the effect of high chloride content of the lower-most 2.5 miles of river on Steelhead runs."* Ironically, and with great misfortune, hundreds of large, healthy appearing adult Steelhead expired in the lower Ventura River prior to spawning during the 1946-47 winter. No scientific studies were made on the fish to determine the actual cause of such a great number dying prematurely in one stretch of river. Low water and drought were the only reasons given. Note: See photos, page v-b.

3. Matilija Dam construction started on June 18, 1946; the sluice gate was closed on March 14, 1948, and the Reservoir did not fill until 1952. Almost immediately engineering problems plagued the construction. Ventura County sued the construction firm and lost, including a \$33,000+ court assessment. County monies then had to be siphoned off from the proposed Casitas Dam project to complete Matilija Dam.

4. A Fish-way/Fish-ladder was started, with future successful functioning capabilities remaining in much doubt.
 - 4.1 On December 9, 1946, the California Division of Fish and Game filed a protest, which in essence stated that the needs for the survival of the native resident trout and anadromous/migratory Southern Steelhead was a meager ½ cfs to 2 cfs of water releases below the dam. This request for minimum flow requirements was most certainly not an accurate scientific assessment of the resource's needs.

10. The August 5, 1948 edition of *Engineering News-Record* contained an article titled "Matilija Dam Troubles," by author Randall Cremer, Vice President of Frederick Snare Corporation, Ojai, California, which elaborated on the Matilija Dam problems from both a monetary and a societal point of view: The State would not allow water to be stored above the elevation of 1,050 (spillway crest 1,125 elevation); engineers resigned upon request and were now defendants in an action filed by the Ventura County Flood Control District for recovery of damages in excess of \$1 million and such promised to be a major scandal in the engineering profession; the original estimate of \$800,000 and now repair costs of over \$2.2 million (actual amount submitted to voters to 1945 bond issue for Matilija Dam was \$682,000). The impression given to the general public was that increased costs were due to abutment problems, but there were many factors, such as the "shear plane," not in the original design and added at the insistence of the State. Various increases in quantities and guesses on other needs.
11. On July 25, 1949, the California Division of Fish and Game announced a major kill of trout and other species in the Matilija Reservoir and attributed it to low water, hot water, and mineral content of the water ... killing both native indigenous and non-indigenous species. Such reservoir waters are referred to by biologists as "biological deserts."
12. In a communication of March 7, 1950, the Ventura County Flood Control District made a declaratory statement that indicates their total mandate is to protect its water rights and that, in order to do so, it would be necessary not to allow water (free water) to flow past Foster Park, and if so, it's to be considered wasted water. Again, on July 14, 1952, a communication from Hydraulics to Flood Control stated that releases from Matilija Dam to be made at such a rate that none would waste past Foster Park. Foster Park is 5+ river miles from the sea.
13. A Southern California official with the California Department of Fish and Game in an intra-office memorandum of July 2, 1953 indicated that the game was over to try and save anadromous/migratory species of fish and a penned-in note to this memorandum describing the recommended mitigation for such losses: "*K-Mart approach to game management. Keep the shelves stocked ... The customer knows best.*"
14. In May 1954, the U.S. Fish and Wildlife Service presented a preliminary report on fish and wildlife resources affected by the proposed Ventura River Water Development Project. This was not an accurate and complete assessment of the native indigenous anadromous/migratory Salmonids of the Ventura River System: It did not define the extent of their historical natural habitat, no references were made to estimated population densities, etc., etc. No mitigation was recommended for the Casitas Dam project, and a very doubtful future for the Southern Steelhead was espoused by the U.S. Fish and Wildlife Service. This was truly a behind-the-desk assessment. Possible future fish passage facilities at the Robles Diversion-Dam Canal on the main Ventura River

- 18.3 An article appearing in the *Engineers News-Record* of April 22, 1965 titled "Concrete Arch Must Undergo Surgery" discussed the many failing structural features of Matilija Dam's 163-foot concrete arch: the internal swelling; external cracking; disintegration in the dam's concrete wall, upper 20-30 feet; safety factor of concrete well below acceptable minimum levels for such arched dams; movements of both abutments during dam's lifetime. This preceding statement of facts and accounting was published as noted by a society of professional engineers.
- 18.4 In late 1965 due to ongoing deteriorating effects taking place by the presence of alkali-aggregate (reactive aggregate) in the upper dam wall creating geological instability, engineers cut a 30-foot notch 280 feet wide in the central portion to alleviate strain. This cut the Dam's original capacity by 45%. The Dam's usefulness has been steadily heading to the very bottom, but its silt/sediment/debris is rapidly heading to the top.
- 18.5 The primary advertised purposes of the 1945 bond issue was to build Matilija Dam for "water storage and flood control." As the Army Corps of Engineers had indicated in their Report to Congress in 1941, the dam would not provide the necessary flood control, nor was it a cost-effective undertaking, and it was now compounded by filling with silt/sediment/debris. The dam filled early in the 1969 flood period and the dam had little effect on the peak attenuation during this period: No flood protection! Within 17 years, the Matilija Dam was rendered almost useless for its two 1945 bond issue advertised purposes: flood control and water storage. Also, recreation is out!
- 18.6 A 1972 study by the International Engineering Company, Inc. determined that an earthquake of 6.5-7 would threaten the integrity of the Matilija Dam's footbridge.
19. The Chief, Anadromous Fisheries Branch, California Department of Fish and Game stated in correspondence of March 21, 1972 and also on April 1, 1972 that it would cost \$1 million annually to provide adequate flows to restore Southern Steelhead with water, spawning habitat, and living space ... and that 20 AF of water annually would be required: 50 cfs January-March and 20 cfs April-December, with \$1.1 million total cost to restore the historic runs of Steelhead in the Ventura River System. These quoted needs by the top administrative official in this branch of the California Department of Fish and Game is in stark contrast to the one issued by the California Division of Fish and Game in 1946 at the time the Matilija Dam was being constructed. This prior 1946 document stated that minimum requirements of not less than ½ cfs to 2 cfs were necessary to keep the prior historic anadromous/migratory and resident Salmonid fishery, which included an estimated annual run of 5,000 adult Southern Steelhead and the many thousands of their progeny in good condition, which was legally required per Section 5937 of the California Department of Fish and Game

23. A news release by the California Department of Fish and Game Region V office of May 20, 1974 identified major kills of river fish, marine fish, and other aquatic life-forms numbering in the several thousands... The State Regional Water Quality Control Board stated that chlorine from the Oakview Sanitation District Plant was the prime suspect, but couldn't prove it. The kills took place from the Oakview Sanitation District Sewage Treatment Plant outfall for some 2.5 miles to the sea/Ventura River mouth. California Department of Fish and Game enforcement officer said it was one of the worst kills he'd ever seen.
24. The U.S. Fish and Wildlife Service Biological Services Program published "Assessment of Efforts of Altered Stream Flow Characteristics on Fish and Wildlife, Part B, California Case Studies" by Jones and Stokes, Inc. (Contractors), Sacramento, California, December 1976, Case Study 74. An excerpt from page 565 indicated that immediately prior to the construction of Casitas Dam there was no record of Steelhead migrations into the Ventura River and Coyote Creek. This was a completely erroneous statement. If any studies were referenced/documented, or any personal communication recorded, they are 100% inaccurate. Going on 5 years now I have been conducting historical research involving anadromous/migratory Salmonids in the Southern California area, and have pictures and a number of oral history subjects who witnessed numerous Southern Steelhead trying to skirt the Casitas Dam spillway wall, as well as catching Steelhead in both the main Ventura River and Coyote Creek during this period.... One of my oral history subjects stated he saw two Steelhead make it over the spillway wall during the 1958 winter period. Also, on page 567 of this document, it stated that because there was no record of Steelhead migration immediately prior to the dam construction, no mitigating features or **In-stream Flows** were included in this project development. What a violation of **Public Trust** responsibility by the State of California and its Resource Agency/ Department of Fish and Game.
25. In 1978, the County dynamited a cement walkway that bridged the Matilija Dam, and they also extended the previous notch for purposes of the dam's safety.... The dam's concrete wall continues to deteriorate.
26. Documentation of February 14, 1979 involving the State Water Resources Control Board and the Casitas Municipal Water District begins the findings on the Conjunctive Use Agreement between the Casitas Municipal Water District and the City of Ventura to divert more Ventura River water through the Robles Diversion-Dam Canal to the Casitas Reservoir. Much State and Federal agency correspondence is quoted within this presentation that amplifies on the need to protect the natural resources of the Ventura River system, but it was only empty rhetoric. More **Public Policy** violations in the offing, and **In-Stream Values, Public Trust Assets,** continue to plummet.

31. On June 24, 1998, the Federal 9th Circuit Court of Appeals ruled that the Bureau of Reclamation had violated the Federal Endangered Species Act by not considering the ecological effects when issuing water contracts for Friant Dam water (San Joaquin River). **The Court ruled that the Bureau must follow the California Department of Fish and Game Code, which requires water development projects to provide water for fish. This will apply to all dams in California: Section 5937, California Department of Fish and Game Code.**

COMPELLING REASONS WHY MATILIJA DAM AND ITS RESERVOIR OF SILT / SEDIMENT / DEBRIS SHOULD IMMEDIATELY BE REMOVED

1. **FOR GENERAL PUBLIC SAFETY...** The reservoir was completely drained for the second time in May 1997 to make additional core samplings to determine the extent of ongoing deterioration of alkali-reactive aggregate in the dam's concrete wall, with County officials and State Dam Safety conducting operations. At least 6 strategically located strain devices on the dam's wall have recorded/registered ongoing movements, and those responsible are unable to clearly define what such movements mean except that there is movement. The dam wall has been significantly notched and the cement walkway dynamited out. A paid scientific evaluation indicated to the County that an earthquake of a magnitude of 6.5-7.0 would threaten the dam's footbridge.
 - Sepulveda Canyon Dam (earth-filled, 2 feet thick reinforced concrete core) Sawtelle (Los Angeles area) failed in 1914 due to overtopping.*
 - Sheffield Dam-Mission Ridge Reservoir (earth-rolled, 4-inch concrete upstream side) on Sycamore Creek, Santa Barbara, collapsed in 1925 as the result of an earthquake slide.*
 - St. Francis Dam (concrete) on San Francisquito Creek, Los Angeles, collapsed in 1928 due to structural failure, and caused loss of life and \$13.5 million property damage to the Santa Clara River Valley.
 - Baldwin Hills Dam (earth-filled), Baldwin Hills (Los Angeles area) ruptured in late 1963 due to fluid extracation and resultant subsidence created by nearby Englewood oil field. There were 5 deaths and \$10 million in property damage.*
 - Casitas Dam (earth-filled) on Coyote/Santa Ana Creeks, Ventura, will soon have \$20 million of additional earth-filled fortification for seismic safety purposes.
 - Cachuma/Bradbury Dam (concrete) on the Santa Ynez River, Santa Barbara seismic safety work has already begun and the U.S. Bureau of Reclamation advised it would take 2 more years to finish at a cost to tax payers of \$41.5 million.

2. **IT IS BOTH A MORAL OBLIGATION AND LEGAL OBLIGATION...** Both the State and Federal governments have knowingly violated their **Public Trust** responsibilities by accepting extirpation as an alternative for the many historical natural **In-Stream Values** possessed by the Ventura River's ecosystem. Terms for the Matilija Dam's construction/placement/operation and the ultimate results are at the centerpiece of such accusatory violations.

* Archives, National Performance of Dams Program, Department of Civil and Environmental Engineering, Stanford University

replenishment processes, as well as depriving the ocean's coastal ecosystem with its annual supply of essential organic nutrients.

A report by S.F. State indicated that in California beaches are the No. 1 tourist attraction, bringing 500,000 jobs and \$1.1 billion annually to the state. Santa Monica and Venice attract 20 million tourists annually. Just in Los Angeles County, 31 miles of once sandy beaches have slowly disintegrated over the years, and now, after 60 years of artificial renourishment, the supplies have run out. New sand and the attendant costs will be hard to come by, and combined with more El Niños, a very serious and grim future could be in store for this major socio-economic resource. Removal of Matilija Dam and Rindge Dam (Malibu) should be No. 1 priorities.

8. **THERE ARE APPROXIMATELY 20 STREAM MILES ABOVE MATILIJDA DAM THAT HISTORICALLY PROVIDED A MAJOR PORTION OF THE FINEST SOUTHERN STEELHEAD SPAWNING/REARING AND CRITICAL LIVING HABITAT/REFUGIA AREA OF THE ENTIRE VENTURA RIVER SYSTEM FOR BOTH THE RESIDENT AND ANADROMOUS FORMS OF THIS SPECIES, AS WELL AS FOR SALMON AND LAMPREY EELS...** Historically, these were all major food sources for the native indigenous peoples, and the anadromous/migratory Salmonids were the centerpiece of the inherent In-Stream Values that the Ventura River System historically possessed.
9. **THE FEDERAL GOVERNMENT DECLARED THE SOUTHERN STEELHEAD AN "ENDANGERED SPECIES"...** Under the Federal Endangered Species Act, at the time of listing and as required by the "Act," all waters above Matilija Dam should have been declared as "CRITICAL HABITAT."
10. **A PRESIDENTIAL-APPOINTED BODY RECOMMENDS REMOVAL OF DAMS THAT NO LONGER SERVE A JUSTIFIABLE PURPOSE...** This is one of six recommendations made by this austere group of scientists recommending that a review should be made of the utility of existing dams.

“He that will not apply new remedies must accept new evils, for time is the great innovator.”

— Francis Bacon*

* As quoted in *American Rivers*, Winter 1997.

CONCLUSIONS AND RECOMMENDATIONS

FEDERAL, STATE, AND COUNTY OFFICIALS ABDICATED PUBLIC TRUST RESPONSIBILITIES BY KNOWINGLY ALLOWING THE FOLLOWING TO TRANSPIRE:

- NO COMPREHENSIVE PLAN WAS DEvised TO ENSURE THE SURVIVAL OF THE NATIVE SPECIES OF FLORA AND FAUNA INDIGENOUS TO THE VENTURA RIVER SYSTEM.
- NO WATER WAS TO GO PAST FOSTER PARK.
- NO WATER WAS LEFT TO MAINTAIN HISTORICAL IN-STREAM VALUES IN COYOTE CREEK OR THE VENTURA RIVER/MATILJA CREEK.
- NO FISH-WAY/FISH-LADDER OR FISH-SCREEN WAS CONSTRUCTED AT THE ROBLES DIVERSION-DAM CANAL.
- NO CONVEYANCE SYSTEMS WERE CONSTRUCTED FOR MIGRATION/EMIGRATION OF ANADROMOUS/MIGRATORY SALMONIDS TO ALLOW THEM ACCESS TO/FROM THEIR MAJOR HISTORICAL SPAWNING/REARING HABITATS ABOVE THE MATILJA DAM ... OR CASITAS DAM.

GENERAL CITIZENRY SUBMISSIONS RELATIVE TO DISPOSITION OF THE MATILJA DAM WALL AND ITS IMPOUNDED SILT/SEDIMENT/GRAVEL/DEBRIS:

- IMMEDIATELY START REMOVING THE MATILJA DAM WALL AND ITS IMPOUNDED MATERIALS, UTILIZING ALL OF THE USABLE PORTIONS TO REFORTIFY THE CASITAS DAM'S EARTH-FILLED WALL, TO MEET PRESENT ESTIMATED SEISMIC SAFETY RETROFITTING REQUIREMENTS. THIS WOULD OVERCOME TWO PRESENT RECOGNIZED SOCIAL NEGATIVE CONDITIONS/IMPACTS AND MAY PROVE TO BE THE BEST CHOICE ENVIRONMENTALLY, ECONOMICALLY, AND FOR SAFETY TO THE GENERAL CITIZENRY: REMOVAL OF MATILJA DAM AS A MAJOR PUBLIC NUISANCE AND BARRIER TO 20 STREAM MILES AND REFUGIA AREA OF HISTORICAL SIGNIFICANCE AS A SPAWNING AND REARING HABITAT FOR THE VENTURA RIVER'S SOUTHERN STEELHEAD; REMOVAL WOULD PROVIDE ALL OR PART OF THE NEEDS TO MAKE CASITAS DAM A MORE SEISMIC-SAFE STRUCTURE; ELIMINATE ALL OR PART OF THE PENDING DAMAGE THAT WILL RESULT FROM THE PLANNED EXTRACTION OF 1.2

CLOSING STATEMENT:

The **MATILIJA DAM** is like an old rusty gate that won't open. For a 52-year period it has locked out many original natural inhabitants from reaching their historical home of many thousands of years and all but extirpated the many **In-Stream Values** of the Matilija Creek/Ventura River System. It's now time to swing the gate open by removing this major, deteriorating, manmade **PUBLIC NUISANCE** and its mountain of silt/sediment/debris. This would allow the many very valuable natural occurring life-forms to carry on with development of essential biodiversity factors necessary for survival of the species. In essence, we would be responsible for the resurrection of these many **In-Stream Socio-Economic Values**: the Southern Steelhead, the native indigenous species of flora and fauna of the Ventura River's ecosystem, and other. We have overdrawn the account, and it's time to start replacing the principal ... and what better time is there to start giving back. Restoration of this portion of the Ventura River System and to the sea is a moral imperative.

... A RIVER WITHOUT WATER IS A RIVER WITHOUT A SOUL.

For a complete copy of "A Case for the Removal of Matilija Dam," or for elaboration of any portion of this Executive Summary, contact author Ed Henke at:

**769 Lisa Lane
Ashland OR 97520
541-482-9578 (phone)
541-482-5554 (fax)**

**A CASE FOR THE REMOVAL
OF MATILJA DAM**

"MATILIJIA DAM"
AND
THE VENTURA RIVER WATER DEVELOPMENT PROJECT
...AN ONGOING ENVIRONMENTAL TRAGEDY
INVOLVING MAJOR LOSSES OF
PUBLIC TRUST ASSETS

**A BRIEF HISTORICAL REVIEW, DISCUSSION AND ANALYSIS INVOLVING
A STRUGGLE BY THE GENERAL CITIZENRY TO SAVE A VALUABLE
SELF-PERPETUATING NATURAL RESOURCE AND ITS ECOSYSTEM FROM
EXTIRPATION VS. COUNTY, STATE, AND FEDERAL AGENCIES THAT
KNOWINGLY ALLOWED FOR COMPLETE EXPLOITATION AND ALMOST
TOTAL DESTRUCTION OF THE IN-STREAM VALUES OF SUCH
PUBLIC TRUST ASSETS**

BY ED HENKE

JULY 8, 1998

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PART I: HISTORICAL REVIEW¹

1. **S:** This synopsis of history and personal responses to the various findings, combined with a broader scope analysis, will commence with a Federal document created in 1941.

On July 19, 1941, the 77th Congress, First Session, House of Representatives, Document No. 323 was introduced by letter to the Speaker of the House by the Secretary of War, Henry L. Stimson. The Secretary was transmitting the contents of a letter and report dated April 25, 1941 from the Chief of Engineers, U.S. Army, on a preliminary examination and survey of the VENTURA RIVER, Ventura County, California authorized by the FLOOD CONTROL ACT approved August 28, 1937, and of Ventura Harbor, California, authorized by the FLOOD CONTROL ACT approved June 22, 1936. The following are extractions from this document found to be relevant to this presentation, with the points and page numbers referenced to document No. 323...

- Point 2, page 2... *"The District Engineer has investigated several possible flood control plans, including those suggested by local interests. He finds that most of the flood losses have occurred in two sections, in and near the City of Ventura on the lower Ventura River, and in the City of Ojai below Stewart Canyon, and that flood control is not justified for other than these sections. He reports that reservoirs either for flood control alone or for flood control and water conservation, as desired by local interests, are impracticable due to excessive costs."*
- Point 36, page 15... *"A public hearing was held in Ventura, California, October 19, 1937, which was attended by about 90 persons, including local, city and county officials, representatives of the State, the U.S. Department of Agriculture, and various civic organizations, as well as the general public. The hearing disclosed, in general, the local interests desired:*

"a. Improvement for flood control of the channel of Ventura River from the ocean to a point 15.4 miles upstream, which is near the base of the mountains.

¹ NOTE: **S** = Statement having relative significance to this historical research presentation.
R = Response by the presenter to the implications of the statement.

- Point 46, page 18... *"Preliminary studies indicated that use of the Foster Park Dam and Reservoir located on Ventura River, at river mile 6, below all important tributaries, might be warranted as a multi-purpose project for flood control and water conservation combined.... It was found that the foundation and abutments are poor and that a Dam at this site would be costly."*
- Point 62, page 23... *"The Ventura Avenue oil fields and rural and suburban territory along the river north of the city, and the city itself, are served by the city's system, principally from the supply diverted from Ventura River at Casitas Narrows. During several years, demands have exceeded the supply from the Ventura River.... Efforts have been made to provide storage on Coyote Creek, but the proposed Bond Issues for this purpose have been defeated at the polls. The City of Ventura, through a resolution adopted by its city council, dated February 26, 1940, endorsed plans and a program for flood control by means of a reservoir, especially when coupled with a project to conserve water, and to improve and ensure the supply available for municipal water supply."*
- Point 64, page 23... *"Reservoirs on the tributaries of the Ventura River would not provide adequate protection against floods on the lower River because only a small part of the run-off would be intercepted by such reservoirs."*
- Point 65, page 23... *"A Reservoir on the main stream at Foster Park for flood control and water conservation combined was also found to be too costly."*

R: In the past, the U.S. ARMY CORPS OF ENGINEERS has been referred to as the ELEGANT DESTROYERS. They had earned this unflattering reputation through an onslaught of DAM building and concrete channelizing projects. In this case, they did not recommend any DAM projects on the VENTURA RIVER SYSTEM... Flood protection plans were recommended for the lower city end of the VENTURA RIVER and in the Ojai area below Stewart Canyon, and even both of these projects were justified by reason of intangible benefits (subjective) being applied to their cost-benefit-ratio-analysis (per point 82, d, page 27). By virtue of such a reputation and fetish toward building water development projects, and then not recommending the building of 4 DAMS on the VENTURA RIVER SYSTEM that Ventura

3. **S:** In December 1945, Ventura County contracted with the Donald R. Warren Co. Engineers and the Atkison-Kier-Bressi & Bevanda for the construction of MATILIJIA DAM.

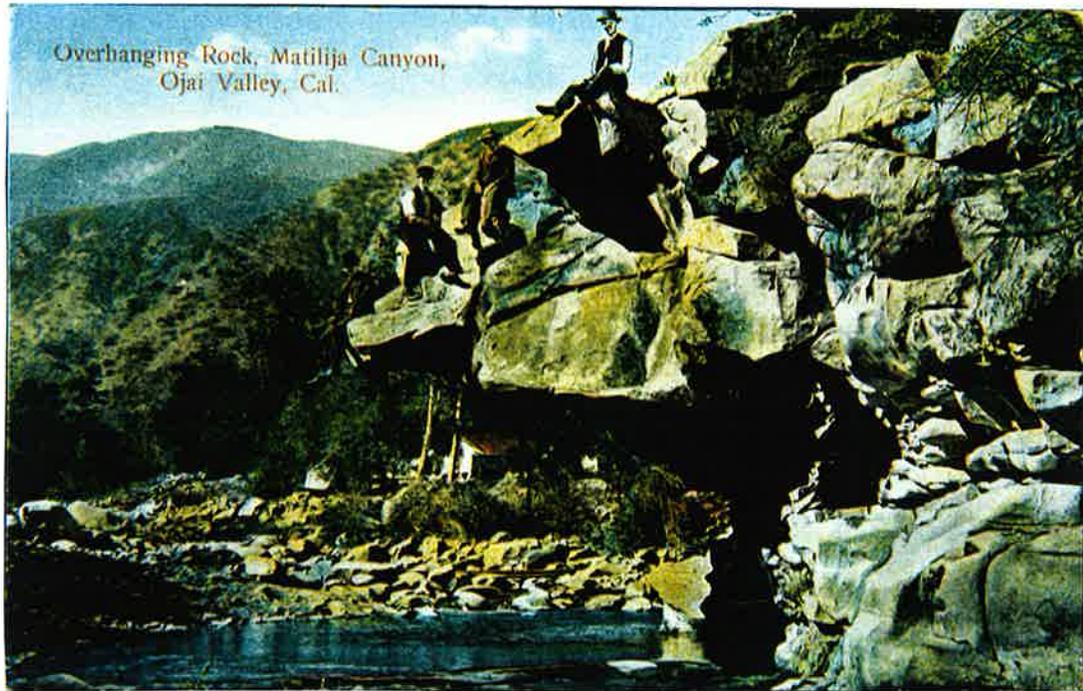
R: The 1945 year and a number of years prior had not experienced drought conditions, so this BOND ISSUE was not based for the most part not upon present needs but to encourage future growth and development at the expense of a resource that had already been limited in its ability to self-perpetuate. Also, a lessening in the quality of life had been laid for its inhabitants.

4. **S:** On January 2, 1946, the Ventura City Sanitation Engineer wrote a letter to the California State Department of Natural Resources, Division of Fish and Game, Stanford University. In this letter he advised the recipient that the City of Ventura was planning to change the method of softening their water supply from the existing lime/soda ash to zeolite and that they would like to dispose of the future waste in the Ventura River at least 2.5 miles above the river's mouth. He asked: What kind of fish are found in the Ventura River; if and where fish are during summer months; approximate minimum flow during the runs; if a sandbar builds across the mouth during the summer months, and if so, do fish remain behind the bar. Also, he asked what would be the effect of 2.5 miles of water with high chloride content on Steelhead runs.

The Division of Fish and Game responded, giving a healthy two-page reply plus attachments on January 3, 1946. His response was that it was not as complete as he'd like it to be: didn't know about the sandbar situation, stream flow conditions for runs of Steelhead, what fish were behind sandbar, and, most significantly of all, stated: *"I do not believe anyone is in a position to answer your question concerning the effect of high chloride content of the lowermost 2.5 miles of river on steelhead runs."*

R: Ironically, hundreds of large, healthy-appearing, adult Steelhead expired in the lower Ventura River during the 1946-1947 winter period. This I personally witnessed, along with many other Ventura residents. The only reasons given were low-water and drought year. However, many very large, healthy, adult

YESTERYEAR



COURTESY OF JIM CAPITO ARCHIVES

Photo of Overhanging Rock in Matilija Canyon taken prior to 1905. This historical Ventura County landmark, located in the Los Padres National Forest, public lands, was dynamited and destroyed in 1946 to make room for the ill-conceived construction of Matilija Dam and its concrete wall.



BATHING AT LYON SPRINGS, MATILIJA CANYON, NEAR NORDHOFF, VENTURA CO., CALIF.

COURTESY OF JIM CAPITO ARCHIVES

A photo capturing one of the many historical IN-STREAM SOCIAL VALUES lost after the early 1900s. Matilija Creek... just upstream from the Matilija Dam

OF SUPERVISORS that the Santa Clara River sand used in the DAM'S construction might result in disruption and eventual failure. Also, he expressed serious doubts about the selection of Santa Clara River aggregate, all of which may create a deteriorating effect in the concrete when combined with the alkali in the cement (alkali-reactive aggregate). He cited numerous failures within the county: Rincon seawall, Montalvo Highway bridge, Ventura Junior High School, and streets and highways. The County's surveyor responded by saying that the question was so controversial in nature that no precaution could be said to guarantee results. Donald R. Warren, supervisory engineer for construction of MATILJA DAM, said rigorous tests had been applied and passed by the State... It was "full speed ahead."

R: The many serious negative aspects of this project were now starting to receive their just attention/discussion in the media and among many direct participants involved in both the initial planning process and actual construction phases of the MATILJA DAM building project ... discussion and dialog that should have taken place prior to the 1945 BOND ISSUE. Mr. Burket's concerns will ultimately prove to be 100% correct.

10. **S:** On November 15, 1947 a memorandum ("No. 14") was prepared by Richard A. Jamison, hydraulic engineer for Robert L. Ryan, Flood Control Engineer, Ventura County, titled: "PROBABLE SAFE YIELD OF MATILJA AND CASITAS RESERVOIRS."

The following is a combination of extracts and extrapolations made from this presentation involving projected ANNUAL EVAPORATION AND SEEPAGE RATES utilizing actual historical data between the years 1925-1946 (19-21 years). Mr. Jamison questioned the total accuracy of his projected SEEPAGE RATES.

than the total actual average annual EVAPORATION recorded for CASITAS DAM/RESERVOIR per item No. 70, page 48 of this presentation. However, on page 2 of the Report, Mr. Jamison stated: *"If water is diverted to hold stored water in Casitas Reservoir at a high elevation, a large portion of this will be disposed of by evaporation and seepage."* (My emphasis.) Utilizing data derived from the November 15, 1947 Report, MATILIJA DAM/RESERVOIR was projected to lose an equivalent of water, on an annual basis to EVAPORATION AND SEEPAGE, that would supply a town of approximately 1,462 families with average water needs for one full year (125,000 gallons per family).

On a much larger scale, Glen Canyon Dam/Lake Powell waste 8% of the Colorado River's flow annually via evaporation and seepage... **ONE MILLION AF PER YEAR!**

11. S: From the November 15, 1947 memorandum by Mr. Jamison, the following was extracted... Monthly run-off in AF after OLD WATER RIGHTS were deducted was calculated. These OLD WATER RIGHTS consisted basically of five major water-users with diversion points in MATILIJA CREEK NORTH FORK (1ST) and VENTURA RIVER within one mile or two below the MATILIJA DAM SITE. His "Table 5" indicated...
 - From 1927-1946 (20 years) there were 88 months (totaling 7.3 years) where there was "0" AF run-off noted... where water-rights exceeded surface water availability, 36% of the total months of these sample years.

Note: October, November, December, 1946 not noted, and July, August, September of 1946 "0" AF run-off.
 - The sum of entitlements for these OLD WATER-RIGHTS HOLDERS equaled 10.6 cfs and when flows of 8 cfs and below 8 cfs, these HOLDERS are entitled to ALL of such surface flows.

These OLD WATER-RIGHTS HOLDERS were allocated in other, more specific terms, 20.42 AF per day/6.65 million gallons. With less than "0" AF surface/run-off noted for the 88 months, this meant that less than ½ cfs per day run-off existed to "0" flows per day during the period of time as noted per Jamison's Table 5. Over 66% of the year during the 1927-1946 period illustrates ecological degradation of a large segment of the river; over 41% of the year during this period indicated that major degradation was taking place to the flora and fauna/ecological processes, which included the SOUTHERN STEELHEAD, mostly to its progeny in their near-failing efforts to perpetuate the species.

12. S: A memo from the CALIFORNIA DIVISION OF FISH AND GAME Fillmore, California to BUREAU OF FISH CONSERVATION, San Francisco dated January 20, 1948 advised that: *"Engineers at the Matilija Dam expected to have the fish-trap and fish-ladder completed by the end of January. Enclosed pictures of the work."*

R: The plan for a FISH-LADDER appears to have been a ploy to avoid advising the general public just how bad the future was going to be for the Ventura River's SOUTHERN STEELHEAD'S annual migratory runs as well as for its other native flora and fauna.

13. S: One of my 82-year-old ORAL HISTORY subjects, who spent most of his life's work as an explosives expert, was involved with the use of dynamite in preparation for the building of both the MATILIJA and SANTA FELICIA (PIRU) DAMS. In this ORAL HISTORY session, he stated that he personally observed the development of such a FISH-WAY/FISH-LADDER at MATILIJA DAM. In his opinion, it was not functioning as to its asserted intent. His understanding was that the adult migrating SOUTHERN STEELHEAD were to be trapped in this device and then placed in a tank at the top of the DAM and from there transported upstream to complete their spawning run. Once this FISH-WAY/FISH-LADDER was started developed (in whole or part?), large adult SOUTHERN STEELHEAD were observed in numbers trapped within its confines, and as he witnessed it, they were captured by DAM workers and taken home for their own personal consumption.

SOUTHERN STEELHEAD: Additionally, Access to the sea is an all essential requirement for the anadromous form of *Oncorhynchus mykiss* to continue advancing their genetics to ensure survival of the species. Dr. Jennifer Nielsen's, et al. 1997 article states that, *"Analysis of genetic distance measures for both molecular markers showed that considerations of life history patterns and freshwater habitats that retain ocean access remain important factors in the preservation of the unique genetic diversity found in Southern California coastal *Oncorhynchus mykiss*."*

16. **S:** In May 1948, the Harold Conkling report to the VENTURA COUNTY BOARD OF SUPERVISORS and the VENTURA COUNTY FLOOD CONTROL DISTRICT titled: "SAFE YIELD—MATILIJA RESERVOIR," reference pages 18-19 stated: *"The probable average annual rate of sedimentation of a reservoir at Matilija would be 3.26 AF per square mile of watershed, or a total of 197 AF.... At the above rate Matilija Reservoir would be completely filled in 39 years. In 10 years its capacity would be reduced to 5,200 AF (from an original storage of 7,000+ AF and the safe yield to 1,480 AF."* A reduction of 26%!

R: This eye-opening report, which was created some three years after the passing of the May 1945 BOND ISSUE, will prove to have predicted with a great degree of accuracy. It seems that it would have been incumbent upon the decision makers to have seriously considered feasibility studies prior to the BOND ISSUE ... and that they demonstrated an unprofessional and careless cart-before-the-horse type of planning. Aside from the CONKLING REPORT, the actual experience of what had already happened to GIBRALTAR DAM/RESERVOIR over a 20+ year period should have been enough to raise red flags when considering the building of MATILIJA DAM. The MATILIJA DAM is in the same general topographic/extended watershed area as GIBRALTAR DAM, located in Santa Barbara County. GIBRALTAR was completed in 1920 and by 1941 was seriously being filled with silt/sediment/debris, already losing 42% of its original storage capacity. In 1949, the GIBRALTAR DAM wall was elevated by another 15 feet and at this time the RESERVOIR'S original capacity was approximately 65% filled with silt/

MATILIJA DAM. The 1945 BOND ISSUE passed by voters called for \$3.4 million to build CASITAS and MATILIJA DAMS as part of the VENTURA RIVER WATER DEVELOPMENT project. The September 1967 issue of *Engineering News-Record*, page 14, stated the MATILIJA DAM construction costs to be \$4 million. The apparent unprofessional approach to this project was obviously void of what successful leadership advocates today refer to as a "quality process" and was motivated by questionable immediate needs for more water storage. Within this failed effort, the safety concern aspects should have driven the entire process, from pre-project planning/pre-1945 BOND ISSUE, from beginning to end ... and nowhere in this planning was there any evidence of a plan to maintain the historical IN-STREAM VALUES of the Ventura River System, keeping such values in good condition as is required by State law.

In 1941, Ventura County citizen groups had gone on record expressing their concerns for safe sites for DAM building. These concerns were expressed to Congress in 1941 by the Secretary of War. The Secretary outlined the U.S. ARMY CORPS OF ENGINEERS' thumbs-down evaluation of Ventura County's four proposed DAM sites: not providing flood protection and not justifiable on a cost-benefit-ratio basis. (See Part I, No. 1, pages 1-4).

18. S: In the *Engineering News-Record* of August 5, 1948, page 94, in an article titled "Matilija Dam Troubles," author Randall Cremer, Vice President of the Frederick Snare Corporation, Ojai, California, discussed more damn problems and the associated costs, both from a societal and monetary point of view:
- The State DIVISION OF WATER RESOURCES would not provide a permit to store water in the MATILIJA RESERVOIR above the elevation of 1,050 (spillway crest 1,125 elevation).
 - Engineers resigned upon request and were now defendants in an action filed by the VENTURA COUNTY FLOOD CONTROL DISTRICT for recovery of damages in excess of \$1 million.

To date there has been no meaningful action taken by the County, State, or Federal governments to protect the many IN-STREAM VALUES, PUBLIC TRUST ASSETS of the Ventura River, from extirpation.

19. S: On July 25, 1949, the BUREAU OF FISH CONSERVATION received a letter from the BIOLOGICAL OFFICE, Southern District 8, CALIFORNIA DIVISION OF FISH AND GAME discussing a major kill in the MATILIJA RESERVOIR of trout from 7" to 20", along with numerous chubs. They had been dying for an estimated period of two to three weeks. Cause was determined to be low water, hot water, mineral contents of water in the MATILIJA RESERVOIR.

R: For many years now biologists have referred to many manmade DAMS/RESERVOIRS as BIOLOGICAL DESERTS, and the MATILIJA DAM most certainly qualifies. These larger fish (20") were SOUTHERN STEELHEAD that had migrated from the sea prior to the completion of the DAM and had moved downstream from the upper reaches of Matilija Creek on their way back to the sea.

20. S: A communication on March 7, 1950 from the VENTURA COUNTY FLOOD CONTROL DISTRICT to the BOARD OF SUPERVISORS: *"In the absence of instructions to the contrary, this office does not intend to store any water in Matilija Dam which is not surplus and belonging to the Flood Control District. The reason for this is that upon the release of water from the Reservoir, it is assumed to become free water and upper water rights users usually take the major portion of the released water although theoretically the water belongs to all of the users downstream. This office intends to release water that is not considered surplus and will do this as long as the river sands are receiving this water by percolation and none of it will pass Foster Park. At present there is no flow of water past Burnham Road or Santa Ana Boulevard. It is our intention to let out 5 or 6 cfs of the flow and arrive at a release which will satisfy the purpose of percolation and yet not waste."*

R: The implication here is two-fold. One, "free water" sounds like what used to be in the Ventura River before the MATILIJA DAM, but yet it is designated to belong to someone downstream. Two, by controlling the flows, not allowing any water to pass Foster Park, and if so, it's considered wasted water. Who is the



Down-river from the Foster Park Bridge during the summer of 1903, the Morrison brothers were caught on film canoeing in the Shell Hole. As an aside, Chinook/King Salmon were documented in the Ventura River in 1881 ... boats were used for fishing in the 1800s and early 1900s and not uncommon at this time.

PHOTO COURTESY OF THE VENTURA COUNTY MUSEUM OF HISTORY AND ART

TODAY



A dewatered dry Ventura Riverbed channel. Photo taken on 11/3/97 from the Foster Park Bridge looking southwest toward Ventura.

YESTERYEAR



COURTESY OF JIM CAPITO ARCHIVES

What the Ventura River looked like at Foster Park during the summer in the early 1900s.

TODAY



A dewatered Coyote Creek and its (38) years of jungle overgrowth. Photo taken on 11/3/97 from the Santa Ana Road/Casitas Vista Road Bridge looking southeast toward Foster Park, in close proximity to its original confluence with the Ventura River at Foster Park and a short distance down the old Coyote Creek channel from the Casitas Dam.

pass the dam, provision has been made to trap them at the base of the dam and transport them to the creek above the reservoir so they can spawn.... Construction of Casitas Reservoir to store flood waters that would otherwise go to the ocean will reduce the chance of restoring steelhead to the Ventura River. It is doubtful that efforts should be made to maintain steelhead runs in the Ventura River, but consideration should be given to the feasibility of protecting runs if future climatic conditions should develop which would be favorable to them.... When more advance planning for the project [Casitas Dam] is undertaken, consideration should be given to providing possible future installation of fish passage facilities at the diversion structure [Robles] on the Ventura River.... The project [Casitas Dam and Robles Diversion-Dam in combination with the Matilija Dam] would probably eliminate the sporadic steelhead fishery which has occurred occasionally in past years."

R: This is not an accurate assessment of spawning/rearing habitat for the SOUTHERN STEELHEAD in the Ventura River System. Reference to Coyote Creek as another seasonal stream is confusing and misleading language. Even though sections of it may be intermittent/interrupted some years, there has always been a good portion of it possessing year-round perennial flows; no mention was made of its various tributary flows. Also, no mention was made of Santa Ana Creek, which historically had its confluence with Coyote Creek just above the old Hoffman Horse Ranch. It has two main branches, both of which possess perennial flows and historically provided excellent annual spawning and rearing habitat to large numbers of adult SOUTHERN STEELHEAD. No mention was made of Murietta Creek and its short south fork, which possesses excellent historical spawning and rearing habitat, having its confluence with the upper Matilija Creek near ORTEGA FLAT. No mention was made of San Antonio Creek (and its tributaries), tributary to the Ventura River entering just above Casitas Springs which historically and to the present day have spawning and rearing habitat. As a matter of information, the water that provides flows in the Coyote Creek and Santa Ana Creek systems originates in the watershed areas of the LOS PADRES NATIONAL FOREST, all public-held lands and PUBLIC TRUST ASSETS. Note: See map page 22a, Historical Salmonid Habitat.

To state that if future climatic changes should develop that may prove favorable to the SOUTHERN STEELHEAD is like saying we're going to wait for another geological era to develop. It is a less than critical observation and professional evaluation when considering what the overall negative impact of the VENTURA RIVER WATER DEVELOPMENT PROJECT as a whole would have on the habitat. To consider a possible fish-passage structure over the ROBLES DIVERSION-DAM in the face of the PROJECT makes a strong statement: The RESOURCE/IN-STREAM VALUES had no representation; IN-STREAM VALUES/PUBLIC TRUST ASSETS are expendable and their destruction is an acceptable alternative. Reference to a sporadic SOUTHERN STEELHEAD fishery occurring occasionally in past years is like saying there wasn't enough to consider saving anyway.

26. S: Excerpt from a written communication on July 5, 1956 from a CALIFORNIA DEPARTMENT OF FISH AND GAME biologist to a fellow employee: *"I was asked to comment on the fish-ladder plans for the Robles Diversion-Dam transmitted with your letter of June 20. In my opinion the proposed fish-ladder is very poorly designed,"* and went on to give multiple reasons why. The whole plan was dropped due to anticipated high costs and judged to be a waste of money based upon the unlikely returns of fish. If the future warranted, it would be reconsidered.

R: What a bureaucratic bungling job. If the future warranted, a FISH-WAY would be considered? Spawning SOUTHERN STEELHEAD can't swim on dry rocks while waiting for the various agencies to thresh over how, who, and whether to build a FISH-WAY ... looking at the sky waiting for the NEW GEOLOGICAL/CLIMATIC ERA to develop. The water and FISH-WAY must be there today, not tomorrow or the next day.

"The first rule of intelligent tinkering is to save all of the pieces."

— Aldo Leopold

TODAY



A dewatered dry Ventura Riverbed channel. Photo taken on 11/2/97 from the Santa Ana Road/Riverside Road Bridge looking southwest toward Foster Park



A dewatered dry Ventura Riverbed channel. Photo taken on 11/2/97 from the Highway 150 Bridge looking southwest toward Foster Park and not too far down-river from the Robles Diversion-Dam Canal, which diverts Ventura River water to Casitas Reservoir

the repaired structure) and using a water value of \$60 at Matilija.... Further testing and repair of the dam cannot be justified on an economic basis."

R: This dam project was not a quality decision from its very inception. James A. Thomson, President of the Rand Corporation, stated that: *"I knew the only way I could really start moving public policy was to have both hard science and hard economics in place."* However, as can be seen by this standard, the planning processes involving the MATILIJDA DAM have consistently fallen far short of Mr. Thomson's and Rand's world-renowned think tank's premise for success.

34. **S:** On August 20, 1964, BECHTEL CORPORATION of San Francisco, California was authorized to perform a preliminary review of MATILIJDA DAM for the purpose of evaluating the condition of the structure with respect to its safety. BECHTEL'S inspection and findings indicated the eventual removal of MATILIJDA DAM as an alternative. An article appearing in *Engineering News-Record* of April 22, 1965, page 29, titled "Concrete Arch Must Undergo Surgery," discussed the many failing structural features of the MATILIJDA DAM'S 163-foot concrete arch: the internal swelling; exterior cracking; disintegration in the DAM'S concrete wall, upper 20-30 feet; safety factor of concrete well below acceptable minimum levels for such arch dams; movements of both abutments during DAM'S lifetime.

The insurance company that underwrites the County's \$5 million liability policy told the County to take immediate remedial measures to prevent further deterioration of the structure, or lose the policy. Approximately 100 families lived in the danger area, a 5-mile stretch below MATILIJDA DAM. The reservoir was drained. The County's consulting engineers, the BECHTEL CORPORATION of San Francisco, made a study and recommended the following: remove and replace seriously defective concrete in the DAM; remove most of the concrete in the top 20 feet and permanently lower the spillway crest; or remove the DAM completely, and if further studies indicated serious abutment conditions, then the DAM should be removed. Repair to the DAM was the least favored of the recommended procedures.

and Mr. Burket proved to be 100% correct. With the DAM'S now reduced capacity, its usefulness was rapidly heading to the very bottom, but the silt/sediment/gravel/debris were rapidly heading to the top.

36. S: The primary advertised purposes of the MATILIJIA RESERVOIR was for WATER CONSERVATION and FLOOD CONTROL in the Ventura River watershed. During the 1952 storm, storage capacity in the MATILIJIA RESERVOIR reduced the peak inflow of 8,800 cfs to a peak outflow of 3,530 cfs, or by 60%. Storage in the RESERVOIR during the February 1962 storm reduced peak inflow from 6,570 cfs to a peak outflow of 5,130 cfs, or by 22%. Because of reduced storage capacity and the extreme run-off rates associated with the 1969 flood, the RESERVOIR filled early in that storm period and had little effect on peak attenuation during the event.

R: Within 17 years, the MATILIJIA DAM was rendered almost useless for its two advertised purposes: FLOOD CONTROL and WATER STORAGE. Also, recreation is now out!

37. S: A study completed in 1972 by the INTERNATIONAL ENGINEERING COMPANY, INC. of San Francisco, California determined that an earthquake from the nearby Santa Ynez fault of a magnitude of 6.5 – 7 would threaten the integrity of the MATILIJIA DAM'S foot-bridge.

R: The DAM had safety concerns, little recognized value, and was continuing to deteriorate.

38. On March 21, 1972, Chief, Anadromous Fisheries Branch, CALIFORNIA DEPARTMENT OF FISH AND GAME responded to my letter of February 20, 1972 regarding the rejuvenation/restoration of the Ventura River. His response in part stated: *"Rough calculations led us to believe this cost of providing an adequate flow for steelhead attraction, spawning and living space would be over \$1 million annually. As a result, we believe it would not be practical to purchase water for rehabilitation of the runs."*

threatened by chronic and infrequent discharges of waste to the river.... A steelhead run in the river has been documented.... Permanent and temporary diversions and impoundments, as well as the chronic and infrequent waste discharges, continue to destroy the river's habitat necessary for the existence of these resources. Until recently, the discharge of industrial waste from the Shell Chemical Plant prevented any life form from existing in the river from the point of discharge to the mouth of the river. Discharges present in the lower reach of the river are still damaging these resources." Effluent from many storm drains along a 1.5 mile stretch of river, including one from the Rock Lite Company was cited.

R: As for the SHELL CHEMICAL PLANT kill as referenced in the 1973 CALIFORNIA DEPARTMENT OF FISH AND GAME document, a CALIFORNIA DEPARTMENT OF FISH AND GAME enforcement officer noted in March 1956, some 17 years prior, that the waste discharges from this plant were killing adult Steelhead. (See photo in the *Executive Summary, p. v-b.*)

This river system was dammed into complete submission (1959), with most or all of its summer surface flows being diverted below MATILIJA DAM and little or no flows going beyond the ROBLES DIVERSION-DAM CANAL. What little surface water was found below Foster Park became extremely vulnerable to any level of concentration of toxic substance entering such a marginal amount of water, with any lethal effects being compounded by extending to all aquatic life forms... And what were the penalties for such negligence and an illegal act that destroyed irreplaceable PUBLIC TRUST ASSETS???

40. S: In July 1973, Gerald D. Bickel presented to directors within the Ventura County Public Works Department an analysis titled: "Shoreline Processes, Littoral Drift, and Beach Nourishment Along the Ventura County Coastline." The following are some extracts...

- *"The effect of dams on sediment production is considered greater than the percent of area controlled because the peak flows with their great sediment/carrying capacity are markedly reduced by large dams."*

presentation by Mr. Bickel... Organic and other essential matter for the maintenance of the sea's coastal ecological systems, and its life forms, have been significantly reduced by the presence of the MATILIJA DAM/RESERVOIR. Note: See photos, page 32a.

41. S: On August 30, 1973, California State Attorney General Evelle J. Younger filed a: "PETITION FOR RECONSIDERATION OF ORDER GRANTING LICENSE"... "IN THE MATTER OF WATER APPLICATION 11311: PERMIT NO. 76001, CASITAS MUNICIPAL WATER DISTRICT, MATILIJA CREEK AND VENTURA RIVER." The following is that petition word-for-word.

The CALIFORNIA DEPARTMENT OF FISH AND GAME, pursuant to Section 1357, California Water Code, respectfully requests that the Water Resources Control Board reconsider its order of June 1, 1973, granting a license to the Casitas Municipal Water District for storage and diversion of water in the Matilija Reservoir and the Robles Diversion-Dam Canal on the Ventura River.

The grounds for this petition are as follows:

- 1) Notice of the proposed grant of the license was not given to the Department of Fish and Game and Petitioner did not learn of the proposed licensing until 30 days after the Board action.
- 2) The license granted contains no provision for releases of water to protect fish-life which exists in the Ventura River below the Robles Diversion-Dam Canal although Fish and Game Code Section 5937 requires the owner of a dam to bypass sufficient water for stream fishery protection purposes.
- 3) The point of a diversion under water application 11311 and Permit #7601 was changed subsequent to the original filings without notification to the Department of Fish and Game.
- 4) The water code has been substantially amended for the purpose of protecting fishery resources from adverse effects of water appropriations. Water Code Section 1243 was

amended in 1972 and Water Code Section 1243.5, which became effective on January 1, 1970, require the Water Resources Control Board to consider the amounts of water needed to remain in the source for protection of beneficial uses and to take into account when in the public interest the amounts of water required for recreation and the preservation of fish and wildlife resources and to give notice to the Department of Fish and Game in order to receive the Department's recommendations as to such flows. These amendments and additions to the Water Code were enacted after the water permits herein were issued but before the license was granted on June 1, 1973.

It is the contention of petitioners that a water permit does not grant an absolute right to a proprietor and the law in effect at the time of licensing and applicable to the appropriation and that the Board has not given consideration to the amounts of water needed to remain in the Ventura River for protection of a valuable fishery resource.

- 5) The project operation and flow release schedules for the Matilija-Robles facilities have been changed and incorporated into an integrated operation in conjunction with the CASITAS RESERVOIR project on Coyote Creek. The integration of the operation procedures for these two projects has produced more damage to fish and aquatic life than would have been sustained by either project independently. It is therefore necessary to examine both projects jointly when considering this request for consideration of the licensing of the Matilija project.
- 6) The State Water Resource Control Board Basin Planning Study has indicated the Ventura River as a river for migratory fish spawning and as a habitat for a cold-water fishery.
- 7) The Ventura River as recently as in the 1950s supported a good Steelhead trout run estimated from 2,500 to 3,000 fish and still sustains a remnant run. Fish and aquatic life including but not limited to Steelhead and rainbow trout have been harmed and destroyed as a result of each of these projects. The Department of Fish and Game believes that the projects should be operated in a manner which will restore this

forceful manner and seeing to it that the provisions of State policy expressed in the CALIFORNIA DEPARTMENT OF FISH AND GAME CODE, SECTION 5937, and others, were aggressively carried out and implemented ... This was a violation of PUBLIC TRUST responsibilities where the public's IN-STREAM VALUES, flora and fauna, PUBLIC TRUST ASSETS were not represented by the holder of the TRUST responsibility, the STATE OF CALIFORNIA.

42. S: On September 19, 1973, the STATE WATER RESOURCES CONTROL BOARD posted a "NOTICE OF SPECIAL BOARD MEETING": *"Order in response to the petitions of the Department of Fish and Game, the Environmental Coalition of Ventura County and the Southern California Council of Fly Fishing Clubs regarding License 10133 and Permit 10364 (Application 11311 and 15998) of Casitas Municipal Water District to appropriate from the Matilija Creek and Ventura River in Ventura County."*

R: At least the very professional and concise presentation by the State's Attorney General was recognized: PUBLIC POLICY and laws of the State of California

43. S: On September 25, 1973, the STATE WATER RESOURCES CONTROL BOARD denied the PETITION filed by the Justice Department and its Attorney General on behalf of the CALIFORNIA DEPARTMENT OF FISH AND GAME and the other petitioners claiming the PETITION was not filed in the required time-frame per STATE WATER CODE 1357, however, they were not without recourse per the following: *"While the Board must reject the petitions in this instance because they were not filed in a timely manner, the Department [CALIFORNIA DEPARTMENT OF FISH AND GAME] is not without a remedy to require the District [CASITAS MUNICIPAL WATER DISTRICT] to provide minimum flows or alternate means for the preservation of fish. Fish and Game Code Section 5937 provides in part that "The owner of any dam shall allow sufficient water at all times to pass through a fish-way, or in the absence of a fish-way, allow sufficient water to pass over, around, or through the dam, to keep in good condition any fish that may be planted or exist below the dam."*

R: Again, CALIFORNIA DEPARTMENT OF FISH AND GAME CODE, SECTION 5937 is standing at the ready and available, but no legal action was taken by the

briefly discussing the State WATER RESOURCES CONTROL BOARD'S denial of the CALIFORNIA DEPARTMENT OF FISH AND GAME petition involving the CASITAS MUNICIPAL WATER DISTRICT'S licensing. He added the following: *"Despite denial of our petition, we are going ahead with an objective of improving the Ventura River System for fish-life and the other native aquatic resources. One of our fishery biologists is scheduled to conduct an investigation on the river and the results of this study should tell us what we should propose for changes in the Water District's operations that will provide for improvements in the affected resources. Following the survey, we plan to meet with the District to develop a mutually acceptable program for restoration of the aquatic resources."*

R: This was an empty promise and nothing positive ever took place to rejuvenate any part of this beleaguered river system's native aquatic resources. The only positive efforts were made by public-spirited citizen groups. The Director told the Senator what he wanted to hear. The Director made no reference to taking the recommended appropriate legal action: CALIFORNIA DEPARTMENT OF FISH AND GAME CODE, SECTION 5937. It's the age-old ploy: "We'll conduct a study."

47. **S:** On March 12, 1974, the VENTURA COUNTY BOARD OF SUPERVISORS authorized that a detailed study of MATILIJA DAM/RESERVOIR to determine probable costs of necessary modifications and revised testing program and to determine expected benefits to CASITAS MUNICIPAL WATER DISTRICT for water stored in MATILIJA DAM and diverted to the CASITAS RESERVOIR. In this study, three assumed hydrologic cycles were run for projecting MATILIJA RESERVOIR capacity by the year 2009. One indicated 165 AF would remain, and the other 750 AF.

R: Today, 1998, there's less than 900 AF capacity. The balance is silt/sediment/debris.

48. **S:** From the analysis of the County Study, it was determined that because of the high cost of an alternative water supply, the elimination of MATILIJA RESERVOIR as a water conservation facility would cost at least \$5.8 million between 1974 – 2009. Maintaining

by officials representing the County, State, and Federal governments... The Ventura River had fast become both a biological desert and a convenient sewer.

50. S: In 1975, the County determined that a total clean-out cost of the sediment and debris behind MATILIJA DAM would probably be about \$2 per cubic yard (3 million cubic yards then), for a total of \$6 million.

R: Today, 1998, there are an estimated 11 million cubic yards behind the MATILIJA DAM wall.

51. S: During and immediately following storm events from 1959 to 1975, the CASITAS MUNICIPAL WATER DISTRICT diverted surplus stream-flows from the Upper Ventura River to the CASITAS RESERVOIR. Turnout to the ROBLES DIVERSION-DAM CANAL is located approximately one mile below the confluence of Matilija Creek and the first North Fork of Matilija Creek.

R: What a loss to the river's surface flows, its groundwater aquifer, and a slow death and destruction to its native flora and fauna below the MATILIJA DAM to the sea.

52. S: On May 7, 1975, correspondence from the CASITAS MUNICIPAL WATER DISTRICT to the U.S. BUREAU OF RECLAMATION regarding the VENTURA COUNTY WATER MANAGEMENT PROJECT stated in part: *"...The above information has been computed per your request; however, such information should not become the basis for any compromises or negotiations relative to the District making any releases for the establishment or enhancement of a fishery in the Ventura River."*

R: What about their ongoing destruction of the fishery and other IN-STREAM VALUES! The CASITAS MUNICIPAL WATER DISTRICT provided water use information to the U.S. BUREAU OF RECLAMATION. Anticipating that water release requests may be made, they refused up front to allow any of the RESERVOIR'S waters to be used to establish or enhance a fishery in the Ventura River. This callous response indicates a total disregard for State PUBLIC POLICY, which declares in part that such IN-STREAM VALUES/RESOURCES possess exceptional

R: The quoted statement per page 565 is 100% inaccurate! I have been doing extensive historical research on anadromous/migratory Salmonids in Southern California coastal waters going on four years now. I have pictures of SOUTHERN STEELHEAD taken in the Ventura River during the 1950s and 1960s, both prior to as well as subsequent to the building of CASITAS DAM, AND oral history subjects have verified their own personal taking of adult SOUTHERN STEELHEAD in both the Ventura River and its major tributary system, Coyote Creek. As the DAM wall was completed and water was spilling over into Coyote Creek, a number of witnesses saw adult SOUTHERN STEELHEAD laying directly below the DAM wall and trying desperately to get over... One witness saw fish making it over the DAM'S spillway wall. Also, an oral history subject stated that he personally called the CALIFORNIA DEPARTMENT OF FISH AND GAME Region V office and advised them of what was happening. He reported there was a sense of indifference and lack of response from them. State representatives were never visible at the scene, while many onlookers were actually watching these fish struggling to gain access to their historic spawning grounds—upper Coyote and Santa Ana Creeks. Obviously, the quote on page 567 is a repeat of such an absolutely inaccurate statement of page 565, and then it was no doubt used as 'credible' evidence to allow the CASITAS MUNICIPAL WATER DISTRICT to squirm out from under providing any mitigating measures such as IN-STREAM FLOWS or a FISH-WAY over or around the DAM wall. There was no evidence of any study being made by any agency — county, state, federal — to substantiate their quote stating that there was no more evidence of adult SOUTHERN STEELHEAD entering the Ventura River for their spawning runs just prior to the completion of CASITAS DAM. Again, if there was a study to support this claim, it was never documented/made public, and if it had been, it could be proven false.

55: S: In 1978, the County dynamited a cement walkway that bridged the MATILIJA DAM. They also extended the notch.

R: The STATE WATER RESOURCES definition of the State's policy to balance IN-STREAM USES with OUT-OF-STREAM uses is PUBLIC POLICY, but in reality means nothing when administrative decisions dominate over mandated/legal responsibilities to protect PUBLIC TRUST ASSETS from destruction... Tell 'em what they want to hear. Furthermore, they defer to the CALIFORNIA DEPARTMENT OF FISH AND GAME as a stalwart who will function as protector of the resource and, in actuality, has functioned as a phantom in this regard when it came to water project development.

58. **S:** On March 27, 1979 in a letter from the U.S. FISH AND WILDLIFE SERVICE field supervisor, Laguna Niguel, California to the general manager and chief engineer, CASITAS MUNICIPAL WATER DISTRICT regarding the EIR for their CONJUNCTIVE USE AGREEMENT with the CITY OF VENTURA states: "*...FWS finds unacceptable the concept of increased diversion of the waters of the Ventura River into Lake Casitas with its resultant losses to fish and wildlife resources. Your own DIR states emphatically that fish and wildlife will be lost without any proposals for mitigation and compensation.... FWS is interested in the preservation of the remaining steelhead trout in the Ventura River. In fact, the Service would like to know why no mitigation or enhancement measures were adopted when the Lake Casitas Project was constructed in 1959 by the BOR?*"

R: The U.S. FISH AND WILDLIFE SERVICE makes a strong statement in favor of preserving the resource, but poses with it a question about where they actually have the jurisdiction and the power to act upon it... Good prose and no action. If they had read their own USFWS Report referenced in item 54, page 40, they would readily see the lack of mitigation was based on misinformation held in this report: inaccurate and erroneous statements.

59. **S:** Excerpts from a letter dated March 28, 1979 from the CALIFORNIA DEPARTMENT OF FISH AND GAME, Region V manager, Long Beach, California to the general manager at CASITAS MUNICIPAL WATER DISTRICT regarding the EIR for their CONJUNCTIVE USE AGREEMENT with the CITY OF VENTURA stated: "*The lagoon at the mouth of the Ventura River is an important wetlands habitat for a variety of wildlife species. Any project that would reduce the value of that wetland (i.e., the reduction of water quality via the reduction of good quality surface flows)*"

means no more of their tributary flows reach the Ventura River channel except from CASITAS DAM spilling during occasional heavy seasonal run-off periods.

61. S: On June 29, 1976, the CITY OF VENTURA and the CASITAS MUNICIPAL WATER DISTRICT took the first formal step to divert the last low flows from the Ventura River. On December 22, 1983, the CITY and DISTRICT took the final step to consummate the CONJUNCTIVE USE AGREEMENT which would implement the proposed diverse scheme.

R: Less and less surface water to run in the Ventura River channel and into its aquifer, to zero proportions.

62. S: On March 21, 1984 FRIENDS OF THE VENTURA RIVER, Petitioner vs. the Respondents, CITY OF VENTURA, through its city council; and CASITAS MUNICIPAL WATER DISTRICT through its board of directors, entered Superior Court in Ventura County. This action was prompted by their proposed CONJUNCTIVE USE AGREEMENT. Petitioners claimed that if the project is implemented, reduced surface and subsurface flows will cause flora and fauna in the area to suffer significant adverse impact. The FRIENDS' case was filed utilizing a violation of the PUBLIC TRUST DOCTRINE would exist with such an AGREEMENT. This was a modification to the FRIENDS' initial suit, which challenged the EIR process, alleging that the DISTRICT and the CITY had failed to heed the findings of the EIR prepared and certified for the project.

R: Court action by public-spirited organizations appears to be the only viable solution to help save precious natural resources from extinction. State and Federal agencies will not exercise PUBLIC POLICY and take the last legal step to save this river system's most valuable native flora and fauna.

63. S: On February 20, 1985, the Superior Court, County of Ventura, ruled in favor of the PETITIONER, FRIENDS OF THE VENTURA RIVER versus CITY OF VENTURA and the CASITAS MUNICIPAL WATER DISTRICT disallowing their CONJUNCTIVE USE AGREEMENT and ordered them to proceed under their November 4, 1959 Trial Operation Criteria until the Court has determined that the respondents have complied with the CALIFORNIA ENVIRONMENTAL QUALITY ACT. The Ventura County Superior Court, as part

OF VENTURA and the CASITAS MUNICIPAL WATER DISTRICT. The CITY and DISTRICT'S proposal to divert all of the low flows from the Ventura River to settle a long-time standing water rights dispute. The respondents had satisfied the requirements as handed down by the court in the first decision of February 20, 1985 which had favored the petitioners, FRIENDS OF THE VENTURA RIVER. As the result of this second judicial hearing, the case would proceed to an Appellate Court hearing.

R: The second round went to the CASITAS MUNICIPAL WATER DISTRICT, but the ruling would be challenged in State Appellate Court.

66. **S:** On June 9, 1988, Appellate Court of Appeals 2ND District reversed this second decision of February 20, 1985 and again in favor of FRIENDS OF THE VENTURA RIVER and in part stated: "*...Compliance with the California Environmental Quality Act is crucial because the capacity of the environment to endure depletion of its resources is limited. In order to preserve a high-quality environment, it is necessary to take all possible action to prevent the elimination of fish due to human activities and ensure that fish do not drop below self-perpetuating levels to preserve these resources for future generations. [§§ 21000, 21001]. As the Superior Court pointed out, shortly after the California Environmental Quality Act was enacted. ...The issue is not whether the project will be beneficial to the licensee ... the test is whether the project will be in the public interest ... in preserving reaches of wild rivers and wilderness areas ... and the protection of wildlife. [citation Friends of Mammoth v. Board of Supervisors (1972) 8 Cal. 3d 247, 254.]"*

R: A victory reconfirming that legal action by public-spirited organizations in a court of law will become the standard for replacing Federal and State agency representation, which is too embroiled in politics and special interest influence to represent PUBLIC TRUST ASSETS in a wise and prudent manner when destructive over-exploitation threatens our natural resources ... but still no surface flows were allocated to maintain the many historical IN-STREAM VALUES of the Ventura River System.

67. **S:** By 1994, the DAM was holding only 900 AF of water, the balance being silt/sediment/debris. The silt/sediment/debris filled 88% of the original capacity and only

TODAY

Matilija Dam/Reservoir

The following (4) photos taken in May 1997 of the Matilija Dam/Reservoir dramatically illustrate the almost 100% deteriorated condition of this impoundment as a provider for any public benefits as originally advertised. The small amount of water floating on top of an estimated (11) million cubic yards of silt/sediment/ debris was drained off to allow for safety checks involving the ongoing deteriorating reactive concrete aggregate in the DAM'S wall.



69. **S:** There is strong evidence that the ROBLES DIVERSION-DAM CANAL has been diverting from the VENTURA RIVER juvenile SOUTHERN STEELHEAD, and no doubt adult SOUTHERN STEELHEAD as well, for 28 years now, and in essence, they were being channeled into this canal and delivered into CASITAS RESERVOIR and Santa Ana Creek as they attempted to migrate/emigrate as smolts, as adults to spawn, or as kelts returning to the sea. Personal communication (1995) with a knowledgeable person on the lifecycles of the SOUTHERN STEELHEAD, which he had observed over many years, combined with strong scientific analysis (1997), leads to such a conclusion. (Identification of scientific documentation is being held in abeyance for future use/discussion.)

R: No FISH-SCREEN or FISH-LADDER at the ROBLES DIVERSION-DAM. A conscious decision was made by all Federal, State, and County officials involved to forego such legally required mitigation, which would have helped the SOUTHERN STEELHEAD in its ongoing efforts to survive.

70. **S:** The following are annual statistics developed by the CASITAS MUNICIPAL WATER DISTRICT for the calendar years 1959-1996 relative to the CASITAS DAM/RESERVOIR operations.

- Average annual loss to EVAPORATION over the 38-year period: 7,736 AF.
- Maximum annual loss to EVAPORATION: 10,637 AF.
- For 31 years of the 38, there was "0" spilling over the DAM wall into lower COYOTE CREEK.
- The MODE during the 38 years for "releases of water down-river" was 73 AF per year for 19 of the years, and 72 AF for 7 of the years.
- In-flow from the VENTURA RIVER through the ROBLES DIVERSION-DAM CANAL was 13,200 AF average annual and the maximum was 50,349 AF.
- For the 1991 year, the CASITAS DAM/RESERVOIR delivered 450 AF of water to Santa Barbara and received 1,240 AF of State water.

R: WATER IS NOT WASTED GOING TO THE SEA via its historical natural channel, but it is wasted going into the atmosphere/sky through evaporation created by large expanses of surface/reservoir waters being exposed to pollution

- For the 38 years, 81.6% of them had no spilling of water over the DAM down the historical COYOTE CREEK natural channel, which would have been during the absolute critical months for maintaining the lifecycles of the SOUTHERN STEELHEAD and other native flora and fauna.
- As for releases of water down-river, exclusive of 2 years, the annual average was 64.53 AF, which works out to be just over 1/3 cfs per day.

This almost 100% of OUT-OF-STREAM WATER-USE scenario, in conjunction with MATILIJA DAM standing with its majestic 135-foot crumbling concrete wall, will require future restoration efforts of the VENTURA RIVER SYSTEM'S native flora and fauna to be a highly motivated and much inspired.

71. S: On April 10, 1998, the U.S. BUREAU OF RECLAMATION announced plans to bring CASITAS DAM up to current earthquake safety standards as part of an agency-wide modernization effort. This to assure the dam's safety during a severe earthquake having a magnitude of 6.5 or greater. The Red Mountain fault is just a short distance away and a critical source of potential movement, just one of many faults in close proximity to this earth-filled dam. Safety concerns for the Cachuma/Bradbury Dam on the Santa Ynez River have recently required major amounts of seismic safety work.

R: A spill of approximately 1,200 cfs of water over the CASITAS DAM on February 23, 1998 was the largest spill since the dam's completion in 1959 and no doubt prompted the sense of urgency for shoring up this earth-filled structure impounding some 252,000-254,000 AF of reservoir water ... over-topping has been a primary cause of DAM failures. One rancher in the Santa Ana Valley has recorded over 60 inches of rain to date. This additional earthen fortification will be extracted directly from the immediate watershed area and is scheduled to commence in October 1998. Estimated cost: \$20 million! How would the general public have reacted to the 1945 Ventura River water development project BOND ISSUE with such additional relative cost issues and seismic safety concerns thrust into the equation? The CASITAS MUNICIPAL WATER DISTRICT, the State of California, and the Federal government have yet to provide one penny's worth of

sion the possibility of these dollars being placed in some type of a special holding trust status, such as a VENTURA RIVER SYSTEM RESTORATION FOUNDATION FUND, whereby individual/corporate foundations and personal/individual, etc. tax-exempt donations could be solicited on an ongoing basis.

Mitigation facilities at both the Casitas Dam and at the Robles Diversion-Dam and its Canal are also required.

- ➔ Casitas Dam: At minimum, a rearing facility for the natural occurring Southern Steelhead genetic types as well as the adequate releases of water down Coyote Creek.
- ➔ Robles Diversion-Dam: At minimum, a fish-way/fish-ladder/fish-bypass system for both migration/emigration to/from the Ventura River/Matilija Creek and the adequate amounts of bypass flows down-river to the sea.
- ➔ Robles Diversion-Dam Canal: Strong consideration should be given to engineering a controlled conveyance system to provide Steelhead access to Santa Ana Creek, a good part of the historical spawning and rearing habitat of the Ventura River system. They sure as hell can get through there now via the canal. The canal terminates at the Santa Ana Creek channel, but emigration coming out is another story. Too much of the summer flows are being drawn out of Santa Ana Creek by private parties, drying up sections of the creek before it reaches the reservoir. An effective screening device should be engineered to prevent the juvenile and adult Steelhead from entering this Canal, or some form of controlled access is established to move them in/out of Santa Ana Creek.

The State of California can no longer avoid its fiduciary responsibility to protect IN-STREAM VALUES of the Ventura River system. In essence, the State has sanctioned extirpation of such values and the various aquatic life forms, PUBLIC TRUST ASSETS, in favor of 100% OUT-OF-STREAM USAGE of the river's waters.

72. S: On June 24, 1998, the Federal 9th Circuit Court of Appeals ruled in favor of the Natural Resources Defense Council's lawsuit (NRDC v. Houston-US BOR) filed some 10 years ago alleging that the BOR violated the Federal ENDANGERED SPECIES ACT by

PART II: ADDITIONAL RELEVANT POINTS OF LAW AND THE INTENT AND MORAL ASPECTS OF PUBLIC POLICY DECISIONS

1. In 1852, the California Legislature enacted a statute designed to protect migrating Steelhead trout and Salmon on their spawning runs by outlawing obstructions in any river or stream as a PUBLIC NUISANCE. The law is that: *"Running waters of the State of California are public property. One who obstructs them obstructs them under license or permission from the State, but only upon such conditions as to their use as the State may impose"* [See Schaezlien v. Cabaniss (135 Cal. 466, 470, 67 Pac Rpt. 755, 757 (1902))].
2. In 1870, the California Legislature enacted PENAL CODE 637 which required: *"...as far as practicable fish-ways over obstructions in the State's rivers and streams."*
3. In 1915, another statute was enacted requiring continuous water releases from DAMS through FISH-WAYS for the purpose of keeping fish below such DAMS in good condition, Section 525. In 1937, it was converted into what is now SECTION 5937 of the CALIFORNIA DEPARTMENT OF FISH AND GAME CODE.
4. The Attorney General's opinion (A.G. op. 50-89 July 23, 1951) issued in connection with the FRIANT DAM dispute on the San Joaquin River held that: *"...Fish and Game Code Section 525 [now 5937] is only a standard for the release of water in excess of what is needed for domestic and irrigation purposes so that what is available for fish life shall not be wastefully withheld."* This indicates that the CASITAS MUNICIPAL WATER DISTRICT should be required at the very least to release an amount of water equal to the difference between the annual safe-yield and the amount that is actually used for domestic and irrigation purposes to help restore the fisheries which have almost been extirpated as a result of the operations of the CASITAS DAM, ROBLES DIVERSION-DAM CANAL and MATILIJA DAM.
5. Under California water law, no water rights or flow reservations are permitted without a physical diversion structure to provide minimum stream flows to protect fish life, wildlife, and vegetation without a physical diversion structure. Bypass flows or minimum stream maintenance flows can only be established in relation to a physical diversion of

way in repair and open and free from obstructions to the passage of fish at all times..." SECTION 5937 of the FISH AND GAME CODE provides that: "The owner of any dam shall allow sufficient water at all times to pass through a fish-way or in the absence of a fish-way, to pass over and around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.... The language of Section 5937 of the Fish and Game Code is unequivocal insofar as it requires the owner of any dam shall allow sufficient water at all times to pass through a fish-way, or in the absence of a fish-way, allow sufficient water to pass over, around, or through the dam, to keep in good condition any fish that may be planted or exist below the dam."

7. In 1988, the California State Legislature passed the CALIFORNIA SALMON, STEELHEAD TROUT AND ANADROMOUS FISHERIES ACT (SB-2261), which mandates: *"...the California Department of Fish and Game to significantly increase steelhead trout stocks.... Under the provision of this Act, it is the State policy to significantly increase the natural production of steelhead trout by the end of the century. It is also the policy of the State of California under this act that existing and natural steelhead trout habitat shall not be diminished further without offsetting the impacts of the lost habitat."*
8. The Appellate Court's findings in reviewing "California Trout vs. State Water Resources Control Board, et al." [207 Cal. App. 3d 585 (1989)], supported the concept that trust properties, such as fish, have a unique status. The title to the fish property in the State waters is vested in the State and held in trust for the people. Some key points in this decision involving the protection by the State of PUBLIC TRUST ASSETS include: *"Water right permit actions, or the failure to take action is not time barred. The nature of the State's property or trust interests by a statute of limitation.... The public is not to lose its rights through the negligence of its agents, nor because it has not chosen to resist an encroachment by one of its own number, whose duty it was, as much as that of every other citizen, to protect the State in its rights."* [See People v. Kerber (1908) (152 Cal. 731, 732, 736, 93 p. 878) in California Trout v. State Water Resources Control Board et al. (207 Cal. App. 3d 585 (1989))].

...Other important points of this Appellate Court decision include the following...

such effect is not immediately measurable." (Sierra Legal Defense Fund Publication *In Brief*, Winter 1997, p. 10)

11. As for all of the many quasi-legal determinations of PUBLIC POLICY made through the political decision making processes that have adversely affected our native cold-water aquatic resources, the INTENT and MORAL aspects of such established PUBLIC POLICY decisions—laws, statutes, mandates, articles, rules, regulations, etc.—should have been the ultimate guidelines for decision making. The massive amounts of Johnny Cochran type diatribes using barrage after barrage of semantics to confuse and overcome such PUBLIC POLICY decisions, or, just completely ignoring them, must cease. *"The only hope for a society to achieve justice, the greatest of virtues in a social order, is for there to be just laws, justly enforced"* (Andrew Bard Schmockler, State of Virginia).

It is obvious that the STATE WATER RESOURCES CONTROL BOARD (in conjunction with the political establishment) has "de facto control" of the State's cold-water fishery resources and not the RESOURCES AGENCY and its DEPARTMENT OF FISH AND GAME. When the CALIFORNIA DEPARTMENT OF FISH AND GAME has spoken, it has been received like a very faint voice in the wilderness.

12. An article appearing in the *San Francisco Chronicle* of February 24, 1998 titled "Saving the Planet Becoming a Religious Issue Across the US" related the following quotes... Pope John Paul II said, *"The ecological crisis is a moral [my emphasis] issue"*, and Ecumenical Patriarch Bartholomew I, spiritual leader of the world's 250 million Orthodox Christians, stated, *"Destroying and polluting the environment are sins."*

PART III: AN EXTENDED AND BROADER SCOPE ANALYSIS

1. The CALIFORNIA DEPARTMENT OF FISH AND GAME needs a major overhaul, as does the entire RESOURCES AGENCY where the DEPARTMENT has its presence. The DIRECTOR of the CALIFORNIA DEPARTMENT OF FISH AND GAME and the top overseer of all natural resources, the SECRETARY FOR RESOURCES, are both appointed positions. Rarely is either position filled by professionals in the various disciplines. They are political appointees by the governor and conduct business at his pleasure. Even if they were professionals, the continuity required for successful management of the State's natural resources breaks down every time a new administration takes the helm.
 - 1.1 In 1993, the CALIFORNIA DEPARTMENT OF FISH AND GAME transferred and demoted a 30-year career biologist following his complaint to law enforcement officials that his supervisor had ordered him to approve an unlawful discharge of creosote into the Sacramento River. The SIERRA CLUB LEGAL DEFENSE FUND represented him, as he was unable to secure private counsel to vindicate his First Amendment rights. After three years a settlement was reached: reinstatement of his supervisory benefits and payment of \$175,000 in damages. A strong message was sent: Retaliation against good public servants will not be tolerated.
 - 1.2 In 1995, following severe flooding, the CALIFORNIA DEPARTMENT OF FISH AND GAME, at the behest of the Governor, announced a sweeping waiver of the State's ENDANGERED SPECIES ACT that authorized the killing or capture of otherwise protected California species in connection with public or private activities to "*prevent or mitigate an emergency or natural disaster*" or to "*restore any property to its pre-emergency condition.*" The SIERRA CLUB LEGAL DEFENSE FUND went to court and the SUPERIOR COURT found the waiver illegal, and the COURT OF APPEALS agreed.
 - 1.3 In testimony before the STATE SENATE NATURAL RESOURCES COMMITTEE in 1995, a 22-year CALIFORNIA DEPARTMENT OF FISH AND GAME enforcement officer who had been named Warden of the Year in 1994 made an allegation under oath and charged that top state officials had repeatedly kept him and other officers from en-

there were 250 Fish and Game Wardens/Fish and Wildlife Officers. Today, only 239 work daily to protect 159,000 square miles of land, more than 1,100 miles of sea coast; 3,600 natural lakes; 1,200 reservoirs; and 80 major rivers. There are more than 75,000 sworn officers in the State, but only 239 have a primary responsibility for enforcing laws which protect the environment. Fish and Game Wardens also have statewide authority to enforce all other laws.

Twenty-five years ago, Fish and Game Wardens were paid the same salary as the State Traffic Officer (CHP). Today, a Traffic Officer's compensation is 35% more than a Fish and Game Warden's. Seven thousand officers have a voice, 239 do not. Warden applicants must have two years of college and a working knowledge of biological sciences, hydrology, soils, ecology, and police science. A Traffic Officer applicant need only have a GED.

How much do you care? In this generation, we are eradicating wild lands and species of wildlife that some day we will wish our grandchildren could just see. Much of California's water is so polluted that knowledgeable people won't eat the fish. The percentage of game law violators which are apprehended is so small as to be insignificant. The fate of California's remaining fish and wildlife, flora and fauna, is in your hands. Action is needed, and now! We need to demand to our State Legislators today that they immediately establish an adequate and realistic budget to meet the State's critical needs for protecting what remains of our-your native-indigenous natural resource assets as well as to provide for equitable compensation for its Fish and Game Wardens/Fish and Wildlife Officers who strive daily to carry out their mandate to protect the natural environment from the greedy and short-sighted. The present process for funding-budgeting and prioritizing is totally inadequate to meet the State's immediate and true needs.

Thank you for listening and for your prompt action,
Your State Fish and Game Warden/Fish and Wildlife Officer
[Emphases added.]

2. In August 1996, the NATIONAL MARINE FISHERIES SERVICE proposed to designate the SOUTHERN STEELHEAD as an ENDANGERED SPECIES under the Federal ENDANGERED SPECIES ACT. On August 11, 1997, they made a final determination of ENDANGERED. How this will all play out remains to be seen. The bio-political process has so far prevailed in Oregon, with voluntary management programs, promoted by Governor Kitzhaber, being accepted by the NATIONAL MARINE FISHERIES SERVICE in lieu of full implementation of the Federal government's ENDANGERED SPECIES ACT on private land owners, forestry products industries, etc. This same process is being heavily pushed in California by the Governor and his Secretary for Resources.

On June 1, 1998, Janice Stewart, U.S. Magistrate, said that *"The National Marine Fisheries Service was arbitrary and capricious when it denied in April against listing the Coho..."* Stewart said, *"The Service unlawfully placed the risk of failure squarely on the species.... The decision of the Service flies in the face of concerns by its own scientists..."* The judge said she *"would not tie the fate of Oregon Coast Coho to the whim of politics and promises of future state conservation actions that may be years or decades away from implementation."* She ordered the Service to reconsider its decision by July 2. She said, *"The decision had no legal basis under the Endangered Species Act."* William Stelle, Regional Administrator for the National Marine Fisheries Service, Northwest Office, said, *"We are frankly somewhat surprised by yesterday's ruling because we believe we made the right decision."* Mike Sherwood, lawyer for the Earth Justice Legal Defense Fund, San Francisco, which filed the case, was elated: *"If they'd made the decision solely on the biological facts, they would have no choice but to list the species."* More than 1 million Coho historically returned to Oregon's coastal streams. Last year, a record low of 24,000 returned and in 1998 the number is expected to be even lower. The Oregon Management Plan for endangered species is a supreme example of bio-political administrative decision making by both the State and Federal governments, which circumvented established PUBLIC POLICY by not fully implementing the various legally required aspects of the Federal ENDANGERED SPECIES ACT.

"ENDANGERED" or "THREATENED" or proposed for listings under the U.S. ENDANGERED SPECIES ACT as of December 31, 1995. By far, the **LOSS OF HABITAT** was the most frequently cited threat: 88%! "*Habitat destruction is a primary threat to the diversity of life*" (William Stolzenburg, Nature Conservancy).

- 2.3 An article in the *San Francisco Chronicle* of April 22, 1998 titled "A Warning of Mass Extinction" indicated very strongly that plant and animal loss was a threat to people in the next century. Released on April 20, 1998 was a poll taken by survey of 400 scientists commissioned by New York's American Museum of Natural History that concluded that the rapid disappearance of species was ranked as one of the planet's gravest environmental worries, surpassing pollution, global warming, and the thinning of the ozone layer: "*The speed at which species are being lost is much faster than any we've seen in the past—including those (extinctions) related to meteor collisions,*" said Daniel Simberloff, University of Tennessee ecologist and prominent expert in biological diversity who participated in the museum survey. Nearly 70% agreed that mass extinction is underway and that 20% of all living species could disappear within 30 years.
- 2.4 Now that the SOUTHERN STEELHEAD has been declared an ENDANGERED SPECIES by the NATIONAL MARINE FISHERIES SERVICE, it is imperative that the 20 stream-miles above MATILIJA DAM be classified under the provisions of the Federal ENDANGERED SPECIES ACT as CRITICAL HABITAT... Developing and implementing actions to save the species are mandatory requirements of this ACT: "*Specific areas ... occupied by the species ... in which are found those physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations for protection.*" The law also allows the secretary (Interior or Commerce) to designate other "*specific areas outside the area occupied by the species*" that are "*essential for the conservation of the species.*" In addition to a designation of "CRITICAL HABITAT," the NATIONAL MARINE FISHERIES SERVICE has determined that some activities taking place in or around the "CRITICAL HABITAT" areas may require SPECIAL MAN-

- 3.1 Recent failed attempts at administrative overriding by Governor Wilson: Demanding that a landmark water-agreement/consensus developed between all stakeholders involving water previously allocated by the accord to the Sacramento/San Joaquin Delta and San Francisco Bay for restoring fisheries and water quality be siphoned off to agri-business, more subsidies for water-gulping cotton and water-intensive rice... Governor Wilson made a last-hour attempt through the NATIONAL MARINE FISHERIES SERVICE to delay ENDANGERED SPECIES ACT listing until more studies are made, again, promoting the age-old political ploy of neutralizing the opposition through "ANALYSIS PARALYSIS."
- 3.2 An article appearing in the *San Francisco Chronicle* of January 28, 1998 titled "Environmentalists Sue Pacific Lumber Company Over Coho Salmon" has to be a classic example of administrative decision making and foot dragging. Pacific Lumber Company of Scotia, California was accused of violating the Federal ENDANGERED SPECIES ACT by ongoing logging activities damaging the Coho Salmon's fragile habitat in rivers and streams flowing through thousands of acres in Humboldt County. Last year, 1997, Pacific Lumber Company was cited for more than 100 violations of the California Forest Practices Rules! How can you have 100 violations and still be allowed to operate? Are State and Federal officials blind to their PUBLIC TRUST responsibilities?
- 3.3 Per an AP release of March 10, 1998, in a survey taken in 1994 only 21% of Americans said they trusted government. A survey taken in February 1998 found it to be 34%, or a 13% improvement. However, this confidence level in government still indicates a high degree of cynicism.
- 3.4 Our natural resources are finite; there are limits to their exploitation and there are limits to growth. Our quality of life continues to take a dive and the quality of urban living compared to 50+ years ago has changed dramatically and plummeted to the depths of despair for many.

FISH COMMISSION made a very emotional speech in 1993 to President Clinton and Vice President Gore at a "Timber Conference" held in Portland, Oregon... *"The natives of this land have existed for more than 35,000 years, an estimated 700 generations. Present-day America is approximately 10 generations old. For 690 generations 'Eco-System' was defined, illustrated, and scientifically concluded by each generation of American Indians living on this land. In 10 short generations, one broad sweep of the geological second hand, America has reduced its life-forms to struggling 'endangered species.'*

"I was asked to address this question: 'Where do we go from here?' And, Mr. President, there are an estimated 5 million American Indians and they may be tempted to quote an old Hollywood Indian and say, 'You mean, "we kimosabe?"' (Laughter followed by all.) But Mr. President, quoting fictional characters and Hollywood characters belongs to another generation (more laughter). You have elevated our relationships to a very respectable place, and we appreciate that. So in all seriousness, where do we go from here? Well, we go home to worried families and stressed ecosystems. In actuality, tomorrow we go out to build coalitions across all ideological lines. We unite a family. And we begin to do the work that lets us leave behind a legacy of love for our natural resources to be enjoyed in perpetuity by all humans yet to walk this earth. Mr. President Clinton, you have been chosen [sic] to write one page on the book of American history. American Indians, natives to this land, hope and pray that the pen you wield will be guided by the sacred being who created and authored the perfect laws of nature by which all mankind has existed since the beginning of time."

7. In less than 150 years, we have decimated our natural resources, both flora and fauna, to a point where much of it has been extirpated and much more of it is just a step away. Placing 150 years on a scale and measuring it against the eons of time it took to create the various life forms, there wouldn't be a unit of measure small enough to see it register. Throw 150 years at an accelerated scale created by Dr. David Whistler, a paleontologist, and watch where it goes as a comparison: *"Think of time as a single day. If you were to compress all time in day, life began 3.7 billion years ago at 10:00 a.m. on that single day. The cockroach came at 9:00 p.m., the dinosaurs at 10:30 p.m. They were all extinct at 11:00 p.m. Man came at 17 seconds to midnight, and all recorded history is 3/100ths of a second."*

- In 1990, the State's new water demand was 26.8 million AF for agriculture; 6.8 million AF for urban areas; and 1.1 million AF for wetlands.
 - Four water-intensive crops—alfalfa, irrigated pasture, rice, and cotton—are grown on 40% of the land and use 54% of the water, but produce only 17% of agriculture revenue.
 - Thirty percent of California's 30 million acres of farmland is irrigated more than three times the national average.
 - California has 7,800 miles of river; all are affected by DAMS, reservoirs, or major surface water withdrawals.
 - Thirty-eight percent of California's native freshwater fish are found nowhere else in the world.
 - As a result of water diversion...
 - Over 66% of California's 116 indigenous fish populations have declined enough to raise concerns.
 - MIGRATORY BIRDS and WATERFOWL have decreased from a high of 60 million to 3 million or a 95% decline.
 - Eighty percent to 90% of RIPARIAN HABITAT in the State has been eliminated.
 - Eighty percent of the SALMON and STEELHEAD population has been lost since the 1950s.
9. We are truly living in a THROW-AWAY, RESOURCE-DISPOSABLE SOCIETY today and must immediately detour in a more sane direction if humanity is going to survive. Our natural resources should never be exploited to a point where their natural sustainability is threatened. From its inception the MATILIJA DAM has created just such a problem. Its condition closely parallels a human being who has suffered a serious coronary occlusion and will die without immediate attention... The river's main artery has been seriously clogged and needs major repair so both its upper and lower extremities will once again have an opportunity to respond and function as a healthy, naturally productive, and viable ecosystem.
- 9.1 Evidence of conventional wisdom mindset by County electorate was covered in the August 27, 1997 issue of the *San Francisco Chronicle* under the caption: "Riverside County Approves Dump Next to Joshua Tree National Park"... A plan to build

- 1958: CALIFORNIA DEPARTMENT OF FISH AND GAME says 1957 kill of Salmon destroyed an entire young Salmon population.
- 1959: U.S. FISH AND WILDLIFE SERVICE makes recommendation to mine owners.
- 1969: 1,600 more dead Salmon are observed.
- 1976: Some 37 years after the first major cries about dead Salmon, the State of California finally files their first enforcement action against the current mine owners, Stauffer Chemical Company.
- 1978: Hundreds of Salmon still dying.
- 1983: The Environmental Protection Agency puts the Iron Mountain Mine on the Federal Super Fund List.

...137 YEARS OF ONGOING POLLUTION AND IRREVERSIBLE DESTRUCTION OF OUR NATURAL COLD-WATER AQUATIC RESOURCES OF THE SACRAMENTO RIVER SYSTEM.

9.3 An article appearing in the *San Francisco Examiner* April 10, 1997 titled "Subway Tunnels Strip Hills of Water" stated in part... Local residents cry out that a 50-foot waterfall has dried up and so have several streams that have run uninterrupted for at least 50 years. John Chickering looked out his window one morning in Nichols Canyon located in the Hollywood Hills and the 50-foot waterfall had stopped: "*It was unbelievable.*" The pumping beneath the Hollywood Hills is part of an ongoing dewatering of the SUBWAY ROUTE that in the past sucked up as much as 380 million gallons a year, about the amount of water consumed by 2,300 families in a year. Powerful pumps drain the advancing tunnels of unwanted moisture/water at a rate of nearly 1 million gallons per day. The water table that fed the waterfall and the streams, as well as the area's abundant vegetation and wildlife, has dropped as much as 134 feet, officials say. Projected cost today: \$75 billion over 20 years... Cost tomorrow and at the end of 20 years? Economic, environmental, and quality of living standards will be accelerated in the wrong direction for the present populace... It's business as usual to accommodate many millions of more

generally recognized, with a full 32 of its ECO-REGIONS harboring *"biodiversity that elevates them to a globally outstanding ranking."*

In this new analysis, called "A Conservation Assessment of the Terrestrial Eco Regions of North America," the authors characterized their study as looking for and classifying *"Globally Outstanding and Ecological Phenomena"* ... ecosystems rare on earth. Four ECO-REGIONS located on the Southern California coast fit into this category, making up one of the only five habitat groups defined by Mediterranean climates on earth. Although they occupy only small fragments of the earth's surface, the Mediterranean habitats—hot and dry in summer, cool and wet in winter—hold fully 20% of the globe's plant species.

If we don't change our direction soon, a total collapse of one the world's most unique Southern California coastal ECO-REGIONS is inevitable.

PART IV: DAM REMOVAL: A VIABLE ALTERNATIVE

1. Some 68,000 large DAMS and some 2 million small DAMS choke the rivers of America. Approximately 600,000 miles of what historically had been free-flowing rivers now lie stagnant behind DAMS.

The NATIONAL PARK SERVICE has removed more than 100 DAMS on rivers and streams. In a recent 3-year period, the WISCONSIN DEPARTMENT OF NATURAL RESOURCES has been involved in the removal of 15 DAMS from Wisconsin's rivers and streams. Removal of the MATILIJA DAM is a viable restoration strategy for our beleaguered VENTURA RIVER. The DAM does not have the SOCIO-ECONOMIC VALUE to justify its existence. It has no productive economic value based upon a true cost-benefit ratio, and has functioned as a grandiose, destructive, major NUISANCE since its inception.

2. The country's best fishery biologists/scientists today agree that the cheapest, most cost-effective way to help ensure the survival of the anadromous Salmonid species is to let the natural processes work and allow the rivers to once again function as free-flowing waterways. Technical fixes are not at all the complete solution. Sixteen years and \$3 billion later (since 1981), the numbers of Columbia River Steelhead and Salmon continue to dramatically spiral downward as the major result of multiple DAMS and WATER DIVERSIONS... Three billion dollars of technical fixes did not work—FISH-LADDERS, barge, and truck, hatcheries, etc.! Last year alone \$438 million was spent in the Columbia River Basin, exceeding the combined cost of \$250 million spent on the MARS PATHFINDER PROGRAM and the \$193 million on other U.S. ENDANGERED SPECIES. ***"In the end, this 'return to the river' is the only solution we can afford"*** (Todd True, Managing Attorney, Earth Justice Legal Defense Fund, Seattle, WA).

2.1 The *American Rivers* publication, Spring 1997 issue, under "Conservation Highlights," related to the wise and prudent use of our country's water resources. Scientists at an Aquatic Ecology Symposium in Tempe, Arizona in February 1997 held by the Western Water Policy Review Advisory Commission, a presidentially-appointed body established to conduct a comprehensive review of Federal activities

The combination of global warming and depriving the annual LITTORAL DRIFT/BEACH REPLENISHMENT processes to function as they have for thousands of years due to the building of high killer DAMS on our rivers and creeks will be a devastating combination of negative effects to all life forms residing in the coastal shore areas of Southern California.

- 2.3 Today's societal values as expressed in the results of a poll conducted for *The Oregonian* newspaper and released on December 8, 1997 indicate that given the choice of whether DAMS on the Columbia River system should be managed to benefit Salmon or to benefit commerce and hydropower, most Oregonians would choose Salmon. Fifty percent of the respondents said they would chip in \$1 or more per month to save Salmon; nearly 40% were willing to pay \$5 or more per month, and 10% as much as \$25 per month. Nearly 40% suggest removal of some of the DAMS to help fish. Sixty percent said improving Salmon runs should be a higher priority on the Columbia and Snake Rivers than commercial uses such as barging or the generation of electricity by DAMS, with a 66% high in the Willamette Valley. Eighty-eight percent of Portland area residents say keeping Salmon in the Columbia and Snake Rivers is very important. The presence of DAMS is the top reason cited by Oregonians as contributing to the decline of the Salmon.
- 2.4 On November 25, 1997, an article appearing in the *San Francisco Chronicle* titled "Government Orders Removal of Maine Dam" advised that the Federal government for the first time ordered the removal of Edwards Dam, a hydroelectric DAM in Augusta, Maine, to allow anadromous fish to swim upstream to their historical natural spawning and rearing habitat. Among the fish being protected in this order is the Atlantic Salmon that, like our Pacific Coast Southern Steelhead, doesn't expire following its spawning ritual.
- 2.5 An article appearing in the *Los Angeles Times* titled "Dam Destruction in North Carolina Shaking Up Northwest" stated that the Quaker Neck Dam in Goldsboro, North Carolina began coming down. Results of this decision will soon provide 75 miles of the Neuse River's main course and 900 tributary miles where multiple

private sources... Eight thousand cubic yards of silt will also be removed, and the concrete FISH-LADDER, non-functional during times of low-flow, will be converted into a flower planter. DAM removal will ensure 20 miles of additional spawning and rearing habitat. Due to delays, this Southern Oregon DAM removal is set for the summer of 1999.

- 2.10 On January 22, 1998, an article appearing in *The Ashland Daily Tidings* titled "Corps of Engineers Cites Dam Breach Cost" has announced that the CORPS is diligently working on a study that would allow for the breaching of 4 DAMS on the lower Snake River, a tributary to the Columbia River. The CORPS was very forceful in response to those questioning as to how serious they were about such a course of action. The response was a willingness to spend up to \$850 million if the study justified in order to save Snake River Salmon runs from extinction, protected now under the Federal ESA. If the 4 DAMS were breached, it would free up 140 miles of the Salmon's historical spawning habitat and help ensure their survival.
- 2.11 On March 14, 1998, an article appearing in the Redding, California's *Record Searchlight* titled "Thirsty People in L.A. Paid to Demolish Dams" stated that the Metropolitan Water District of Southern California will help pay for the demolition of 4 irrigation DAMS on Butte Creek, a tributary to the upper Sacramento River, at a cost of nearly \$10 million. This is the result of the Cal Fed Bay-Delta Program to help recoup the huge losses of multiple runs of anadromous migratory Salmonids of the upper Sacramento and San Joaquin River Systems. Removing the DAMS will open up 30 miles of spawning habitat to spring-run Chinook Salmon. Urban water purveyors are paying part of this nearly \$10 million tab. Spring-run Salmon in the Sacramento system have gone from historical numbers of hundreds of thousands down to an estimated 1,000-2,000, with some Salmon runs extirpated. DAMS and water diversions are the prime reasons given.
- 2.12 In the National Wildlife Federation publication *National Wildlife* 1998 issue an article titled "In Fighting a Dam Disaster, They Helped to Make History" discussed a 7-year effort by Kevin and Karen Coffey and the Northeast Kingdom Chapter,

3. The NATIONAL GEOGRAPHIC, June 1991 article titled, "THE COLORADO, A RIVER DRAINED," written by Jim Carrier, had a very descriptive quote folks in Colorado had developed to describe the Colorado River: *"The Colorado River has defined the West. Water flows toward money. It has nothing to do with gravity."* There's a very large public-spirited movement today to remove one of the really big DAMS on the Colorado River, the GLEN CANYON DAM/LAKE POWELL, due to damage to the ecosystem and recreational/scenic historical values, etc. of the river and its beautiful canyon.
4. S: A study by Hazel, 1976, indicated that his data suggested an average monthly post-project stream-flow of less than 70% of pre-project levels is likely to degrade the fishery, and a post-project stream-flow of less than 30% of the pre-project flow is certainly detrimental (*California's Stream Resources*, Vol. 1: "Overview and Assessment," Bulletin #215, December 1982, p. 61, by State of California, The Resources Agency, Department of Water Resources). The VENTURA RIVER now has a poor quality dribble here and a poor quality dribble there. Approximately 20 live-stream miles are available above MATILIJA DAM.
5. On May 17, 1996, I wrote a letter to the Executive Officer, CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, Los Angeles Region, regarding a water quality observation made and "Questionnaire Study" that I had created involving both the Ventura River and Santa Clara River estuaries. This Questionnaire of November 28, 1995 went to 26 of my Ventura County oral history subjects, ages 65-95, with four being over 90, who were a part of my ongoing HISTORICAL RESEARCH project being conducted on anadromous/migratory Salmonids in Southern California coastal rivers/creeks... These old-timers were all old county Steelhead fishermen. The question posed was: "Were you ever aware of 'STRIPED MULLET' being in the Ventura River mouth or Santa Clara River mouth (estuaries)?" One hundred percent responded with a NO! My thoughts were that this non-indigenous, brackish-water intruder of fairly recent times was direct evidence of the results of the choking off of a free-flowing river: creating losses of species, over-salinization of an estuary system, salt-water intrusion, intervals of sedimentation build-up in the river channel due to lack of natural peak flushing flows,

8. Removal of the silt/sediment, etc. accumulated behind the MATILJA DAM wall could end up on the positive side of the ledger for Ventura County. Today's market value for these natural occurring products is estimated to be \$15 per cubic yard to the construction industry; this totals out to be a value of \$165 million.

Ventura County recently put out to bid/contract for the removal of similar natural products located near the Santa Clara River. The best bid was \$3 per cubic yard to be paid to the County for the removal.

9. What the restoration of the Ventura River System could ultimately produce on a natural self-perpetuating basis, and from a pure economic value perspective, if MATILJA DAM were to be removed is quite impressive. With each adult SOUTHERN STEELHEAD being valued at anywhere from \$75 to \$300+ each, full restoration of the Ventura River System could have an elevated IN-STREAM ECONOMIC VALUE of \$375,000 to \$1,500,000 annually. This is based upon very recent historical conservative numbers estimated at 5,000 adult SOUTHERN STEELHEAD. This does not include the IN-STREAM ECONOMIC VALUES of their juvenile progeny. Through my own personal research and calculations, the production of anadromous/migratory Salmonids just above the MATILJA DAM alone, under optimal conditions, could produce on an annual basis over 3,000 adult STEELHEAD averaging four pounds and with an estimated potential pure IN-STREAM TOTAL ECONOMIC VALUE of \$225,000 to \$900,000.

10. ORGANIZATIONS/INDIVIDUALS AS OF MAY 6, 1974, SOME 24 YEARS AGO, THAT PROVIDED SUPPORT/RESOLUTIONS FOR THE RESTORATION OF THE ANADROMOUS/MIGRATORY SALMONID RESOURCES OF THE VENTURA RIVER

- 10.1 The American Association of University Women Ventura County Chapter
- 10.2 American Legion, Post #399 - Ventura
- 10.3 Associated Sportsmen of California - Resolution
- 10.4 California Fly Fishermen Unlimited - Sacramento Statewide Resolution
- 10.5 California Trout - San Francisco - Statewide Resolution
- 10.6 City of Ojai Planning Commission

- 10.24 The Save the American River Association – Sacramento – Resolution
- 10.25 Senator Robert Lagomarsino – State Senator, Ventura County
- 10.26 Mr. Leo Shapovalov (now deceased)– Sacramento, California – Biologist, California Department of Fish and Game, Retired. Mr. Shapovalov was a world famous anadromous fishery biologist. He received "The Most Outstanding Publication in Wildlife Ecology Management" in the years 1954-1955 for his publication, "The Life Histories of Steelhead Rainbow Trout and Silver Salmon" ... presented by the National Wildlife Society.
- 10.27 Sierra Club – State and National Resolution
- 10.28 Sport Fishing Institute – Washington, D.C. State and National Resolution
- 10.29 Sportfishing Association of California – Long Beach Statewide Resolution
- 10.30 Steamboaters – North Umpqua River, Oregon – State and National Resolution

This organization evolved through a common interest shared by men and women from all over the world who gathered each fall on the North Umpqua to enjoy its great pleasures. It was made world famous by being the favorite of Zane Grey ... U.S. novelist 1875-1939.
- 10.31 Trout Unlimited – State and National Resolution
- 10.32 Ventura College, Biology Department – Resolution from 7 staff instructors
- 10.33 The Wilderness Society – State and National Resolution
- 10.34 Wildlife Management Institute – Washington, D.C. – Resolution
- 10.35 World Wildlife Fund – Washington, D.C.
- 10.36 California Waterfowl Association – San Francisco Statewide Resolution

PART V: CLOSING STATEMENT

WE CAN HELP REVERSE OUR DOWNWARD SPIRAL BY REMOVING MATILIJA DAM:

The President's Forest Plan, known as the FEMAT Report (Forest Ecosystem Management Assessment Team), published in 1993, was created by scientists from a variety of disciplines and concluded something that has been plain to many observers of the VENTURA RIVER SYSTEM (and other rivers/creeks in Ventura and Santa Barbara Counties): that HABITAT is better while it is still intact than after it has been restored. Accordingly, they suggested a focus on these parts of the landscape where the ecosystem is still functioning with integrity, resilience, and most of its parts still sound... These REFUGIA areas received their NUMBER ONE PRIORITY RATING for RESTORATION AND CONSERVATION. The SECOND PRIORITY was to expand those REFUGIA into adjacent connecting areas so that in time the species (SOUTHERN STEELHEAD) would then be able to reoccupy more of its original habitat/range. Following the guidelines of these scientific conclusions for establishing the NUMBER ONE PRIORITY for RESTORATION AND CONSERVATION of the species, the stream miles and their REFUGIA (historical natural riparian/fishery habitat) above MATILIJA DAM fit in perfectly to qualify as our NUMBER ONE PRIORITY.

The obvious best and most secure way to ensure the survival of the native indigenous species of flora and fauna of the VENTURA RIVER SYSTEM is to immediately arrive at a consensus for the complete removal of MATILIJA DAM and all of its silt/sediment/debris, which currently blocks 20 river/tributary miles of CRITICAL SPAWNING AND REARING HABITAT located in the Los Padres National Forest, public owned lands. Removal of MATILIJA DAM would be a QUALITY DECISION and the right thing to do for a multitude of reasons. Removing the DAM would move us in a positive direction where we can divorce ourselves from the conventional wisdom pundits and reverse this destructive negative management of our natural resources in Ventura County. It will serve the greater public interest and help right a bad decision made some 50 years ago. If we don't demonstrate to our children that we care about the future of these natural resources, why should they care? Of course it's easier to turn a blind eye to a past error

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