

LOIS HENRY: Desert aquifer overtapped and needs urgent care

Californian columnist Lois Henry

By Lois Henry

Kern County planners accidentally made a big boo-boo on the desert 10 years ago that has resulted in a potential groundwater catastrophe so large it could threaten the existence of the China Lake Naval Air Weapons Station.

Yeah, big boo boo.

The intricacies of CEQA

When Kern County adopted its General Plan update in 2004 and designated 27,000 acres of Indian Wells Valley lands as appropriate for agriculture, it created a situation where landowners could clear and plant without getting permits, notifying neighbors or going through any further environmental analysis.

Converting lands to ag was considered "ministerial" by the county. That means they fit all the qualifications as outlined in the General Plan's environmental impact report (EIR) so there was no need to revisit each case.

Except much of this land had never been farmed; it was pristine desert habitat.

Clearing it to farm pistachios on a large scale likely should have triggered a reanalysis under CEQA (the California Environmental Quality Act) which has a section that states if later activities come up that weren't examined in the original EIR, then new analysis is needed.

I asked Planning Director Lorelei Oviatt about that and she disagreed.

"If every time something changed we were required to update our General Plan, there would be absolutely no development anywhere in California," she said.

I agree that every small thing shouldn't require reanalysis. But going from native ground to orchards seems like a big enough deal that it should have been looked at.

Nope. The county's EIR says that only projects with discretionary actions need biological analysis on a case-by-case basis, not ministerial projects, she said..

"So no evaluation is required."

She added that "... wildlife agencies retain full independent authority to review and take action if they believe there is some impact."

Except, if clearing hundreds of acres is "ministerial," there is no requirement to notify those agencies. So, how would they know to investigate whether there was an impact?

That's quite a Catch-22.

I asked Julie Vance, an Environmental Program Manager with the California Department of Fish and Wildlife who oversees Kern, about this situation.

She was well aware of, and very frustrated by, Kern's "ministerial" attitude toward this land conversion.

She said her office had been trying to work something out with the Kern County Planning Department since 2011.

"At the time, it was only hundreds of acres that had been disturbed. As opposed to now, when it's into the thousands of acres," she said. "We told them (the county and growers) there were likely species in the area, Mohave ground squirrels and burrowing owls." Both are considered threatened or of concern.

She thought they were close to some kind of deal back in 2011, then "They ran scared. I think they didn't want certain things disclosed because of the groundwater issues."

The next thing her agency knew, thousands of acres had been plowed.

She has continued to send letters.

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Unforeseen stuff happens. I get that and I certainly don't blame planners for their actions back then.

Though I do think the county has played fast and loose with CEQA (California Environmental Quality Act) requirements in recent years (see side box).

What I don't get is why planners now are recommending against using the one tool in the county's kit that would jump start the clean-up of this mess.

That tool, an urgency ordinance to stop or limit new groundwater pumping, seems like the most logical first step.

The Navy is all for it. Such an ordinance was recommended by the county's own groundwater consultant. Locals think it's a sound move and so does the area water district.

So what's the holdup?

Big ag. In other words, politics.

Let's catch up on the background before we move on. Back in 2004, the county updated its general plan and designated large swaths of land in the Indian Wells Valley, which includes Ridgecrest and the China Lake, as OK for agriculture.

Most of those lands, about 27,000 acres, had never been farmed before, which is a key issue. About three years ago, pistachio growers discovered the valley, its excellent growing climate and, more importantly, its groundwater. Approximately 3,000 acres were quickly planted between 2010 and 2013. And, just as quickly, local well owners and the Indian Wells Valley Water District saw water tables drop dramatically.

The Navy took notice.

The trajectory of the area's groundwater could threaten China Lake's mission, according to the Navy. (There's also the issue of thousands of nut trees attracting birds that could get sucked up into Navy jet engines, but let's stick with groundwater for this story.)

Considering the Department of Defense is sniffing around for non-essential bases to close or reduce, this could not have come at a worse time.

The Navy met with county planners about this time last year about the issue. The county ultimately contracted with Todd Groundwater, an engineering consultant firm, to look at all available information on groundwater in the area and issue a report. That report came out in January. To no one's surprise, it showed that agriculture was a major new draw on groundwater.

Todd deemed the valley in "critical overdraft." Pumping is three to five times greater than what the basin is taking in from mountain streams.

If all 27,000 acres deemed OK for ag in the county's General Plan were, in fact, planted, it would essentially drain the aquifer, the report showed.

Among the various recommendations in the Todd report: Kern should pass an "urgency ordinance" to keep the overdraft from worsening as it implements a variety of solutions.

But that is the one recommendation county planners will urge the Kern County Board of Supervisors at their March 4 meeting to ignore.

Kern County Planning Director Lorelei Oviatt told me such an ordinance would have to apply to everyone equally, not just ag and that it would open the county to expensive lawsuits. She pointed to such an ordinance passed by San Luis Obispo County last year, which has been besieged by lawsuits.

"We are looking at it but such an action has a chilling message to business," she said. Not to mention what it might say to the DoD, she said. "We very much support China Lake staying in the desert."

Aside from that, she said, there's a question of whether simply being in overdraft is a true emergency necessitating an urgency ordinance.

Couple things.

We know, based on the county's own report and one the Navy put out about the same time, that the water table is headed south -- fast. If we wait for wells to start sucking sand, we've waited too long.

An urgency ordinance would simply keep things from getting worse.

And, oh by the way, local businesses and the Navy already know about the problem.

Far from "chilling" anything, swift county action would assure both entities that someone is taking the problem seriously.

The county has successfully passed urgency legislation before. It did so when it limited the placement and height of wind turbines in order to protect military flight paths.

An urgency ordinance can be done and, in light of the very high stakes here, it would be irresponsible for the Board of Supervisors to ignore that path.

Lawsuits? Yeah, well, growers are definitely not happy with the situation.

"We don't agree that there's as much of an overdraft," said Rod Steifvater, owner of Mojave Pistachios LLC, the largest single grower in the Indian Wells Valley with 1,600 acres of trees. Steifvater also has orchards in the San Joaquin Valley side of Kern, as well as in Fresno and Madera counties.

Steifvater himself is not a large political contributor. I found only one donation he made to Supervisor Mick Gleason for \$250 this past December.

But agriculture overall is a large contributor, not just to Gleason, but the other supervisors as well, and is one of Kern's main power brokers.

The Todd report, Steifvater said, is filled with inaccuracies.

Chiefly, he felt the Todd report low-balled the amount of recharge coming into the basin and overestimated the amount of water that pistachios need each year.

And for the report to have estimated that 100,000 acre feet a year could be pumped if all designated ag lands were planted was "just grandstanding and not helpful at all," he said.

Overall, though, yes, he agreed, the basin is in overdraft and steps need to be taken to protect supplies.

He doesn't object to the idea of rezoning most of the designated ag lands to limit the amount of new ag coming in, which Oviatt said she intends do. That could take 18 months or more, however.

For his part, Steifvater said he's already decided not to plant other acreage he owns in the Indian Wells Valley. He'll hold onto it so competitors can't come in, he said.

And, he said, the valley needs to start importing water, another recommendation in the Todd report.

But he scoffed at how the county is reacting to the Indian Wells Valley groundwater situation, particularly as it was poised to allow a company to pump more than 100,000 acre feet a year from another desert aquifer just to the south.

He referred to the Fremont Valley where AquaHelio LLC had proposed to pump native groundwater and sell it to other Kern users. The proposal was approved by the Planning Commission before it was killed by Oviatt because of the drought, she said.

"What's totally ridiculous is when you look at the big picture," Steifvater. "The county says we have this dramatic overdraft here while they claimed Fremont Valley had so much water they could pump out 100,000 acre feet a year in spite of the fact Fremont had already been dried up twice when farmers were pumping much less."

Yeah, groundwater is tricky that way.

Opinions expressed in this column are those of Lois Henry, not The Bakersfield Californian. Her column appears Wednesdays and Sundays. Comment at <http://www.bakersfield.com>, call her at 395-7373 or e-mail lhenry@bakersfield.com

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