



# Restore Hetch Hetchy

## Yosemite National Park

Newsletter  
Fall 2018

### California Courts agree with San Francisco

#### Hetch Hetchy diversion needn't meet "reasonable" standard

San Francisco need not comply with the State Constitution's provision that all methods of diversion of water be reasonable, according to the July 9 ruling of a state appellate court. On October 17, the California Supreme Court agreed, by denying Restore Hetch Hetchy's request for it to take up the case.

As usual, the state Supreme Court gave no explanation for its denial, which leaves the appellate court ruling and reasoning in place. Its reasoning was that Congress clearly intended that San Francisco would build a dam in Hetch Hetchy Valley and that California law should not be allowed to "frustrate" that intention of Congress.

Although the 1913 Raker Act enacted by Congress does contain a "savings clause" that clearly specified that all California water law would still apply, and numerous unambiguous statements in the Act's legislative history reinforce that principle, the appellate court's July ruling sidestepped the savings clause. Instead, it ruled that California law was preempted by federal law and cited several previous court decisions relating to the 1902 Reclamation Act – the statute which ultimately provided authorization for federal financing, construction and operation of Shasta, Trinity, Folsom, New Melones, Millerton and San Luis Dams in California (each of those dams being several times the size of the O'Shaughnessy Dam in Hetch Hetchy Valley).

In court, Restore Hetch Hetchy had argued that the Reclamation Act, and court decisions relying on it, did not apply to the Raker Act, since in the Raker Act the federal government was acting only as a landlord (of federal lands), not as a dam builder. The court disagreed without explanation.

The only option left for pursuing the "unreasonable method of diversion" argument in court is to ask the United State Supreme Court for review. Restore Hetch Hetchy is investigating this option but is aware that the U.S. Supreme Court accepts only about 1 out of every 100 cases that are submitted for review.

## Next Steps for Restore Hetch Hetchy

Restore Hetch Hetchy's commitment to return a second Yosemite Valley to its natural splendor remains undiminished. The basic premise of our "unreasonable method of diversion" approach—that the value of restoring Hetch Hetchy far exceeds the cost of the water system improvements that would make it possible—is also unchanged. As a result of the unwillingness of the California Courts to apply State law to San Francisco, Restore Hetch Hetchy will pursue this approach in the halls of government and in the public square.

**Interior** – Restore Hetch Hetchy's July 23 meeting with Secretary Ryan Zinke has opened the door to continuing discussions with the Department of the Interior. Interior understands that the American people have lost a second Yosemite Valley and that San Francisco has enjoyed a privilege not available to any other city.

**Value of Restoration** – Restore Hetch Hetchy will soon release a report assessing the value, in economic terms, of a restored valley. It's an odd thing to put the value of a second Yosemite Valley in dollars and cents, but it's important to show that the value of restoration outweighs the costs of making it possible.

*(continued on page 2)*



Photo: Sherman Hogue

Secretary of Interior Ryan Zinke with Restore Hetch Hetchy on O'Shaughnessy Dam. L to R, Secretary Mark Palley, Executive Director Spreck Rosekrans, Zinke, board member Mark Cederborg, and Vice-chair Virginia Johannessen. Smoke from the Ferguson fire hangs over Hetch Hetchy's normally spectacular backdrop. See page 4.



## Next Steps *continued...*

### Water Supply Alternatives –

With expert consultants, we are refining a suite of water supply options (groundwater, surface storage, recycling etc.) that would provide improved reliability independent of the challenges brought forward by the Bay-Delta plan, climate change or other external factors. Restore Hetch Hetchy is committed to ensuring that **not a drop of water supply will be lost.**

**2018 Election** – We have an eye on specific candidates for election/re-election who have shown interest in our campaign for restoration. It's time for some of these politicians to step up.



Photo: Tim Connor

*Senator Lois Wolk on the O'Shaughnessy Dam with Environmental Defense Fund's Tom Graff, Actor Harrison Ford and Interior Secretary Donald Hodel. Secretary of Resources Mike Chrisman, on behalf of Governor Schwarzenegger, assured Wolk that the State would assess the value of restoration. This State's Hetch Hetchy Study (2006), however, addressed only costs and omitted value. Restore Hetch Hetchy has commissioned this analysis and will soon release its findings.*

## Restore Hetch Hetchy welcomes new board members

### Political experience and legal expertise



**Craig Reynolds** lives in Davis where he recently retired from 30 years of service in the California Legislature as Chief of Staff for several legislators, including, most recently, 14 years with Senator and Assemblywoman Lois Wolk. He staffed hundreds of bills and policy initiatives, including the legislative request in 2004 which asked Governor Schwarzenegger to study the feasibility of restoring Hetch Hetchy Valley.



**James Fousekis** is a retired lawyer, who practiced commercial litigation in San Francisco for over 40 years. Jim has visited Yosemite Valley over the past 70 years, and still feels its magnificence. Jim's wife, on their visit to Hetch Hetchy in the early 1980's, declared the reservoir should be drained—somewhat to the shock of their San Francisco-based companions. Jim came to realize his wife was right.

### *Restore Hetch Hetchy thanks the following individuals and organizations for submitting "amicus" letters to the California Supreme Court on behalf of our case.*

*Former California officials* – **Attorney General Dan Lungren, Resource Secretaries Huey Johnson and Doug Wheeler, and Senator Lois Wolk** – prepared by attorney **Roger Moore.**

*Former Superintendents of Yosemite National Park* – **David Mihalic, B.J. Griffin and Robert Binnewies** – prepared by attorney **Deborah Caplan.**

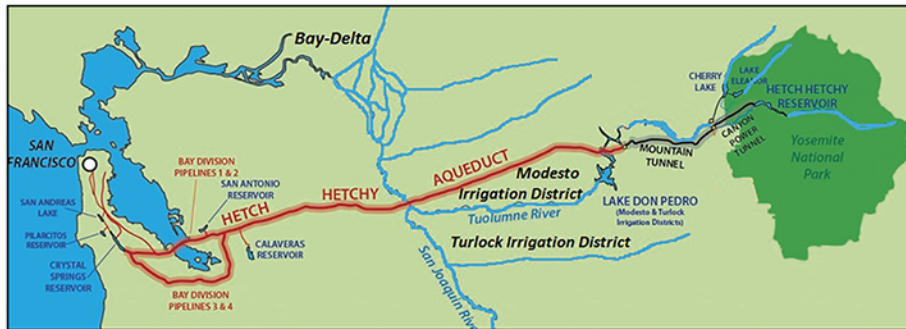
*Environmental Organizations* – **California Coastkeeper Alliance, California Wilderness Coalition, California Water Impact Network, Californians for Western Wilderness, Mono Lake Committee, The Bay Institute, Foothill Conservancy, Friends of the River, Friends of the Eel River, Friends of the Inyo, and The Natural Heritage Institute.**

*San Joaquin Valley farmer* – **Stuart Woolf.**

## The Bay-Delta Plan, and why it matters to Restore Hetch Hetchy

The San Francisco Bay Sacramento-San Joaquin Delta is the largest estuary on the west coast of the Americas. Its aquatic environment has been degraded by upstream water diversions, pollution and invasive species. Chinook salmon and other fish populations have crashed, and some are listed for protection under the Endangered Species Act.

The State Water Resources Control Board's Bay-Delta Plan would increase fresh water flow into the Delta. The Tuolumne River, where San Francisco gets 85% of its supply, would be required to retain no less than 40% of its natural flow between February and June. The Board plans to vote in November.



*The waters of the Tuolumne River, when not diverted by San Francisco or the Turlock and Modesto Irrigation Districts, flow into the San Joaquin River then north into the Bay-Delta. Restore Hetch Hetchy takes no position on the State Board's flow proposal.*

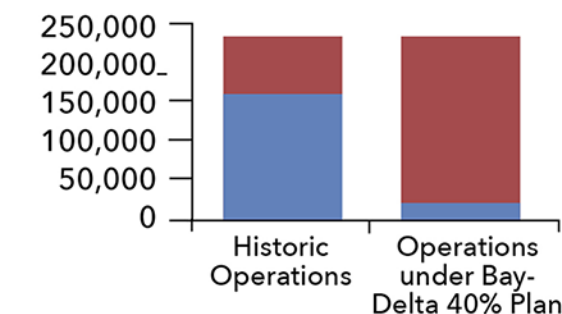
The City and the Turlock and Modesto Irrigation Districts, with which it shares Tuolumne River supplies, would be forced to make changes, especially in dry years—reducing their usage, withdrawing more from storage, or developing additional supplies.

The impact on San Francisco would be greater than on Turlock and Modesto for two reasons. First, when San Francisco battled to build the O'Shaughnessy Dam and other reservoirs in the Tuolumne watershed, it did so knowing it would have "junior" water rights and would receive little flow in dry years. Second, in the 1960's when it worked with Turlock and Modesto to build Don Pedro Reservoir, the City committed to provide 51.7% of any future required flow increases on the Tuolumne River—even though the Districts use 4 times as much of the river's flow. (San Francisco has reserved the right to argue that the 51.7% figure does not apply and any burden to provide extra water to the river should be divided differently.)

**The effect on San Francisco could be large. The City estimates it would need an additional 900,000 acre-feet of supply (2.5 times the storage of Hetch Hetchy Reservoir) to get through a drought.** *(continued on page 4)*

## It's all about the drought

### San Francisco's diversions from the Tuolumne River watershed from 1987-1992



In a repeat of the 1987-1992 drought, San Francisco's available share of the Tuolumne River would be reduced from 151,000 acre-feet to 20,000 acre-feet annually (the blue bars). Under the Bay-Delta Plan, significant new investments would be required to retain historic delivery levels.

■ Withdrawal from storage or alternative supply

■ Flow available to San Francisco



## Meeting the Secretary at Hetch Hetchy

**We were pleased to meet with Secretary of the Interior Ryan Zinke** on July 23. We convened first at the nearby Evergreen Lodge, then drove to Hetch Hetchy.

The Secretary entered the Cedar Room and simply said “Hi, I’m Ryan Zinke.” After we introduced ourselves, the Secretary poured himself a cup of coffee and said “Let’s get to it”.

We presented a short summary of our campaign—some of which he already knew: that the damming of Hetch Hetchy is the worst destruction ever allowed in any of America’s national parks; that San Francisco’s special deal requires them only to pay \$30,000 annually in “rent” for Hetch Hetchy; and that restoration is eminently feasible and can be achieved **without San Francisco losing a drop of water supply**.

We then drove down to Hetch Hetchy to see its granite cliffs and the reservoir. After the meeting, Secretary Zinke posted the following on Twitter:

***“Good meeting with Restore Hetch Hetchy. Taking a fresh look at different options to restore public access and recreation to the valley.”***

Interior spokeswoman Heather Swift added that Zinke “is very interested in exploring different options and opportunities for restoring the valley and allowing public access for recreation in a huge part of Yosemite National Park, while also providing both conservation and water delivery benefits.”

The meeting generated a predictable plethora of media coverage, including a straightforward article in the Wall Street Journal, a negative editorial in the San Francisco Chronicle and a provocative viewpoint published in the Manteca Bulletin. Links to these articles are posted on Restore Hetch Hetchy’s website.

We look forward to continuing to work with the Department of the Interior.



Photo: Department of the Interior

Former Yosemite Superintendent Dave Mihalic (left) served as special advisor to Secretary Zinke in 2017 and 2018. A long-time advisor to Restore Hetch Hetchy, Mihalic suggested requesting a meeting with the Secretary through normal channels.

***Mr. Mihalic will speak at Restore Hetch Hetchy’s Annual Dinner in 2019.***

## The Bay-Delta Plan *continued...*

The Bay-Delta Plan may force the City to diversify its water supply and rely on sources other than the Tuolumne River. San Francisco and its customers might then be less emotionally attached to Hetch Hetchy Reservoir—making our job of restoring Hetch Hetchy Valley easier. The City, however, would likely argue it shouldn’t have to do even more for the environment.

### **What other water agencies have done:**

California cities and farms have changed how they store, move and use water, often because of collapsed fisheries. Farmers have installed enough drip irrigation to reach the moon and back. Cities have built local surface reservoirs, and recharged groundwater basins locally and in remote basins. Cities are also increasing their use of recycled wastewater—a drought-proof supply. San Francisco has pursued very few of these options.



If you use Social Media, connect with us on Facebook, Twitter and Instagram. Tell all your friends about Hetch Hetchy.



## Making Friends in Yosemite Valley



Yosemite Valley is an obvious place to spread our message - that Hetch Hetchy was once a magnificent glacier carved valley in Yosemite National Park and that it can be restored. Office Manager Julene Freitas, accompanied by volunteers Erika Ghose and Michael Barber, went to the park this summer to make new friends for Restore Hetch Hetchy. Most visitors did not even know Hetch Hetchy existed and were shocked when told this "other Yosemite" is currently being used as water storage for the city of San Francisco. Park employees (unofficially) and other local folks were happy to see us.

We look forward to returning soon.

Students at Ross Valley Charter School were shocked and saddened when they learned about Hetch Hetchy, so they created and sold postcards to support restoration.

## Yosemite Inspires



Photo: Colette Robinson



Photo: Julene Freitas

In September, the Yosemite Climbing Association sponsored its 15th Annual "Yosemite Facelift". A small team from Restore Hetch Hetchy joined the hundreds of volunteers who spent a week picking up litter left by summer crowds. The commitment of Facelift volunteers is a joy to behold, and speaks to the very essence of the national park idea.



Photo: Emily Belo Korrell

**RESTORE HETCH HETCHY GEAR** makes great holiday gifts and helps spread our message. Hoodies, jackets, t-shirts, hats, water bottles, patches, stickers and other items are available at [hetchhetchy.org](http://hetchhetchy.org).





## Restore Hetch Hetchy

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*The loss in the California courts was made official when the State Supreme Court declined review in October. It was clear the odds were against us, however, during the oral hearing on May 30 when the presiding judge leaned heavily toward San Francisco's arguments.*

*I have no regrets, and wonder if things might have come out differently if we'd been assigned a different judge in Tuolumne County of a different appellate panel in Fresno. We'll never know.*

*It was important to meet, along with several board members, Secretary Zinke at Hetch Hetchy. I can say he is intrigued, but that it is too early to tell if he will support restoration as strongly as Secretary Donald Hodel did 30 years ago.*

*The Bay-Delta Plan is very big news in San Francisco and contentious within City government. The PUC's analysis indicates that it threatens water supply far more than restoration of Hetch Hetchy. The timeline for the Bay-Delta Plan is short, and the City needs to make improvements quickly if it hopes to retain undiminished reliability. We will help if we can.*

***Serving as Executive Director is a joy and a privilege. But it's also a solemn responsibility. The board and staff are grateful to everyone who shares the vision of returning Hetch Hetchy Valley in Yosemite National Park to its natural splendor. It's the most worthy of goals, and one we intend to achieve.***

**-Spreck Rosekrans**



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### STAFF

Spreck Rosekrans  
*Executive Director*  
Julene Freitas  
*Office Manager*



**Please support Restore Hetch Hetchy.**  
*Together we can all make Yosemite whole again.*

**Use the attached envelop or contribute online.**  
Ways to give also include contributing appreciated stock, donating your car, or including Restore Hetch Hetchy in your estate plan.

**SAVE THE DATE** 🌙 **April 13, 2019**

**Restore Hetch Hetchy Annual Dinner** Berkeley City Club

**Special Guest: Former Superintendent David Mihalic**

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