

**A BRIEF HISTORY OF THE CALIFORNIA LEGISLATURE'S
ANNUAL FISHERIES FORUM – WHERE IT HAS BEEN, SOME OF
THE CHORES AHEAD**

Good afternoon, Senator Wiggins and Members of the Joint Legislative Committee on Fisheries and Aquaculture

I am Bill Kier.

Aware that I am a self-anointed regimental historian of California coastal and fisheries lore, your consultant, my friend Fred Euphrat, asked me to put some of this afternoon's moving parts into historical context, so that the Joint Committee might have an even clearer idea of where you have been since you embarked on your first Capitol Fisheries Forum 36 years ago, and where you might, now, take things -- on behalf of the state's rivers, fish, and coastal resources -- from here

My background includes all the following:

- I was a California Department of Fish and Game biologist, beginning in 1957, studying San Francisco Bay and Delta fish populations and the potential impact on them of various Delta water diversion schemes;
- The Department's biologist in charge of planning salmon conservation into the Oroville Dam complex, including the design of the Feather River salmon hatchery
- Chief of the Department's Water Projects Branch
- Assistant Secretary, the Resources Agency (now Natural Resources Agency), responsible for water, fisheries and coastal policy matters
- Principal consultant to the California State Senate's committees on Fish and Game, Natural Resources, and Water Resources. (I staffed the Senate for 17 years.)
- Director and environmental policy specialist at the Senate's Office of Research (nee' "Senate Office for Research and Policy Development")
- Principal, Kier Associates, *Fisheries and Watershed Professionals* <http://www.kierassociates.net>, since leaving the Senate staff in 1983
- Founding board member, The Bay Institute; and developer of the Institute's case in the State Water Resources Control Board's nearly-historic Bay-Delta water rights/ water quality hearings of 1986-88

For the past three years Helen and I have lived in beautiful Humboldt County -- in Senator Wiggins' Second Senate District and Mr Chesbro's First Assembly District -- where Kier Associates has had an office for more than 20 years. Before that we were in Marin County where I was, as I am now in Humboldt County, active in local politics.

Kier Associates' work has focused in recent years on Klamath River water quality and salmon conservation issues, and on helping the National Marine Fisheries Service develop Pacific salmon recovery plans. Prior to that we worked on upper Sacramento River salmon restoration issues.

The story I'm about to tell you goes back at least 40 years. It has a lot to do with the late Bill Grader, Zeke Grader's dad. I'm going to infringe a bit on the Salmon Panel, which is up next, because Bill Grader and I largely shaped our working lives around salmon conservation.

BILL GRADER, A MAJOR FORCE IN CALIFORNIA FISH POLITICS

Bill Grader moved from the Northwest in the late 1940s to help his brother with a fish buying and processing business in Fort Bragg's Noyo Harbor. Bill ended up taking the business over.

Bill got into politics early, he was a "natural". He helped run Warren Magnuson's campaign for King County (Seattle) Prosecutor when he was 16.

"Maggie" went on to Congress in 1936 and, as a U.S Senator, authored the Magnuson Fishery Conservation and Management Act of 1976, that which asserts control over the fish resources within our nation's Exclusive Economic Zone ("EEZ") – the "200-mile-limit law" – and seeks to protect and rebuild the nation's fish resources through eight multi-state fishery management councils. California participates in the Pacific Fishery Management Council, based in Portland.

Bill was progressive to the core. He helped Alan Cranston organize the California Democratic Council in the early 1950s -- the California Democratic Party was conservative in those days. The CDC gave anti-war progressives a place of their own.

Bill ran the first successful Democratic congressional campaign in memory on California's then-solidly Republican North Coast. That was for Clem Miller in 1958. The district stretched from the Golden Gate to Oregon.

Bill worked as Clem's field rep. When Clem was killed in a plane crash four years later, Bill ran for the seat and lost to a Republican, Don Clausen. Clausen served as the North Coast's congressman for 20 years before being defeated by Doug Bosco in 1982.

Bill knew everyone in or around the fish business – on both coasts. Bill knew everyone in the Capitol – both in Sacramento and Washington, D.C. When he didn't have his hand in a campaign, he ran Grader Fish Company; served as the executive officer of the State's North Coast Regional Water Quality Control Board, or in Sacramento as Undersecretary of the Resources Agency.

I met Bill at the Resources Agency in 1964. We worked for Governor Pat Brown.

BIRTH OF THE JOINT LEGISLATIVE FISHERIES COMMITTEE

In 1972 Bill helped Barry Keene get elected to the Assembly's North Coast district. Barry got the Rules Committee to set up the Joint Legislative Fisheries Committee at Bill's suggestion. Barry and Bill put together the first Fisheries Forum in 1973. Barry eventually got a consultant for the Committee.

For years fishermen, environmental activists, and people in the fish business ran to Bill for help with problems they had with the Department of Fish and Game or other state agencies, with the Fish and Game Commission, or the Legislature. Bill would trudge over the hill from Fort Bragg to Sacramento to take care of their problems.

Since Assemblyman Keene and his constituents were all so interested in fish and rivers and coastal resources, it made sense to Barry to provide a special touchstone for those subjects here in the Capitol. Your Joint Committee has, through a long succession of coastal-district Members, served as that touchstone for the past 36 years.

There were times, in fact, when the Joint Committee took on offshore oil drilling, a liquid natural gas (LNG) offloading facility; and various coastal pollution issues, that the members of the Joint Fisheries Committee referred to themselves as the Legislature's "coastal caucus". The Joint Committee did not take anything away from the standing committees' authorities, but they did introduce legislation under their own, Joint Committee name.

What I've tried to do here is explain how natural it was for Bill Grader to take a hand in things when they weren't going well for fish and fishermen, and what a great fit his skills were with those of the folks around the Capitol.

I want to shift gears just a little, now, hopefully without stealing any thunder from Vivian Helliwell, who is just a bit further down your witness list this afternoon, and to tell you about a specific, major way in which Bill Grader brought citizen energy to work for river and fish conservation to the benefit of both the Legislature and Fish and Game.

In the late 1960s – just as in these past two spawning seasons – the Sacramento River fall-run chinook salmon, the bread-and-butter of California's ocean salmon fishery, mysteriously disappeared. Thousands of fish returned to the river, but not in sufficient numbers, it was thought, to support a fishery.

In summer, 1968 Fish and Game Director Walter Shannon called a meeting of salmon-interested folks to announce that the Department would ask the Fish and Game Commission to shut down the salmon fishery. This was before the Magnuson Act, which elevated such decisions to the Pacific Fishery Management Council and U.S Secretary of Commerce.

Mr Shannon and Fish and Game Commission President Hank Clineschmidt had the support of the sports-fishermen for the closure and, as the data presentations wound down at that meeting, the commercial salmon fishermen appeared they would go along with the closure. That year, as this, there seemed little else that could be done.

Bill Grader was there that night, of course. I sat next to him. He was a big man. He began to squirm and mutter under his breath as one after the other the commercial fishermen began to say, reluctantly, that they agreed with the need for the salmon fishery closure.

Bill suddenly bellowed a great oath. The commercial men scurried back to their seats as Bill got to his feet, reeling off the things that State and federal agencies had done – or let happen – to bring the state's salmon populations to a sorry state: dams and diversions without regard for salmon, logging practices that choked rivers and creeks with mud and trash, and more.

Bill said others could sit there and take it on the chin – and perhaps never fish again. Or they could follow him "across the street" and ask the Legislature for help dealing with the problems.

His anger turned the tide that night. I was even caught up in it, forgetting for the moment that I was staffing the Legislature and that I would likely end up working for Bill Grader, again, as I had back at the Resources Agency

The next morning Bill was in my Capitol office when I got there. His pockets were full of notes – draft bills on yellow scratch paper, hotel notepads, cocktail napkins. There was the outline of a salmon spawning gravel protection bill scrawled on a matchbook cover.

INJECTING CITIZEN POWER INTO THE PROCESS

Bill saw the need for a committee of citizens interested in salmon to work between the Department and the Legislature – to keep things rolling. The Department wasn't comfortable with the idea, didn't know what it might lead to. Bill got the California Citizen's Advisory Committee on Salmon and Steelhead Trout authorized by the Legislature in 1970. He chaired it, and, when the Department chose to sit it out, he personally raised the funds for its first consultant and got its first report to the Legislature on time in 1971.

With the creation of the Joint Fisheries Committee, then, in 1973, the Salmon and Steelhead Advisory Committee's reports became an integral part of each Annual Fisheries Forum.

By the time that Bill's old friend U.S Senator Warren Magnuson got the federal Fishery Conservation and Management Act on the books in 1976, the Advisory Committee had been at it for five years. They had helped the Joint Fisheries Committee and the standing committees develop dozens of legislative initiatives, everything from logging rule improvements, clean water act amendments, better hatchery policies and river protections.

They had earned a rest. They would see how the new Magnuson Act played out, and pray for better days for California's salmon.

Things went reasonably well for awhile. California was full of new environmental awareness. The Fisheries Forums featured reports from the Department and the fishermen on how well the new Magnuson Act and its regional fishery management councils were working out.

And then, as sometimes happens, the salmon, and the things that they feed on in the ocean – krill and juvenile rockfish – suddenly disappeared, the result of an especially severe “El Nino” coastal ocean warming event in 1982 and 1983.

Everyone was wringing their hands. No one seemed to know what to do.

It seemed to Bill Grader that it was the right time to re-inject some citizen power back into the Sacramento salmon scene. Senate Joint Resolution 19 of 1983 restored the California Advisory Committee on Salmon and Steelhead. The Department of Fish and Game went along this time, but they weren't able to give the Advisory Committee the support it wanted.

In 1985 the Joint Committee on Fisheries got a \$350,000 appropriation to support the Advisory Committee. I was hired by the Advisory Committee as its principal consultant in 1986. The Committee had already produced its first report to the Legislature, Fish and Game director and the Commission. (See <http://ifrfish.org/CAC/CAC.htm> for the “CAC's” reports)

In 1988, after a thorough assessment of the state's salmon situation, the Advisory Committee delivered up a report with a suite of bills to address the salmon conservation issues of the day (which, sad to say, are the salmon conservation issues of this day).

The seminal bill, the Joint Fisheries Committee's SB-2261, established a salmon restoration program within the Department of Fish and Game which continues to this day, and a policy to guide the program which was subsumed by Congress into the Central Valley Project Improvement Act four years later.

The most controversial of the bills, a Senate Joint Resolution memorializing the President and Congress to stop the sale of the last significant increment of water available from the federal Central Valley Project – since it might be needed to meet Delta water quality

standards -- went right down to the wire. It passed the Assembly, with an “aye” from Fresno County’s Assemblyman, Assembly Water Committee chair Jim Costa, in 1989. What I hadn’t already earned as the CAC’s salmon consultant I sure earned that year as its lobbyist.

Bill Grader, who passed away in 1984, would have been proud of the work of the citizens’ advisory committee.

THE CURRENT SALMON CRISIS, WHAT THE JOINT COMMITTEE CAN CONTRIBUTE

A team of scientists, lead by the National Marine Fisheries Service’s Southwest Fisheries Science Center, released a report just last week entitled “What caused the Sacramento River fall Chinook stock collapse?” The team’s leader, Steve Lindley summed up the situation this way: "Poor ocean conditions triggered the collapse. **But what primed it is the degradation of the estuary and river habitats and the heavy reliance on hatcheries over the years**".

The river-estuary habitats

I follow Sacramento River and Bay-Delta fish habitat conditions and the impacts that water extractions have on them. I began studying these things 52 years ago as a Department of Fish and Game biologist and haven’t been able to break the habitat.

There was a moment, 20 years ago, when I actually thought we were going to get it right for salmon in the Delta.

The State was in a bind with the U.S Environmental Protection Agency – with the Clean Water Act – and was forced to revisit some Bay-Delta water quality decision-making that it had completed only a few years earlier

All of us had known this was going to happen and the “responsible agencies” had been strengthening their Delta science in anticipation of the SWRCB proceedings. The U.S Fish and Wildlife Service had tackled the question “How much streamflow through the Delta is required to assure the safe passage of Sacramento River juvenile chinook salmon?”.

As you know, the State Water Resources Control Board (SWRCB) uses a “quasi-judicial” process for its proceedings, complete with opening statements, expert witness testimonies, cross-examination of the witnesses, rebuttal testimonies, sur-rebuttal testimonies, and closing statement/summations – the whole megillah.

I coordinated the non-profit Bay Institute’s “case” in these proceedings. We used a dozen expert witnesses. There were several dozen parties to the proceedings that contributed testimony. The proceedings stretched for 20 months and produced a 14,000-page transcript and 44,000 pages of technical exhibits.

We handed in our closing statements in February, 1988. The SWRCB members and staff poured over the record for the next six months and issued a draft plan for Bay-Delta salinity and flows to support salmon in October, 1988.

I thought the U.S Fish and Wildlife Service’s case was heroic. They brought in solid, solid science that demonstrated how much streamflow it took to get juvenile chinook salmon safely from Rio Vista downstream to upper San Francisco Bay.

In late 1987, as their case was winding down, the Service lost its counsel – to retirement or a transfer or something – I can’t recall a this point. The Service’s sister agency at Interior, the

Bureau of Reclamation, saw this as a chance to rein the Service in and shape the Service's final case.

It was touch and go for awhile, but, in the end, the Service prevailed, shook off Reclamation's attack, and got its Delta streamflow recommendations solidly into the record where they played a major role in shaping the SWRCB's October, 1988 draft "Water Quality Control Plan for Salinity, San Francisco Bay/Sacramento-San Joaquin Delta Estuary".

The Service's Delta salmon streamflow recommendations were based in part on their articulated policy (the policy was spelled out in their Delta hearings summation) that mitigation – in this case, their rearing of juvenile chinook salmon at Coleman National Fish Hatchery 200 miles upstream on the Sacramento River's Battle Creek – had to be provided at, or as near as possible, to the point of habitat loss – in this case the development of the Shasta Dam complex 50 years earlier.

The Service testified that the straying rates of hatchery salmon experienced by the Department of Fish and Game, which began trucking hatchery salmon to the estuary in the late 1960s, were unacceptably high and would not, therefore, provide adequate mitigation to the upper Sacramento River region.

I was surprised to learn recently that the Service has been trucking Coleman Hatchery salmon to the estuary for the past two years. I have taken the liberty of drafting a letter for the Joint Committee's consideration and use, asking the Service's Acting Director, Mr Gould whether the mitigation policy that his Service worked so hard to uphold 20 years ago has undergone some conscious change – or whether it is simply the victim of "policy drift".

By the end of January, 1989 California's Delta politics-as-usual had buried the SWRCB's draft plan – which some of us had poured years of our lives into. In the 20 years since, California government has largely pretended that it doesn't know what to do about the Delta. But for that one shining moment in 1988 we had all the information that we needed to protect the Delta and we had a SWRCB that thought that it was quasi-judicial and somehow beyond politics.

It is my opinion that that case – the way the Governor's people and the Legislature's water committees stomped the draft Delta plan to death – broke the SWRCB's ability to deal straight up with the Delta. The SWRCB has been a Delta spectator, not a major Delta actor in the years since.

The role of the salmon hatcheries

In the late 1990s the scientists from our firm worked on a suite of assessments for the Battle Creek Working Group, a non-governmental group chaired by Mendocino salmon fishermen and fisheries leader, the legendary Nat Bingham. The group included water interests, Battle Creek landowners, local politicians, and, of course, the responsible agencies.

The central purpose of the Working Group was to draw a plan for restoring salmon habitat in Battle Creek, the only place left where we could create a self-sustaining population of winter run chinook salmon, the first Pacific salmon to be placed on the Endangered Species Act list.

But there was also the problem of how to integrate the operation of the Coleman National Fish Hatchery, the largest chinook salmon hatchery in the world – and which sits on Battle Creek six miles upstream from its junction with the Sacramento River – with the proposed

restoration of salmon to Battle Creek and the desired increase of salmon use of the 40 miles of mainstem Sacramento River above Battle Creek, between Battle Creek and the end-of-the-line at Keswick Dam near Redding.

Soon after completing work on the main Battle Creek restoration plan (see <http://www.battle-creek.net/docs/Battle%20CreekSalmonandSteelheadRestorationPlan.pdf>) we identified ways in which Coleman Hatchery operations would likely impede the restoration of naturally-spawning salmon in the region and the steps that should be taken to reduce the problems (See “Maximizing Compatibility Between Coleman National Fish Hatchery Operations, Management of Lower Battle Creek, and Salmon and Steelhead Restoration” http://www.krisweb.com/biblio/battle_xxxx_wardetal_1999_compatibility.pdf).

These were not trivial problems. My concern is that they have not been addressed and that they are still confounding the restoration of salmon in the upper Sacramento River.

We have spent over \$100 million in the past 20 years to improve Sacramento River salmon spawning conditions above Battle Creek. But because Coleman Hatchery fish gang into Battle Creek, non-hatchery fish gang into Battle Creek too. In 2002 nearly a half million adult fall run chinook salmon piled into Battle Creek. Most suffocated and died there. I doubt seriously much salmon production came of it.

The solution to the problem, we suggested in our 1999 “Maximizing Compatibility” report was to construct a weir across lower Battle Creek and allow in only the number of fall run chinook spawners the creek can accommodate – about 9,000 spawners. And to relocate the fish entrance to Coleman Hatchery to a point about two miles upstream from the mouth of Battle Creek where the Gover Ranch ditch emptied in the river.

That is, the Gover Ranch diverts water from Battle Creek during the irrigation season. It could, as easily, divert some Battle Creek water during the fall migration season, enough to lead those salmon inclined to enter the hatchery to do so via the ranch ditch, rather than lower Battle Creek -- “where the gang goes”. And, in this way, the salmon that now gang into Battle Creek could be encouraged to use the restored habitat in the mainstem river.

My gut tells me that no serious action has been taken on this suggestion to re-plumb the fish entrance to Coleman Hatchery. But I have included a request for a status report on the subject in the proposed letter to the Service’s Acting Director Mr. Gould. The Fish and Wildlife Service operates Coleman Hatchery.

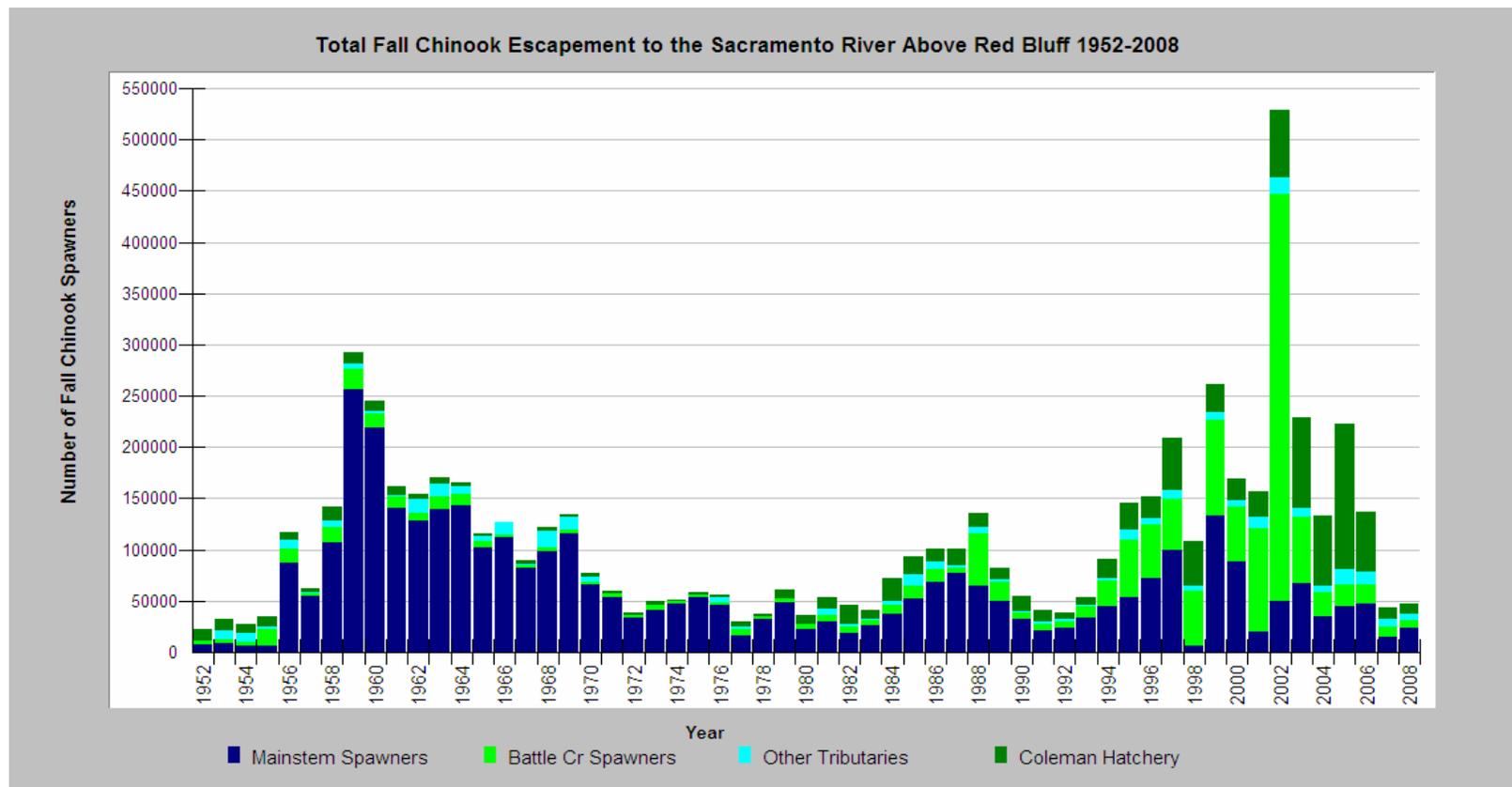
CONCLUSION

I don’t get any particular joy out of criticizing agencies or their personnel. I was a bureaucrat for nearly 27 years and, like most of today’s bureaucrats, I thought I did a good job.

But I have reluctantly come to the conclusion that very little change comes from within – that the agencies require prodding, cajoling and an occasional swift kick in the pants before they will change the way they do business.

As my team walked away from Battle Creek a few years ago I could practically hear things sliding back to their agency “angle of repose”. Despite their natural aversion to citizen involvement, agencies’ efforts desperately need it.

We thank the Joint Fisheries Committee for hosting such opportunities as today’s Forum to re-inject some citizen power into the conservation of California’s fish resources.



Sacramento River fall-run chinook salmon returns to the upper spawning grounds (Red Bluff Diversion Dam up to the end-of-the-line at Keswick Dam) have gone from mostly wild to predominantly hatchery-origin fish which gang into Battle Creek and lure wild fish there as well (total of 450,000 crowded into the creek in 2002).