Scorched Earth

How Climate Change Pits Big Oil against Big Agriculture in California's Central Valley

Noel Edlin and Erin Poppler

As the producer of a large percentage of America's food, California's Central Valley is often referred to as the breadbasket of our nation. Resting alongside the "breadbasket" is a veritable oil bucket. Although no popular moniker currently exists to identify it as such, the Central Valley is a major oil-producing region. Both industries are formidable in their own right and essential to the economic strength of the region; and both are heavily reliant upon the area's natural resources. While there has historically been harmony between these two industries running their substantial operations side by side, this situation is rapidly changing for the worse. New tensions are developing that could have far-reaching consequences. The source of that tension, simply put, is water. While food and oil are unquestionably valuable resources, they are trumped by water, California's most precious resource of all.

THE TENSION

Central Valley farmers depend heavily on the local aquifer system for water. Historically, there was enough water from underground aquifers and surface water to sustain their operations. But this is no longer the case, and in the past year, an unprecedented number of farmers had to lay fallow hundreds of thousands of acres of their crops. But many farmers have continued to produce a relatively normal output of crops, making up for the lack of water by digging more wells and extracting more groundwater at a frenzied pace. Climate change, drought, and the agricultural industry's own overpumping have diminished farmers' usable water to a trickle and depleted water tables to historic lows. In fact, many scientists are concerned that the damage done with these overpumping practices will prove to be irreversible. Farmers argue that this problem, and the resulting detriment to crops, is compounded by oil companies' operations that purportedly contaminate Central Valley groundwater with brine and chemicals. The farming industry argues that injection wells installed by oil companies decades ago allegedly disposed of billions of gallons of alkaline oil-field wastewater. There is now speculation that well casings may also have leaked and contaminated agricultural wells as a result. Water drawn by farmers from older wells is now highly alkaline. The alkalinity destroys existing crops, ruins piping systems, and makes future crop growth impossible until the water is remediated. These accusations have created a palpable strain between factory farms and oil companies.

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THE RESPONSE

In the shadow of a historic drought and the battle over crucial and limited resources exemplified by the deep tensions between the oil and agricultural industries, concerned parties have responded in a variety of ways. Environmental experts are

studying the problem to understand the science and determine possible remedies. In the legal sphere, some have taken the battle to court. On the state level, sweeping legislative reform has been passed that will change how water is managed across California.

THE BLAME GAME

In light of the very real and crippling challenges related to the water crisis, the impulse to allocate blame is understandable and a lawsuit can be a highly useful tool for this purpose. This is precisely what a commercial farm is attempting to do in a potentially explosive and groundbreaking lawsuit that has attracted a fair amount of attention in the media and legal profession (*Palla Farms v. Crimson Resource Management Corp. et al.*[1]). Palla Farms, a commercial farm in Kern County, sued several oil companies for, among other things, damage to its crops and property from fracking operations. The plaintiff claims that the water that oil companies extracted during their production process and then reinjected into oil wells is the source of high levels of salts that contaminate the aquifer the farm used to irrigate its orchards. The plaintiff claims the problems with its crops can be directly attributed to the high level of salt in its water source. While this is a single lawsuit, if the Central Valley farmers are certified as a class, or an important verdict or large settlement is obtained in this particular action, then potential damages could be in the billions of dollars and landmark precedents established.

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As this lawsuit demonstrates, oil companies are an obvious and deep-pocketed culprit to try to blame. However, doing so creates an incomplete picture that ignores the regional and environmental issues that dramatically affect groundwater. For instance, we must consider how the groundwater pollution problem likely goes all the way back to the mining industry. As is widely known, from 1848 to the mid-1850s, California was a hotbed of mining activity. In the early days of the Gold Rush, gold nuggets could be easily found on the ground. Later, forty-niners used techniques such as panning for gold in rivers and streams. But as the supply dwindled, other more sophisticated methods for extracting gold, such as hydraulic mining, were developed. With this technique, a high-pressure hose is used to loosen gold from gravel beds. This mixture was then sluiced and the gold sunk to the bottom for collection. Hydraulic mining was extremely detrimental to the environment because it released large amounts of heavy metals and other pollutants into California waterways. The ill effects of these practices can still be seen in many parts of the state, including the Central Valley. Although mining practices are now heavily regulated and most of the gold has, for all intents and purposes, been extracted, these pollutants are probably still wreaking havoc on the groundwater supply. In addition, climate change could be just as devastating as mining runoff and alkaline pollution to water tables, causing groundwater levels to be depleted to all-time lows.

ALTERNATIVES TO THE BLAME GAME

Rather than blame and litigate fault, a different reaction to the state's most serious drought and the resulting tensions between industries has been a push toward groundwater regulation and preservation. For example, in March of this year Governor Jerry Brown and lawmakers proposed a $1.1 billion drought relief bill, which is similar to the $687 million drought relief bill—the Sustainable Water Management Act—lawmakers approved in September 2014. The package includes nearly $300 million in programs devoted to water recycling and improving the quality of potable water. But critics of the bill are concerned about the fact that nearly $700 million of the funds were at the outset and are today earmarked for flood-prevention measures originally approved in 2006. While this new piece of legislation, at least in part, is a step in the right direction, more needs to be done. It is no longer possible to ignore the devastating effects of California's most serious drought, or to deny the likelihood of more erratic weather patterns in the future leading to even more severe droughts. The issue is further exacerbated by the fact that the state's population is expected to increase over the next two decades from 39 million to a total of 45 million people. Given these considerations there is no doubt that the water supply will continue to decline while at the same time demand for this precious resource will skyrocket. The current situation is a perfect storm for increased tensions that will likely result in future litigation and further legislation.

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THE FUTURE

While there is much conjecture and prediction about how long California's historic drought will stretch; what the full ramifications will be; and how we will respond to future litigation, regulation, and legislation about these issues, one thing is clear: we will all have to adapt. And we have a choice in what that looks like. Adapting means we cannot remain biased in our perspectives as attorneys, industry representatives, residents, or legislators because we are all stakeholders in the precious and fragile water supply. So let's change the conversation from a battleground between stakeholders to an effort to find common ground.

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Note

1. The authors' firm represents a party in the *Palla Farms* case.