

Saving San Francisco Bay: A Case Study in Environmental Legislation

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Saving San Francisco Bay: A Case Study in Environmental Legislation*

On August 7, 1969, the Governor of California signed a bill establishing the San Francisco Bay Conservation and Development Commission (BCDC) as a permanent agency.¹ The Commission is empowered to monitor and control the development of the San Francisco Bay and its shoreline.² For that purpose it has jurisdiction over the Bay itself,³ over the diked saltponds⁴ and managed wetlands⁵ surrounding the Bay, and over an area extending 100 feet landward from the shoreline. Anyone wishing to "place fill, to extract materials, or to make any substantial change in use of any water, land, or structure"⁶ within the BCDC's jurisdiction must first secure a permit from the Commission to do so;⁷ approval by local governmental units is no longer sufficient.

* Much of the material in this Note is drawn from contemporaneous accounts published in the following newspapers: Albany Times, Los Angeles Times, Oakland Tribune, Palo Alto Times, Redwood City Tribune, Sacramento Bee, San Francisco Chronicle, San Francisco Examiner, San Jose Mercury, San Jose News, San Mateo Times, and Sunnyvale Standard-Register Leader. In addition, significant information came from interviews with the following persons: Mary Henderson, Redwood City Councilwoman, in Redwood City, Cal., Dec. 2, 1969; Claire Dedrick, Director of the Save Our Bay Action Committee, in Menlo Park, Cal., Dec. 8, 1969; Harry Jackson, Legal Counsel for the Leslie Salt Company, in San Francisco, Cal., Dec. 9, 1969; Melvin B. Lane, Chairman of the Bay Conservation and Development Commission, in Menlo Park, Cal., Mar. 18, 1970; James Garibaldi, Lobbyist for the Leslie Salt Company, in Sacramento, Cal., Apr. 2, 1970. The authors wish to thank these and all other persons interviewed for their help in clarifying events occurring during the BCDC controversy.

1. Law of Aug. 7, 1969, ch. 713, Cal. Stats. 1395 (1969), *amending* CAL. GOV'T CODE §§ 66,600 *et seq.* (West 1966) (codified at CAL. GOV'T CODE §§ 66,600 *et seq.* (West Supp. 1969)).

2. For a detailed explanation of the composition and operation of the BCDC see CAL. GOV'T CODE §§ 66,620, 66,630-36 (West Supp. 1969).

3. As defined in the BCDC legislation, San Francisco Bay includes "all areas that are subject to tidal action from the south end of the bay to the Golden Gate . . . and to the Sacramento River line . . . including all sloughs, and specifically, the marshlands lying between mean high tide and five feet above mean sea level; tidelands (land lying between mean high tide and mean low tide); and submerged lands (land lying below mean low tide)." CAL. GOV'T CODE § 66,610(a) (West Supp. 1969).

4. As defined in the BCDC legislation, saltponds consist of "all areas which have been diked off from the bay and have been used during the three years immediately preceding the effective date of . . . this section . . . for the solar evaporation of bay water in the course of salt production." CAL. GOV'T CODE § 66,610(c) (West Supp. 1969). There are some 46,000 acres of saltponds surrounding the Bay, virtually all of which are owned by the Leslie Salt Company.

5. As defined by the BCDC legislation, managed wetlands consist of "all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the effective date . . . of this section . . . as a duck hunting preserve, game refuge or for agriculture." CAL. GOV'T CODE § 66,610(d) (West Supp. 1969). More than 50,000 acres of marshlands around the Bay qualify as managed wetlands.

6. CAL. GOV'T CODE § 66,632(a) (West Supp. 1969).

7. The BCDC makes its decisions on permits according to whether the proposed project is "(1) necessary to the health, safety or welfare of the public in the entire bay area, or (2) of such a nature that it will be consistent with the provisions of this title and with the provisions of the *San Francisco Bay Plan* . . ." CAL. GOV'T CODE § 66,632(f) (West Supp. 1969). In an attempt to clarify this admittedly vague standard, the California legislature listed the following factors as relevant to any decision: the extent of the benefits to the public, the purpose of the project (uniquely water-oriented,

The 1969 law permanently halts indiscriminate encroachments on the waters and shorelands of San Francisco Bay. In the 120 years prior to the enactment of the BCDC legislation, the total surface area of the Bay was reduced through filling and diking by approximately 250 square miles. The United States Army Corps of Engineers has predicted that if all remaining tide and submerged lands susceptible of reclamation were in fact reclaimed, only 187 of the original 680 square miles of Bay would remain. The significance of the 1969 BCDC legislation is that it may preclude fulfillment of this prediction.

The establishment of the permanent Commission was heralded as a milestone in environmental preservation. It represents a far-sighted response to an issue of environmental quality obtained through the legislative process. Consistent with the growing consciousness of environmental degradation in this country, conservationists will undoubtedly propose an increasing number of environmental protection measures to legislative bodies on every level in the years to come. The BCDC campaign should prove instructive to these advocates because of its overwhelming success in the face of strong opposition. This Note will document, in case study fashion, the history of the passage of the BCDC legislation, spotlighting the factors that contributed to its success. In so doing, the authors depart from traditional legal commentary in the hope that the lessons of the particular struggle will be of value to those engaged in similar future battles.

I. BACKGROUND OF THE BCDC LEGISLATION

The campaign which culminated in the establishment of the BCDC as a permanent agency in 1969 had its beginnings eight years earlier when three women whose husbands were associated with the University of California at Berkeley, Mrs. Clark Kerr, Mrs. Donald McLaughlin, and Mrs. Charles Gulick, formed the Save San Francisco Bay Association. Their original goal was to prevent the city of Berkeley from pursuing fill projects in the Bay.⁸ The Association began a membership drive and started a campaign to inform the public about the dangers involved in continued bay-filling. The group was able to enlist the help of Nicholas Petris, then State Assemblyman from the Berkeley area. In both 1961 and 1962, Petris introduced bills in the California Assembly calling for a moratorium on bay-fill. Both bills died in committee.

shoreline or public access improvement), the availability of alternative upland locations or alternative Bay sites, the probability of establishing a permanent shoreline (versus slow encroachment), the extent of fill proposed, the soundness of design, and the safety of the project. CAL. GOV'T CODE § 66,605 (West Supp. 1969).

8. Bay-fill is defined in the BCDC legislation as "earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods" CAL. GOV'T CODE § 66,632(a) (West Supp. 1969).

In 1963 the Association was instrumental in the production of a major study of the Bay. The report, *The Future of San Francisco Bay*,⁹ was written under the auspices of the Institute of Governmental Studies of the University of California. This study examined ownership of the Bay, economic and recreational values of the Bay, pollution of the Bay, and past and proposed encroachments by fill and diking of the waters and tidelands of the Bay. The study concluded by recommending a regional "bay conservation and development commission" to regulate fill in the Bay and to coordinate shoreline development according to a master plan. It also called for a moratorium on bay-filling while the plan was in preparation.

Armed with this factual information, in 1964 the Association had its first success in the legislature. The late Senator J Eugene McAteer, reportedly at the urging of Mrs. Kerr, sponsored a successful bill creating a commission to study the problems of the Bay.¹⁰ Once established, the Commission reviewed the history of indiscriminate development of the Bay and issued a report¹¹ calling for an examination of the possibility of establishing regional planning and management for the Bay.

In 1965, McAteer in the Senate and Petris in the Assembly successfully sponsored a bill establishing the Bay Conservation and Development Commission as a temporary agency.¹² The Commission was charged with the task of preparing a comprehensive and enforceable plan for the conservation of the Bay and the development of its shoreline. It was also given the power to grant or deny permits for development and fill, so that the Bay would be protected from indiscriminate encroachments while the plan was being prepared. Over the course of the next three years, the temporary Commission prepared 23 reports on various aspects of the Bay. These reports served as the basis for the *San Francisco Bay Plan*,¹³ which was officially presented to California's Governor and legislature on January 6, 1969.

The *Bay Plan* outlined specific policies to guide the future uses of the Bay and its shoreline. It also charted what the Commission regarded as desirable uses for all areas within its jurisdiction. To implement the proposed policies, the Commission recommended the creation of a permanent regional agency. That agency, the Commission suggested, should continue to have the power to grant or deny permits for all bay-filling and dredging and, in addition, should have limited authority to direct shoreline develop-

9. M. SCOTT, *THE FUTURE OF SAN FRANCISCO BAY* (1963).

10. Law of May 19, 1964, ch. 98, Cal. Stats. 311 (1965).

11. SAN FRANCISCO BAY CONSERVATION STUDY COMMISSION, *SAN FRANCISCO BAY: A REPORT TO THE CALIFORNIA LEGISLATURE* (1965).

12. Law of July 12, 1965, ch. 1162, Cal. Stats. 2940 (1965) (codified at CAL. GOV'T CODE §§ 66,600 *et seq.* (West 1966)).

13. SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION, *SAN FRANCISCO BAY PLAN* (1969).

ment, a power not given to the temporary agency.¹⁴ Thus the foundation for establishing a permanent agency had been laid.

II. THE 1969 CAMPAIGN: THE PUBLIC PHASE

A. *The Bills*

In the legislative session that followed the formal release of the *Bay Plan*, 10 bills pertaining to the continuation of the BCDC were introduced. Of those, only four received serious consideration by the legislature—the bills authored by Senators Dolwig, Marks, and Petris,¹⁵ and by Assemblyman Knox.¹⁶ Each of these will be examined in detail.

The first bill introduced in the 1969 session was sponsored by Senator Milton Marks, a Republican from San Francisco who had been elected to fill the seat vacated by the death of Senator McAteer. Marks' measure was considered the administration bill.¹⁷ It merely deleted the BCDC termination provision from the 1965 bill. The bill said nothing about official adoption of the *Bay Plan* and did not include any provisions for expansion of BCDC jurisdiction to saltponds and managed wetlands or to a shoreline band, all of which had been recommended by the *Bay Plan*.

Senator Richard J. Dolwig, a Republican whose district comprised San Mateo County,¹⁸ introduced a bill that would have established an entirely new agency to redo the work of the BCDC by preparing a new master plan over a five-year period. The bill would have been a major obstruction to conservation efforts, not only by scrapping the years of work that had gone into preparing the BCDC's *Bay Plan*, but also by stalling efforts to implement a permanent, enforceable plan for the development and conservation of the Bay.

The remaining two bills, a Senate measure authored by Nicholas Petris of Oakland, and an Assembly bill introduced by John Knox of Richmond, were identical in several ways. Both bills provided for the continuation of the BCDC as a permanent agency and for use of the *Bay Plan* as an interim guideline. Both bills called for the BCDC to have a 1000-foot shoreline jurisdiction around the Bay, and neither included jurisdiction over the

14. Shoreline jurisdiction was essential in order to ensure that prime shoreline sites would be preserved for suitable uses, to allow maximum feasible public access to the Bay, to establish policies for the use and development of saltponds and managed wetlands, to assure that no shoreline area was used in a manner detrimental to the Bay, and to encourage attractive design of shoreside developments.

15. Former Assemblyman Nicholas Petris was elected to the California State Senate in 1966.

16. The four bills were A.B. 2057 (Apr. 8, 1969), introduced by Assemblyman Knox; S.B. 839 (Mar. 28, 1969), introduced by Senator Dolwig; S.B. 347 (Feb. 19, 1969), introduced by Senator Petris; and S.B. 117 (Jan. 16, 1969), introduced by Senator Marks.

17. Governor Ronald Reagan, in his annual opening speech to the legislature, had urged continuation of the BCDC. The Marks bill originated in the Reagan Administration and embodied the Governor's recommendations for the Commission.

18. See Figure 1 *infra*, for a map of the San Francisco Bay area. Geographic locations mentioned throughout this Note may be found on the map.

46,000 acres of saltponds in the Bay. Finally, both the Knox and Petris bills envisioned the BCDC operating as part of a regional government vested with responsibility for several area-wide problems. The BCDC was in favor of this approach, and Knox himself had been a consistent advocate of regional government for the nine-county Bay area. However, regional government was not politically feasible in 1969, and its supporters eventually were forced to set aside interest in regional government to concentrate on securing approval of the BCDC as a single-purpose agency. The regional government link was soon dropped from both bills.

B. *SOBAC*

In April, 1969, when all four bills were pending in the legislature, the outlook for passage of a strong preservation measure seemed dim. Several factors contributed to this sober assessment of the chances for a strong BCDC bill. Substantively, each of the four bills had grave weaknesses. The Marks bill was merely a skeletal measure designed to prevent termination of the BCDC,¹⁹ and the Dolwig bill was a well-conceived plan to scrap all progress to date. Even the two potentially strong bills, the Knox and Petris measures, were flawed by their politically ill-advised link to regional government and by inadequate provisions for BCDC territorial jurisdiction.

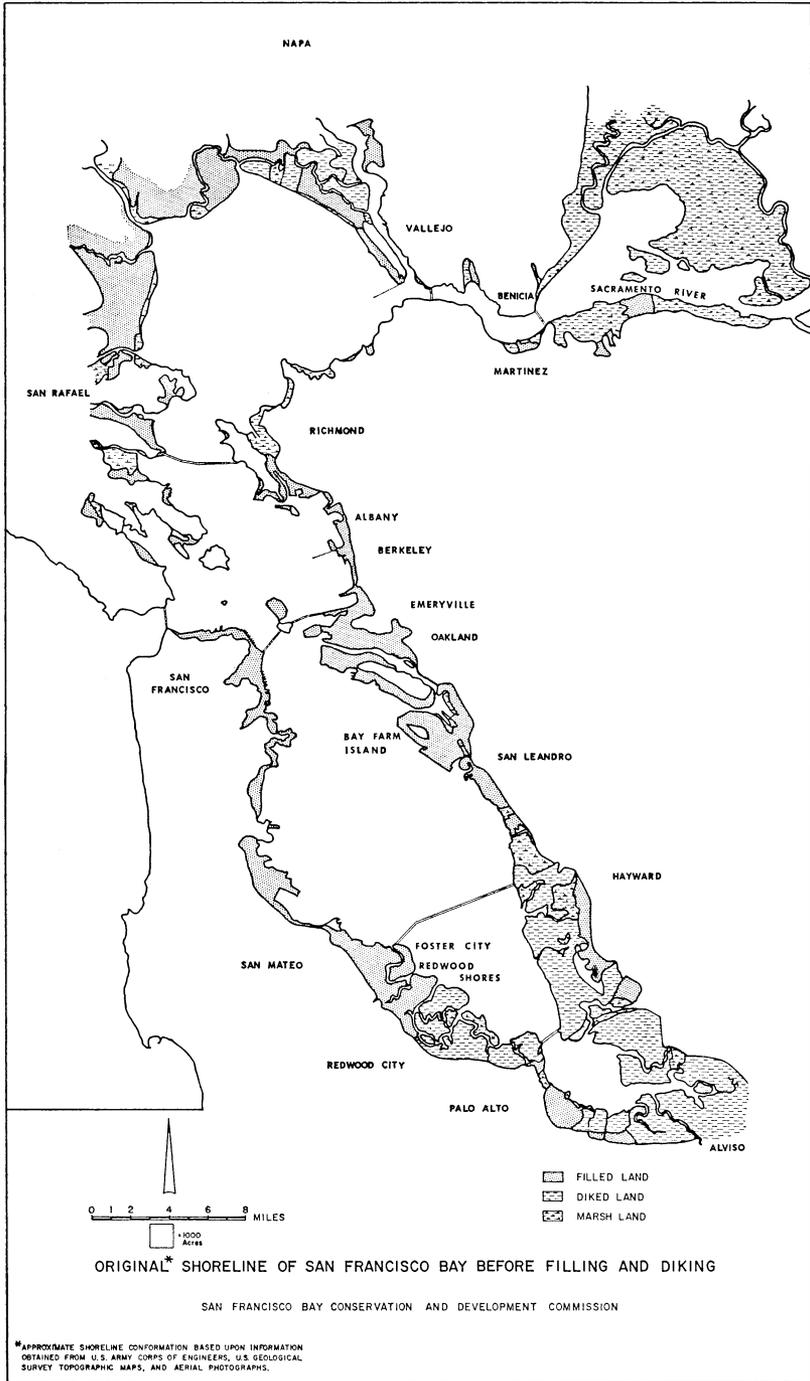
Politically, prospects for the bills were discouraging as well. Conservationists might have hoped for an ally in Governor Ronald Reagan, who earlier in the year had surprised them with announcement of his support for continuation of the BCDC. However, the administration sponsored the Marks bill, which was a decidedly weak effort. Senator Dolwig, as chairman of the Senate committee to which the three Senate bills on the BCDC had been referred and presumably that to which Knox's bill would be referred if it cleared the Assembly, was viewed by many conservationists as an obstructionist. Each of the bills had been sitting idly in his committee for several weeks; that committee had come to be known as the "graveyard" for past conservationist proposals.

In addition, strong private interest opposition was being organized to combat proposed BCDC controls on development of the Bay. The Leslie Salt Company had hired Sacramento's highest paid registered lobbyists to present their case to the legislators.²⁰ Westbay Community Associates had

19. The introduction of a skeletal bill that will be extensively amended later in a legislative session is a common technique among legislators, especially where the lawmakers are too busy to have a bill prepared by the deadline for introduction or want to delay proposing a detailed bill for tactical reasons. Thus the Marks bill was not necessarily suspect because it was in skeleton form at its introduction.

20. See text accompanying note 31 *infra* for a discussion of Leslie Salt Company's objections to the Bay legislation.

FIGURE 1



retained the former San Mateo county manager to lobby for their interests in Sacramento on a salary of \$300 a day plus expenses and entertainment costs.²¹ The Mayor of Oakland, one of the largest Bay area cities, had already publicly registered his opposition to regulations on fill as inimical to his city's development.²²

Two women, Janet Adams and Claire Dedrick, were aware of the poor prospects for getting a tough bill through the 1969 legislature and were convinced that passing a strong conservation bill would require massive public support to overcome normal political obstacles and well-financed, well-planned opposition from large private landowners in the Bay area. Dismayed by the lack of leadership for such an effort on the part of prominent Bay area conservation organizations,²³ these two women seized the initiative and undertook a vigorous public relations effort on behalf of preservation of the Bay. Their campaign took shape as the Save Our Bay Action Committee (SOBAC), formed in mid-April of 1969 and based in Senator Dolwig's home district. Much of the credit for eliciting intense citizen support on behalf of strong legislation is owed to the sustained efforts of this organization.

SOBAC utilized well-proven public relations tactics in the campaign. The group distributed 38,000 deep blue and chartreuse bumper stickers bearing the slogan "Save Our Bay." They circulated petitions in support of a strong bill, collecting several hundred thousand signatures, and with good press coverage, delivered the petitions to politicians likely to be influential on the bill. They placed full-page newspaper advertisements urging attendance at committee hearings where BCDC bills were being discussed. Attached to the ads were contribution coupons to be returned to SOBAC headquarters. By this method, SOBAC compiled a large mailing list and collected over \$21,000 to finance its activities; SOBAC's first advertisement was repaid in three days from mailed contributions.

SOBAC's basic strategy was to avoid discussing the substantive details of the legislation and to concentrate instead on several simply understood issues. First, SOBAC supported only one bill, the Knox measure, throughout the campaign. Second, it encouraged the attitude that the Bay belonged to all the residents of the Bay area, as is illustrated in the slogan "Save Our Bay." Third, SOBAC singled out two opponents of BCDC legislation, Senator Dolwig and certain Bay developers, and made them into political scapegoats by focusing public indignation on them; Senator Dolwig was

21. See text accompanying note 33 *infra* for an examination of the position of Westbay Community Associates on Bay legislation.

22. See text accompanying note 37 *infra* for a discussion of local municipal efforts to block the BCDC legislation.

23. By early 1969 neither the Save San Francisco Bay Association nor the Sierra Club, the two largest and best-organized conservation groups in the Bay area, had made any efforts to enlist public support for strong legislation.

pictured as the enemy of strong Bay controls and the developers were portrayed as villainous despoilers of the Bay.²⁴ Finally, it appealed to the emotions of the public by presenting frightful, if not altogether accurate, pictures of what the Bay would be like if the present course of bay-filling were to continue.²⁵

SOBAC's campaign was aided by several factors. First, a preexisting network of conservation organizations was utilized. The Sierra Club counted 33,000 members in the Bay area; the Save San Francisco Bay Association, the progenitor of all Bay-saving organizations, reached a membership of between 20,000 and 25,000 persons. At the suggestion of the BCDC, a number of Bay-area groups had formed The Citizens' Alliance to Save San Francisco Bay in November of 1968. Even though none of the organizations had assumed leadership in early 1969 for a public campaign on behalf of Bay preservation,²⁶ all of these groups could be called upon to support SOBAC's efforts.

Second, many of SOBAC's techniques capitalized on the fact that the Bay is a highly visible resource. In view of the significance of the Bay to the area and the public awareness of the Bay, SOBAC did not have to sell the populace on the value of saving this resource, as conservationists often must do in other situations. SOBAC had only to alarm the public that the Bay was endangered.

Third, many examples of bay-fill were visible all around the Bay. In the western part of the Bay, two large housing developments had been built on Bay lands. Foster City had been constructed on 2600 acres previously reclaimed from the Bay for farming. Redwood Shores was developed on 4200 acres of converted salt ponds owned by the Leslie Salt Company. Although these developments were not especially offensive examples of bay-fill, local residents had attacked their legitimacy and protested further expansion. For instance, in the East Bay, much controversy was generated when portions of Bay Farm Island, formerly a wildlife habitat, were filled for homesites. More distasteful yet was a fill along the western

24. "TODAY, DEMAND of Senator Richard J. Dolwig . . . the removal of his own bill . . . and any other Bill designed to exploit San Francisco Bay and its shorelines"

"TODAY, THERE IS STILL TIME—to save and salvage the incomparable, but exploited, San Francisco Bay and its shores—to protect the interest of all the people from the financial self-interest of the Very, Very Few." *Redwood City Tribune*, Apr. 19, 1969, at 5, col. 1-8.

25. For instance, the Bay was depicted as being in danger of narrowing into a river if all the land in the Bay susceptible of reclamation were in fact filled.

26. Several conservation organizations were involved in private lobbying on behalf of the BCDC legislation. William Siri, President of the Save San Francisco Bay Association, Dwight Steele of the Sierra Club, Peter Behr, representing several groups, and John Zierold, the registered lobbyist for the Planning and Conservation League all labored in Sacramento in support of the bill. BCDC Chairman Melvin Lane and Executive Director Joseph Bodovitz also appeared at the hearings on behalf of the BCDC. In addition, the BCDC's counsel in the California Attorney General's office, E. Clement Shute, lobbied for the legislation both for the BCDC and the Attorney General himself, who had announced his personal support for the bill.

shore of the Bay that obstructed one of the few freeway vistas of the Bay with a movie theater, various automotive outlets, and a rent-a-car parking lot. Least bearable of all were the numerous garbage dump sites located on marshland at various points around the Bay.

Finally, SOBAC was aided by the growing national concern over environmental pollution. Capitalizing on the alarm, SOBAC phrased its advertisements to link environmental pollution to the Bay preservation issue.²⁷ While the arguments presented were often irrelevant, they helped in generating public support.

C. *First Victory for the Conservationists*

SOBAC placed its first advertisement the day after Senator Dolwig tried to explain his bill to a meeting of angry conservationists. The meeting ended with Dolwig firmly established as a target of the conservationists. SOBAC's advertisement urged citizens to demand that Dolwig remove his bill from consideration and encouraged attendance at the upcoming hearing of Dolwig's Governmental Efficiency Committee.²⁸

Three hundred BCDC supporters traveled to Sacramento by car and chartered bus to attend the hearing. Because of the large crowd, Dolwig was forced to move the meeting from the committee room to the larger facilities of the Senate Chamber itself, an unprecedented act. The subject of the committee's attention was the Petris bill, at that time the Senate's most conservation-oriented BCDC measure. The committee approved the bill and sent it on to the Senate Finance Committee.

Two weeks later, after a visible outpouring of public support for Bay conservation, Senator Dolwig made a dramatic reversal. Announcing that he was in favor of a strong BCDC, Dolwig revised his bill by adding amendments calling for BCDC jurisdiction over saltponds, managed wetlands, and a 300-foot shoreline band. What prompted the complete change in the Senator's position on Bay preservation? Associates suggested to the press that he had grown "increasingly restive from personal attack both at home and in Sacramento."²⁹ SOBAC's pressure on him was probably a factor. Petitions bearing approximately 80,000 signatures supporting a strong Bay bill had been presented to the Senator by different delegations from his district; more than 400 letters advocating a strong BCDC bill

27. The following advertisement typifies those of SOBAC: "1969 . . . Pollution has reached a level as to seriously damage plants and animals in the Bay area Indeed the color of the sky has changed. . . there are no Mission Bays, no swimming where the water is shallow and warm, or safe to swallow accidentally. . . . WIRE! WRITE! PHONE!—to Demand a Halt to 122 years of Destruction of San Francisco Bay . . ." Undated SOBAC Release, on file with the STANFORD LAW REVIEW.

28. See note 24 *supra*.

29. San Francisco Chronicle, May 9, 1969, at 28, col. 8.

arrived at his office each day. Prior to his reversal, members of his political party had publicly suggested that he be dropped by the party in the coming state senatorial elections in favor of someone more responsive to conservation needs.³⁰ The Senator himself stated that his reversal had been the result of continuing discussions between his staff and the BCDC. The amendments to his proposed bill had, in fact, been prepared by the BCDC staff at Dolwig's request. All these elements, with public pressure from various sources being perhaps the most important, played a role in Dolwig's sharp reversal.

III. THE 1969 CAMPAIGN: THE LEGISLATIVE PHASE

A. *Opponents' Arguments before the Assembly Local Government Committee*

On the same day that Senator Dolwig announced his support for a strong BCDC bill, the Assembly Local Government Committee, of which Knox was chairman, took the Knox bill under consideration at a public hearing. While being laughed at, hissed, and shouted down by the crowd of 450 BCDC supporters, the two major commercial interests opposing BCDC legislation—Leslie Salt Company and Westbay Community Associates—presented their arguments against regulation.

The *Bay Plan* recommended that saltponds be included within the BCDC jurisdiction and that they be maintained in production as long as possible. In addition to the economic value of the ponds, the Commission cited two other reasons for continued saltpond use—the ponds were a wildfowl habitat, and they supplemented the total water surface area of the Bay and thereby aided weather moderation and smog prevention. If and when the saltpond owners no longer desired to keep the saltponds in production, the *Bay Plan* strongly encouraged public purchase for the purpose of breaching the existing dikes and actually adding to the Bay's total area. If limited funds prevented such public purchase, the *Bay Plan* outlined criteria to be followed in permitting development. These criteria emphasized preservation of open water surface by dedication to public use and substantial public access. The *Bay Plan* also directed further study of the feasibility of public purchase of the owner's right to develop the saltponds.

Leslie Salt Company was the largest landholder in the Bay, owning 52,000 acres. Most of its land was former marshland that had been turned into saltponds.³¹ Some years prior to 1969, Leslie withdrew 4200 acres of this land from salt production to develop the Redwood Shores housing

30. Redwood City Tribune, Apr. 24, 1969, at 16; interview with Mary Henderson, Redwood City Republican Councilwoman, in Redwood City, Cal., Dec. 2, 1969.

31. See note 4 *supra*.

project on the western shore of the Bay in San Mateo county. The company had plans for further withdrawals for housing developments in future years. In view of the restrictions on Leslie's possible future plans, the company opposed inclusion of saltponds in the BCDC's jurisdiction. Its representatives argued that saltponds were not part of the actual surface waters because they were no longer subject to the tidal action of the Bay, and that therefore they were not appropriate for BCDC regulation. The saltponds, Leslie's spokesmen contended, were already subject to adequate regulation by local zoning controls. Furthermore, they maintained that the application of the *Bay Plan's* policies, which would place severe restrictions on the company's ability to develop its saltponds and could possibly prevent the company from developing its acreage at all, would constitute a taking of lands without just compensation.³²

The other primary opponent of BCDC legislation was Westbay Community Associates, a joint venture partnership including Ideal Cement Company, banker David Rockefeller, Crocker Land Company, and the investment banking firm of Lazard Freres & Co. Westbay had plans for a 27-mile long recreational and housing complex along the Bay's western shoreline. This plan involved 10,000 acres of submerged land, and it would have required massive amounts of fill. Because the BCDC would have authority over all fill proposals in the Bay and since the *Bay Plan's* policies threatened to preclude the kind of filling required for its project,³³ Westbay Associates staunchly opposed efforts to make the BCDC a permanent commission. The primary argument relied on was that the BCDC restrictions were tantamount to inverse condemnation. The company also argued that the operation of the *Bay Plan* would stagnate the tax base of local governments. Finally, Westbay proposed several amendments to the bill, which

32. The constitutionality of the BCDC's permit powers has since been upheld as a valid exercise of the police power in a California court. In *Candlestick Properties, Inc. v. BCDC*, 11 Cal. App. 3d 557 (1st Dist. 1970), an owner of tidal land was denied a permit to fill the property with demolition debris. The land had been purchased for the purpose of depositing fill from construction projects, and the adjoining parcels were either filled or in the process of being filled. The landowner argued that the property had no value except as "a place to deposit fill and as filled land," and that the denial of a permit to fill was a taking without just compensation. The State appellate court disagreed, saying: "It is a well settled rule that determination of the necessity and form of regulations enacted pursuant to the police power 'is primarily a legislative and not a judicial function, and is to be tested in the courts not by what the judges individually or collectively may think of the wisdom or necessity of a particular regulation, but solely by the answer to the question is there any reasonable basis in fact to support the legislative determination of the regulation's wisdom and necessity?'. . . . Without question, an *undue* restriction on the use of private property is as much a taking for unconstitutional purposes as appropriating or destroying it. However, it cannot be said that refusing to allow appellant to fill its bay land amounts to an undue restriction on its use. In view of the necessity for controlling the filling of the bay, as expressed by the legislature [in the preamble to the McAteer-Petris Act], it is clear that the restriction imposed does not go beyond proper regulation such that the restriction would be referable to the power of eminent domain rather than the police power." *Id.* at 571, 572 (citations omitted).

33. One of the major goals of the *Bay Plan* was that all desirable uses be accommodated without substantial bay-filling. Some fill might be justified where substantial public benefits result—for example, new recreational opportunities or new public access to the Bay. However, such fill would be permitted only if the same benefits could not be achieved equally well elsewhere without filling.

it hoped would emasculate the BCDC's powers should the bill become law.³⁴

Despite the arguments of Westbay Community Associates and the Leslie Salt Company, Knox's bill passed easily out of the Local Government Committee. It was then sent to the Assembly Ways and Means Committee, which must approve all bills involving an appropriation of money. That committee quickly approved the bill and sent it to the Assembly, where the measure passed readily by a vote of 55 to 9. The bill then went on to the Senate.

B. Bay Legislation Gains an Ally in the Senate

The Knox bill arrived in the Senate at a particularly appropriate time. A week earlier, an internal change of leadership had placed Senator Howard Way, a conservationist who had already indicated his support for strong BCDC legislation, in the office of president pro tem. Way, representing an agricultural and mountain district in the eastern part of the state, was known to support shoreline and saltpond controls, and had indicated his intention to support such a bill in the Senate.

One Bay area senator has suggested that the struggle for passage of the BCDC bill brought about the change of leadership.³⁵ Ousted leader Hugh Burns denied at the time that the Bay controversy was instrumental in his loss of power, since he had "consistently supported continuing the BCDC."³⁶ Six weeks later, however, when the bill had cleared all of the difficult and controversial hearings and needed only a final confirmation from the Senate, Burns was one of 10 senators who voted against the bill.

Way's election aided the conservationists in two ways. First, as the leader of the Senate, Way used his personal influence to speed progress on the bill. Second, his election was generally regarded as bringing about a change in the temper of the Senate that dislodged the advocates of special interests from their position of influence over legislation in the upper house. Conservationists considered his election particularly important because they sensed that the greatest threat to the BCDC bill came from well-

34. Westbay proposed deletion of the following provisions: the prohibition of fill except where no alternative location existed; the permitting of fill only for industries linked to water and airport activities; the requirement of a two-thirds vote of the commissioners to change the *Bay Plan*; and the allowance of the appointment of proxies for commissioners. In addition, it took the position that all commissioners should be local government officials. Westbay's intention was to assure by the first two revisions that its type of development would be permissible under the *Bay Plan*. It apparently felt that the latter three proposals, if enacted, would make the commission a more malleable entity, one from which Westbay might more easily secure a permit for its bay-fill development. Two of these changes received serious consideration, and one of them, that relating to proxies, was approved and became part of the 1969 law.

35. Democrat Alfred Alquist concluded that the BCDC struggle led to Burns' defeat: "What finally made up our minds was the fight over San Francisco Bay. . . . It convinced many of us that it was time for a change and the place to start was the pro tem." *Quoted in* Sacramento Bee, June 3, 1969, at B7, cols. 1-3. Later Alquist characterized the election of Howard Way as the "turning point in the battle to save the bay." *San Jose Mercury*, Aug. 8, 1969, at 1, col. 2.

36. *Sacramento Bee*, June 9, 1969, at A4, col. 2.

financed corporate interests in the Bay area. To BCDC supporters, Way's election signalled a new era in which the Senate would be more responsive to public interest legislation.

Way's first action on behalf of the BCDC was to assign the Knox bill to the Local Government Committee, rather than to Dolwig's Governmental Efficiency Committee, to which former leader Burns had referred all the other BCDC bills. Although Dolwig had recently reversed his stand on the BCDC, all of the prior bills up to that time had been languishing in his committee. The Knox bill was well received in the Senate Local Government Committee. Motions to remove shoreline controls from the bill were rejected, while jurisdiction over saltponds and managed wetlands was added. The bill was then passed on to the Finance Committee, the Senate's counterpart to the Assembly Ways and Means Committee.

C. The Controversy over Shoreline Controls

While the Knox bill was having such success in the Senate, another obstacle to BCDC legislation arose. Several bayside cities were mounting a campaign to oppose the BCDC's proposed shoreline jurisdiction. Their argument was based on the principle of "home rule," the concept that local governments should be allowed to manage the municipal affairs within their jurisdiction without interference from other levels of government. Extending BCDC authority to regulation of development along the shoreline, including areas within the limits of bayside cities, was considered a violation of home rule. It threatened the ability of these cities to attract development and thereby enhance the local tax base. Even more serious, some cities viewed the BCDC as a step toward regional government, the ultimate destruction of local home rule. Three cities were particularly active in resisting the imposition of BCDC control over the shoreline.

The City and County of San Francisco belatedly realized that the 1000-foot shoreline control provision of the proposed legislation would extend BCDC supervision to parts of its downtown area and financial district. The Board of Supervisors issued a statement opposing shoreline controls, and the city joined with the League of California Cities in proposing a compromise plan for shoreline control. Under this plan, the BCDC would be given power to review shoreline projects and make recommendations to cities and counties regarding such proposals. However, the governing body of the local city or county would be able to override the BCDC's recommendations upon a two-thirds vote. This plan was never given serious attention; however, San Francisco's objections were allayed when the area of shoreline jurisdiction was ultimately reduced to 100 feet.

Two small industrial cities on the Bay, Albany and Emeryville, each of which had already commenced fill projects along the shoreline within

their city limits, made more vigorous efforts against the imposition of shoreline controls. The Mayor of Albany took his cause directly to the state legislature. His main argument was that the proposed BCDC regulations would preclude shoreline projects that would augment the city's tax base.³⁷ The Mayor of Emeryville tried a different approach. He hoped to muster opposition to the BCDC by writing a letter to each of the 402 municipalities in California, claiming that the BCDC would violate home rule. The tactic was ineffective, however, since most of the Bay area cities had already voted to support continuation of the BCDC. Only one city, the coastal city of Long Beach in southern California, passed a resolution opposing the BCDC legislation.³⁸

Both Albany and Emeryville were in Senator Petris' district. The Senator, whose own bill had initially called for 1000-foot shoreline jurisdiction, vacillated between wholeheartedly supporting Bay conservation and catering to the interests of these municipalities. He managed to obtain an exemption in his bill for the Emeryville fill project. When the city undertook its statewide campaign against the BCDC just a few days later, Petris felt betrayed and declared to the press that he would eliminate the exemption from his bill. Replying to the city's home rule argument, Petris answered irately: "Our home is not Oakland, Emeryville or Albany. It is the Bay area. We have to enlarge our concept of home rule."³⁹ He further declared: "The cities have encouraged and invited filling. They have competed . . . to . . . fill the Bay. That's how they have exercised home rule"⁴⁰ However, Petris and the cities reconciled their differences prior to the final Senate committee meeting on the BCDC bill. At that time, Petris, with apologies to his "conservationist friends," secured a limited exemption from BCDC jurisdiction for both Albany and Emeryville. On the Senate floor, when Dolwig proposed to eliminate these exemptions from the bill, Petris came to the aid of the exemption for Emeryville, of which he was the original author.

Governor Ronald Reagan also became involved in the issue of shoreline controls. Under pressure from Bay area cities and counties to oppose shoreline regulation, the Governor expressed reservations about giving the BCDC shoreline controls. However, SOBAC apparently influenced his position on the issue by presenting him a four-foot high stack of petitions containing 200,000 names urging his support for strong protection of the

37. After his trip to Sacramento, Albany Mayor Richard Clark was reported to have assessed the BCDC proponents as follows: "[P]roponents of this type of legislation either don't know the financial problems such bills could cause because they don't have intelligence, or they favor them because they would like to eliminate Albany as a city." Albany Times, June 4, 1969, at 1.

38. BCDC Chairman Mel Lane countered Emeryville's letter with a letter of his own that explained the BCDC's position on home rule. Lane sent a copy to each state legislator, city council, and board of supervisors in the state.

39. Oakland Tribune, June 17, 1969, at 1, cols. 7-8.

40. *Id.*

Bay, including shoreline controls. Shortly thereafter Governor Reagan announced his support for the inclusion of the Bay shoreline in the BCDC's jurisdiction.

D. *Action in the Senate Finance Committee*

While the battle over shoreline controls was being waged, the Senate Finance Committee had instructed the four authors of major bay legislation—Knox, Petris, Dolwig, and Marks—to design a compromise bill consolidating their proposals, a move that had been advocated by Senator Dolwig and President Pro Tem Way. For procedural reasons, the authors decided to retain the Knox bill and to graft the amendments from other bills onto this measure. When completed, the compromise bill provided for BCDC jurisdiction over saltponds, managed wetlands, and a 100-foot shoreline band. The bill did not contain the special exemptions for Emeryville and Albany.⁴¹

Dolwig, who was a member of the Senate Finance Committee, pressed for quick consideration of the bill by the committee in order to avoid weakening amendments and the possibility of adjournment before the bill could be passed. However, consideration of the bill at the next scheduled meeting of the Finance Committee was postponed at the request of Assemblyman Knox, so that an exemption for the city of Albany could be designed.⁴² This move angered BCDC chairman Mel Lane, who saw the delay as giving the special interests time to work out other weakening amendments to the bill.

When the Finance Committee finally convened, exemptions for Emeryville and for Albany were approved. More damaging still, southern California committee member John Schmitz proposed an amendment to remove shoreline controls. This amendment was initially rejected and then adopted by the Committee. Senator Dolwig argued against removal of the controls and voted against both that amendment and the exemptions for the cities. After accepting these amendments to the Knox compromise bill, the Finance Committee approved the weakened bill and sent it to the Senate floor.

E. *The Final Fight on the Senate Floor*

Conservationists recognized by this time that some form of BCDC legislation would probably be approved by the Senate; however, they were doubtful that the BCDC would be as powerful as they desired. Most critical

41. The Governor reportedly wanted the BCDC bill to bear the name of a Republican sponsor, either Marks or Dolwig. Palo Alto Times, July 12, 1969, at 3, cols. 5-8. Senator Petris felt that this problem could be resolved by allowing the bill to carry the name of Assemblyman Knox, a Democrat, while permitting Republican Dolwig to lead the floor fight for the bill in the Senate.

42. As author of the bill, Knox was entitled to postpone consideration of the measure by the committee until he was ready to present it.

to them were the shoreline controls, which had been deleted from the bill in committee. Without these controls, the BCDC could provide no protection against indiscriminate development along the shoreline. Furthermore, without regulation it was anticipated that increased pressures to fill the Bay would result. The present configuration of the shoreline has limited sites available for specialized water-oriented uses. Should these prime sites be appropriated for less than the most suitable uses in the absence of controls, new bayside sites for the more suitable uses would have to be created through fill in the Bay. Consequently, the need and desire to take advantage of Bay shoreline areas would, lacking shoreline regulation, increase pressures for fill. Finally, lacking shoreline controls, the BCDC would be unable to assure public access to the Bay and would be without power to encourage attractive designs in shoreline developments.

Throughout the controversy, senators from southern California were the most vigorous in opposing shoreline controls. Regional political reasons explain their intense interest in weakening the Bay preservation bill. Local governments in southern California were particularly sensitive about increasing their property tax base and creating more jobs by encouraging development. The concept of home rule was of vital importance to them because it ensured the right to proceed with development without interference or regulation by a higher level of government. Giving the BCDC shoreline controls would establish in the Bay area a regional authority capable of preempting local decisions on development within its jurisdiction. Such a precedent might all too easily be repeated in the south. Thus, the southern senators recognized that they could reap political gains in their home districts by championing home rule in the Senate on this occasion. At the same time, they had relatively little at stake in attempting to weaken regulation of the Bay, a resource several hundred miles to the north of their constituencies.

Recognizing the strong opposition to shoreline controls among southern senators, SOBAC took its campaign to southern California. Two days before floor action was slated in the Senate, SOBAC placed an advertisement in the *Los Angeles Times* asking southern California citizens to help by supporting strong BCDC legislation. The advertisement emphasized that the Bay belonged to all Californians, and that it was one of the state's special and unique natural resources. It urged citizens to relay to state senators their support of a strong Knox bill without weakening amendments.

When the Senate opened debate on the Knox bill later in that week, Senator Dolwig proposed an amendment to restore BCDC jurisdiction over a 100-foot shoreline band. After the longest debate of the session, Dolwig requested a roll call vote, which fell short of the required 21-vote majority. Dolwig then asked for a call of the house, a directive from the president

pro tem to the sergeant-at-arms to bring in all the absent members of the Senate (by arrest, if necessary) and to prevent egress of those members present. After this was accomplished, a second vote was taken. The amendment restoring shoreline controls was passed by a 22 to 18 vote.

Next Dolwig urged that the Albany and Emeryville exemptions be removed from the bill. Senator Petris came to the defense of the exemption he had obtained for Emeryville. Neither exemption was excised. Two other amendments relating to the procedural functioning of the BCDC then were proposed, both of which had been advocated by Westbay Associates. One of these, which would have reduced the two-thirds majority vote of the BCDC Commissioners required to amend the *Bay Plan*, was defeated. The other, an amendment to prohibit the appointment of commissioners' proxies, was approved. This amendment was a blow to conservationists, since several of the most conservation-oriented individuals serving on the Commission were proxies appointed by commissioners who were frequently unable to attend meetings due to other responsibilities.

The final vote on the entire BCDC measure was reserved for a later session. One last attempt in the later session was made to cripple the bill by amendment. Senator Way blocked this attempt as out of order according to the Senate's procedure and refused to approve a motion to suspend the rules.⁴³ The final vote on the BCDC was then taken. The measure passed by a vote of 24 to 10. That same afternoon, the Assembly concurred in the Senate's amendments by a vote of 55 to 4.

The last step to a victory for proponents of the BCDC legislation was taken when the Governor signed the bill into law on August 7, 1969. At that time the Governor stated that he regretted only the exemptions for Emeryville and Albany. The major controversies of jurisdiction, however, had been decided in favor of the BCDC and preservation of the Bay.

IV. CONCLUSION

The passage of the McAteer-Petris Act to save San Francisco Bay is now history. Its success is already being acclaimed as a landmark in the development of environmental law.⁴⁴ It is the preeminent example of the passage of a precedent-setting piece of legislation protecting a well-known natural resource in the face of opposition from private interests. Some of the ingre-

43. A request to suspend the rules of the Senate reportedly would have received automatic approval from former President Pro Tem Burns. Interview with Claire Dedrick, SOBAC, in Menlo Park, Cal., Dec. 8, 1969.

44. At the National Conference on Environmental Law in San Francisco, November 6-8, 1970, at which the most significant aspects of environmental law were noted and discussed, both the campaign for passage of the McAteer-Petris Act and the law itself were featured in presentations by several speakers. Additionally, the BCDC campaign was the example illustrating legislative techniques useful to conservation in the manual prepared and distributed in conjunction with that conference. See J. BRECHER & M. NESTLE, ENVIRONMENTAL LAW HANDBOOK § 3.24 (1970).

dients of success were clearly fortuitous, such as the election of a sympathetic president pro tem just prior to the arrival of the Knox bill in the Senate. They therefore have no application outside the BCDC example. Others, such as the compilation of a thorough background of factual information supporting the position of the conservationists, were the product of conscious planning. These latter elements recommend themselves to the proponents of future campaigns.

One factor stands alone as crucial to the passage of the bill—the consistent, active public support for the legislation. The importance of public participation in campaigns to pass environmental legislation cannot be ignored, even where other factors helpful to the success of such a campaign are present. Lack of public support can spell disaster in such a campaign. The effective utilization of citizen pressure, on the other hand, has resulted in success in this particular case. The most important tactical lesson of the BCDC campaign is that public support is vital to the passage of conservation legislation.

The success of the BCDC suggests an even broader lesson. Passage of the law illustrates that the legislative process can be made to work for conservation goals; it has already worked, in the case of the BCDC, even in the face of considerable pressure from private interests. As such, the passage of this legislation should be a strong encouragement to the active conservationist. In the past, conservationists have tended to look to the courts for redress of environmental damage and protection of scenic and natural resources.⁴⁵ This trend may be due in part to the distrust conservationists feel toward lawmaking bodies, where private interests with more money and greater influence can often defeat the causes of less powerful forces speaking for conservation and esthetics. However, the BCDC campaign indicates that conservationists have a weapon of their own—public pressure—to tip the balance in their favor. Given a massive display of public support, which can be generated by a relatively small core of dedicated, hard-working supporters, conservationists can hope to exert more pressure on legislators than can lobbyists representing private interests. Therefore, perhaps the most important lesson of the success of the BCDC legislation is that conservationists can and should rely on the lawmaking process as an important weapon in their arsenal of legal strategies.

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45. See, e.g., *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965), cert. denied, 384 U.S. 941 (1966) (setting aside grant of FPC license for hydroelectric project); *Sierra Club v. Hickel*, No. 24,966 (9th Cir., Sept. 16, 1970) (attempt to enjoin construction of a resort in the Sierra Nevada mountains).