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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF INYO

COUNTY OF INYO,)	
)	Case No.: No. 9365
Plaintiff,)	
)	
v.)	MEMORIAL TO FRANK H. FOWLES,
)	
SAM YORTY, et al.,)	DISTRICT ATTORNEY AND CHAIR,
)	
Defendants.)	INYO COUNTY WATER COMMISSION
)	
)	
)	Date: 2 October 1998
)	
)	Time: 1:00 p.m.
)	
)	

1 Do not remember the former things, or consider the things of old. I am
2 about to do a new thing; now it springs forth, do you not perceive it? I
3 will make a way in the wilderness and rivers in the desert. The wild
4 animals will honor me, the jackals and the ostriches; for I give water in
5 the wilderness, rivers in the desert, to give drink to my chosen people.
6 (Isaiah 43:18-20.)

7 Nearly three millennia ago Isaiah foretold the life of Frank Fowles in this valley. We should
8 not claim surprise and call the prophet's words coincidence, for the only and meaningful coincidence
9 is that both men lived and worked in the desert. Water lawyers and teachers tend to begin their history
10 with shortsightedness in the humid riparianism of England. But Frank Fowles' life and his master
11 works – beginning with the filing of *Inyo v. Yorty* 26 years ago – ratify that the discernment of justice
12 in the human governance of natural resources arose not in the abundance of the British Isles, but in the
13 scarcity and harshness of the Jordan – like the place in which Frank and we his legacy have labored, a
14 valley in the desert.

15 To give water in the wilderness, to revive the river in the desert for his people, Frank had to do
16 a new thing. He had to ignore established water law and proprietary rights. He had to lack fear at the
17 overwhelming political and legal power of Los Angeles. Most importantly, he had to have faith in
18 leading his county into a place where no one – no district attorney and no judge – had gone before, and
19 to embark on a course whose outcome neither he nor the judges who heard him could anticipate.

20 It has been said that for the first three quarters of this century, the Owens Valley symbolized
21 deceit, colonialism, and exploitation; but in the last quarter century this valley and county came to
22 stand for integrity and honesty in public decisions, self-determination by the people of Inyo, water
23 conservation in Los Angeles, and ultimately not merely victory over but partnership with our former
24 adversaries in joint governance of the valley's water resources for the good of all. (*Inyo Register*
25 (Aug. 26, 1997) p. 4.) If that is so, the dividing line of the Owens Valley century can be precisely
marked: 15 November 1972, the day that Frank and his deputy Lee Bray filed *Inyo v. Yorty* in this
Court.

1 Consider the boldness – and foresight – in the six-page complaint that Frank and Lee filed in
2 this Court 26 years ago. Frank’s pleading described the Los Angeles defendants’ collection, storage,
3 and transportation “of surface water for export in conjunction with their extraction of sub-surface
4 water” as “an ongoing continuous and non static water gathering project which significantly [a]ffects
5 the environment of plaintiff County.” In one sentence the District Attorney laid out the legal theory
6 that would guide the Third District Court of Appeal’s landmark decisions of 1973 [32 Cal.App.3d
7 795], 1977 [71 Cal.App.3d 185], and 1981 [124 Cal.App.3d 1]. While the Justices would take nearly
8 a decade and dozens of printed pages to articulate fully the premise that Los Angeles’ groundwater and
9 related surface water operations were subject to the California Environmental Quality Act (CEQA)
10 and required an environmental impact report (EIR), and Los Angeles would take all that time and
11 hundreds of pages and thousands of days of labor to confront that reality, Frank got in right from the
12 beginning, in two one-sentence paragraphs.

13 Frank also got it right from the start on the necessary relief: that pending compliance with
14 CEQA, Los Angeles be enjoined: from exporting “in any given month ... no more than the average
15 monthly amount of water so exported in the twelve months preceding the effective date of the
16 Environmental Quality Act; from utilizing sub-surface waters in place of surface waters within
17 plaintiff County ...; and acting “in such a way as to reduce the supply of water to any properties,
18 communities or individuals within plaintiff County.” It took four years for the Court of Appeal to
19 embrace Frank’s plea for not allowing Los Angeles to play the surface and groundwater supplies off
20 against each other [61 Cal.App.3d 91], and another eight years after that for the Court to reaffirm that
21 premise and finally measure its injunction by CEQA’s effective date of November 1970 [160
22 Cal.App.3d 1168]. But in the end, the Justices agreed with Frank’s understanding of what his people
23 needed.
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1 While Frank's legacy to the law and environment of California began on 15 November 1972, it
2 did not end there. I have in mind another date 12 years later in the chambers of the Los Angeles City
3 Council. When Roman Polanski made *Chinatown*, he used that venue to depict Owens Valley
4 ranchers driving their sheep through the council horseshoe in protest against Mulholland's ambitions.
5 On 18 April 1984, however, in Los Angeles City Hall that history came full circle. There in the
6 horseshoe gathered before the city council sat Mayor Tom Bradley, the chair of the Board of Water
7 and Power Commissioners, the Chair of the Inyo County Board of Supervisors, and Chair of the Inyo
8 County Water Commission, Frank Fowles. There these men signed the first "declaration of
9 cooperation" between Inyo County and Los Angeles – securing the first commitment of Los Angeles
10 to share decision-making over the valley's water resources with Inyo County, and the first step that
11 ultimately brought the permanent long-term water management plan effective last year. Looking on
12 this ensemble of the powerful from behind a council member's desk that day, I realized then as I
13 affirm today that no one deserved more to be at that table than Frank Fowles.

14 Because once again Frank did it a new way. When he yielded the district attorney's office to
15 Buck Gibbons, in the end not voluntarily, Frank did not become bitter or withdrawn from public
16 service. With the creation of the Inyo County Water Commission by the people's 1980 enactment of
17 the Owens Valley Groundwater Ordinance, Frank volunteered to serve, and became the commission's
18 first chair. In the critical years of the 1980s, Frank used that position to bring about peace with Los
19 Angeles, and of even greater importance to defend it. We cannot minimize the importance of Frank's
20 contribution in these critical years. With the Owens Valley citizenry understandably wary of Los
21 Angeles, and even three supervisors subjected to voter recall over the initial agreement, Frank took a
22 leading role in explaining and defending the wisdom of negotiating with the city – realizing, I trust,
23 that his own experience and credibility with the people, coupled with his disinterest in elections
24 outcomes, impressed on him both a responsibility and opportunity that no one else in the valley could
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1 assume. Frank's leadership as citizen preserved the governance of this county in its hour of greatest
2 need.

3 Frank did not deserve to leave us as soon as he did, but surely he deserved to live long enough
4 to see, in the cause of peace and greater protections for the Owens Valley than even he could have
5 imagined, discharge of the writ of mandate in May 1997 that Frank had earned from the Court of
6 Appeal 24 years before. In a legal struggle of epic proportions, the fight is usually borne by a series of
7 relay runners; but in the case of *Inyo v. Yorty and Los Angeles*, one runner ran every lap of the entire
8 race, present at the creation in this Court in November 1972, and at the political finality of the writ in
9 Mayor Riordan's homage to this valley in August 1997. And Frank's spirit will move over the waters
10 yet again, when we gather at the Aqueduct Intake to reopen those gates, partially but permanently.

11 Beyond his momentous achievements for the law and the environment, we must also honor
12 Frank's unique legacy to the government of Inyo County. Here the achievement and the debt become
13 personal. Frank had the good judgment to hire Buck Gibbons, and initially Pat Canfield. Buck in turn
14 hired Pat, Dean Stout, Phil McDowell, Greg James, and me. Consider that the two Judges of this
15 Court, the longest-serving district attorney in Inyo County history, his present successor, the director
16 of the Inyo County Water Department, and your former special counsel are all the institutional
17 children and grandchildren of Frank Fowles. I am honored to be part of the family that Frank created
18 for this county; forever enriched by the professional encouragement and personal example of unselfish
19 public service he gave me, and the hours and days that we shares as colleagues, and more than
20 colleagues, friends.

22 Let us now embrace the full text of the prophet:

23 ... for I give water in the wilderness, rivers in the desert, to give drink to
24 my chosen people, the people whom I formed for myself so that they
25 might declare my praise. (Isaiah 43:20-21.)

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Today as his chosen people we show forth the praise for which Frank rarely if ever asked, but so richly earned.

Respectfully submitted,

Special Counsel to the County of Inyo, 1976-1997