CALIFORNIA v. CALIFORNIA:

Law, Landscape, & the Foundational Fantasies of the Golden State

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According to the venerable Wikipedia, there are approximately 900 popular songs about California (including at least 76 simply titled "California").[1] There are, perhaps, just as many — and frequently contradicting — cultural perceptions about this Golden State.

For some, there is Jack Kerouac's (and Dean Moriarty's) California: "wild, sweaty, important, the land of lonely and exiled and eccentric lovers come to forgather like birds, and the land where everybody somehow looked like broken-down, handsome, decadent movie actors."[2]

For others, there is Mark Twain's California, full of a "splendid population":

> [F]or all the slow, sleepy, sluggish-brained sloths stayed at home — you never find that sort of people among pioneers — you can-

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[1] *List of Songs About California*, Wikipedia, http://en.wikipedia.org/wiki/List_of_songs_about_California (last visited May 5, 2012).

[2] Jack Kerouac, On the Road 168 (1976).

> not build pioneers out of that sort of material. It was that population that gave to California a name for getting up astounding enterprises and rushing them through with a magnificent dash and daring and a recklessness of cost or consequences, which she bears unto this day — and when she projects a new surprise the grave world smiles as usual and says, "Well, that is California all over."[3]

Truman Capote, meanwhile, believed that "[i]t's a scientific fact that if you stay in California you lose one point of your IQ every year."[4]

There is the California embodied in the majestic mountains of Yosemite, and the notion of a state that is natural and free and part of the Wild West.[5] There is the California embodied in the box office, and the notion of a state that is all silicone and silicon. All of it is ultimately bound by and built by the same foundational fantasies of a state at the crossroads of backcountry and concrete. This paper explores those fantasies, and discusses the ways in which legal actions over seminal environmental issues of water, travel, and air both mirrored and made the California identity.

California becomes a place not quite as "west of the West" as Alaska, not always as rugged and rural as Washington and Oregon, and yet far

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[3] Mark Twain, Roughing It 282 (1976).

[4] *Truman Capote quotes*, ThinkExist.com, http://thinkexist.com/quotes/truman_capote/ (last visited May 5, 2012).

[5] John Muir's national park movement and Jack London's words on the will, struggle, and power of nature were seen as fighters against capitalist emasculation and the mechanization of modernity at the turn of the nineteenth century. This fight has persisted in San Francisco's resistance to development, and organizations and (grassroots) movements such as the Greenbelt Alliance and Save the Bay.

At the same time, this resistance is arguably an exercise in capitalism and (concentrated) wealth. As Richard Walker puts it, "rich people want a pretty view." But "wanting green space may have the detrimental effect of not making enough low-income housing to more people." *Forum: The History of Bay Area Environmentalism* (KQED radio broadcast Nov. 16, 2007), available at http://www.kqed.org/a/forum/R711161000.

Consider, too, the relationship between San Francisco and Lake Tahoe: industrial leisure under the guise of "outdoorsmanship" has resulted in lake sedimentation and algae fertilization. Contrast that, however, with the (somewhat unexpected) role of hunters and sportsmen (including Teddy Roosevelt) as early and ardent conservationists. *See generally* John F. Reiger, American Sportsmen and the Origins of Conservation (2000) (arguing that "gentlemen" hunters and anglers came together to lobby for laws regulating the taking of wildlife and wilderness preservation, both out of a desire to protect their hobbies and a nineteenth-century sportsman's code demanding that its followers take responsibility for the total environment).

out enough to be a place where "you can't run any farther without getting wet."[6] Perhaps like much of the West, California is a place and people trying to create community and history from scratch. It is as much fiction as it is fact: a place as carefully constructed in courtrooms as it has been by adjoining tectonic plates. Either way, California has more often than not been built by conquering and controlling nature.

> People were here for the jobs, here for their slice of the dream, and natural beauty gilded connections between the two. The Mediterranean climate churned out mild winters, low humidity and long "Indian" summers promoting outdoor life so convincingly, in fact, that many newcomers seemed to overlook the fact that they'd moved into earthquake country.[7]

In many ways, life here is only possible with the manipulation of water and air. So first came the golden climate; then came the Golden State; and then came the lawsuits.

Indeed, for all its perceived "chill surfer" character, contentious litigation underlies some of the most compelling stories of California: "it is also the place where the American Dream is pursued most fiercely, its spoils contested most brutally."[8]

Law acts as both a conscious reflector and a subconscious creator of culture.[9] And this analysis is not limited to abstract ruminations on an intangible ethos. This paper connects law and film, "two of contemporary society's dominant cultural formations, two prominent vehicles for the

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[6] Brian Gray, *American West*, class lecture at UC Hastings College of the Law (2012); *Neil Morgan quotes*, ThinkExist.com, http://thinkexist.com/quotation/california_is_where_you_can-t_run_any_farther/217039.html (last visited May 5, 2012).

[7] Chip Jacobs & William J. Kelly, Smogtown: The Lung-Burning History of Pollution in Los Angeles 24 (2008). Consider, too, UC Berkeley's decision to build its Memorial Stadium directly atop the Hayward Fault — against the wishes and warnings of geologists — because that was where the best view would be. It is currently undergoing a massive renovation and seismic retrofit, such that the fault line that runs "from goal post to goal post" will not literally split the stadium in two. *The Hayward Fault at UC Berkeley*, http://web.archive.org/web/20110716064610/http://seismo.berkeley.edu/seismo/hayward/ucb_campus.html (last visited Sep. 7, 2012). (NB: It is nevertheless this writer's opinion that it does make for the best view and is well worth it.)

[8] R.C. Lutz, *On the Road to Nowhere?: California's Car Culture*, 79 Cal. Hist. 50 (2000).

[9] *See generally* Lawrence M. Friedman, American Law in the 20th Century (2002).

chorus through which society narrates and creates itself."[10] Both law and film alike are "dominant players in the construction of concepts such as subject, community, identity, memory, gender roles, justice and truth; they each offer major socio-cultural arenas in which collective hopes, dreams, belief, anxieties and frustrations are publicly portrayed evaluated, and enacted."[11] Whether art has imitated life and the law in the Golden State or vice versa, lawsuits have built California based on a "double mystery" of erasure and positive reinvention: blessed by nature, yet having to battle against it in order to grow and flourish.[12]

Call it "California v. California."

WATER WARS

"Forget it, Jake — it's Chinatown."

First and foremost, the story of California is a story of water.[13] There are the ocean waves along California's 840 miles of coastline, from the seaside cliffs of Mendocino to the surf and sand of San Diego. There is the snow melting off of the Sierra Nevada. There is a flooded valley and an

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[10] Orit Kamir, *Why 'Law-and-Film' and What Does it Actually Mean?: A Perspective*, 19 CONTINUUM: J. OF MEDIA & CULTURAL STUD. 255, 256 (2005); *see also* JOHN DENVIR, LEGAL REELISM: MOVIES AS LEGAL TEXTS (1996). In fact, the entire fledgling field of "law-and-film" is arguably an exercise in Friedmanism.

In fact, much of American history has been shaped by popular fictions; the nation is built upon stories of "cowboys and Indians" and war. In the couple centuries of its existence, the United States has used these tales of absolute victory of its "Goodness and rosy plumpness" to justify its birth, its expansion, and, indeed, its empire. GORE VIDAL, IMPERIAL AMERICA 6 (2004); STANLEY CORKIN, COWBOYS AS COLD WARRIORS 3 (2004).

[11] Kamir, *supra* note 10, at 264.

[12] *See generally* CAREY MCWILLIAMS, CALIFORNIA: THE GREAT EXCEPTION (1999) ("Is there really a state called California or is all this boastful talk? [. . .] Like all exceptional realities, the image of California has been distorted in the mirror of the commonplace. It is hard to believe in this fair young land, whose knees the wild oats wrap in gold, whose tawny hills bleed their purple wine — because there has always been something about it that has incited hyperbole, that has made for exaggeration."); —, SOUTHERN CALIFORNIA: AN ISLAND ON THE LAND (1946).

[13] The "history of California in the twentieth century is the story of a state inventing itself with water." WILLIAM L. KAHRL, WATER AND POWER 1 (1983). Simply put, California is a "hydraulic society." DONALD WORSTER, UNDER WESTERN SKIES: NATURE AND HISTORY IN THE AMERICAN WEST 53 (1994).

aqueduct that turned a desert into a metropolis. And they are all part of a complicated water system that "might have been invented by a Soviet bureaucrat on an LSD trip."[14] Indeed, ingrained in California's very identity is drought and [artificial] abundance. (Or, conversely, artificial drought: "[t]he concomitant reallocation of water away from consumptive uses as needed to fulfill these environmental commitments has created for some users a 'permanent regulatory drought.' "[15]) In California — a place where north and south alike face challenges in rainfall, storage, and distribution — water is power.

Broadly speaking, California has a dual system of water rights which recognizes both appropriation and riparian doctrines.[16] The appropriation doctrine, which originated during the Gold Rush days, allows for diversion of water and applies to "any taking of water for other than riparian or overlying uses."[17] The riparian doctrine, by contrast, "confers upon the

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[14] Peter Passell, *Economic Scene; Greening California*, N.Y. Times, Feb. 27, 1991.

[15] Brian E. Gray, *Dividing the Waters: The California Experience*, 10 Hastings W.–Nw. J. Envtl. L. & Pol'y 141, 144 (2004). Indeed, water and environmental legislation has at times caused further water shortage problems. This places the state in a bit of a bind: also ingrained in California's identity is a deep connection to the land and the environment (specifically, this has been created and reflected in landmark interpretations on the public trust and reasonable use doctrines). As such, California faces unmatched resource challenges, as it must grapple with issues both personal and principled.

For better or worse, California has always been on the "cutting edge" in both contention and conservation: the state was built on limited resources. The rest of the nation, meanwhile, did not feel the squeeze until the post–World War II/Cold War period, at which point America — as a rising "empire" — realized that "the special imperatives of maintaining economic and political dominance on a global scale required a degree of planning that helped promote conservationism." Thomas Robertson, *"This Is the American Earth": American Empire, the Cold War, and American Environmentalism*, 32 Diplomatic Hist. 561, 562 (2008). Perhaps — in somewhat maudlin terms — with great power did come great responsibility, as suddenly America's resources had to extend further and beyond its borders.

[16] Lux v. Haggin, 69 Cal. 255 (1886), recognized both the appropriation and the riparian systems. While this put the doctrines on equal legal footing, however, the two in their essentially inverse relationship will perhaps always be in conflict. Nonetheless, both systems are in turn viewed through the lens of the reasonable use doctrine. *See, e.g.*, Peabody v. City of Vallejo, 2 Cal. 2d 351 (1935); *see also* Cal. Const. art. X, § 2 (codifying the reasonable use doctrine); Cal. Penal Code § 370.

[17] City of Pasadena v. City of Alhambra, 33 Cal. 2d 908, 925 (1949) (citations omitted). The California Supreme Court first articulated the doctrine — adopting it from de facto miner's laws — in *Irwin v. Phillips*, 5 Cal. 140 (1855).

owner of land contiguous to a watercourse the right to the reasonable and beneficial use of water on his land."[18] Thus this dual system is one that can be internally contradictory and certainly complicated.[19] At its most basic, the conflict is often one between landowners and those who simply seek to use the water connected to a given piece of land.

Amidst all the complicated doctrines, fact becomes stranger than fiction. Law, culture, and the water system — "labyrinthine and convoluted, full of double-crosses, triple-crosses, and twists piled upon twists" — converge in Roman Polanski's *Chinatown* (1974), which tracks the California Water Wars at the turn of the twentieth century.[20] Water and power lie at the root of all evil in a neo-noir Los Angeles — a Los Angeles both fictionally and factually devoid of natural resources and a natural port; a Los Angeles that essentially has "no geographic reason to exist."[21]

Yet exist it does, in large part (if not entirely) due to William Mulholland and the Owens Valley. In the late 1800s, Los Angeles had started to outgrow its already-limited water supply. City representatives identified the Owens Valley as a reliable source of water and began to quietly buy up parcels of land there. At first they did so secretively, for fear of driving up the cost of land.[22] When word got out, however, they unapologetically made known their true intentions. Meanwhile, Mayor Frederick

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[18] *Pasadena*, 33 Cal. 2d at 943.

[19] In fact, "large-scale water transfers [in California] more closely resemble complex international diplomatic negotiations than they do simple market exchanges." Gray, *supra* note 11, at 146.

To clarify: the state (as trustee to its people) owns, controls, and regulates the physical water while the people simply enjoy rights to the use of water under state law. Eddy v. Simpson, 3 Cal. 249, 252 (1853); Kidd v. Laird, 15 Cal. 161, 180 (1860); Cal. Water Code § 102. As such, "no water rights are inviolable; all water rights are subject to governmental regulation." United States v. State Water Res. Control Bd., 182 Cal.App.3d 82, 106 (1986).

[20] Josh Spiegel, *Classic Movie Review: Chinatown*, Box Office Prophets (Aug. 2, 2010), http://www.boxofficeprophets.com/column/index.cfm?columnID=13075; Chinatown (Paramount Pictures 1974).

[21] Richard Walker, *The American City*, class lecture at UC Berkeley (2008). The same can actually be said of Napa Valley, which is not necessarily conducive to growing grapes save for the wonders of water engineering.

[22] As Jack Nicholson's Jake Gittes says in *Chinatown*, "Do you have any idea what this land would be worth with a steady water supply? About $30 million more than they paid for it."

Eaton had tapped his friend, Mulholland, to be superintendent of the newly-created Los Angeles Department of Water and Power.[23] Together, they employed what some saw as "chicanery, subterfuge, spies, bribery, a campaign of divide-and-conquer, and a strategy of lies to get the water [the city] needed."[24] There were allegations that Eaton, Mulholland, and the city's power brokers "conspired to snatch water for their own enrichment."[25] The fact was that Los Angeles did indeed acquire all land and water rights relating to Owens Valley through decades of smart (or, perhaps, sly) legal, legislative, bureaucratic, and economic action.[26] Eaton even lobbied President Teddy Roosevelt to halt a federal irrigation project for farmers in the Owens Valley.[27] And though everything the city did was technically legal, even Catherine Mulholland (William Mulholland's granddaughter) wrote: "Few seemed to care about the action's moral niceties."[28]

Nevertheless, William Mulholland's "engineer's eye plotted the Los Angeles Aqueduct and brought the water over 230 miles to these dry valleys by gravity alone, an engineering marvel and a civic triumph, albeit at the expense of the Owens Valley, which quickly turned to dust."[29] As the

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[23] The department has been the source and subject of contention and controversy every since. *See, e.g.*, Cnty. of Inyo v. Los Angeles, 78 Cal.App.3d 82 (1978). In fact, Inyo County and the department are at it again as of last year in a battle over groundwater.

[24] Marc Reisner, Cadillac Desert 48 (1993).

[25] *William Mulholland's Gift: Modern L.A.*, L.A. Times, Jul. 10, 2011, http://articles.latimes.com/2011/jul/10/opinion/la-ed-mulholland-20110710.

[26] These actions included bond measures and a lot of court time for Mulholland. Reisner, *supra* note 24, at 62–66.

[27] Jacobs & Kelly, *supra* note 7, at 23.

[28] *Id.* As its 1974 *New York Times* movie review put it, *Chinatown* — and the events on which it is based, in which fact is every bit as strange as fiction — is a "melodrama that celebrates not only a time and a place (Los Angeles) but also a kind of criminality that to us jaded souls today appears to be nothing worse than an eccentric form of legitimate government enterprise." Vincent Canby, *Chinatown*, N.Y. Times, Jun. 21, 1974.

[29] Jacobs & Kelly, *supra* note 7, at 23. In fact, Mulholland "had demonstrated that a city could bend nature to meet its interests. Before and after this water-grab, men here dredged massive harbors from silt, dragged a cosmos-searching observatory onto a mountaintop, smashed flight-speed records, and harnessed ocean currents for electricity. A near-religious devotion to technology had made Southern California's nature seem malleable." *Id.* at 24.

first gush of water rushed down the aqueduct, Mulholland famously proclaimed: "There it is. Take it."[30]

Take it they did. And this would not be the last battle of the water wars: in its eternal thirst, Los Angeles would attempt — though ultimately unsuccessfully — to divert water from Mono Lake.[31] Starting in 1940, after purchasing riparian rights pertaining to Mono Lake, the city applied for permits to appropriate the waters of four tributaries feeding into the lake. By 1941, the city had extended its aqueduct system into the Mono Basin. By 1970, the city had completed a second aqueduct designed to increase the total flow into the aqueduct by 50 percent. Each year over the next decade, the city would divert a combined 156,647 acre-feet of water from the Mono Basin and cause Mono Lake's surface level to recede at an average of 1.1 feet.[32] Though the "ultimate effect of continued diversions [was] a matter of intense dispute . . . there seem[ed] little doubt that both the scenic beauty and the ecological values of Mono Lake [were] imperiled."[33]

In 1979, the public interest groups led by the National Audubon Society brought suit against the city of Los Angeles, arguing that the Department of Water and Power's diversions violated the public trust doctrine. The doctrine stands, broadly, for the idea that each state is "trustee of the tide and submerged lands within its boundaries for the common use of the people" — that state waters are a public resource equally owned by all citizens.[34] As such, the state has a duty to ensure equal access to and enjoyment of those waters.

The case eventually made its way to the California Supreme Court. While the Court recognized that common law public trust actions had thus far been focused on navigation, commerce, and fishing, it went on to

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[30] *Id.*

[31] Mono Lake is the second largest lake in California, and sits at the base of the Sierra Nevada near the eastern entrance to Yosemite National Park. Historically, most of its water supply comes from snowmelt in the Sierra Nevada carried in by five freshwater streams. The lake is saline; it contains no fish but supports a large population of species. Nat'l Audubon Soc'y v. Superior Court, 33 Cal. 3d 419, 424 (1983).

[32] *Id.* at 428.

[33] *Id.* at 424–25.

[34] Cal. State Lands Comm'n, *The Public Trust Doctrine*, http://www.slc.ca.gov/policy_statements/public_trust/public_trust_doctrine.pdf; *see also* Martin v. Waddell, 41 U.S. 367, 410 (1842). The public trust doctrine can be traced back to Roman laws of common property.

rule that the "recreational and ecological" "principle values" the plaintiffs sought to protect — "the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds" — were "clear[ly] . . . among the purposes of the public trust."[35]

The Court ultimately concluded:

> The public trust doctrine serves the function in [California's integrated water system] of preserving the continuing sovereign power of the state to protect public trust uses, a power which precludes anyone from acquiring a vested right to harm the public trust, and imposes a continuing duty on the state to take such uses into account in allocating water resources.[36]

Thus the plaintiffs succeeded in imposing upon the state "the duty . . . to protect the people's common heritage of streams, lakes, marshlands and tidelands." In short, they saved Mono Lake.

And perhaps the courts deserve some credit too, "for they are the ultimate guardians of the rights secured by the common law, statutes, the California Constitution, and in some cases the Fifth and 14th amendments to the United States Constitution."[37] Indeed, as Brian Gray has argued, the California Supreme Court has actively adapted the development and division of water resources to changes in the state's economy, demographics, resource base, natural environment, and social values.[38]

In its interpretation of the public trust doctrine in *Audubon*, the California Supreme Court subjected state water rights to "the requirement that they be exercised in accordance with contemporary social values."[39] On one level, the Court ensured that environment, law, and society would al-

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[35] *Audubon*, 33 Cal. 3d at 435 (internal citations omitted). In fact, a decade earlier, the California Supreme Court had expressly held that public trust protects "the preservation of those lands [covered by the trust] in their national state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area." Marks v. Whitney, 6 Cal. 3d 251, 259–60 (1971).

[36] *Audubon*, 33 Cal. 3d at 452.

[37] Gray, *supra* note 15, at 147.

[38] *Id.*

[39] Brian E. Gray, *"In Search of Bigfoot": The Common Law Origins of Article X, Section 2 of the California Constitution*, 17 Hastings Const. L.Q. 225, 228 (1989). Thus, the last two centuries of California Supreme Court jurisprudence have been an exercise

ways be inexorably intertwined. On another level, the decision confirmed that they always were.[40]

California water rights have always been "a peculiarly fragile species of property rights, heavily dependent on judicial perceptions that the private right is consistent with the broader public interest."[41] Every water case and every water right in the state of California is examined through the lens of the reasonable use doctrine. Enacted by initiative in 1928, article X, section 2 of the state constitution provides that all uses of water resources must be "exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."[42] As a whole, this represents "one of the most forceful and interventionist definitions of reasonable use in the western United States."[43]

Yet "reasonable use" is as flexible as it is forceful. After all, "[w]hat constitutes a reasonable use of water is dependent upon not only the entire circumstances presented but varies as the current situation changes . . . . [R]easonable use of water depends on the circumstances of each case, [and] such an inquiry cannot be resolved *in vacuo* isolated from statewide considerations of transcendent importance."[44] Water rights, resources, and law in California are, then, necessarily products of culture. As such, courts are in a position to articulate and enforce cultural values. Indeed, a "principal responsibility (which will be exercised only on rare occasions) will be for the courts to hold the parties' feet to the fire — to apply the established law

in "shap[ing] and, where appropriate . . . reshap[ing] water rights as necessary to facilitate the economic and social development of the state." *Id*. at 253.

40 Indeed, with common law doctrines such as public trust, reasonable use, and public nuisance, common citizens have as much control over California's environmental law and enforcement as do the courts. This is coupled with the already-heightened sense of environmentalism of California's political culture. As Carey McWilliams put it, "the lights came on all at once" in California. See, also, the next section on air pollution lawsuits for further discussion on the importance and implications of common law in conservation and culture.

41 Gray, *supra* note 39, at 227.

42 Cal. Const. art. X, § 2.

43 Gray, *supra* note 15, at 146.

44 Joslin v. Marin Mun. Water Dist., 67 Cal. 2d 132, 140 (1967). "What is a [reasonable and] beneficial use at one time may, because of changed conditions, become a waste of water at a later time." *Tulare Irrig Dist. v. Lindsay-Strathmore Irrig. Dist.*, 3 Cal. 2d 489, 567 (1935).

to present clearly to the competing interests the consequences of adhering to hardline positions and refusing to negotiate in good faith to achieve fair and creative solutions to the problems and challenges Californians face."[45]

Thus, on one hand, California used the law to create the identity of "adventure, indulgence, romance, [and] delight" on which it has always prided itself.[46] In the last couple of centuries of California history, the manipulation of water has allowed for gold mining, wine country, and the continued existence and bragging rights to a place fondly known as "the Bay Area" to the north, and for orange groves, palm trees, and the Beach Boys' "Surfin' Safari" to the south. On the other hand, California laws protecting public interests in the environment reflect the will of a people that have always had a special affinity with the land unspoiled by such developments. To choose between the two explanations is an endless exercise in "chicken or egg?"

In the end, the California water system requires constant vigilance and occasional vitriol from courts and citizens so that they may separate fact from fiction in facing the state's resource challenges. Or perhaps the people must simply roll with the proverbial punches and accept the tangled web of water rights and injustices they have woven. Perhaps it is better to simply "[f]orget it, Jake — it's Chinatown."

TOONS, TRAINS, & AUTOMOBILES

"Who needs a car in L.A.?"

The story of another California emblem — the automobile — belies similar legal drama and deep disquiet. California law has on one hand protected

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[45] *Id.* at 149–50.

[46] *Life in California*, VisitCalifornia, www.visitcalifornia.com/Life-In-California (last visited May 15, 2012). "California: Find Yourself Here" commercials happily perpetuate the stereotype that "board meetings" here necessarily involve surfboards and snowboards. *California: Find Yourself Here*, YouTube, http://www.youtube.com/watch?v=Md69zCJKD1c (last visited May 5, 2012). In the beginning, boosters sold the state as an Eden of gold and orange groves, images built upon the mythical Argonaut tales to the north and the romanticizing of *Ramona* and the Spanish missions to the south. *See, e.g.*, Jack London, The Call of the Wild (1903); Ramona (1910) (based on the eponymous novel by Helen Hunt Jackson). Indeed, in many ways, "California" is a brand unto itself, the "sale" of which has led its people to actively seek and artificially create the pieces necessary to fit into notions preconceived on storyboards.

the state's legendary car culture and on the other hand been at the forefront of the fight against vehicle emissions.

Distinctly fashioned after *Chinatown* and loosely disguised as a Disney "kid flick," *Who Framed Roger Rabbit?* (1988) tells the story of Los Angeles's automotive industry and the so-called General Motors conspiracy from the 1920s to the 1960s.[47] The first ten minutes of *Roger Rabbit* show a Los Angeles where protagonist and private investigator Eddie Valiant takes the train everywhere and proudly proclaims: "Who needs a car in L.A.? We've got the best public transportation system in the world!"

And perhaps they did. By 1910, Los Angeles boasted 1,164 miles of track, the largest electrical transit system in the world. Each day, 600 trains passed through the Los Angeles Terminal alone, which stood as the largest building west of the Mississippi. Behind its identity as a sprawling suburban autopia — "indeed inherent in it — was the historical creation of Los Angeles by the [b]ig Red Cars of the Pacific Electric Co. and the [Y]ellow [C]ars of the Los Angeles system." At its peak in 1946, the average Los Angeles resident rode transit 424 times in a year. By 1950, however, transit ridership had decreased 41 percent. By 1955, in an attempt to solve problems in rail transit and reduce traffic congestion, trains had been abandoned in favor of buses. Cars had already caught on, and all the more so with the introduction of public transportation that was arguably worse than its railway predecessor.

Moreover, this was a deliberate business move: Pacific Electric had sold its passenger rail cars and buses to the Metropolitan Coach Lines bus company; Los Angeles Railway had sold its controlling interest to National City Lines, a Chicago-based company whose investors included General Motors, Firestone, Standard Oil of California, and the Mack Truck Company.[48] By 1963, the last Yellow Car (the last train standing) made its last run from Vermont Avenue to Pico Boulevard.[49]

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47 Who Framed Roger Rabbit? (Touchstone Pictures 1988).

48 *See* United States v. Nat'l City Lines, 186 F.2d 562, 566 (7th Cir. 1951). The case eventually reached the United States Supreme Court, twice, but on procedural issues. *See* United States v. Nat'l City Lines, 334 U.S. 573 (1948); United States v. Nat'l City Lines, 337 U.S. 78 (1949).

49 *Los Angeles Transit History*, L.A. Metro, http://www.metro.net/about/library/about/home/los-angeles-transit-history/ (last visited May 5, 2012).

So the conspiracy theory goes something like this: "the evil auto giant, General Motors bought up the beloved Los Angeles transit company, replaced its charming red streetcars with soot-spewing GM buses" (that, incidentally, used Standard Oil gas and Firestone tires), and "greedily pocketed profits while transforming L.A. from a balmy paradise into a smoggy, congested parking lot" by making transit so unattractive that eventually there were so few riders that GM could abandon transit and drive people to cars instead.[50]

It would seem *Roger Rabbit* was on to something. In 1946, the Department of Justice filed an antitrust suit against National City Lines for conspiracy to monopolize the transit industry. The parties agreed that "in 1938, National conceived the idea of purchasing transportation systems in cities where street cars were no longer practicable and supplanting the latter with passenger buses."[51] They disagreed, however, on whether this constituted a "concerted conspiracy by the City Lines defendants and supplier defendants to monopolize that part of interstate commerce which consists of all the buses, all the tires and tubes and all the gases, oil and grease, used by the public transportation systems of some 45 cities owned and controlled by the City Lines companies."[52] The court found against the defendants, ruling that "by their united and concerted action" they had contracted to "exclude competitors from selling buses, tires, tubes and petroleum products" in violation of the Sherman Act.[53] Each company paid a fine of $5,000 while seven key executives each paid a $1 fine for the elimination of a system that "in order to reconstitute today would require maybe $300 billion."[54] Over the next twenty-five years, there would

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[50] Christine Cosgrove, *Roger Rabbit Unframed: Revisiting the GM Conspiracy Theory*, ITS Rev. Online 3 (2004–2005), http://americandreamcoalition.org/transit/rrunframed.doc (last visited Sep. 7, 2012). Cosgrove goes on, however, to criticize the conspiracy theory and offer alternative explanations for the demise of the Los Angeles rail system.

[51] *Nat'l City Lines*, 186 F.2d at 567.

[52] *Id.*

[53] *Id.* at 571.

[54] Taken for a Ride (New Day Films 1996). The documentary purports to expose "how things got the way they are. Why sitting in traffic seems natural. Why [Los Angeles's] public transportation is the worst in the industrialized world. And why superhighways cut right through the hearts of our cities."

be three more major investigations into GM's alleged monopoly practices: two settled out of court; one was eventually dropped.[55]

Yet to make conspiracy the controlling narrative here is perhaps to put a romantic gloss over the realities of a transit system that had been fraught with problems (and arguably needed a conspiracy to save it). They had been "streetcars not desired."[56] Instead, some had reviled the transit companies as "monopolistic and greedy operators whose trolleys were filthy and so slow that sometimes it was faster to walk."[57] And all monopoly and greed aside, the companies had struggled even before GM entered the market: they had first tried and failed to procure government subsidies before selling to the likes of GM out of necessity.[58]

Conspiracy or not, railroads opened the door to the car culture that would eventually drive them out. The vast transit network spurred suburbanization and, in turn, the rise of the automobile. Car culture sold and signaled visions of suburbia: of home ownership, of constructing a string of villages rather than a city, of moving ever outward in a new iteration of Manifest Destiny — of something synonymous with the American Dream.[59] The post–World War II period saw the construction of highways and the

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[55] *Id.*

[56] Cosgrove, *supra* note 50. Many transit companies made far more money as real estate developers and as such encouraged families to move from the city to the suburbs. This resulted in longer commutes that made automobiles all the more attractive and efficient methods of transportation.

[57] *Id.* Under this analysis, the rise of the automobile becomes nearly inevitable, especially accompanied by certain cultural shifts. For example, the rise of middle class income (in conjunction with a decrease in automobile pieces) gave suburban families the means to buy the cars they had always desired in the first place. Moreover, the car was simply an easier and better way for married women in these families to juggle work (as the number of women entering the work force had been steadily increasing since 1920), household duties, and childcare.

[58] *Id.*

[59] *See generally* Kenneth T. Jackson, Crabgrass Frontier: the Suburbanization of the United States (1985). Indeed, "[t]he car culture that emerged in Southern California had a profound impact on American culture, as other cities began to develop along similar lines, with the automobile at the center of regional planning, and the oil industry essential for that growth. Los Angeles had the oil and the cars at the start of the 20th century, a combination we are still paying for." *'Oil!' and the History of Southern California*, N.Y. Times [online edition], Feb. 22, 2008, http://www.nytimes.com/2008/02/22/timestopics/topics_uptonsinclair_oil.html?pagewanted=all.

Interstate Highway Act of 1956 to "protect the nation." The war effort had required the movement of men and materials, and this mobility evolved into the sense of individual freedom, industrial progress, and consumerism with which "the democratic automobile" was imbued after the war was over. Thus, "[w]ith the nation exploding in wealth . . . the car quickly became the hottest of the new consumer items, and nowhere was the apotheosis of the car more pronounced than in the Golden State."[60]

In fact, prior to the war, Los Angeles had already pioneered the incorporation of cars into everyday life: "Los Angeles during the 1920s was a laboratory of the future. It was the first city created to serve the needs of the automobile — it's where the car culture was born."[61] It was the first city to adopt a simplified traffic code (one that included a "Jaywalking Ordinance" solidifying certain "car rights"), the first to install an interconnected signal system, and the first to have pedestrian-activated signals.[62]

Even now, the Los Angeles freeway experience can be described as the mystical marriage of man and machine. Joan Didion describes driving in the city as an exercise in letting go and submitting to "the only secular communion Los Angeles has."[63] She certainly has a point about commuting as community: Didion's comments came in the context of backlash against efforts by the California Department of Transportation (Caltrans) to reduce the number of drivers on Los Angeles freeways in the 1970s by

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60 Lutz, *supra* note 8, at 50. Consider, too, nostalgia-inducing drives up and down a small town street in George Lucas's *American Graffiti* (1973), a tribute to his hometown of Modesto; or James Dean and his iconic — and ultimately deadly — Porsche-powered tear down a rural stretch of Highway 46.

In California, cars are a part of both state and personal identity. As one auto consultant told the *New York Times*, "In other states, you do not see or hear, 'I want it to say something about me.'" Brian Alexander, *Almost as Many Vehicles as People, and Every One Says, 'Me!'*, N.Y. Times, Oct. 22, 2003.

61 *'Oil!' and the History of Southern California*, *supra* note 59.

62 John E. Fisher, *Transportation Topics and Tales: Milestones in Transportation History in Southern California* 2, Los Angeles Department of Transportation, available at http://ladot.lacity.org/pdf/PDF100.pdf.

63 Joan Didion, *Bureaucrats*, *in* The White Album 79, 83 (1979). "Anyone can 'drive' on the freeway . . . . Actual participants think only about where they are. Actual participation requires a total surrender, a concentration so intense as to seem a kind of narcosis, a rapture-of-the-freeway. The mind goes clean. The rhythm takes over."

creating a new Diamond (carpool) Lane.[64] "Citizen guerillas" covered the Diamond Lanes with splattered paint and scattered nails, and even hurled objects at maintenance crews.[65] They formed the Citizens Against Diamond Lanes organization to lobby against the project.[66] And Caltrans received several thousand letters on the matter, ninety percent of which opposed Diamond Lanes.[67] Ironically enough, it was the desire to protect the right to drive alone that brought people together.[68] It caused, Didion observes, "large numbers of Los Angeles County to behave, most uncharacteristically, as an ignited and conscious proletariat."[69]

On the opposite end of the spectrum, Joel Schumacher's *Falling Down* (1993) depicts a drive-home-gone-amok, in which William Foster (better known as "D-Fens," by his vanity plate) is literally driven mad by Los Angeles — and its infamous traffic — like an Odysseus or Dorothy gone bad.[70] Indeed, the film opens with the irony of rush-hour gridlock in a city that is supposed to be about mobility. D-Fens simply wants to get home in time for his daughter's birthday party, but he cannot. In fact, his entire life is — as the movie posters put it — a "tale of urban reality" in which he is "an ordinary man at war with the everyday world." As this terrible truth sets him free (in all the worst ways), D-Fens's rampage through the streets shows turf wars and freeway politics where roads cut through poor, ethnic neighborhoods.[71]

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64 *Id.*

65 *Id.* at 82.

66 Everett M. Rogers, Diffusion of Innovations 401 (1962).

67 *Id.*

68 Paul Haggis's *Crash* (2004) takes this idea to its logical extreme in its opening lines: "It's the sense of touch. In any real city, you walk, you know? You brush past people, people bump into you. In L.A., nobody touches you. We're always behind this metal and glass. I think we miss that touch so much that we crash into each other just so we can feel something." Crash (Lions Gate Films 2004).

69 Didion, *supra* note 63, at 83.

70 Falling Down (Warner Bros. 1993).

71 The same might be said of the Embarcadero Freeway that ran through downtown San Francisco (torn down following the Loma Prieta Earthquake of 1989) and the double-decker Central Freeway that used to run through Hayes Valley (and whose concrete form created a dark underbelly for drugs and prostitution). Raymond A. Mohl, *Stop the Road: Freeway Revolts in American Cities*, 30 J. of Urban Hist. 674 (2004).

Out of its arguably schizophrenic love for both cars and conservation, Californians have fought against cars every bit as vehemently as they have protected them. This has most notably played out in the form of air pollution litigation. It was California that first discovered the link between automobiles and air pollution, and it was California that first took measures to control it. As a direct result of these measures, "the state came to occupy a unique position in vehicular emission control."[72] Indeed, California state efforts have been a major influence in shaping the federal approach to emissions and pollution.[73]

To start at the very beginning:

> Something happened in Southern California in the early 1940s. In the first year of that decade . . . the area experienced a brownish, hazy, irritating, and altogether mysterious new kind of air pollution that was more persistent than, and quite different from, the isolated instances of irksome smoke that had troubled major urban centers from at least the mid-1800s. The new problem was, of course, smog.[74]

In contrast to the Didion's car-loving community, in October 1946 "hundreds of 'aroused' Pasadenans held a protest march [over the inability of existing law to deal with smog]. It wasn't a full-scale uprising, but the message from the suburbs was powerful: united they stood, wheezing they'd fall."[75] Meanwhile in nearby Altadena, the district attorney's office, "acting then as both smog cop and public guardian, had advised the Altadenans to relax; the 'obnoxious fumes' had mainly a psychological effect. [Property-rights leader James] Clark, responding cleverly, invited the D.A. to travel there, then, to 'get [his] lungs full of psychology.' "[76] In the people's minds,

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[72] Jacobs & Kelly, *supra* note 7, at 2.

[73] *Id.*

[74] James E. Krier & Edmund Ursin, Pollution & Policy: A Case Essay on California and Federal Experience with Motor Vehicle Air Pollution, 1940–1975 1 (1977). The focus on the 1940–1975 is notable: the time period is bookended first by World War II and then by the creation of the federal environmental regime. The result is a purely state story in a post-Progressive era.

[75] Jacobs & Kelly, *supra* note 7, at 22.

[76] *Id.* at 20. Lest Los Angeles's prosecutors get short-changed here, however, the District Attorney's office did, "in a blast at . . . manufacturers, file[ ] thirteen smoke-abatement lawsuits, including two against well-known outfits — Standard Oil's coastal refinery and Vernon's Bethlehem Steel Corporation." *Id.* at 29.

smog was still just a temporary problem though: "Los Angeles had rearranged nature in the past, why not again?"[77]

Rearrange it did: in 1947, the city established the Los Angeles County Air Pollution Control District, the first of its kind in the nation (the Bay Area Pollution Air Control District was subsequently established in 1955).[78] Between 1947 and 1950, the state adopted the Ringelmann System, which measured the quantity of smoke rising from stacks and other resources, and limited smoke accordingly. In 1960, the passage of the Motor Vehicle Pollution Control Act "brought the state into the active role of control for the first time" under the first piece of motor vehicle emission control legislation in the country.[79] All in all, California started the nation's first air quality program more than a decade before the passage of the Federal Clean Air Act.

Yet even before the landmark legislation, litigation had already been under way in California. Starting before 1940, citizens annoyed with the growing "smoke nuisance" had been seeking redress through civil suits. The public nuisance doctrine has provided the basis for air pollution cases ever since (including, in most recent jurisprudence, lawsuits over greenhouse gases, global warming, and even challenges over whether alternative energy sources such as wind turbines end up creating more — albeit different — environmental problems than solutions).

A longstanding common law notion, the public nuisance doctrine protects the public against "a substantial and unreasonable interference with a right held in common by the general public, in use of public facilities, in health, safety, and convenience."[80] The California Penal Code defines "public nuisance" as anything injurious to health, offensive to the senses, or obstructive to free use of property so as to interfere with comfortable enjoyment or free passage by the public.[81]

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77 *Id*. at 23.

78 *Id*. at 8.

79 Jacobs & Kelly, *supra* note 7, at 8.

80 Dan B. Dobbs, The Law of Torts 1334 (2000).

81 "Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway . . . " Cal. Penal Code § 370.

In practice, public nuisance has been in many ways the "inland" or "atmospheric" version of the public trust doctrine employed in water cases.[82] Both aim to protect communal interests in the environment and natural resources; "they protect collective interests against the excesses of private activity, operating flexibly as common law backstops to political failures."[83] It would seem that the use of common law doctrines — such as public nuisance and public trust — that enforce societal norms also demonstrates how environmental issues are very much a part of California's fabric.

Indeed, cultural voices have sounded alongside litigious ones even in the early days of air pollution litigation. Heading into the 1950s, at a time when smog and sparing the air were still new, the *Los Angeles Times*, "as the loudest voice around, was the world's first environmental soldier, and [publisher Norman] Chandler was its General Patton."[84] As the smog swirled over the next few months (and ever after), the *Times* "chaperoned readers through trash heaps, refinery boilers, chemical factories and every other operation unofficially indicted for the scourge."[85]

Some argue that this model of mutual reinforcement between common law and culture better protects the environment than the sweeping federal legislation that has followed — and at times tried to replace — it:

> [T]he common law enforces the norms of society, whereas the administrative state tries to impose intellectually generated norms on society. Common law rules tend to limit liability to conduct that

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[82] William H. Rodgers, Jr., Environmental Law § 2.16 173 (1977).

[83] Albert C. Lin, *Public Trust and Public Nuisance: Common Law Peas in a Pod?*, 45 Davis L. Rev. 1075, 1078 (2012). Still, the two differ in scope, function, and legal foundation, resulting in differing applications to different environmental challenges. Nevertheless, there have also been water lawsuits based on public nuisance, especially early on in California's history. *See, e.g.*, People v. Glenn-Colusa Irrig. Dist., 127 Cal. App. 30 (1932) (enjoining diversion from Sacramento River into an unscreened canal as a public nuisance on the ground it killed many fish species in the area); People v. Russ, 132 Cal. 102 (1901) (enjoining construction of dams in the Salt River area as a public nuisance because the dams' diversion of water obstructed the public's free use of a navigable stream).

[84] Jacobs & Kelly, *supra* note 7, at 28. Yet, ironically, Chandler's family had been at the forefront of the diversion of water away from the Owens Valley.

[85] *Id.*

> society deems unjust, whereas the administrative state imposes liability where the state deems it useful to achieve its objectives.[86]

Certainly the common law — which, as a practical matter, mobilizes and relies on the actions of ordinary citizens rather than politicos — is a "bottom up" approach that may be "more likely to draw upon existing social understandings and norms in the development of law, which may in turn be more effective."[87] Others, however, argue that reliance on ever-changing cultural trends actually weakens rights (reliance which, in turn, gives rise to a litigious approach that is neither effective nor efficient in creating long-term solutions) and that public nuisance suits are improper means of environmental enforcement.[88]

Legal theory aside, California has led the way in environmental protection, particularly where air pollution is concerned. In fact, California continues to occupy a special place in environmental protection even under the federal regulatory scheme. While federal laws such as the Clean Air Act generally preempt state law, California is — and always has been — permitted to set more stringent standards in certain instances (usually through waivers issued by the Environmental Protection Agency). This means, of course, the relationship between state and federal law has sometimes been rocky: "[t]he time since 1970 has been one of struggles in California . . . to cope with these bold new breaks, struggles that put — are still putting — the federal system to a fine test."[89] Still, the "California exception" exists in part to enable the state to cope with its exceptionally severe problems (especially in Los Angeles).[90] At the same time, "it was also motivated by California's pioneering experience in the field (an experience, like

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[86] David Schoenbrod, *Protecting the Environment in the Spirit of the Common Law*, in The Common Law and Environment: Rethinking the Statutory Basis for Modern Environmental Law 17–18 (2000).

[87] Frank B. Cross, *Identifying the Virtues of the Common Law*, 15 Supreme Court Economic Review 21, 26 (2007).

[88] *See* Gary D. Libecap, *The Battle over Mono Lake*, 6 Hoover Digest (2006), available at www.hoover.org/publications/hoover-digest/article/6467 (arguing for a market approach to resource allocation); *Am. Elec. Power v. Connecticut*, 131 S. Ct. 2527 (2011) (declining, essentially, to allow interstate nuisance to supersede the current regulatory regime under the Clean Air Act).

[89] Krier & Ursin, *supra* note 70, at 10.

[90] *Id.* at 2.

most pioneering ones, characterized as much by failure and frustration as by grand accomplishment), and by the accompanying purpose to employ California as a testing ground for new approaches to control."[91]

In 2002, California adopted the Clean Cars Law (Assembly Bill 1493), the world's first law targeting global warming pollution from new cars and trucks.[92] Successive legislation required automakers to cut their carbon emissions 30 percent by 2016. In 2004, thirteen Central Valley car dealers and the Alliance of Automobile Manufacturers (which represents, among others, GM, Ford, DaimlerChrysler, and Toyota) sued the state to stop implementation of the Clean Cars program.[93] Undeterred, the state brought a public nuisance suit against the six biggest automakers in the country.[94] The automakers' claims were ultimately denied, and the state suit dismissed. Most recently in January, the California Air Resources Board unanimously passed the so-called "Advanced Clean Cars" package. The plan mandates a 75 percent reduction in smog-forming pollutants by 2025 and that one in seven of new cars sold in California in 2025 be an electric or other zero-emission vehicle.[95]

Again, as with water, California deliberately and eagerly used the law to embrace car culture. At the same time, reactions to and regulation of car

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91 Krier & Ursin, *supra* note 74, at 2. "[T]he state's efforts have been a major influence in shaping the federal approach to vehicular pollution control, and have also of late been much shaped by the federal approach." *Id.* at 3.

92 AB 1493 amended Cal. Health & Safety Code § 42823 and added § 43018.5; *California Clean Car Law Prevails over Big Auto Challenge*, Natural Resources Defense Council, www.nrdc.org/globalwarming/fauto.asp (last visited May 15, 2012).

93 *Cent. Valley Chrysler-Jeep v. Goldstene*, 529 F. Supp. 2d 1151 (E.D. Cal. 2007); *Cent. Valley Chrysler-Jeep v. Goldstene*, 563 F. Supp. 2d 1158 (E.D. Cal. 2008).

94 *California v. General Motors*, 2007 WL 2726871 (N.D. Cal. 2007). Meanwhile, the United States Supreme Court had held in *Massachusetts v. EPA*, 549 U.S. 497 (2007), relevant part, that the Clean Air Act gives the EPA authority to regulate tailpipe emissions of greenhouse gases and that such gases fell within the Clean Air Act's definition of "air pollutant."

95 *California passes sweeping auto emission standards*, Fox News (Jan. 28, 2012), http://www.foxnews.com/politics/2012/01/28/california-passes-sweeping-auto-emission-standards/ (irony of citing to Fox News for a global warming story intended); *see also* Katrina Schwartz, *California's "Clean Car" Rules: A Historical Perspective*, KQED News (Jan. 27, 2012), http://blogs.kqed.org/climatewatch/2012/01/27/californias-clean-car-rules-a-historical-perspective/.

culture's environmental impacts show a people and a place trying to ease its conscience.

Perhaps California is destined to be a state of irreconcilables where law stands at the intersection:

> What, for example, is an auto executive to make of the fact that Californians bought more Hummer H2's from January to July [2003] . . . than any other state, yet drivers have also bought so many gas-electric hybrids that Detroit has been forced to play catch-up with the Japanese? On one hand, the Hummer sales say Californians are rich and therefore entitled to two parking spaces, but the new hybrids say the state is full of environmental advocates. Both pictures are true.[96]

Perhaps over the last few decades, Eddie Valiant's train-filled town has given way to a sprawling state more accurately and at best embodied in Roger Rabbit's Car Toon Spin at Disneyland. Perhaps that is California all over:

> We've been on the run
> Driving in the sun
> Looking out for number one
> California, here we come
> Right back where we started from[97]

CONCLUSION

". . . where we run out of continent."

California has always been the main character — and sometimes even a caricature — in its own stories. It is paradoxically the most populous state and yet a "new frontier." It is "a world that is simultaneously old and new. The public trust doctrine and the Endangered Species Act have been laid down alongside one-hundred-year-old water rights, and we somehow have to figure out how they can, and should coexist."[98]

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96 Alexander, *supra* note 60.

97 Phantom Planet, *California, on* The Guest (Epic 2002).

98 Gray, *supra* note 15, at 151.

These are the plots and the protagonists that underlie the creation of California, both in legal facts and in social and silver screen fictions. Foundational fantasies, after all, "seem to have originated as a way of giving human form to all that is titanic and inchoate about nature."[99] In California's "dynamic and utilitarian conception" of water rights, "we have our Bigfoot. He is more than a myth. Inhabiting our remote mountain canyons, wild rivers, high desert lakes, and bays and estuaries, he is also a vital part of our legal imagination."[100] This Bigfoot has at times allowed politicians and engineers to pillage the Owens Valley and at other times save Mono Lake from the same fate. Indeed, California's water laws and litigation have been aptly fluid in allowing for very different endings to very similar stories.

In California's roadways, road rules, and anxiety over air pollution, there is an attempt to reclaim nature in the unnatural — an attempt to recast a manmade exercise into the ultimate form of wilderness and freedom (picture, for a moment, hugging the California coastline on the Highway 1 or winding through the snowy peaks en route to Lake Tahoe, perhaps even in a hybrid car). Of course, these days, "Californians do not cruise much anymore, nor do they hang out at drive-ins. . . . Still, the car culture persists because drivers continue to spend a lot of time sitting on freeway on-ramps, imagining they could be doing these things instead of waiting for the two-cars-per-green-light-meter light to join the herd on Interstate 5."[101] Dreams of the state with the most cars having the smallest carbon footprint turn ignoble smog and traffic into something decidedly noble.

Taken together, California has indeed been a frontier for environmental law and culture. On one level, the lack of a federal system prior to the 1970s forced California into this role out of necessity; on another level, California gladly filled that role. Its ability to operate, unconstrained, using common law doctrines allowed California to mold itself into the "Golden State®" it wanted to be by manipulating the environment in the name of the

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99 Gray, *supra* note 15, at 272 (quoting D.R. Wallace, The Klamath Knot 137 (1983)). Such myths affirm "a desire for human power over wilderness. [. . .] They link us to lakes, river, forests, and meadows that are our homes as well as theirs. They lure us into the wilderness . . . not to devour us but to remind us where we are, on a living planet. If [they] do not exist, to paraphrase Voltaire, it is necessary to invent them." *Id.* at 272–73.

100 *Id.* at 273.

101 Alexander, *supra* note 60.

public good, and also to actually protect the public good. Sometimes the two have meant the same thing; sometimes they have not. The result has been creative yet complicated.

Perhaps this makes California a place every bit as crazy and sun-addled as outsiders make it out to be. Yet out of these lawsuits, California is also a place that 37,691,912 people have created and called "home" where once there was none.[102]

More than anything, as "native daughter" Didion notes:

> California is a place in which a boom mentality and a sense of Chekhovian loss meet in uneasy suspension; in which the mind is troubled by some buried but ineradicable suspicion that things had better work here, because here, beneath the immense bleached sky, is where we run out of continent.[103]

But only if the continent and the California landscape — so capable of both bounty and bust — do not run out on us first.

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[102] *State & County QuickFacts: California*, U.S. Census Bureau, http://quickfacts.census.gov/qfd/states/06000.html (last visited May 15, 2012).

[103] Joan Didion, *Notes from a Native Daughter*, *in* Slouching Towards Bethlehem 171, 172 (1968).