

October 2018

# Headwaters

NEWSLETTER OF THE  
STANISLAUS FLY FISHERS

Stanislaus  
Fly Fishers

A CHARTER CLUB  
OF FLY FISHERS  
INTERNATIONAL

MEMBER OF THE  
NORTHERN  
CALIFORNIA  
COUNCIL OF FLY  
FISHERS  
INTERNATIONAL

2018  
General Meeting

Tuesday, October 9,  
2018

6:00 p.m.

New Location!

Grace Lutheran Church  
617 W. Orangeburg  
Modesto, CA

## President's Message

I just got back from a weekend of fishing on the Little Truckee River and it was very enjoyable. If you want more details, you will have to come to the meeting this month & find out.

While out fishing this weekend, I started to think about the progression from using a fishing vest to chest pack to vest/pack to now a sling pack. I'm starting to see more vests being used and is it because some fishermen have not change with the times or our vests making a comeback? Which is your preference for stream fishing?

Fishing out of a tube/pontoon boat has places to put gear and salmon/steelhead fishermen are not in need of a lot of flies & stuff but if you're going out for the day which way do you carry all the items needed? I'd like to hear what you think as seasoned fly fishermen.

Last month we lost a great member & friend. Greg

Ewert was not always around as much as he would have liked but every time we saw him he was always Greg.

I've heard stories and comments about who Greg was, and it keeps going back to whenever Greg heard of someone going somewhere to fish, Greg would go out to his truck, grab a fly box, and tell them this is what he would use, and go ahead and take the box and bring back what they didn't use.

Greg may have just met that person, but for him to loan out a box of flies says a lot about his character and how much he wanted people to get out and fish even if he couldn't.

I think Greg would now ask us to take up the slack he left and be that kind of person to the next person you could help. It's now time to pay it forward.

Hope to see you all at this month's meeting.

- Jim

# Stanislaus Fly Fishers Membership Information

Membership dues are \$36 per year for members.

Members must also join Fly Fishers International. Dues vary, but do not exceed \$35 for a single, one-year membership.

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## Club News

### October Program: *Little Truckee Outing Review & Roundtable*



Several members who recently attended a club outing on the Little Truckee River will be sharing their thoughts and experiences from the outing. Additionally, there will be a club round table discussion regarding upcoming activities and location recommendations for future club outings.



The 2018 Salmon Festival @ Knight's Ferry is just around the corner. As we have in the past several years, the SFF will have a fly casting area and information booth. The festival hours are 10:00 a.m. - 3:00 p.m. Members are invited to join us and help provide a basic introduction to fly casting to children and adults. It's a great opportunity to introduce a young generation to fly fishing and perhaps entice some adults as well. Of course, it's always fun to walk down to the Knight's Ferry Bridge and count the salmon that are migrating upstream for spawning. Sny members willing to arrive early to help set up would be greatly appreciated. Setup expected to begin approximately at 8:30 a.m.

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*"Soon after I embraced the sport of angling I became convinced that I should never be able to enjoy it if I had to rely on the cooperation of the fish."*

- Sparse Grey Hackle



## Stanislaus Fly Fishers 2018 Board of Directors

President – Jim Goodwin  
Vice-President – Jeff Bakker  
Treasurer – Bob Ramos  
Secretary – Rick Allen  
Membership – Dennis  
  Stambaugh  
Conservation – Lonnie Moore  
Raffles – Jim Bowen  
Webmaster – Mike Hewitt  
At-Large – Bud Heintz  
At-Large – Pat Roe  
At-Large – Bob Nakagawa

*Board Meetings are held  
on the fourth Tuesday of the  
month at 5:00 p.m. at Me & Ed's  
Pizza on Pelandale Ave. in  
Modesto. All members are  
welcome to attend.*

## Club News *(cont.)*

### **Dinner**

No club-provided dinner or beverages at this meeting. You may BYO if you wish.

### **Raffle News***Out of the frying pan ...*

#### **SMALL RAFFLE**

When held, the small item raffle is \$5 per ticket or 3/\$10 and only for members in attendance the night of the meeting. The items will be on display and the raffle tickets sold prior to the meeting. The raffle will be held at the end of the meeting time.

#### **DOOR PRIZE**

The monthly door prize is for members only. When you arrive and sign in at the meeting, you will receive a ticket for the door prize raffle of a half-dozen flies tied by one of our members. ***Members who donate flies for the door-prize drawing, will receive two regular raffle tickets.***

#### **LARGE RAFFLE (52 Playing Cards + 2 Jokers)**

There is no current large raffle.

### **Membership Information**

Membership Dues (\$36) for 2018 are overdue. For your convenience, we can now accept a credit card for your dues, but there will be an additional fee of \$1.00 to cover the cost of the transaction.

All memberships are “Family Membership” status. Spouses, significant others and children are now all included in every membership.

**Reminder: These are the club dues and *DO NOT* include FFI dues.** FFI dues are paid directly to the FFI and must be maintained regularly since the SFF is an FFI Charter Club. If you are not an FFI Life Member, or do not pay for three years at a time, **you must renew your membership yearly!** Also, remember to list the Stanislaus Fly Fishers as your **Affiliated Club**. This is important due to our Charter Club status. The online application for FFI membership is linked below.

FFI Membership [Application](#)

## Upcoming Outings and Events

**SALMON FESTIVAL - November 10, 2018 @ Knight's Ferry 10 a.m. - 3 p.m.**  
**HOLIDAY DINNER - December 11, 2018 @ TBA**

## Tundra Comics



# Conservation Notes

By Lonnie Moore, Conservation Director

## Who's Water Is This Anyway?

Ever found yourself “flipping feathers,” while wading the middle of a fast running ice cold stream, water up to your elbows, and suddenly frigid drops start flowing over the top of your outrageously expensive waders? This “river wading” situation usually causes me to ask myself: WHY did I get myself in this position? My next thought is: “HOW did I get in this position...and CAN I possibly get out alive? Also there may be a “quivering lip” prayer that comes out of nowhere, that goes something like: “Please God, just get me out of this river alive, and I swear to never come this far out again!” (I do fall short of swearing I'll only fish from the bank with worms)

This is similar to how our situation feels in regards to California water supplies, and the effects on fish and other wildlife. Plenty of people have done things to make California highly attractive to large populations of people, high volumes of industry, concrete, pollution, and “Me first” attitudes! We have gotten ourselves “out in the deeps” and can't or won't admit our errors. Or maybe we don't have the sense to understand our dire dilemma (maybe it's all the above and a few other reasons too!)

For Californians, it may be useful to have a quick look at our history and our “terrible” need for water! Early Californians found out that without water it was very difficult to do many things in the state. And this was a state that really didn't have water most of the year, at least not in the form of rain or water that was close (and therefore useful and plentiful) all year long.

It was soon realized that water would be the true treasure of the “golden state.” So, as a new official U.S. state, and as more and more newcomers laid claim to water and used water in various ways (some of these claims and uses would later be determined to be illegal), new laws had to be created to “keep the peace,” Some of these laws may have seemed fitting at the time, but that was 150 years ago...today our world has changed.

Oh, by the way, the answer to this paper's title is: THIS IS YOUR WATER! And another thing, you also own the fish and all the other wildlife! Well, at least you share ownership with a few million others (but that's another, future, paper.)

So, now for the long answer...and striving to be educational, let me try to explain this “water rights” thing:

California fresh-water is held in “Public Trust” (meaning: relating to a population or a community as a whole; open to all persons); that is, all the water belongs to the citizens/residents of the state. Public Trust is a concept that relates back to the origins of democratic government and its seminal idea that within the public lies the true power and future of a society; therefore, whatever trust the public places in its officials must be respected. Public Trust public lands, wildlife, and waters are to be managed by government entities with the intent that these resources and populations continue for the public good.

However, the longer answer (the CA answer written many years ago) also needs to explain who has rights to the people's water, in what order, for what, in what quantity, and under what terms, and was designed to favor the earliest Californians (and put the folks who came later at disadvantage). What worried them was (and continues today) a question of inviolability (they wanted the “rights” forever and that should never be changed). Legal battles (and some not so legal) concerning those rules have largely continued, but those rules are not necessarily carved in stone. Instead, changing times and needs have pushed hard to change legislation and judicial

decisions. Now, more than ever, drought and climate change are forcing us to reconsider and/or reconstruct the issues and laws.

There's a word... "usufruct" (lawyer talk). I know it sounds salacious, but it's a term commonly used to describe a citizen's right to use, but not own, someone else's property. In this case, it is used to reach for the state's water (your water).

As the promise of land and gold drew settlers into California, the doctrine of "prior appropriation" arrived in the Sierras. Under this system, which was favored by miners, the first person to claim stream flow for a "beneficial use" or in those days basically divert it from nature (and even severely damage nature) for human benefit, enjoyed "first right." In times of shortage, the last to arrive to a watershed became the first ordered to give up water (regardless of the water volume, or the value, or good/bad done by the activity, person or company, etc.). This was solidified in California case law in 1855: "*Qui prior est in tempore, potior est in jure*" (he who is prior in time is better in right).

In 1850, just as the miners were damming streams and rigging them with flumes to move water to their mining camps, downstream in Sacramento, California's first legislature voted a constitution that adopted English Common Law (there had suddenly become farmers and other business in the lowlands and they wanted water rights too). Without explicitly decreeing it, California law became more like English "riparian doctrine" for water...or did it?

Under this, anyone owning land alongside a natural water body enjoyed the right to (beneficially) use it. In times of shortage, riparians would share the shortage equally, and many "appropriators" could just "go pound salt".

With common law dictating one system, and the constitution validating another, it took only five years after statehood for riparians (land owners along the river) and appropriators (others wanting state water for their own use) to make it to the Supreme Court of California. The decision in the 1855 case (*Irwin v. Phillips*) seems to favor prior appropriation, especially to those who would profit. Those who posed as "riparians" lost because they were deemed squatters, not owners, of the public land they were flooding.

Today, some still claim eligibility for riparian rights, as was done in the 1870's, as the farmers in the Stockton area began diking and draining the Delta tracts, with riparian law applied even as dredges created "lost and found rivers" the between or in the middle of existing rivers...and that even irrigation ditches provided appropriative rights. The claim being that these all these rights should continue today, regardless of damage or due process.

For years after, appropriators continued to argue with riparians, and even began to argue with other appropriators. A new decision in the California Supreme Court emboldened each of the rivals with a greater sense of entitlement. To resolve disputes among the appropriators in 1872, the legislature passed a law requiring appropriators to register their water diversions with a county recorder and make good on their announced diversions in a timely manner. The "first in time" rule would now apply for the benefit of appropriators.

The result of this "registration law" was that appropriation became "legal," but while the legislature acknowledged appropriation, it did not repeal riparianism, which remained in the state constitution. So, there appears to still be rights of different "quality" that provide "inherent" advantages to some people, businesses, organizations, and public utilities...all with unequal or due process. Read on...

Confused? For decades, so have been the state, many farmers, miners, counties, cities, irrigation districts, citizens, and public utilities. This is why it sometimes seems like everyone has "THE" water right, and sometimes like no one really does. Ah, California!

Well enough of that, but let me add some related but different confusion and argument:

The current California State Water Resources Control Board states something called “The Water Rights Process” as:

A water right is a legal entitlement authorizing water to be diverted from a pacified source and put to beneficial, non-wasteful use. Water rights are property rights, but their holders do not own the water itself. They possess the right to use it. The exercise of some water rights requires a permit or license from the State Water Resources Control Board (State Water Board) whose objective is to ensure that the States water is put to the best possible use and that the public interest is served.

In making decisions, the State Water Board must keep three major goals in mind:

1. developing water resources in an orderly manner;
2. preventing waste and unreasonable use of water; and
3. protecting the environment.

The State Water Board is also called upon to adjudicate water for entire systems or act as a “referee” or fact-finder in court cases involving water rights.

Notice that item #3 mandates the Board to at least “keep in mind” the protection of the environment. And lately, it seemed that they were making quite an effort to keep the environment in mind, especially in keeping with recommendations from the Department of Fish and Wildlife.

However, the current incantation of the “United States Department of the Interior” seems to have made a last minute “course correction” for California water (Per USDI memo/order signed Oct 01, 2018). This decision appears that it may be based solely upon the complaint of the local irrigation districts. This change grants the wishes of the involved irrigation districts, and the City of San Francisco, to continue restricting water flows allowed past the Don Pedro and La Grange Hydroelectric Projects (dams). And seems to relieve them from following the laws to protect the environment, do no harm (or remediate any harm done), and finally from fulfilling their decades old licensing requirements and promises to you...the public.

The flow restrictions have scientifically been shown to continue a Tuolumne River environment of conditions that expose salmon and trout (eggs and fish) to water temperatures and low water flows that are highly detrimental to their survival for even a short period. (It is my opinion, along with many others, that these are a few of the more serious conditions that have led to the severe demise of the Tuolumne fish and other local wildlife.)

Sounds like the current Feds have decided to make determinations about your water and wildlife despite what you and the State of California might want. You might notice in this elongated essay...I never said the Feds had any California water rights (especially to a river that is completely within the state, like the Tuolumne).

Note: Anyone wanting a copy of the Oct 01, 2018 Department of the Interior document, please feel free to contact me ([lmoorenorcal@gmail.com](mailto:lmoorenorcal@gmail.com)) and I’ll shoot an electronic (PDF) version to you.

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*Most of the world is covered by water. A fisherman's job is simple: Pick out the best parts.*

*– Charles Waterman*



## Video Links

- [\*Brace Yourself - Fly Tying Tip\*](#)
- [\*Fishing from a Drift Boat Basics\*](#)
- [\*Smith Island Restoration Project\*](#)
- [\*Sunsets & Cocktails Episode 3: Fall on the Motherlode River\*](#)
- [\*Trouts Fly Fishing: For A Few Drifts More - Fall Float Fishing on the Colorado River\*](#)
- [\*Fall Run – Steelhead Fly Fishing\*](#)
- [\*3 Fly Fishing Legends | Cast Northwest | Episode 5\*](#)
- [\*Video review of the new R.L. Winston Pure and Salt Air fly rods\*](#)
- [\*Eric Jackson's "Alignment"\*](#)
- [\*Upstream: A Fishing Tale\*](#)

## Suggested Reading

- [\*Postfly Game Fish of the Week: Largemouth Bass\*](#)
- [\*Fly Fish Oregon Done\*](#)
- [\*Question: How do I achieve the "dead drift" when I'm dry fly fishing?\*](#)
- [\*Common Sense Fly Fishing: Line Control\*](#)
- [\*Reflections on another western fire season\*](#)

