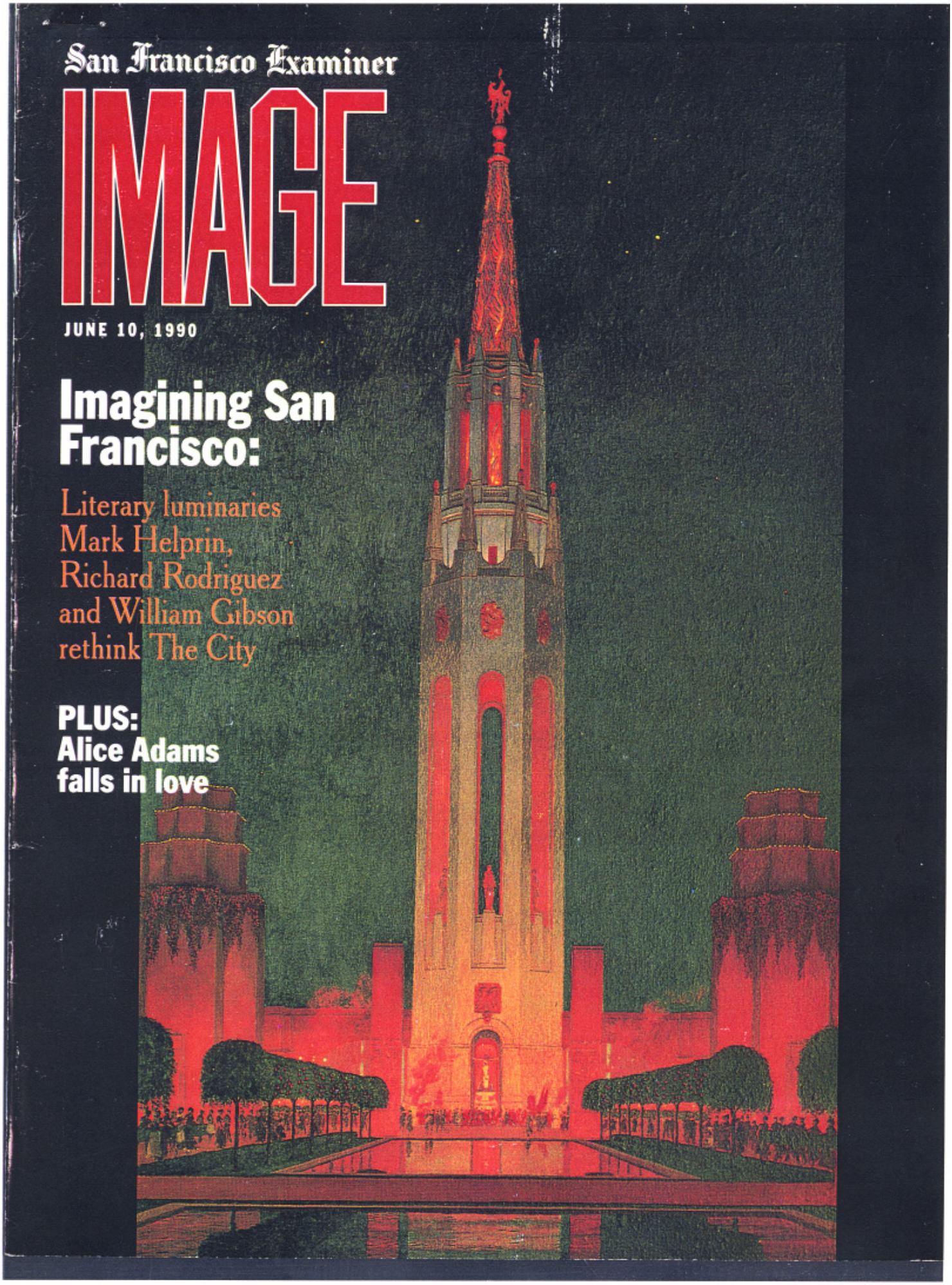
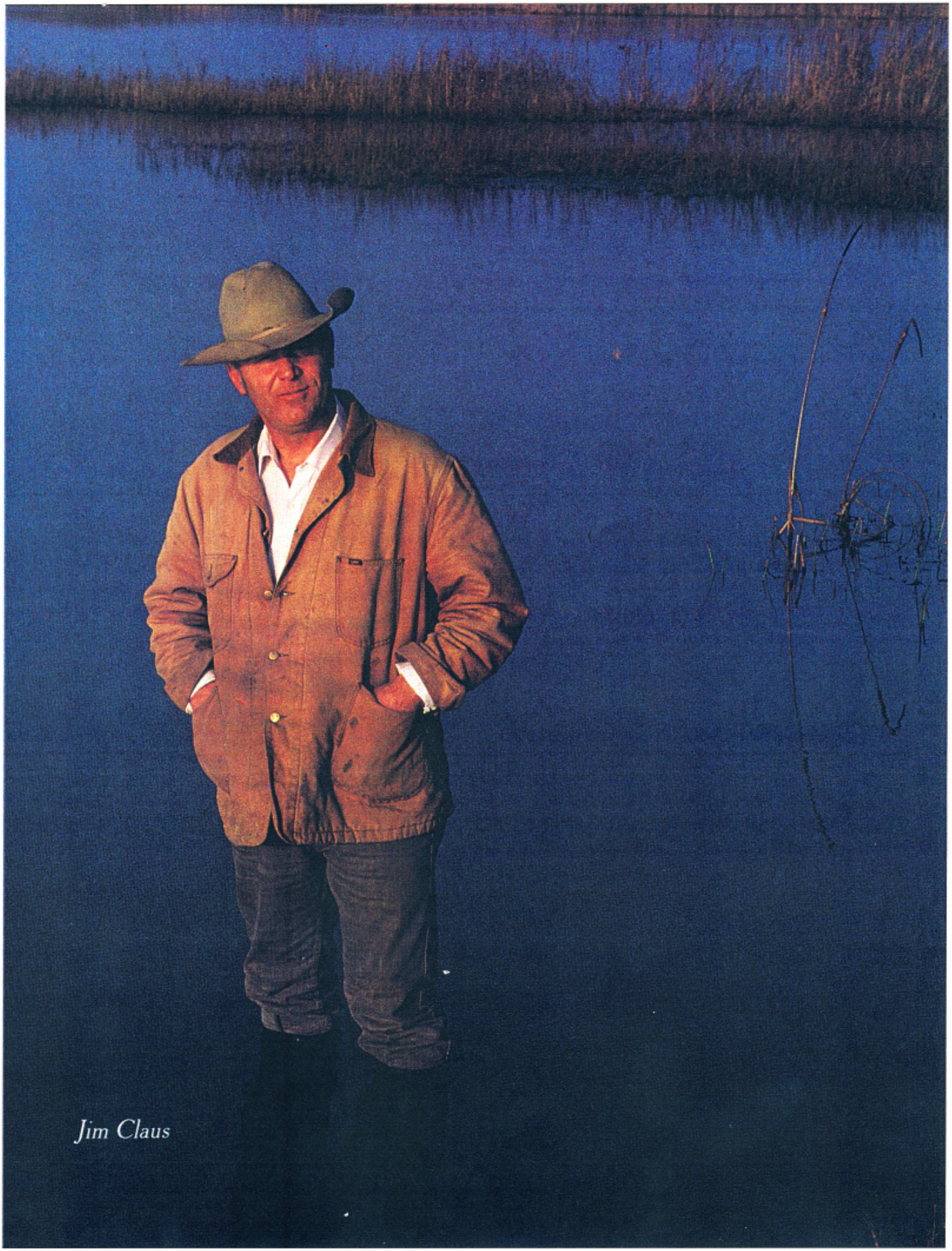

San Francisco Examiner
IMAGE
JUNE 10, 1990
Imagining San Francisco:
Literary luminaries Mark Helprin, Richard Rodriguez and William Gibson rethink The City
PLUS:
Alice Adams falls in love

APPENDIX 1


Jim Claus

Down the drain

He's been reviled as a crank and a crackpot, but Jim Claus took on the government and agribusiness over one of the worst toxic dumps in the West — and won.

Call Jim Claus the swamp fox.

The man who took on everyone from the Secretary of the Interior to California's most powerful farmers to force them to admit that the way we irrigate farms is poisoning the West has suffered the fate of most whistle blowers. He was driven from his home, had his livelihood destroyed, was vilified as a crank and troublemaker and rarely received credit for his single biggest victory: a 1985 state order to shut down the farm waste water evaporation ponds at the Kesterson National Wildlife Refuge, an order that forced the federal government to reexamine its irrigation practices throughout the American West.

But after spending the 1980s fighting in the courts, pleading his case before local, regional and state water boards and lobbying the media and agricultural scientists, Claus is making it clear to all but the most obstinate that wetlands for protected bird species are not good places to dump farm drainage water laden with deadly poisons.

Five years after he won his historic Kesterson cleanup order, Claus is back in federal court to force a solution to the drainage crisis in the western San Joaquin Valley. He wants to make sure that the type of toxic farm drainage water that ravaged Kesterson doesn't destroy other rivers and wetlands that have become disposal areas for irrigation projects all over the West. "Much of the agricultural effluent in the San Joaquin River is being sucked up at the federal pumps in Tracy and sent back down the Delta-Mendota Canal and the state Aquaduct to contaminate not only western valley farmland but the drinking suppplies sent over the Tehachapi Mountains to Southern California," Claus wrote in his latest federal lawsuit.

The problem at Kesterson was selenium, a normally harmless trace element that is toxic in concentrated doses and causes a variety of ailments, including birth defects and death. Selenium from the western San Joaquin Valley soil was contaminating the irrigation water, which in the late 1970s was discharged into the Kesterson Reservoir, where it quickly polluted the food chain. By 1983, the bird sanctuary 80 miles southeast of San Francisco was dying. Dead birds floated everywhere in the stinking evaporation ponds.

But if selenium was the immediate culprit at Kesterson, Claus believes the real killers were members of the so-called Hydraulic Brotherhood, a powerful network of politicians, reclamation officials, engineers, scientists and rich farmers who be-

By Lloyd Carter

Photographs by Elizabeth Mangelsdorf

The Kesterson Reservoir, *80 miles southeast of San Francisco (see map, opposite), is a refuge for migrating geese, ducks and other water fowl. Inset, right, the now unused San Luis Drain, was "temporarily" dumping farm drainage at Kesterson while the government studied its controversial plan to eventually flush the water into the sea via the San Francisco Bay. But in 1983, dead birds and deformed embroyos started turning up at Kesterson in large numbers. The culprit was selenium, a trace element in the soil, toxic in concentrated doses, that had dissolved in the irrigation water. Opposite top (l. to r.) embroyo with curled lower beak and missing eyes, wings and legs; embroyo with missing eyes, curled lower beak, only one toe on each foot, upper legs shortened and twisted; embroyo with missing eyes, legs and lower beak, elongated upper beak, eroded nostrils, only one small wing; and normal embroyo. From the lab of Dr. Henry M. Ohlendorf of the U.S. Fish and Wildlife Service.*

lieved without question that California's rivers should be rerouted to develop the western valley desert. It seemed like a good idea 30 years ago, and a lot of those factory farmers in the western valley will argue fiercely that it's still a good idea.

The problem in the western valley is that all the irrigation over the last half century has waterlogged the land, and unless it is periodically drained to lower the groundwater table, salts and toxins just below the root zone kill the crops. And there are a lot of toxins in western valley soils just as nasty as selenium, things like arsenic and boron, heavy metals, uranium, cadmium, mercury, chromium and sodium sulfate. Because of the drainage problem, plans were made in the 1960s to build a massive canal — the San Luis Drain — to carry the waste water to the Sacramento-San Joaquin Delta, where it could be "safely" flushed through the San Francisco Bay to the Pacific Ocean, the ultimate salt sink.

But, unsurprisingly, Delta and Bay Area residents were suspicious of the scheme and demanded scientific studies to prove that it was safe. So in the 1970s, with studies underway, the Hydraulic Brotherhood decided to use Kesterson as a "temporary" dumping ground for drainage from the Westlands, the nation's biggest federal irrigation district — legendary for its political muscle. That's when Jim Claus came onto the scene and muddied the waters.

A successful Bay Area real estate investor with a Stanford Ph.D. in urban geography, Claus started going duck hunting in the Merced County wetlands around Kesterson in the early 1970s and fell in love with the area. By the late 1970s he'd bought several combination cattle ranch/duck clubs there, including 950 acres right next to Kesterson.

Claus did not notice anything unusual until 1981, when his forage grasses wouldn't grow and his cattle started losing weight, getting sick and dying. The Freitases next door were having similar problems; their cattle were dropping dead every time they drank the foul smelling water that was starting to bubble up on their property. Local hunters reported nabbing ducks that were sickly and underweight, some with damaged feather patterns. Another neighbor, Frank Schwab, found a goose with a stunted leg. Claus began speaking out and things got weird. "We had death threats, we couldn't eat in restaurants, we weren't welcome in town anymore. When we were at the hearings we had to keep moving our vehicle," Claus said. "We were attacked in every possible way you can imagine, including having our house burglarized. We had people trespass on our property, destroy items, give us (threatening) messages, call us on the phone, threaten to maim and kill our children and kidnap our youngest child."

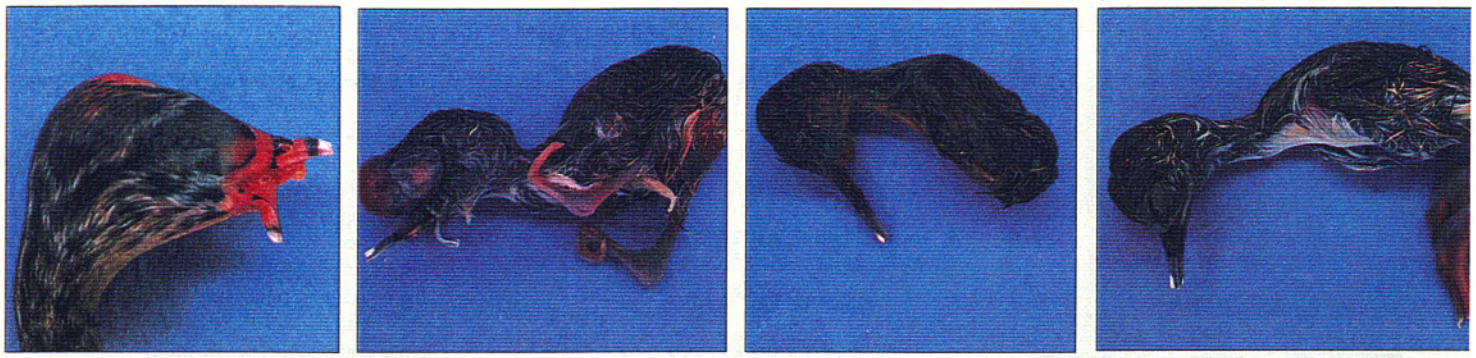
The pressure from the federal government was more subtle. The Bureau of Reclamation, which operated the Kesterson evaporation ponds, said there was no leakage from Kesterson to adjacent ranches. The water was fine, they insisted, cleaner than local groundwater.

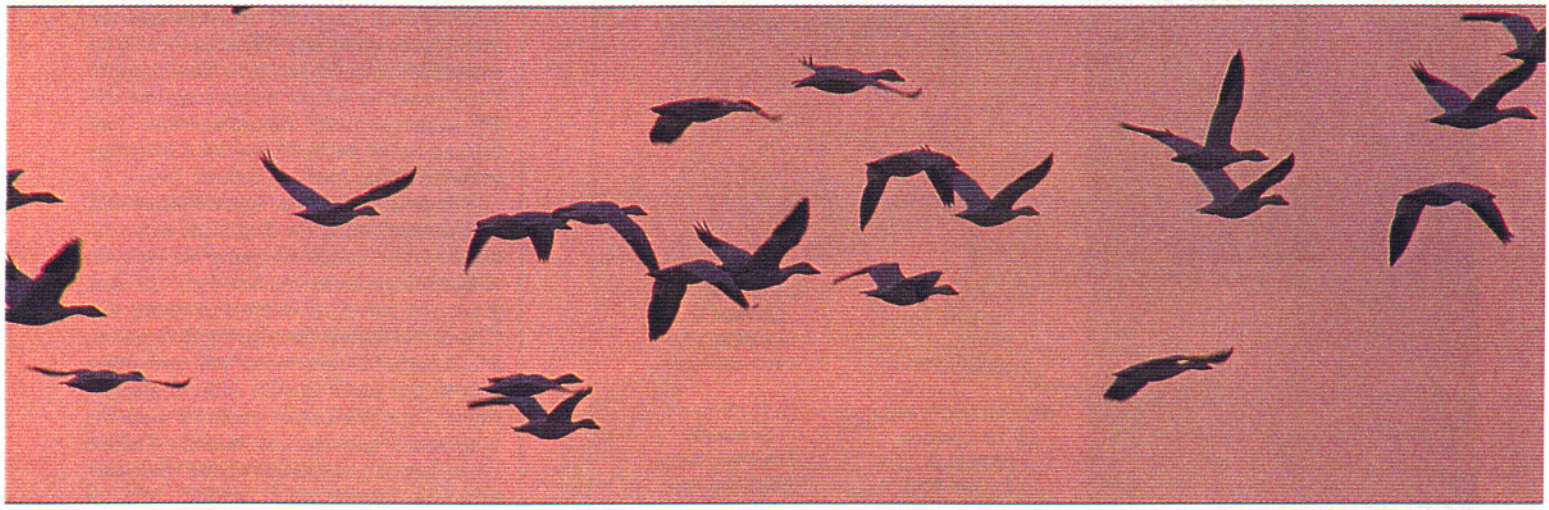
Scientists later found that selenium in the drain water had quickly infected Kesterson plant life, then become more concentrated as it moved up the food chain to the migratory ducks, which started showing bizarre embryo abnormalities like missing eyes, wings and feet and corkscrewed beaks. But the bird deformities did not become public knowledge until the fall of 1983, five months after they were discovered.

By 1984, Kesterson was at full virulence. Birds were dying by the thousands. As many as 2,600 were picked up in a single day, 15,000 in a month. Bureau officials called it avian cholera, but 12 of the 14 birds that were actually tested had died of selenium toxicosis.

In late April of that year, Claus and his wife, Karen, appeared before the Central Valley Regional Water Quality Control Board to demand that Kesterson be cleaned up or closed. The regional

SAMUEL W. WOO





board, dominated by farming interests, refused to acknowledge that there was even a problem. So the Clauses appealed to the State Water Resources Control Board with a massive stack of paperwork they had accumulated to document their claims, including proof that scientific warnings had been issued all through the 1960s and 1970s about the dangers of the kind of drainage water being dumped at Kesterson.

As early as 1949, David Love of the U.S. Geological Survey had proposed a thorough study of selenium in the West, warning that it could save the country tens of millions of dollars and much future grief by keeping bad land out of production. Love says politics killed his proposal. Agriculture Department officials admitted in 1961 that they feared a selenium survey could hurt property values all over the West.

Reclamation officials and agriculture interests, who wanted to continue dumping drainage at Kesterson, rushed busloads of farmers to the December water board hearing — but to no avail. On Feb. 5, 1985, Jim and Karen Claus won the order to clean up the reservoir.

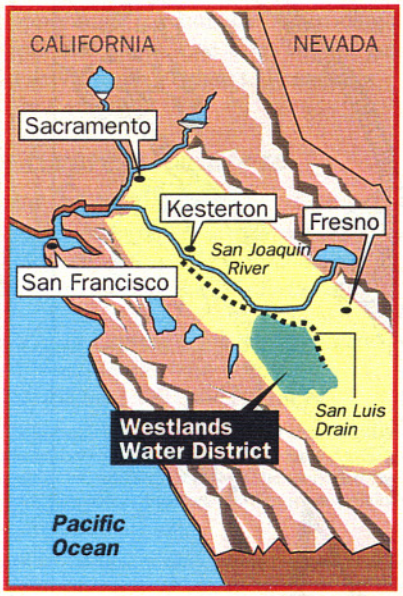
Six weeks later, just a few days after Claus could be heard thundering righteously about government stupidity on "60 Minutes," former Interior Secretary Donald Hodel ordered the reservoir closed. It was a stunning move. Twenty-five years after it had been authorized by Congress and narrowly approved by a majority of California voters, the still unfinished state-federal plumbing job to irrigate the western valley had dead-ended in the sulfurous Kesterson swamp. Since the closure, the Bureau of Reclamation has spent nearly $50 million to study and undo the mess, and will spend $3.5 million a year, every year for the foreseeable future, just to keep an eye on it.

The shutdown sent shock waves through California's $17 billion-a-year agriculture industry that would eventually reverberate around the globe. Kestersons were springing up everywhere, including the Soviet Union, where a scheme to grow cotton in the desert killed the Aral Sea, once the world's fourth largest fresh water lake.

Jim Claus shook the temple of the Hydraulic Brotherhood to its foundations. It may never recover. Whether the Clauses will recover is another matter.

When the death threats grew serious and their Kesterson area home was bur-

CHRIS MORRIS



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glarized, they took their children and fled, first to Beverly Hills, then to Ventura and finally to a country home near Portland, Ore. Claus briefly considered moving to Australia but decided to stay and fight. "At that point, if I had stayed any length of time in Australia, I simply would not have come back to the United States. But I felt that I had a responsibility to stand up for what was right. I realized that I could not simply walk away from the situation," he said.

The family's bitter battle to recover damages to their ranch lasted two years and ended in July 1987 with the government agreeing to buy 90 acres. It was an expensive war, fought in a Washington, D.C., courtroom with no coverage by the TV cameras and reporters who had flocked to the earlier Kesterson hearings in Sacramento and Los Banos.

Claus served as his own attorney and was almost jailed for contempt when he accused the judge of being in cahoots with the government lawyers. At one point, the government tried to charge the Clauses $170,000 for copying documents the Interior Department was providing free to the news media. After a sympathetic *Reader's Digest* reporter had his magazine's lawyers question the Justice Department's attorneys about their tactics, the department settled, though without admitting that the government had done anything wrong. In the end, Claus had to concede that the fight had cost him more than his ranch was worth.

Except for an occasional foray into water board hearings on the Kesterson cleanup, Claus dropped from sight for a while, keeping a low profile in Oregon. But in mid 1989 the swamp fox emerged with a new lawsuit.

This time Claus is fighting the Interior Department over its failure to protect migratory birds in the Tulare Basin, a factory farm area in the southwest corner of the San Joaquin Valley where there are more than 7,000 acres of drainage water evaporation ponds, many far deadlier than Kesterson. National wildlife refuges established there to shelter migratory ducks and geese are woefully inadequate and lack secure water supplies. One wetlands "refuge" known as Pixley has no water at all. Presumably the ducks bathe in the alkali dust.

The southern valley is the domain of some of the state's most powerful landholders, including J. G. Boswell, who owns 140,000 acres, and the Chandler family, owners of the *Los Angeles Times*. Perhaps coincidentally, *Times* coverage of the Tulare Basin dispute has been virtually non-existent. Republican Congressman Charles "Chip" Pashayan, who represents the Basin, has ignored the problem. Boswell is one of his largest contributors.

U.S. District Judge Lawrence Karlton, who has had many thorny California water issues before him over the years, is faced in the Claus suit with one of the most difficult decisions of his career. Acting again as his own attorney, Claus has amassed a mountain of persuasive evidence. U.S. Fish and Wildlife officials have said publicly that there are Migratory Bird Treaty Act violations occurring in the Tulare Basin, where bird deformity rates are higher than they ever were at Kesterson. But Justice attorneys insist that the law against killing migratory birds is being enforced.

Claus says he finds himself once again defending public resources because government agencies entrusted to do so have failed so miserably. "If one has to find the individuals with the least conscience and the most fight, one must look at the lawyers. Every time a public servant lies, there is a government lawyer not far behind him telling him that he doesn't have to tell the truth. The lawyers manage to remove any personal sense of responsibility."

The dozens of professional papers and doctoral theses written about Kesterson over the last five years always credit the state water board or Donald Hodel with closing Kesterson. As if either would have taken action without the screaming and relentless Jim and Karen Claus. It's a slight that still rankles the Clauses, but there are signs that they are at last receiving recognition for their efforts. This year they spoke at the annual selenium conference at UC-Berkeley where Jim was prevented from speaking seven years ago by Interior officials who labeled him a crackpot.

Claus still owns the Kesterson Gun Club — which he renamed the Blue Goose. He says he will sell it to the government if the government wants to buy it. Claus still likes to prowl his swamp, making improvements in the marsh, watching ducks fly overhead. The duck population is at an all-time low and he doesn't hunt anymore. He talks instead of turning all 50,000 acres of privately owned duck clubs in the area into public wetlands for future generations to enjoy.

There's been enough killing, he says. ■

Lloyd Carter is a reporter for United Press International in Fresno who won the San Francisco Press Club's Best Environmental Coverage award in 1985 for his reporting on Kesterson.

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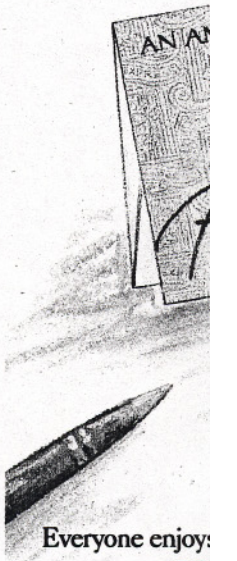

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APPENDIX 1
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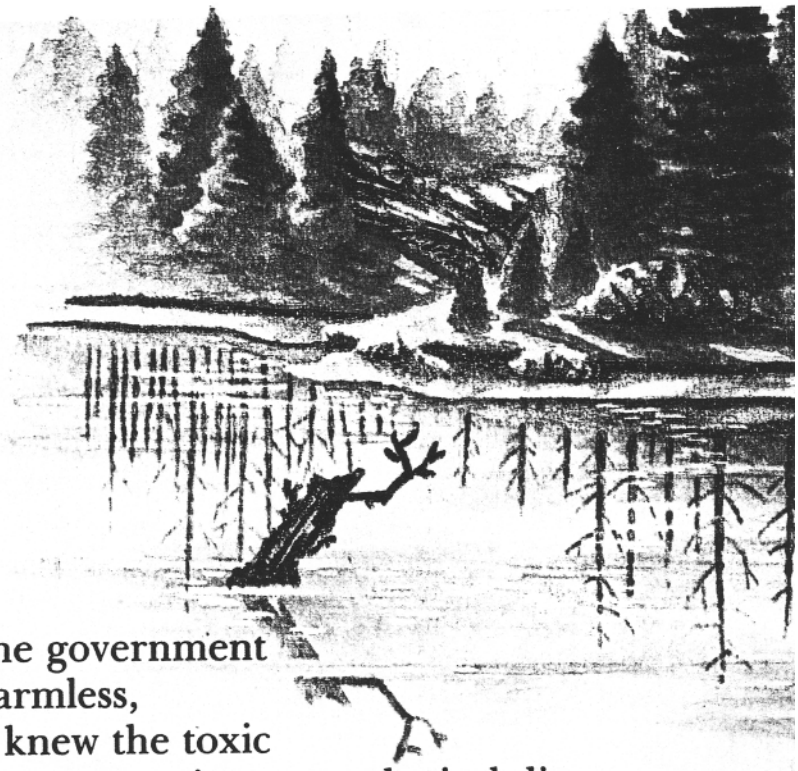

Though the government called it harmless, Jim Claus knew the toxic waste water was causing an ecological disaster. His lonely battle against the bureaucrats dramatizes a national dilemma

The Case of the Poisoned Wildlife Refuge

By Randy Fitzgerald

One morning in late 1981, 15 cattle belonging to Jim and Karen Claus drank from an irrigated pasture on their ranch in California's San Joaquin Valley. And one by one, the cows lay down and died. A foul odor began to permeate the ranch. To Jim, it seemed to originate in the Kesterson National Wildlife Refuge next door. As months passed, fish disappeared from streams, frogs from irrigation ditches, rabbits from fields. Birds fell dead. The environment was degenerating before their eyes.

For Jim and Karen Claus and

ILLUSTRATION: JAMES E. DYEKMAN

their three children, their 1400-acre ranch and duck-hunting club represented their savings and a lifelong dream. Both held Ph.D.s—Jim in land-use economics, Karen in psychology—and they had been trained to ask questions. But when they tried to raise an alarm, people ignored them. No one wanted to believe that the marshy 5900-acre refuge for migratory birds could be dying.

Investigating further, Jim began to suspect something was wrong with the irrigation water, the valley's lifeblood. He decided to notify officials at the U.S. Fish and Wildlife Service, which ran the Kesterson refuge. Jim had been introduced to FWS in 1979 when he entered into an easement agreement with them. In return for a pledge to keep their property as it was—native pasture and a duck habitat—landowners were promised the government would protect the area, called "Grasslands," as permanent wetlands.

In late 1981, Jim flew to Portland, Ore., to warn FWS regional officials: "Your refuge is killing the very life it is supposed to protect." He says that they tried to assure him nothing was wrong with the water and perhaps predators were depleting the wildlife. But once back home, he received the first of a series of packages, apparently mailed anonymously by sympathetic employees of the FWS and the Bureau of Reclamation.

Inside, Claus found reams of federal documents relating to Kesterson and the surrounding 50,000 acres of the mostly private Grasslands. He was shocked. Kesterson was being transformed into a toxic waste dump. "I can't believe our government is doing this to us," he raged. "This water is dangerous!"

"Then we must close Kesterson," Karen replied, "no matter what it costs."

Jim first had to find the source of the pollution and who was responsible. His search would uncover a problem with national implications.

Corporate Muscle. Jim found that water flowed into Kesterson along an 83-mile-long drain from the Westlands Water District, a group of several hundred farming operations southwest of Fresno. An impermeable clay layer underlies much of Westlands' 603,000 acres, creating serious drainage problems. High salinity levels tended to combine here in the irrigation water with naturally occurring trace elements such as selenium—toxic at high levels—in Westlands' soil. This water had to be removed after use or it would poison crops. So farmers hooked up subsurface tile drains to pipe used irrigation water away, via the Bureau of Reclamation's master drain, to Kesterson.

Kesterson, with its 12 evaporation ponds, was originally planned as part of a drainage system through which the agricultural waste water would flow, eventually to reach the San Francisco Bay delta. But in 1975 a shortage of funds and environmental concerns over high salinity

and pesticides in the water prevented the system's completion, and the drain stopped at Kesterson.

Tile-drain water had begun flowing into Kesterson in 1978, and by 1981, the year that Jim noticed animal deaths and deformities, the waste water was all from tile drains. Sources say that for several years Reclamation continued to deny there was a problem.

Claus also began to understand the political muscle he was up against. These were not ordinary farmers. Westlands' membership was dominated by large corporations, which, with other landowners, exercised considerable influence over the Bureau of Reclamation. Westlands was America's biggest irrigation district and the largest recipient of federally subsidized water in the reclamation program.

To favor family farms, the law had limited those that could receive subsidized water to 160 acres. (It has since been raised to 960 acres.) This acreage limitation was circumvented by elaborate leasing arrangements. Further, as a Natural Resources Defense Council report notes, over half of Westlands acreage was permitted to be devoted to growing surplus government crops, especially cotton. Thus Westlands received subsidies for both its water and its crops.

Unanswered Complaints. Because Westlands is semi-arid, its soil can only be made highly profitable with enormous floods of cheap irrigation water. A 40-year contract, which went into effect in 1968 between Westlands and Reclamation, made this possible: it called for water deliveries from federal dams at $7.50 an acre foot. (A study by the Natural Resources Defense Council shows the true delivery cost is $97 an acre foot, with American taxpayers making up the difference.) And Reclamation charged Westlands only 50 cents an acre foot to divert the waste water away.

Jim Claus kneels on the ravaged soil of Kesterson

For months, Claus tried to warn his Grasslands neighbors about the danger in re-using Westlands' waste water, but to no avail. The

PHOTO: WARREN MORGAN

cattlemen feared that if word got out their water was toxic, their herds would become worthless and property values would plummet.

As Claus persisted in his campaign, his family was harassed. Vandals ransacked their home, and an anonymous caller threatened to harm his family. But before long, other landowners adjoining Kesterson began experiencing problems. On Frank and Janette Freitas's 5500-acre ranch, sheep and cattle started dying, and gardens refused to grow as Kesterson water began seeping into their properties.

Jim still clung to his faith that, given the facts, officials would take corrective action. On March 14, 1984, he and Karen met with a ranking Reclamation official in Sacramento. They expressed their belief that toxic seepage from Kesterson was destroying their land. The meeting produced no results but the couple determined to continue to fight.

They filed a formal complaint with the California Regional Water Quality Control Board, Central Valley Region, requesting immediate enforcement of the water-quality law. Months of research went into Jim's presentation. But the board denied his request.

Genetic Nightmare. Jim returned home defeated. Then another package arrived. "Karen, we've got them!" he exclaimed.

New memos laid out the full story. Reclamation *knew* about scientific studies showing that selenium levels at Kesterson were high enough to kill the fish population. In June 1983, environmental specialist Felix Smith of the FWS and two other scientists had been sent there to check on how agricultural waste water was working. Apparently, Reclamation and the FWS had been using western wildlife refuges as waste-water dumps for several decades—without rigorous studies to determine possible toxic effects. Now the scientists found deformed chicks without eyes or legs. The marsh had degenerated into a genetic nightmare. Although Reclamation claims it acted as quickly as it could, critics charge that these findings were not acted on for quite some time.

Jim and Karen Claus now appealed the regional board's decision to the state board. With new testimony from government officials and others belatedly rallying to the Clauses' side, a case emerged that the board could not ignore. On February 5, 1985, the board concluded that drainage of waste water into Kesterson Reservoir posed a hazard to the environment, that the site must be cleaned up and that state water discharge standards should be enforced.

On March 15, 1985, Interior Secretary Donald Hodel ordered Kesterson closed. But Westlands launched a fierce lobbying counterattack and two weeks later Secretary Hodel backed off, announcing a phased shutdown, which would allow Westlands use of Kesterson

as a water dump until July 1986, when it would be closed.

Jim Claus had sued the United States in U.S. District Court for damages relating to Kesterson seepage. The Justice Department asked the court to dismiss the suit, calling it "a patently unmerited effort to open the federal treasury to their gain." The suit did not proceed. Claus then sued the government in U.S. Claims Court. Supporting his case were the findings of Herbert Skibitzke, former senior research hydrologist for the U.S. Geological Survey: The land surrounding Kesterson "will not be redeemable in a reasonable time or at a manageable cost. The water pouring onto the land is inconceivably bad, and the damage is essentially permanent."

Ecological Disaster. When Claus requested government documents bearing on his case, he was told he must pay over $170,000 for search and photocopy costs. "The government's intent is to bankrupt the Claus family or force them to withdraw the lawsuit," contends Bruce Nahin, a Los Angeles attorney representing them. The squabbling over blame continues, while the Clauses, Freitases and another family involved have been reduced to financial ruin, pain and despair.

Observers believe Justice and Interior are fighting so hard because they want to avoid a precedent that might encourage similar suits. Last year, a survey by the FWS found that 85 wildlife refuges were suffering from documented, suspected or potential problems—most caused by agricultural irrigation wastes that Interior has allowed to be dumped in them for years. The Stillwater National Wildlife Refuge in Nevada, for instance, has selenium levels comparable to Kesterson's. Early this year millions of fish and scores of birds were found dead there.

In 1985 Jim Claus and his family moved to Portland, Ore., where they are now struggling to establish new careers. He takes small consolation from events that have transpired since he first spoke out. Although Kesterson was closed to drainage dumping after June 30, 1986, Westlands still receives taxpayer-subsidized federal irrigation water for its toxin-producing soils.

Donald Anthrop, environmental professor at San Jose University, calls the episode "an ecological disaster brought about by subsidized irrigation of marginal land that should never have been irrigated in the first place." And the Natural Resources Defense Council asks, "Does the profit of a relatively small number of farmers justify water subsidies that may create an insoluble threat to the environment?"

The Interior Department should settle damage claims with landowners around Kesterson. More important, the FWS and Bureau of Reclamation should put an end to the ecological disaster at all wildlife refuges in the West. We must not let our nation's wildlife refuges become toxic dumps.