Delano

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## Introduction

Once the heart of farm labor organizing and the birthplace of the United Farm Workers labor union, the City of Delano, in California’s verdant San Joaquin Valley, is host to three prisons, whose combined population accounts for around 16-20% of the city’s roughly 53,000 residents (Department of Corrections and Rehabilitation, State of California 2016, 2011; US Census Bureau 2010). The City’s transition from being a hub of union labor to one of prisons emblematizes broader shifts in the state’s and country’s political economy with the erosion of the Keynesian welfare state into a permanent crisis workfare-welfare state (Gilmore 2007). Where capital’s demand for manual farm labor once made brown bodies indispensable to the creation of profit, the unemployment rate now hovers around XX%, nearly 3 times the statewide average. Horrifyingly, and yet unsurprisingly, these populations, rendered surplus within the local economy, live in the county which, in 2005, had the highest per capita rate of people killed by law enforcement officers anywhere in the US (Swaine et al. 2015). How might we begin to account for the changes that have occurred in Delano and across the South San Joaquin Valley? In this chapter, I examine the relationships between the state, capital, labor, and environmental policy that facilitated and resisted social and environmental changes in Delano over the past 150 years, culminating with the construction of the City’s third detention facility in 2005. I also foreground one particular site of resistance to this narrative, situated within the conditions for its possibility, the racial environmental state (Department of Corrections and Rehabilitation, State of California 2016, 2011; US Census Bureau 2010).

I examine the ways in which environmental policy (and the state more generally) and the social relations of production (labor and capital) have developed and interacted over the past two hundred years to produce the social, cultural, legal, and political economic conditions under which a motley consortium organized in opposition to the construction of a prison in California’s Central Valley.

Scholars have previously used the Delano II campaign as a case study in creative social justice organizing strategies that links prison abolition with environmental justice. Rose Braz and Craig Gilmore (2006) situate the Delano II case study within the ongoing fight to halt the massive expansion of prisons and incarceration in California since the early 1980s, to document and reveal the radical potential of coalitional strategies like those developed throughout the Delano II campaign. They show how the campaign came to embody the struggle against the biggest threats identified by youth environmental justice activists: the “three Ps” of police, prisons, and pollution. Extending this analysis, Ruth Wilson Gilmore (2008) uses the campaign to highlight the possibilities that emerge for developing new structures for understanding, and social relations for engaging social change, by looking at the process of coalition building like that around the Delano prison. She describes the way that activists started with a flexible understanding of environmental justice–that highlighted by Braz and Gilmore–to engage people across disparate social identities and political struggles, by identifying commonalities…

Gilmore goes on to show how focusing on sites of organized abandonment that are “intensely occupied by the antistate state,” such as Delano, can provide useful insights to the types of conceptual and political linkages that can emerge through and between “marginal people and marginal lands in both urban and rural contexts and raises the urgent question of how to scale up political activity from the level of hyperlocal, atomized organizations to the level of regional coalitions working for a common purpose, partly because their growing understanding of their sameness trumps their previously developed beliefs in their irreconcilable differences” (Gilmore 2008, 38).

Building on this previous scholarship, I am interested in how the structures of the racial environmental state, and particularly the EIA process, facilitates these important forms of coalitional politics, as well as limitations and contradictions to social justice organizing. The broad scope of the EIA process, and its embedded public feedback mechanisms seem to provide an intrinsic opportunity for coalition building and the development of unexpected political alliances such as those foregrounded in previous scholarship about the Delano campaign. Yet the very structures that enable engagement with the state are circumscribed by the administrative and juridical bounds of public policy. The ways of knowing, shaping, and stretching the concept of racialized and multiply inhabited environments are still bound to legal definitions and precedents. Likewise, the rules of engagement depend upon cartesian definitions of place and belonging, even if affect and political mobilizations might know no such bounds. By reexamining the story of the Delano II prison, I demonstrate both the capacity and limitations of the racial environmental state as an agent of social and environmental change.

The campaign to stop the construction of the second prison in Delano was one fight in an ongoing struggle to curtail growth of the prison industrial complex and mass incarceration of people across the US (Braz and Gilmore 2006). Campaign organizers had three primary goals for the campaign. First was to stop the proposed prison in Delano from coming into existence. Second, was that stopping Delano II would, at least temporarily, end California’s massive 20-year prison construction spree that had began in the 1980s. Finally, and perhaps most importantly, the campaign was an opportunity for galvanizing broad opposition to the continued expansion of the prison system from constituencies throughout the state.

At the time the Delano II campaign began building steam in 2001, the proposed prison was slated to become the second prison in the small agricultural town still reeling from the construction of its first prison less than a decade earlier. The first prison was supposed to be a boon to the local economy, but never lived up to those promises–while the statewide unemployment rate was nearly halved between 1993 and 2000, from approximately 9.5% to just under 5%, unemployment in Delano remained high and only decreased about a third, from approximately 35% to 23% over the same period (US Department of Labor, Bureau of Labor Statistics 2016b, 2016a). But more than just their lack of contribution to the local economy, the Delano prisons stand in for the social, cultural, and political economic shifts that maintain relationships of domination between capital and racialized labor throughout the Valley. The prisons’ imposing presence on the outskirts of Delano serves as a physical reminder of the ways in which the state punatively disciplines people on the margins of capitalist society, the latest in a long legacy of racial projects aimed at dehumanizing and delegitimizing people racialized as illegal, foreign, unassimilable, and exploitable (cf. Ngai 2004; Molina 2014).

Situated within the broader prison abolition struggle, Delano II represented a chance to bring an end to California’s massive 20-year prison expansion that resulted in 21 new prisons between 1984 and 1997 (California Department of Corrections 2007), and saw the number of detainees in state prisons skyrocket from around 25 ,000 in 1980 to 163,000 in 2000–considered the largest such expansion in the history of the world (Bureau of Justice Statistics 2016; Gilmore 2007).

In addition to the strategic significance of stopping the construction of the Delano prison, the campaign itself, and the tactics used within the campaign, demonstrate the viability of environmental justice principles as a heuristic for organizing diverse struggles within and against the racial environmental state. Environmental justice activism emphasizes the structural interrelatedness of social, economic, and cultural factors in producing and reproducing environmental conditions that render geographically differentiated populations vulnerable to premature death (Bullard 1994; Pulido 2000; Gilmore 2007). As others have shown, and I discuss later in this chapter, the conceptual flexibility of the environmental justice framework helps to map the impacts of prisons onto the diverse places where prisoners and their families come from, the communities and environments where prisons are erected, and the regions whose economies and resources are burdened by the material effects of prisons (Braz and Gilmore 2006; Gilmore 2008). The campaign hooked into this flexibility to engage a diverse and unlikely range of allies in the public participation and legal mechanisms of the EIA process. Thus, even though the short-term goal of stopping the Delano prison was significant, the campaign’s overarching objective was to strengthen the broader movement against the state’s use of prisons as a “catch-all solution to social and political problems” (Gilmore and Gilmore 2008, 142).

On the one hand, by leveraging the public participation and procedural requirements of the EIA process, campaign organizers compelled the California Department of Corrections (CDC[^8]) to engage the concerns of both private individuals, as well as public entities about the impacts of the prison on a range of stakeholders, the local economy, and the environment. But on the other hand, engaging the state through its own mechanisms of environmental state-making, the campaign was exposed to all of the procedural limitations that EIA carries with it, such as its technocratic language and pedantic reliance on legal doctrine. This double-edged sword of the EIA process, in particular, and engaging the state in general, is a recurrent theme throughout this chapter, and indeed, points back to one of the central contradictions throughout this dissertation, of the potentials and pitfalls inherent to justice sought on the terms of state institutionalization of environmental logics.

## A Brief Racial and Environmental History of the Central Valley

For thousands of years, the Paleuyami and other groups of people associated with the Yokuts and Shoshonean linguistic groups prospered throughout California’s southern San Joaquin Valley–the vast stretch of fertile lands nestled between the Tulare Lake basin, the Tule River, Sierra Nevada Mountains, Tehachapi Mountains, and Pacific Coastal Mountains, including the area now incorporated as the City of Delano (Kroeber 1907b, 1907a, 1925; Spier 1978).[[1]](#footnote-2) In addition to the Paleuyami, some 50 Yokuts tribelets, with a combined population of at least 19,000, inhabited the greater Tulare Lake region, making it one of the most heavily and densely populated regions in the state prior to the arrival of Spanish settlers (Kroeber 1925; Preston 1981). The first documented expeditions into the San Joaquin Valley by white people were led by Spanish missionaries Pedro Fages and Francisco Garcés in 1772 and 1776, respectively (Brewer 2001; Garone 2011). Over the next 75 years, small numbers of Spanish and Mexican cattle and pig ranchers, and white American fur trappers settled throughout the Valley. Relations between the white settlers and Yokuts may have initially been amicable; the Spanish and Mexican ranchers looked to the Yokuts for their labor and as the objects of religious salvation and “civilization” (Cook 1971; Preston 1981). However, the racial attitudes of the Spanish toward the Yokuts as “fickle, unreliable thieves”(Preston 1981, 53), led to exploitation of Yokuts through manipulation, coercion, and enslavement (Preston 1981). Unsurprisingly, the incursion of these early white settlers precipitated a sharp decline in Yokuts populations as a result of raids on Yokuts rancherías, the spread of diseases such as malaria and syphilis, forced removal, and displacement due to the depletion of resources by settlers’ agricultural activities. By the middle of the 19th century, the Yokuts population was reduced to a quarter of its size prior to contact with white settlers (Preston 1981; Garone 2011).

Following the discovery of gold at Sutter’s Mill in 1848, prospectors began scouring the San Joaquin Valley for other mining opportunities. The discovery of gold in the Greenhorn River around 1851 led to the Kern River gold rush and massive settlement boom in the Valley throughout the 1850s (Menefee and Dodge 1913; Preston 1981; Vredenburgh 1991). Many of the white American settlers drawn to the Valley by the gold rush established agricultural settlements on the fertile soils of the greater Tulare basin in fulfillment of American Manifest Destiny. Settlers’ agricultural activities initially consisted primarily of cattle ranching, but later transitioned to intensive wheat production. The wheat boom drove further settlement of the Valley, and introduced capitalist relationships between people and the land. Though the indigenous populations throughout the region largely depended upon cultivated subsistence agriculture for their survival, the white settlers introduced intensive farming techniques and concentrated livestock grazing to produce marketable commodities and accumulate surplus value (Preston 1981).

The capitalist restructuring of the San Joaquin Valley began with the social and environmental transformations of the Valley that flowed from the colonial mentality of American Manifest Destiny. The increase in white settlement of the Valley and conversion of the land to agricultural uses further entrenched the remaining Yokuts populations and former “Mission Indians” who fled to the Valley in refuge from the coastal missions (Gorenfeld 1999). The introduction of non-native flora and fauna, coupled with the expansion of intensive farming, and especially open-range livestock grazing, dramatically altered the Valley environment and significantly reduced the availability of usable resources for the remaining indigenous populations. According to Preston (1981), the threats of starvation and alienation from the land pushed the Yokuts to develop new subsistence strategies throughout the 19th century, such as raiding white settlements for livestock and incorporating the newly introduced grains into their diet. Like the Spanish and Mexican settlers that preceded them, the white American settlers developed racial logics that marked the Yokuts as “savage” and “treacherous,” but unlike the Spanish, they did not view the Yokuts as a potential source of labor (Preston 1981, 81). Rather, the white Americans viewed the Yokuts as a population that needed to be eliminated or removed as a necessary, and indeed inevitable (following from the idea of Manifest Destiny), condition for further capitalist development of the Valley. The Yokuts, pushed to the limits of survival, resisted through increased raids and warfare, with a number of skirmishes with US militias leading up to the “Indian War” of 1856 (Menefee and Dodge 1913; Cook 1971; Preston 1981; Gorenfeld 1999). Although a number of treaties were negotiated on behalf of the US government in the 1850s, the US Senate refused to ratify any of them, denying payment to the Yokuts for any ceded lands, availing lands set aside for reservations for white settlers, and reinforcing the status of indigenous peoples as rightless populations without Constitutional protections. After the failure of the Senate to ratify the treaties, the Army established separate reservations, and by 1860, the majority of Yokuts had been relocated to these poorly managed reservations with scarce food resources, sealing the fate of the valley under white capitalist settlement (Heizer and Elsasser 1980; Gorenfeld 1999).[[2]](#footnote-3)

With the flood of white settlers arriving in the Valley during the Kern Valley gold rush, and the simultaneous elimination of the last significant Yokuts populations, the capitalist transformation of the Valley shifted focus from domination of people to domination of nature through the technologies of capitalism. Until the 1850s, the US government’s primary involvement in the colonization of the San Joaquin Valley was through military conquest and Indian Affairs. However, once the State of California was admitted to the Union in 1850, the process of statemaking switched from military conquest to geographical domination through systems of knowledge, law, and infrastructure–the technologies of capitalism that helped to reorganize the “wilderness” of the Valley into a social space for the production of wealth (Smith 1984).

The first of these endeavors in statemaking involved the use of geological surveys to take stock of the lands and therefore consolidate control over the territories under both the State and Federal governments. Between 1851 and 1855, the US Department of the Interior conducted the first Public Land Survey in the San Joaquin Valley to classify, grade, and subdivide parcels of land to facilitate their transfer from the “public domain” of federal control into the hands of private speculators and developers. William Preston (1981) notes that this conversion of land into a real estate commodity drove speculation among settlers in terms of the land’s potential for agricultural yields as well as in world commodity markets. As a commodity, however, the lands were geographically differentiated in their value as farmland, and therefore required further interventions to ensure their productive value.

Another limitation to land use the surveys helped overcome was that of transporting commodities to markets. Surveyors, some commissioned by the federal government and others by private rail companies, identified routes for rail lines that would eventually connect the San Joaquin Valley to San Francisco and Los Angeles, as well as to Sacramento where they met with the transcontinental railroad (Menefee and Dodge 1913; Preston 1981; Railroad Beginnings in California 2014). The establishment of rail lines throughout the Valley allowed for cheaper transportation of commercial agricultural goods, while also allowing for quicker transport of troops to ensure continued military dominance of the white settlers against the remaining indigenous populations still scattered throughout the Valley and foothills. With construction of the transcontinental railroad completed in May 1869, the Central Pacific Railroad Company initiated construction later that year of a rail line down the San Joaquin Valley to eventually connect Sacramento and San Francisco to Los Angeles. Around the same time, Central Pacific started a cemetery along the planned route, just south of the border between Tulare and Kern Counties, where many of the rail workers would be buried (History North Kern Cemetery District 2014)[[3]](#footnote-4). Due to financial troubles, the Southern Pacific Railroad Company, which had been purchased by the “Big Four” controlling shareholders of Central Pacific in 1868, halted construction of the railroad tracks and set up a railhead in the vicinity of the cemetery, establishing the town of Delano in 1873, named in honor of Columbus Delano, Secretary of the Interior under President Grant (Dunne 1967; Railroad Beginnings in California 2014, 2014). This rail connection spurred a new wave of growth as investors, homesteaders, and laborers flocked to Delano to take advantage of the commercial agriculture possibilities opened by the improved connectivity and sense of “security” the railroad line provided for white settlers.

While the surveys and railways enabled the commodification of land throughout the Valley, one of the most enduring and contentious issues addressed unevenly by the state has been the use and availability of water for irrigation, and protection from flooding. Again, the state intervened by conducting further land surveys, setting the stage for the later establishment of infrastructure to control flooding and provide irrigation throughout the Valley (Alexander, Mendell, and Davidson 1874; Preston 1981). Although much of the early irrigation infrastructure was privately funded, the state provided both the geographical knowledge that facilitated water diversions for irrigation, as well as the legal system for establishing water rights (cf. Hanak et al. 2011). Starting in 1854 near Visalia, large-scale irrigation projects began diverting water from the tributaries to Tulare Lake in order to increase arable lands, to protect against drought and dry seasons, and by the 1860s, to increase commercial crop yields, especially on smaller farms lacking the economic buffers afforded by scale. Through the middle of the 19th century, Tulare Lake, situated along the western edge of the San Joaquin Valley, was the largest areal body of fresh water in the western part of the continent. In the latter part of the nineteenth-century, diversions of the tributary rivers to Tulare Lake for agricultural irrigation led to the disappearance of all of the lake’s surface water except in times of floods (Alexander, Mendell, and Davidson 1874; Preston 1981; Vredenburgh 1991).

The last two major factors that contributed to the capitalist transformation of the Valley were establishing means for protecting farmland from grazing livestock and the development and incorporation of mechanized technologies as a means of production. Prior to the No Fence Law of 1874 and invention of barbed wire fencing that same year, ranchers largely relied on open range grazing for their stocks of cattle and sheep, both of which were in heavy demand for food and wool, respectively. Prior to that year, the prohibitive cost of enclosing farms with fencing effectively discouraged large-scale farming due to the risk of livestock damaging crops; but the new law and inexpensive barbed wire tipped the scales toward farming. The introduction of barbed wire allowed farmers enclose their farmland with a much smaller outlay of time and capital than that needed for traditional fencing. Furthermore, the No Fence Law made it possible for farmers to sue ranchers for damages incurred by livestock or to confiscate stray livestock that wandered onto their farmland. The availability of cheap rail transportation for delivering goods to eager markets, both domestic and foreign, combined with the means for high-surplus production opened up by farm enclosure, resulted in a wheat boom throughout the Valley from the 1860s through the 1880s (Menefee and Dodge 1913; Preston 1981; Community Planning Laboratory 2009). With wheat booming, farmers throughout California’s Central Valley were quick to adopt, and in many cases, contributed to the innovation of, mechanization technologies such as larger gang plows and combined harvesters. The dependence on mechanization, combined with the uneven availability of water throughout the Valley meant that farming generally required large outlays of capital, meaning that larger-scale farms run by capitalists tended to win out over the smaller family farms prevalent in other parts of the US (Olmstead and Rhode 2003).

The wheat boom gradually gave way to the expansion of fruit orchards and row crops due to the widespread cultivation of wheat elsewhere in the country combined with the high profitability of fruit production. Whereas wheat was easily planted and harvested on small farms, the transition to labor-intensive fruit cultivation established new demands for labor, which would ultimately transform the Valley once more. By the early twentieth-century, the Valley was (some sort of statistic about production and economy). In the fields around the City of Delano, dominant crops included table grapes, cotton, sheep, and cattle, supplemented by tree fruits, nuts, and row crops (Menefee and Dodge 1913; Preston 1981; Community Planning Laboratory 2009).

## Agricultural Labor Organizing

As the commercial agricultural industry grew in Delano and throughout the San Joaquin Valley, so too did the tensions and contradictions of growth premised around racial capitalism. US Census Bureau records indicate that the City of Delano had a small, mostly white population of about 800 in 1920[[4]](#footnote-5). When the Dust Bowl drought and dust storms plagued the Great Plains in the early 1930s, thousands of “Okies” and “Arkies” relocated to the San Joaquin Valley, both as fixed settlers and itinerant farm pickers alongside the Mexican, Japanese, and Filipino populations that accounted for upwards of 75% of the agricultural labor force (Oakland Museum of California 2014). The influx of white labor via the Dust Bowl, coupled with the effects of the Great Depression, created racial tensions in the agricultural labor market, and in the early 1930s, state and local government agents, as well as the Federal Bureau of Immigration,[[5]](#footnote-6) coercively pressured or forcefully deported hundreds of thousands of Mexican and Filipino workers, many of whom were US citizens, to Mexico (Ngai 2004; Oakland Museum of California 2014; Molina 2014). Despite the deportations, Delano’s population continued to grow, and by 1940, the official population nearly doubled from that of 1930, most likely with a significant undercount of migrant labor.

When the US ramped up its military industrial machinery during World War II, most of the white farmworkers were drawn away from the fields and into the battlefields or manufacturing sectors. The resulting labor shortages led Franklin Delano Roosevelt to initiate the Mexican Farm Labor Program, or “bracero” guest worker program in 1942, to ensure the continued surplus of low-wage agricultural labor, especially in the West Coast including places like Delano. The poorly regulated program and lack of enforcement mechanisms led to inhumane living conditions, withheld pay, and mistreatment among farm workers; a large influx of non-contract Mexican farm workers; and virtual collapse of organized labor unions within agriculture . Yet the bracero program also gave rise to renewed labor militancy, with bracero strikes throughout the Northwest, and the efforts of organized labor unions contributing to the end of the bracero program in 1964 .

One of the unions strengthened by militant organizing efforts amongst farm workers was the Agricultural Workers Organizing Committee (AWOC). Three years after César Chávez began serious efforts at organizing farmworkers throughout California’s Central Valley, and on the heels of a successful National Farm Workers Association (NFWA) grape pickers strike at Martin Ranch, the Delano AWOC, comprised primarily of Filipino grape pickers, and led by Philip Vera Cruz and Larry Itliong (and Benjamin Gines and Pete Velasco; ), organized a strike against table grape growers in 1965. They immediately reached out to Chávez for NFWA support, knowing that the campaign’s success depended on the unified front of Filipino, Mexican, and Chicano laborers, as well as other organizations such as the International Longshore and Warehouse Union. A week after AWOC walked off the fields, NFWA voted in Delano to join the strike, and a year into the campaign, AWOC and NFWA merged, forming the United Farm Workers of America (UFW). The campaign endured for five years, but the UFW emerged victorious, securing contracts with both of the growers in the campaign’s crosshairs, and marking the first major victory for union organizing amongst farm workers, and setting the tone for the use of a combined strategy of a nonviolent field strike, labor boycott, consumer boycott, marches, and hunger strikes .

The victory in the table grape strike at Delano marks the birth of the UFW and a significant turning point in farm labor unionization, both of which, in turn, are important dimensions of the solidification of Chicano and Latino political power, particularly within California.

Less than a quarter century after the table grape strike victory, plans were underway to build the first state prison in Delano, the North Kern State Prison.

## The Delano Prisons

Shortly after the first prison in Delano, North Kern State Prison (NKSP) began accepting inmates in 1993, the California Department of Corrections (CDC) began planning for a second state prison within the City of Delano, which it designated the California State Prison-Kern County at Delano II (Delano II). Since the early 1980s, the State of California had been engaged in a prolonged expansion of its prison system, and beds were being filled with new inmates just as fast as they were being constructed. Ruth Wilson Gilmore (2007) describes this expansion as California’s “use of prisons catchall solutions to social problems” (5), and Delano II was slated to become the latest addition to California’s prison construction boom.

CDC progressed with the planning for Delano II, initiating the environmental review process in the first half of 1994 by completing an environmental impact report (EIR), the state-level equivalent of the EIS, as required by the California Environmental Quality Act (CEQA), the State of California’s “mini-NEPA” statute. Whereas federally funded projects in the U.S. are subject to NEPA and its EIA process, the State of California requires state funded projects to adhere to the state’s equivalent of NEPA, the California Environmental Quality Act (CEQA). Like NEPA, CEQA mandates an EIA process, which includes the Environmental Impact Report (EIR) and a published Notice of Determination (NOD), or the state equivalents to the EIS and ROD under NEPA. While there are significant differences between NEPA and CEQA, for the purpose at hand they dissolve beneath their structural imperatives to get state administrators thinking about environmental factors in their decision making, and to open that process up to public scrutiny.

The Delano II EIR produced by CDC in 1994 called for a 400-acre, 4,180 inmate facility with a Level IV maximum security designation. Through the process of feedback and revision, however, the planned facility was scaled back. By the time CDC certified the EIR and issued its NOD in 1995, the proposed prison called for a site on 320-acres, housing 2,200 inmates–a significantly smaller facility, but massive nonetheless (California Department of Corrections 2000). The property CDC selected for the prison is located approximately four miles west of California Highway 99, approximately 2.5 miles west of Delano’s urbanized area, about half a mile south of the existing North Kern State Prison, and adjacent to the 500-bed, City owned Delano Community Correctional Facility. When CDC proposed the new prison, the site was being actively used as farmland, and was surrounded on three sides by productive farmland.[[6]](#footnote-7)

The CDC successfully completed its statutory requirements to begin construction of Delano II in 1995, however, the plans had to be placed on hold when the state legislature failed to provide funding for the prison. Throughout the first half of the 1990s, California was struck harder by economic recession and recovered much more slowly than the rest of the US (California Legislative Analyst’s Office 1995b). Furthermore, reductions in military spending following the end of the Cold War in the early 1990s had a particularly strong effect on the California economy due to widespread military base closures and reduced contracts to the aerospace industry, one of Southern California’s largest industries (Dertouzos and Dardia 1993). As a result, the state shifted its budget priorities, making significant reductions to spending related to health and welfare, and modest increases in corrections and education spending. However, the roughly 8% increases in corrections spending in both the 1994-1995 and 1995-1996 state budgets merely covered the costs associated with increasing prison populations, and the projected growth resulting from the “Three Strikes” law enacted in 1994 (California Legislative Analyst’s Office 1995a). Despite projections of continued growth in prison populations and overcrowding in existing prisons, the 1995-1996 budget did not allocate any funds for the construction of new prisons, including Delano II, so the project was put on hold pending budgetary approval.[[7]](#footnote-8)

Even though the California legislature didn’t allocate any funds for additional prison construction from 1995-1999, the policing and sentencing practices that kept prison beds filled, continued doing their worst. Despite the long-term trend of decreasing crime rates between the mid-1980s and 2000, the continued growth in California’s prison populations throughout the 1990s–fueled in part by enactment of the notorious “Three Strikes and You’re Out” law in 1994–led to unsustainable overcrowding (see California Legislative Analyst’s Office 2005; Gilmore 2007). In 1999, the newly elected Democratic Governor Gray Davis indicated his willingness to fund further expansion of the state’s prison system by proposing a budget that allocated $335 million for construction of the Delano II prison and the planning of a second additional prison in San Diego (California Legislative Analyst’s Office 1999). In May 1999, a month before the final budget would be approved by the legislature, Governor Davis pushed through urgency legislation[[8]](#footnote-9) allocating over $311 million toward Delano II implementation, including $4 million for the cost of mitigating the prison’s impacts on the municipal government (Braz and Gilmore 2006; Friends of the Kangaroo Rat v. California Department of Corrections 2003). Funding for the prison came in the form of lease-purchase financing and lease-revenue bonds, which, as Ruth Wilson Gilmore compellingly argues, are one of the pieces to the partial “fix” to crises of accumulation that enabled the California prison boom over the last two decades of the twentieth century (Gilmore 2007, 88–127). Gilmore further explains that this process also establishes prisons as an infrastructural securities investment mechanism with higher returns for private firms than standard municipal bonds with little added investment risk, and a whole lot less potential for political fallout from the increased tax burden of voter-approved municipal bonds (Gilmore 2007, 100–101).

With a budgetary green light, CDC resumed planning for Delano II in 1999. Due to the continued growth in prison populations over the intervening years, CDC increased the planned prison capacity by 235% from the initially approved capacity of 2,000 inmates,up to 5,160 inmates, and from a 320-acre site up to a 480-acre site.[[9]](#footnote-10) This design change triggered the need to amend the previously approved 1995 EIR with additional analyses considering the environmental impacts of the newly proposed design revisions. In February 2000, CDC published the Draft Supplemental EIR (SEIR) for a 45-day period for public review and comment and held a subsequent public hearing to receive oral comments, in accordance with CEQA guidelines (Association of Environmental Professionals 2014, 15105). On May 22, 2000, CDC published a Final SEIR containing a record of the comments received and CDC responses to those comments, followed by the publication of the Notice of Determination (NOD) approving the Final SEIR on June 7, 2000 (California Department of Corrections 1995), which is the California equivalent to the NEPA Record of Decision granting final approval of the environmental review process. Typically, this is the point at which the lead agency may proceed with project implementation. However, in the case of Delano II, this was the point at which organized opposition to the prison led to a five-year delay in prison implementation with a lawsuit built around the requirements of California’s EIA process.

## Taking the Prison to Court

When Governor Davis pushed to pass the urgency legislation to fund the Delano II prison construction, organizers from across the state rallied opposition to the funding bill at the state capitol. Despite their efforts, the bill was passed by the legislature. However, the energies directed at opposing the bill were not for naught, as the organizers maintained their momentum by redirecting their efforts toward other avenues of action, including the legal foothold afforded them by the environmental review process.

In July, 2000, one month after the CDC filed the Notice of Determination (NOD) approving the Final SEIR, a coalition of prison abolitionists and environmental justice activists filed a lawsuit against CDC to prevent construction from commencing because of alleged inadequacies in the SEIR. The coalition was represented by environmental lawyer Babak Naficy, Esq., who filed the lawsuit against CDC with the Kern County Superior Court of California on behalf of the three named plaintiffs, Critical Resistance (CR), the National Lawyers Guild Prison Law Project (NLGPLP), and Friends of the Kangaroo Rat. The lawsuit petitioned for a Writ of Administrative Mandate and injunctive relief, or in other words, requested the court to review and overturn the CDC decision to approve the Delano II SEIR and halt further action toward prison construction. CDC immediately challenged the legal grounds for CR and NLGPLP to participate in the lawsuit. CDC asserted that both parties lacked standing, or the legal basis for claiming harms caused by the proposed prison. CDC’s lawyers claimed that the intent for both CR and NLGPLPto bring suit was predicated not on environmental harms that might result from shortcomings in the SEIR, but rather, on a non-environmental political agenda aimed at stopping prison expansion.

Several months after the campaign organizers filed their lawsuit against CDC, they organized a conference in Fresno, about 90 miles north of Delano, to bring together prison abolitionists and environmental justice activists from across California. This conference, titled “Joining Forces: Environmental Justice and the Fight Against Prison Expansion,” aimed to build political alliances that took advantage of the conceptual linkages between existing anti-racist social justice struggles and environmental justice networks throughout California. One of the outcomes from the conference was a network of supporters backing the lawsuit against CDC, and several organizations subsequently filed amici curiae briefs on behalf of the organizers.

Nearly a full year elapsed before the Superior Court finally handed down its decision in the lawsuit. The court ruled that ultimately, the SEIR submitted by the CDC was insufficient to account for the combined cumulative impacts of the proposed prison in light of the existing prison on the adjacent lot. The court ordered CDC to address these deficiencies by completing further environmental assessments, including the public review process, effectively halting construction plans for the time being.[[10]](#footnote-11) This marked a tremendous victory for the coalition of abolitionists, environmental justice activists, local residents, and even state officials drawn in to the conflict.

The CDC submitted a Revised Cumulative Impact Assessment, and after another two years of litigation, eventually had the stay on construction lifted by the Court of Appeals. Down but not out, the campaign organizers switched their efforts from the legal strategy based around the prison’s environmental impact to a legislative strategy aimed at stopping the prison from being funded. The legal campaign waged through environmental policy infrastructure generated a broad base of supporters in the campaign to stop the prison from being funded. The strategy of linking the prison construction to environmental justice issues, social justice issues for working-class communities of color, as well as environmental land, ecology, and resource issues gave the campaign wide ranging support that extended beyond hardcore environmentalists and prison abolitionists. This means that the organizers were successful in conveying the common sense message that prison construction based on racist profit models was not a good way to build safer communities.

On June 7, 2001, after almost a year of back-and-forth between the lawyers and courts, the Superior Court ruled in favor of CDC on the issue of standing, forcing CR and NLG to withdraw from the lawsuit; Friends of the Kangaroo Rat stayed on the lawsuit to its conclusion. Before the courts even had a chance to weigh the merits of the lawsuit, two-thirds of the team fighting the construction of Delano II were pushed out of the courts, despite the renewed effort from campaign supporters to substantiate the standing claims of CR and NLG. The court’s decision reveals two important considerations for the case study–the determination of standing in relation to the EIS process, and the broader campaign strategy used by the campaign organizers.

## Court Rulings

The decision handed down by the Superior Court in June 2001, included two important rulings. The first ruling, which is discussed in greater detail below, was that CR and NLG lacked standing as plaintiffs in the trial. The second ruling dismissed two of the arguments challenging the deficiency of the SEIR, but upheld the third. By ruling in favor of the plaintiffs on the third point, which related to cumulative impacts, the court effectively stopped CDC from continuing with the construction of Delano II until they addressed the impact studies required by the court. The court found that the cumulative impact analysis in the SEIR “did not adequately address the effect of past projects and existing projects, and…failed to provide a summary of the expected environmental effects of the pending and proposed projects” (4 Cal. Rptr. 3d 562). This marked a tremendous victory for the plaintiffs because it meant that CDC would have to return to the EIA process to further examine the environmental impacts of the proposed prison, and submit their updated findings for another round of public review.

Despite ruling in favor of requiring CDC to prepare a cumulative impact analysis, the Court ruled against the plaintiffs on a number of other points based on merit. These additional arguments included (1) failure to fully and adequately describe the proposed prison development project; (2) failure to consider a reasonable range of alternatives to the proposed prison; (3) failure to propose adequate measures to mitigate the significant foreseeable impacts on wastewater treatment, the San Joaquin Kit Fox, the Tipton Kangaroo Rat, and on local schools. By granting the cumulative impact argument but rejecting these additional arguments, the Court reduced the scope of future legal arguments that could be used to hold CDC responsible when it completed its cumulative impact analysis.

The legal concept of standing is complex, particularly with regard to environmental law, and because of its gatekeeping function within the judicial system, shouldn’t be taken lightly. In environmental law, standing refers to the plaintiff’s ability to establish that they suffer injury from a project or action, and that it will continue unless the court takes action. They also need to establish a chain of causation that links the project or action to some portion of the environment used by the plaintiff or some member of a plaintiff’s party. The form of injury claimed does not need to be physical or economical; aesthetic or recreational impairments are also considered valid based on past US Supreme Court decisions.[[11]](#footnote-12) In the case of Delano II, the court ruled that CR and NLG both lacked standing, meaning they were not allowed to participate in the lawsuit. The lawsuit rested on the plaintiffs’ claim that there were three areas of environmental impacts not considered under the SEIR that would cause harm to the plaintiffs. The Court ruled that neither Critical Resistance nor the NLG sufficiently substantiated that any of these three areas of impacts would directly inflict injuries upon members of either organization since they did not bring forth evidence that they lived, worked, or played within the local environments that would be affected if the prison were to be constructed.

This is an important point because it’s well within reason to assert that the construction of a new prison will directly impact the living environments of potentially incarcerated individuals and their families, and as we know from history, the addition of beds to the prison system means bodies will be found to occupy them–and those will disproportionately be black or brown. But in the eyes of the courts, such factors don’t count toward standing. Only impacts directly linked to the changes in the physical environment resulting from the state’s action in constructing a prison count toward standing; impacts conjecturally related to potentially incarcerated persons do not count.[[12]](#footnote-13)

Ironically, the bodies employed within a prison as guards and staff would count toward standing, but those bodies unemployed, incapacitated, and rendered surplus somehow don’t count in this case.[[13]](#footnote-14)

CDC complied with the court order and produced a Revised Cumulative Impact Analysis (RCIA). This document provided a brief history of the region and detailed analysis of the projects developed in the 15-year period leading up to Delano II. Essentially an addendum to the SEIR, it required a 45-day period for public review and comment, initiated August 15, 2001, prior to finalization and approval by the CDC director. Six months after the Superior Court’s ruling, the revised SEIR including the RCIA received approval and CDC filed a NOD on December 13, 2001.

On December 13, 2001, the CDC attorney filed a Return to the Writ and Motion for Discharge of the Writ. These filings notify the Superior Court that the CDC completed and approved the RCIA, including the necessary public hearings, and ask the Court to dismiss the case and withdraw the order preventing them from proceeding with construction. The Court agreed to hear the case, and several months later, on April 4, 2002, the Court ruled that the CDC’s revised analysis was sufficient, and dismissed the case on April 18, 2002. Then on July 7, 2002, Friends filed an appeal with the California Court of Appeals, Fifth District, charging that the CDC had still not fulfilled its CEQA obligations in the RCIA. The appeals process lasted over a year, but on August 18, 2003, the Court ruled in favor of CDC, lifting the final legal barrier to construction of the Delano II prison.

[Discussion of the depublication of the court decision]

The case brought forth against the CDC in the Court of Appeals by the coalition opposed to the prison construction contained three main points arguing that the RCIA was insufficient and therefore necessitated further study and justification by the CDC before the prison could be constructed. The first point regarded the proposal for the prison to obtain its water supply by pumping groundwater and treating its wastewater on-site for distribution to neighboring farms for agricultural irrigation, free of charge. This proposal, Friends argued, would negatively impact the local water supplier, the South San Joaquin Municipal Utility District (SSJMUD), by reducing its income potential, and by extension, impact its customer base due to increased supply rates (the “water issue”) (Friends v. CDC [depublished]). The Court waived this argument on the grounds that the issue had not been raised in the administrative record, and therefore, Friends did not have legal grounds to raise the issue in court (Friends pg. 22). The second point raised in the appeal argued the inadequacy of the RCIA in assessing the cumulative impact of probable future traffic patterns (the “traffic issue”). Friends argued that the RCIA failed to fully consider the Delano General Plan and Kern County Council of Governments regional transportation model in determining cumulative traffic impacts of the proposed prison; the Court rejected this argument on merits (Friends v. CDC [depublished pg. 32]. The final issue raised in the appeal was that the RCIA did not adequately consider possible mitigation measures to the conversion of farmland to non-agricultural uses (the “farmland issue”). Whereas the CDC determined in the RCIA that there was no feasible mitigation for the conversion of farmland to nonagricultural uses, Friends argued that CDC should have evaluated the possibility of establishing an easement on neighboring farmlands to prevent future developments from further reducing agricultural land uses in the area. The Court again rejected this argument on merits (Friends pg. 37; original pg. 567)

The first argument, the “water issue,” concerned the CDC proposal to obtain its water supply from groundwater pumping on the site of the new prison. The existing farmland on the proposed site used surface water supplied by SSJMUD, supplemented by a small amount of groundwater when needed (Friends [depublished pg. 9]). In the RCIA, the CDC proposed supplanting the SSJMUD supplied surface water previously used on the site with groundwater, and redistributing the treated wastewater for irrigation of neighboring farmlands (Friends [depublished pg. 9-10]). The RCIA concluded that groundwater pumping would result in significant environmental changes to both the local groundwater and surface water supplies. Friends argued that this conclusion was not supported by sufficient evidence. Rather than address the The Court of Appeals ruled that CDC was shielded from the water issue because Friends “failed to exhausted its administrative remedies with regard to the issue it [raised] concerning the use of water at the site” (Friends [depublished pg. 9]). In order for an issue to be raised as the basis for legal action in a CEQA case, the party bringing the lawsuit needs to provide evidence that the issue was brought to the attention of the lead agency conducting the environmental review process, through official channels during the public feedback periods.

The Court of Appeals ruled that neither of the two letters brought forth as evidence of the administrative record sufficiently raised a valid reason to require CDC to further investigate the water impacts of the proposed prison prior to the certification of the RCIA. The first letter, the Court ruled, did not qualify as part of the administrative record since it was sent prior to publication of the RCIA, to someone other than the designated contact for the public comment period of the CEQA review. The second letter was included in the administrative record, however the CDC responded, and the Court concurred, that the letter based its arguments on economic impacts outside the scope of CEQA. As in NEPA, socioeconomic considerations are not *per se* covered by CEQA impact analysis requirements,[[14]](#footnote-15) however, socioeconomic effects directly caused by, or which result in changes to the physical environment can be considered.[[15]](#footnote-16) In the case of the second letter discussing the water issue, the Court determined that the basis for dissent with the RCIA lay only in economic impacts to SSJMUD due to changes in water usage, and not due to changes in either the physical surface water or groundwater conditions, thereby disqualifying the letter as part of the administrative record justifying legal action under CEQA.[[16]](#footnote-17) This nuance of causality, dependent upon physical changes to the environment, is one of the important ways in which judicial narrowing decreases the scope and applicability of NEPA and similar EIA statutes.

The third argument Friends made in the Court of Appeals concerned the conversion of farmland to nonagricultural uses to accommodate the proposed prison and its associated infrastructure. The RCIA concluded that a total of 2,300 acres of agricultural land would be converted to nonagricultural uses, and that no mitigation measures were available to reduce this impact to the environment. Therefore, it concluded that the conversion of farmland was a significant and unavoidable environmental impact (Friends [original pg. 564]). Friends argued that this conclusion was insufficient because it failed to consider, among other things, the possibility of mitigating the environmental impact through the establishment of agricultural easements on farmland in the vicinity of the proposed prison (Friends [original pg 565]; See also Williamson Act and California Farmland Conservancy Program Act). In theory, establishing an agricultural easement might function as a mitigation measure for developing over agricultural lands by ensuring that some portion of existing agricultural lands are shielded in perpetuity from future developments. The Court rejected this argument on merits:

The CDC correctly observed that once the prison is built and the 480 acres of farmland at that site have been converted to what the RCIA calls “an institutional use” (i.e., a prison), the 480 acres of farmland will be gone…The only option for “mitigating or avoiding the project’s contribution to” loss of farmland would be to not build the prison. (Guidelines, § 15130, subd. (b)(3).) This is in essence the “‘No project’ alternative” which was required to be discussed in the SEIR (see Guidelines, §15126.6, subd. (e))…

Appellant’s suggestion that an agricultural easement be created assumes, incorrectly in our view, that the creation of an agricultural easement would constitute “mitigation.” We disagree…The easement would presumably not be on the site of one of the “probable future projects” identified in the RCIA. (Guidelines § 15130, subd. (b)(1)(A).) It would thus not reduce or mitigate the loss of farmland caused by this project or by the “probable future projects” (Guidelines, § 15130, subd. (b)(1)(A), § 15065, subd. (c).) The suggested agricultural easement would presumably not create any new farmland where no farmland presently exists (at least appellant does not so claim). Thus an agricultural easement would not compensate for a loss of farmland “by replacing or providing substitute resources or environments” (Guidelines § 15370, subd. (e)), and would not fall within subdivision (e) of Guidelines § 15370. At best, such an easement might prevent the future conversion of some as yet unidentified parcel of farmland to a nonagricultural use. Although appellant might deem this to be a desirable result, appellant’s desire for such a result does turn appellant’s proposed action into mitigation of the cumulative impact (on farmland) of this project and of the past, present, and probable future projects properly considered in the RCIA. (Friends pg. 566-567)

The basis for the Court’s ruling against Friends boils down to the rejection of the claim that an agricultural easement might mitigate the conversion of farmland into non-agricultural use. The ramifications of this ruling extend beyond this case study, with continuing relevance in ongoing debates as to whether or not the loss of agricultural lands to development can be reasonably mitigated, and therefore, what responsibility government agencies have to evaluate and mitigate the effects of development projects on agricultural and other protected lands.[[17]](#footnote-18) Importantly, after the Court of Appeals issued its decision rejecting Friends’ appeal, Friends and its allies throughout the state successfully petitioned the Court to depublish the final ruling, meaning that the case cannot be cited as legal precedent by either courts or parties in future cases.[[18]](#footnote-19)

Depublication of the *Friends* ruling has had an important and lasting impact on case law regarding mitigating the loss of agricultural lands within and beyond California, because even though it cannot be cited as legal precedent, it still informs both administrative and legal decision making[[19]](#footnote-20). Additionally, courts have differed in their findings regarding the validity of easements or fees in-lieu as mitigation measures required to be considered under CEQA. Indeed, in 2004, the California Court of Appeals for the third district issued a conflicting ruling in *South County Citizens for Responsible Growth v. City of Elk Grove* (2004) (Cal.App.3 Dist.) that agricultural easements or conservation fees could mitigate the loss of agricultural lands to future development pressures, and therefore, the lead agency had an obligation under CEQA to address the issue in its impact assessments. The *South County Citizens* decision was not published, so like the *Friends* decision, it could not be cited as legal precedent. Then, a decade after the *Friends* case was decided, the California Court of Appeals for the First District issued a decision in the case of *Masonite Corp. v. County of Mendocino* (218 Cal. App. 4th 230, 238, 241 (1st Dist. 2013)), in which the Court ruled, like in the South County Citizens decision, that a lead agency has a CEQA obligation to consider the use of easements or fees as appropriate mitigation measures for the conversion of agricultural lands. Unlike the previous two cases, this case was published, so at least in the First District, a precedent was finally established to require consideration of agricultural mitigation within the EIA process.[[20]](#footnote-21)

My purpose in exploring the nuances of this (depublished) court decision is not to nitpick or criticize the Court’s judicial discretion, but rather, to highlight both the precarity and potential flexibility of EIA applicability. The ease with which the Court dismissed the entire water issue based on the technicalities of the record demonstrating the exhaustion of administrative remedies prior to legal action points to the limitations of legal relief in the EIA process, but also the importance (and difficulty) of utilizing a strategy that fully engages the entire EIA process with legal exactitude. While the Court of Appeals ruling could not be predicted during the public feedback periods of the Delano EIA process, engaging a broad coalition of EIA respondents across a diverse range of issues did provide a crucial foothold for litigation.

## Resistance to the Prison

Several months after filing the lawsuit against the CDC, members of the organization Critical Resistance, one of the plaintiffs in the lawsuit, helped to organize a day-long conference in Fresno, about 90 miles north of Delano, to bring together prison abolitionists and environmental justice activists from across California. Held in February 2001, this conference, titled “Joining Forces: Environmental Justice and the Fight Against Prison Expansion,” aimed to build political alliances and develop organizing strategies that took advantage of the conceptual linkages between existing anti-racist social justice struggles and environmental justice networks throughout California (Braz and Gilmore 2006).[[21]](#footnote-22) Braz and Gilmore (2006) describe the conference as “the first statewide gathering designed to explore the place of prisons in the environmental justice movement and the ways that antiprison activists can learn from environmental justice examples.” In addition to Critical Resistance, sponsoring organizations included the California Prison Moratorium Project, the Southwest Network for Environmental and Economic Justice, the Center on Race, Poverty and Environment, Fresno State University MEChA, and the West County Toxics Coalition.

[Possibly some additional details from the conference, summarizing from Braz and Gilmore (2006) and Gilmore (2008)]

One of the outcomes from the conference was a network of supporters backing the lawsuit against CDC, and several organizations subsequently filed amici curiae briefs on behalf of the organizers.

The two main ways that people and organizations have used NEPA and the EIA process to intervene in proposed projects and programs are through its public feedback mechanisms and through the use of judicial review. The EIA process is often represented using a flow chart to highlight the various steps, decisions, stakeholders, and timelines involved in fulfilling NEPA (or equivalent state-level legislation) requirements (see figure X). Each decision node within the flowchart presents an opportunity for both public feedback and judicial review. The legal basis for this intervention lies in the U.S. Administrative Procedures Act of 1946 (APA), which provides judicially reviewable guidelines for public transparency throughout the decision making process. This means that the lead agency is responsible for researching, documenting, and publicly reporting the decision making process. Individual citizens and organizations can challenge adherence to NEPA requirements through the APA if they believe the lead agency failed in its responsibilities, or made decisions that appear “arbitrary or capricious” (citation).

An important lessons of the Friends case is that a social justice strategy utilizing NEPA or its equivalents needs to engage the entire EIA process according to the guidelines and limitations established by the state through administrative policies, quasi-formal guidance documents, and legal precedent. While the EIA process institutionalizes modes of participatory and legal dissent to state actions, it also requires negotiating the complex bureaucracy and attending to minute legal details that the state carries in tow.

The longview perspective of the Delano II campaign reveals that it was highly successful, even if the Kern Valley State Prison eventually came to fruition. The campaign delayed the doors from opening by five years. The strategies employed by CDC? The movement and coalitions that developed. The relationships developed between prison abolition organizers and state and regional government officials?

As part of the public disclosure process, and to minimize the likelihood of a lawsuit, the lead agency is required to elicit public feedback at each of the steps in the aforementioned EIA process flow chart. Over the course of the entire EIA process, the lead agency will arrange a series of public meetings–informational, scoping, and feedback–where information, concerns, and dissent about the proposed action. These meetings are paired with the opportunity to submit written comments, with all verbal and written comments becoming part of the permanent, published EIA record. Comments and feedback can range from simple letters of support, to requests for consideration of additional factors or data, to lengthy point-by-point critiques of the lead agency’s work. The lead agency is legally obligated (citation or footnote explanation) to respond to every written comment or oral testimony received during public feedback periods. Responding to the comments does not mean an obligation to remediate or resolve the issue raised, only to provide acknowledgement and where appropriate, document the ways in which the decision making process gives consideration to the comments. It is often the case, however, that in their response to comments, the lead agency will substantively modify or amend their environmental analyses or project proposal with additional data or mitigation plans in order to adequately address the submitted comments and avoid litigation. Thus, the public feedback mechanisms of the EIA process can sometimes shape both the decision making process, and ultimately, environmental outcomes.

[Provide one or two examples of intervention through comments etc shaping the outcomes]

Although the public feedback mechanisms within the EIA process can sometimes help reshape proposed projects or programs, they are less effective as a means for redirecting or reshaping the underlying policy-based functional objectives of the proposed actions. Put another way, public feedback might encourage the lead agency to take measures to minimize the air, water, soil, and energy impacts of a new prison construction, but it is unlikely that public feedback in the EIA process, will, *per se*, have any impact on whether or not the net number of prison beds is going to increase throughout the state. Written and oral comments submitted to the lead agency are typically treated in a *pro forma* fashion such that the lead agency respectfully notes the comment in the record, but is unlikely to alter their ultimate decision as a result of it. Although final decisions about funding and implementing a proposed action are made after an affirmative outcome from the EIA process, the proposal is likely to have sufficient political will behind it to see it through long before the EIA process formally commences.

## Litigation

The APA provides a legal basis for challenging the lead agency’s actions through judicial review of the documentation, process, and decision making procedures followed by the lead agency. Such lawsuits typically occur either after the lead agency approves an environmental assessment (EA) that declares the proposed project will have little or no adverse environmental impacts (Finding of No Significant Impact [FONSI]), or after the issuance of one of the EIS reports, from the notice of intent and scoping documents, through draft EISs, and up to the final revisions and the record of decision.

The Record of Decision (ROD)[[22]](#footnote-23) describes the specific components of the proposed action that are permitted, the rationale for these decisions, and any mitigation measures or ongoing monitoring activities upon which the decision depends.

If, after filing comments through the EIA process, individuals or organizations believe their concerns have not been adequately addressed in subsequent steps along the EIA process, or if they feel that the plan of action would in some way cause them direct injury, those individuals or organizations have the right to file a lawsuit against the lead agency in a court of law.

There are three primary considerations in the judicial review process within NEPA, and state action more generally: standing, reviewability, and court relief. (Czarnezki 2006)

By looking at prison construction as an entry point into examining the EIA process as a venue for potentially radical organizing efforts, we can see how the environmental state is inextricably bound to the racial state.

What are the features of the racial state such that prisons become a catch-all solution to a range of social, political, and economic crises?

The construction of prisons (and expansion of the means and mechanisms of criminalization) is a racialized and gendered mechanism for managing populations rendered as surplus to the nation/state and economy. Organizing communities in opposition to prison construction around this understanding is inherently an anti-racist project.

Think about the way that the state provides a platform for civic engagement.

Poulantzas (2014, pg91):

“It is precisely through a system of general, abstract and formal rules that law regulates the exercise of power by the state apparatuses, as well as access to these apparatuses themselves. Within a specific form of domination, this legal system controls the process whereby power is apportioned to the various classes and, above all, the distinct fractions of the bourgeoisie that make up a power-bloc. By thus giving order to their mutual relations within the State, it allows a changed balance of forces in the ruling alliance to find expression at state level without provoking upheavals. Capitalist law, as it were, damps down and channels political crises, in such a way that they do not lead to crises of the State itself. More generally, capitalist law appears as the necessary form of a State that has to maintain relative autonomy of the fractions of a power-bloc in order to organize their unity under the hegemony of a given class or fraction. This compulsion is further bound up with the State’s relative separation from the relations of production - that is to say, with the fact that agents of the economically dominant class (the bourgeoisie) do not directly coincide with the occupiers and agents of the State.”

NEPA operates through the interconnected elements of administrative proceduralism and jurisprudence. Information gathering, scientific analyses, disclosure and public feedback, and administrative review all fall under the category of administrative proceduralism. As governance mechanisms, they require planners, policy makers, and decision makers to follow established sets of procedures, with the theory being that informational inputs from a breadth of disciplines and plurality of sources lead to better administration of programs. Jurisprudence provides a system of legal checks and balances to the proceduralism. Judicial review, as well as the threats of costly legal fees, lengthy delays, and establishing new legal precedents, encourages prudence within the administrative process. The combined effect of these governance mechanisms is a structured yet flexible framework for enabling state sanctioned environmental change. That every environment is a racialized environment means that NEPA also represents a framework for reshaping racialized space. Therefore, understanding how the procedural and juridical elements of NEPA function as platforms for social justice organizing means \_\_\_.

## Conclusion

The Delano campaign demonstrates the conceptual flexibility of an environmental justice framework for engaging the racial environmental state through the environmental impact assessment (EIA) process mandated by state and federal environmental policies. The malleability of EIA allowed organizers to stretch the concept of environment, and thus, the social justice organizing capacities around racialized space, by linking the prison infrastructure to its social-environmental impacts. In turn, this facilitated discussions about the broader impacts of the prison between residents, local and state government officials, environmental justice advocates, and prison abolitionists. Together, these unlikely allies formed a loose coalition cohered in their opposition to the prison and the conversion of farmland into carceral space[[23]](#footnote-24).

Down but not out, the campaign organizers switched their efforts from the legal strategy based around the prison’s environmental impact to a legislative strategy aimed at stopping the prison from being funded. [Add descriptive stuff about the campaign in Sacramento][ Did this grow out of the lawsuit and EIS campaign, or was it always part of the plan?]

Despite the hard fought battle in the courts and statehouse, construction of Delano II proceeded, and it began accepting inmates in June 2005 as Kern Valley State Prison. But this outcome is not the end of the story. Kern Valley State Prison was the last large-scale state prison built as part of the California prison boom. It capped the largest prison expansion in US history–a quarter century that witnessed the prison system grow from a dozen prisons and 23,000 inmates, to add 33 prisons and 140,000 additional inmates at its peak in 2006. Although prison expansions and infill housing have continued to ameliorate the severe overcrowding and insufficient capacities for medical care, new construction ended. While this is not a direct result of the campaign against the Delano prison, the Delano II campaign helped raise broad awareness of the social and environmental justice implications of prison expansion, and thus served as an important component within statewide efforts to curtail prison expansion and incarceration rates. The four-year delay caused by the Delano II campaign ensured that by the time inmates began arriving at Kern Valley State Prison, it would be the last time until the corrections system underwent massive changes.

Indeed, the end of the prison boom came about as a result of a combination of factors including massive campaigning by prisoners, their families, prison reform advocates, and prison abolitionists; chronic state budgetary crises coupled with increasing incarceration costs throughout the 2000s; and a complex series of court actions around the case *Plata v. Brown* that surfaced a court order in 2005 limiting the California prison population, legislation intended to reduce prison overcrowding, and ultimately, a Supreme Court ruling in 2010 upholding the state court’s mandates.

One of the insidious ways in which the discourse about anthropogenic climate change complicates environmental justice work is that it tends to substitute the language of “greening” for justice. Growing concern over the future of human society in the face of precipitous climate change means that concern about any issues related to the environment become synonymous with a concern about climate change, a concern over the release of greenhouse gases into the upper atmosphere, or in the extreme, simply a concern with the vague and amorphous concept of “sustainability.” The effect of this discourse is two fold. First, it enables the “greenwashing” of projects, meaning that a “green” or “sustainable” veneer gives the impression that a project is immune to critique on environmental grounds. Second, it sidelines other understandings of environment and environmental justice. Without diminishing climate justice concerns, an environmental justice position considers the project in terms of the social justice implications for environmental changes that might occur as a result of project implementation.

Prison construction and expansion projects initiated since the early 2000s are increasingly promoted as green projects, apparently in an attempt to garner support from local communities, as well as politicians and bureaucrats at the municipal, state, regional, and national levels. By promoting a prison project as green and/or sustainable, project promoters are able to minimize concerns about the environmental justice implications of the project and the specific geographical siting of the project. Developers are likely also taking advantage of green building incentives, such as tax credits and exemptions (e.g., Qualified Energy Conservation Bonds [QECBs]), or to meet municipal building regulations (e.g., Los Angeles County’s LEED silver requirement for county buildings).

Despite the claims of green prisons as being environmentally friendly, there remain numerous critiques of prison construction from both ecological and environmental justice perspectives. First is the direct environmental impact of prison construction on the localized ecology–the inevitable impacts on the physical conditions supporting flora and fauna–whether the project represents new construction or expansion or renovation of existing facilities. Second are the proximity-related environmental impacts to soils, groundwater, and air quality, which disproportionately affect neighboring communities and incarcerated populations. Third are sociocultural impacts to things like employment, the local economy, housing and urban planning, as well as less localized factors like policing practices

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1. Yokuts (also Yokote, Yokots, or Yokoch) and Shoshonean are general terms that refer to linguistic families, not specific tribes. Yokuts is a word meaning “people” in most of the Yokuts dialects, while Shoshonean identifies peoples whose dialects derived from the Shoshoni language. Most of the Yokuts peoples were divided into tribes with distinct names and dialects. The area where the City of Delano now sits was primarily inhabited by Paleuyami peoples when the Spanish and Americans settled in the valley. Their neighbors were other Foothill and Valley Yokuts tribes including the Yauelmani, as well as the Shoshonean Giamina.(See Kroeber 1907b, 1907a, 1925) [↑](#footnote-ref-2)
2. The systems of reservations established by the US Army for the resettlement of indigenous populations in California went through much turmoil throughout the 1850s due to widespread corruption and abuse by government officials. Food on the reservations was scarce, funds intended to support reservation life were embezzled by local government agents, and the military did little to protect the reservation populations from white marauders (Heizer and Elsasser 1980). [↑](#footnote-ref-3)
3. including an unmarked mass grave of numerous Chinese laborers killed in a cholera epidemic{anon. History North Kern Cemetery District, no datezu:336913:MSE582WK} [↑](#footnote-ref-4)
4. As the census was collected the first week of 1920, this figure likely undercounted the migrant farm workers who would pass through Delano during picking seasons; from 1930 onward, the decentennial US census was collected in April, possibly contributing to the big jump in population in 1930.(California Department of Finance 2013; US Census Bureau 2016) [↑](#footnote-ref-5)
5. The US Federal Bureau of Immigration was the predecessor to the US Immigration and Naturalization Service, which in turn was succeeded by the Immigration and Customs Enforcement following the establishment of the US Department of Homeland Security following the September 11, 2001 attacks on the Pentagon in Washington, DC, and the World Trade Center in New York City. [↑](#footnote-ref-6)
6. In California, the majority of prisons are located in rural areas, especially throughout the central region of the state in the San Joaquin Valley. The vast majority of prisoners, however, come from urban centers, particularly the Los Angeles Metropolitan Area (CDCR 2011). The siting of prisons in poorer rural communities, particularly where there is a large population for whom English is not the primary language spoken at home. Why rural areas? In addition to the Cerrell Report, evidence points to the success of a group of grassroots activists who called themselves the Madres del Este de Los Angeles, or Mothers of East L.A., as a major factor in the switch from urban to rural prison siting. [↑](#footnote-ref-7)
7. Although the state legislature didn’t allocate any funds for new prisons, they continued funding the construction of the Corcoran prison, whose construction was already underway. See also, (Gilmore 2007). [↑](#footnote-ref-8)
8. In the State of California, “urgency legislation” is a term used to describe legislation that takes immediate effect once passed by the legislature and signed by the governor, and requires a two-thirds vote for approval. In the case of budget items, urgency legislation can make funds available for immediate appropriation, rather than when the full budget is signed by the governor. (California Department of Finance 2012; California Constitution) [↑](#footnote-ref-9)
9. The original EIR evaluated impacts for up to 4,180 inmates on a 400-acre site, however the certified decision only called for 2,200 inmates on 320 acres. (See California Department of Corrections 2000, 1–1) [↑](#footnote-ref-10)
10. Friends of the Kangaroo Rat v. California Department of Corrections, 4 Cal. Rptr. 3d 558 (Court of Appeal, 5th Appellate Dist. 2003). [↑](#footnote-ref-11)
11. There are 9 major U.S. Supreme Court decisions that establish precedent for standing in environmental law (need list and citation). [↑](#footnote-ref-12)
12. This is related to [find the case where the potential for an increase in crime around a nyc jail was dismissed] [↑](#footnote-ref-13)
13. Perhaps a legal case could be construed such that a plaintiff representing prisoners and their families did have standing based on impacts to [↑](#footnote-ref-14)
14. CEQA guidelines 15131(a). The Guideline reads as follows:

    Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes. [↑](#footnote-ref-15)
15. CEQA guidelines 15131(b-c); 40 CFR 1508.14 - HUMAN ENVIRONMENT. Citizens Assn. for Sensible Dev v. County of Inyo, 172 Cal. App. 3d 151 (Court of Appeal, 4th Appellate Dist., 2nd Div. 1985). Citizens for Quality Growth v. City of Mt. Shasta, 198 Cal. App. 3d 433 (Court of Appeal, 3rd Appellate Dist. 1988). c.f. Metropolitan Ed. v. People Against Nuclear Energy; Baltimore v. NRDC.

    Go back and check Daffron 1975 article further, and Fogleman S.3.6.2

    The Guideline reads as follows:

    §15131(b): Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

    §15131(c): Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.(CEQA Guidelines Section 15131) [↑](#footnote-ref-16)
16. Friends v. CDC [depublished]: “One might reasonably argue that the water issue raised by the letter in question refers to a physical change in the environment, namely, changes in future groundwater levels due to well pumping to supply the prison with water, which in turn results in an economic effect of the proposed prison. However, the chain of causality in the letter does not actually engage how the physical changes to groundwater levels or surface water supplies impart economic impacts to SSJMUD or its customers, only that the changes in water usage and allocation would result in potential economic impacts.” [↑](#footnote-ref-17)
17. See Safran2004; Bass2014 [↑](#footnote-ref-18)
18. Cite published case, also maybe the docket record? [↑](#footnote-ref-19)
19. e.g., Safran2004; Bass2014; Meserve2011 [↑](#footnote-ref-20)
20. Bass2014 [↑](#footnote-ref-21)
21. Rose Braz and Craig Gilmore, “Joining Forces: Prisons and Environmental Justice in Recent California Organizing,” *Radical History Review* Fall, no. 96 (October 2006): 95–111, doi:10.1215/01636545-2006-006. [↑](#footnote-ref-22)
22. In the state level California Environmental Quality Act (CEQA), the ROD is replaced by the equivalent Notice of Determination (NOD). [↑](#footnote-ref-23)
23. (VERIFY)Braz and Gilmore, 2006 [↑](#footnote-ref-24)