National Reclamation in Imperial Valley: Law v. Policy

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Now, what machinery have you? You have the machinery of the National Reclamation Act, intended, as your Governor has remarked, to meet the demands of the homeseekers of the country. Guarded in every way against monopoly and speculation, intended to secure to every man of industry an area of land sufficient, according to the soil and the climate or productiveness, for the support of a family, and sufficient for that alone, (applause), it is also intended to break up existing land monopoly.

Senator Francis G. Newlands of Nevada

Passage of the Reclamation Act by Congress in 1902 marked the culmination of a decade of citizens' gatherings known as the National Irrigation Congresses. These Congresses had advocated extension of the earlier Homestead Acts into seventeen arid and semi-arid western states, accompanied by substantial public financing of the cost of uniting water and land. In formulating the reclamation program, proponents were particularly concerned with preventing land speculation and the acquisition of water monopolies that had plagued previous land allocation programs. When President Roosevelt gave executive support to the proposal in 1901, he cautioned that "the Government should make clear, beyond shadow of doubt, its intention to pursue this [reclamation] policy on lines of the broadest public interest."

The following year, Congress drafted the Reclamation Act with the goals of the Irrigation Congresses clearly in mind. During the legislative debates, Congressmen were assured that the legislation guarded

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5. Id.
6. First Annual Address to the Congress by President Theodore Roosevelt (Dec. 3, 1901), reprinted in 14 Compilation of the Messages and Papers of the Presidents 6641, 6658 (1923).
against the possibility of speculative land practices and compelled division of large acreages into small holdings. As a result, the Reclamation Act contained numerous devices for assuring that the Act's beneficiaries would be family farmers. The Act required both that recipients of federal water live on or near their farm, and, more importantly, that an individual could not obtain water for lands exceeding 160 acres.

In the early years following passage of the Reclamation Act, the acreage limitation appeared to be accepted as a condition for obtaining government water. The first chief of the Reclamation Service found that, although he was told that landowners would not agree to divide their land, they yielded when the matter was placed before them. Confirming this view, a California engineer reported in 1905 that "already owners of more than seventy huge tracts of land have signified . . . their willingness to subdivide their lands for the benefit of intending settlers."

These forecasts turned out to be optimistic, especially in Imperial Valley.

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Imperial Valley, a below sea level basin of desert sands, lies adjacent to Mexico on the southern California border of the United States. In 1901, the year preceding passage of the Reclamation Act, private developers cut the silted bank of the Colorado River, releasing its waters to flow by gravity through a canal onto the desert sands. The developers encouraged prospective farmers to purchase public lands from the government and then buy river water from the company to irrigate their farms. The project was built without government assistance and the president of the development company adamantly opposed any government interference with "the private property and the private profits of any private corporations."

In 1905 disaster struck. Floodwaters of the Colorado River de-

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15. Id. at 63 (statement of A. H. Heber, President, California Development Company).
stroyed the canal's intake gates and, as a result, the entire flow of the river poured through the Company’s canal and into the desert basin, forming the Salton Sea, a lake on the northern edge of the Valley, and threatening to inundate the entire Valley. In 1907, Southern Pacific, whose railroad track was endangered by the changed course of the river, succeeded in closing the gap and returning the Colorado to its previous channel. With help from the federal government, the immediate danger of inundation was avoided. However, the hazard remained that flooding of the Valley might recur.

As years passed, the Valley's leaders changed their conception of how best to meet their irrigation needs. In 1911 they formed the Imperial Irrigation District, a public agency created under the laws of California. The District's organizers sought relief from periodic floods, unpredictable summer flows, and daily friction created by the passage of their canal through Mexico. They turned to Congress, not as an intruder on "private property and private profit," but as a source of public aid and an instrument for private development. Public assistance came to be greatly valued, provided it came free of public control.

Interest in water development was not confined to Imperial Valley. A broad program to develop water and hydroelectric power resources for all of Southern California and the rest of the Lower Colorado Basin was evolving. The Bureau of Reclamation had undertaken studies in 1920 concerning the possibility of a major facility on the Colorado River, but conflicts among the competing western interests defeated Congressional authorization in three successive Congresses. In 1928, responding to the sustained urging of Imperial Valley and other Southern California interests seeking development, Congress passed the Boulder Canyon Project Act. The Act authorized construction of the Hoover Dam across the Colorado River and delivery of water stored behind the dam to several areas of the Southwest, including Imperial

17. Id.
18. Congress authorized the President in 1910 to spend up to one million dollars for the purposes of protecting lands in Imperial Valley and elsewhere along the lower Colorado River. S.J. Res. 120, 36 Stat. 883 (1910).
22. 373 U.S. at 554.
23. 559 F.2d at 532.
25. Id. § 617.
Valley, for irrigation.26

The Act's extended and confused legislative history opened the door to questions concerning the applicability of the Reclamation Act's 160 acre limitation to Imperial Valley recipients of project water. During deliberations in 1928, Congress considered two differing authorizations for the Boulder Canyon Project. The House passed H.R. 5773, which provided:

[All contracts for the delivery of water for irrigations purposes . . . shall provide all irrigable land held in private ownership by any one owner in excess of one hundred and sixty acres shall be appraised in a manner to be prescribed by the Secretary . . . and that no such excess lands shall receive water from said canal if the owner thereof shall refuse to execute valid recordable contracts for the sale of such lands . . . . ]27

The version of the Act passed by the Senate included several references to reclamation law, but lacked a specific reference to the 160 acre provision.28 California Senator Hiram Johnson, however, told the Senate that the House and Senate bills had "like purposes" and "like designs."29

In conference, the House accepted the Senate bill. Congressman Phil Swing, who represented Imperial Valley and sponsored the House bill, urged his colleagues to pass the Senate bill, saying "the only differences" between them "are matters relatively of small importance compared with the beginning of this great project."30

Although reference to acreage limitation was omitted, the Act includes specific references to reclamation law, of which acreage limitation is an essential part. Section 1 of the Act provides that expenditures for the All-American Canal, the facility which delivers water to the Imperial Valley, are reimbursable "as provided in the reclamation law."31 Section 4(b) prescribes payment "in the manner provided in the reclamation law."32 Section 14 provides that the Act "shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise therein provided."33 This "exception" became the open door through which enforcement of acreage limitation in the Imperial Valley was avoided.

Initially, the impression of Valley residents was that the Boulder
Canyon Project would apply the 160 acre limitation on farm size to all landowners entitled to receive project irrigation water. Attorney Northcutt Ely, Assistant to Secretary of the Interior Ray Lyman Wilbur, wrote in a 1930 memorandum:

The Reclamation Law's limitation of 160 acres to a particular owner presents a serious problem, in view of the fact that this, being an existing project, includes many farms with larger area. I see nothing to do but enforce it unless the Imperial Irrigation District can get new legislation. In any event, enforcement of this requirement would undoubtedly have a salutory effect on suspected speculative activities in that locality.34

Three years later, however, during the closing days of the Hoover Presidency, Secretary Wilbur signed a letter taking a contrary position:

Upon careful consideration the view was reached that this limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned.35

Since the farmers of Imperial Valley had appropriated water prior to the Boulder Canyon Project, water was delivered to them without a 160 acre limitation on use.

Given this interpretation of the Act, there was to be no change in the stratified social and economic situation prevalent in the Valley. Imperial Valley was not a community of farmers with families working their own land in the tradition of the Homestead and Reclamation Acts. On the contrary, it was a divided, polarized society. One-third of the Valley population was of Mexican origin and worked as field wage laborers.36 An intensive investigation of the Imperial Valley by the present author in 1928, on the eve of the passage of the Boulder Canyon Project Act, found:

Mexicans came principally as . . . gangs of hand laborers and remained a class apart. . . . [T]he coincidence of class, racial, and cultural differences which comb[ined] to maintain a social ostracism . . . delay[ed] the rapprochement of the two cultures . . . and retard[ed] the blurring of the class line.37

A subsequent study conducted by the Bureau of Agricultural Economics in 1942, when delivery of water via the All-American Canal began, found:

34. Response No. 8 by Northcutt Ely to Item No. 8 posed by Richard J. Cooley for consideration in connection with the Imperial All-American Canal contract (Nov. 4, 1930), reprinted in 71 Interior Dec. 496, app. D at 528 (1964).
36. I P. TAYLOR, MEXICAN LABOR IN THE UNITED STATES 18 (1930).
37. Id. at 33, 94.
About 40 percent of the total number of farm landowners do not live in the valley but collectively control almost one-half (48 percent) of the total acreage in farms . . . . [T]he prevalence of large-scale farming operations appears to introduce various problems which are due, in part, to instability of the working personnel, their lack of interest in community and social welfare, poor housing conditions, and other problems commonly associated with the hiring and housing of agricultural labor; concentration of the farm wealth and control among relatively few operators and, in some instances, the flow of farm wealth in the form of profits to non-resident operators; consolidation of the farm land into large farming units which reduces the number of farms operated by farm families in the community, stimulates the development of a labor class, and discourages owner operated farms. . . . 38

The introduction of Bureau supplied water served only to accentuate the social and economic disparities in the Valley. The 1960 census reported that 800 landowners, each of whom owned more than 160 acres, held 233,000 acres or approximately one-half the total acreage of the Valley.39 The 1964 Census of Agriculture reported the average size of an irrigated farm in Imperial County was 676 acres.40 By 1978, the Census reported the average had decreased slightly to 630 acres, but remained over four times the California average of 143 acres.41

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Between the 1933 Wilbur letter and 1964, no Secretary of the Interior moved to enforce acreage limitation in Imperial Valley. This inaction occurred despite occasional criticism from an Interior Department Solicitor. Solicitor Fowler Harper recorded his disagreement with the Wilbur position in 1945 and applied acreage limitation to the Coachella Valley, a neighboring area also served with water through the All-American Canal.42 But in 1958, Solicitor Elmer Bennett, without making a formal inquiry into the divergent views of Secretary Wilbur and Solicitor Harper, rejected acreage limitation enforcement in the Valley, noting that, "to my mind the time has long since passed when [re-evaluation] is realistic and practicable."43

In 1964, however, the Interior Department changed its position. Solicitor Frank Barry, after thorough investigation issued a formal

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38. **BUREAU OF AGRICULTURAL ECONOMICS, U.S. DEPT. OF AGRICULTURE, LAND OWNERSHIP AND OPERATING TENURE IN IMPERIAL VALLEY, CALIFORNIA 1-2 (1942).**
41. **1 U.S. DEPT. OF COMMERCE, 1978 CENSUS OF AGRICULTURE, pt. 5 (California) 1, 250 (1981).**
42. **559 F.2d at 538.**
opinion, to which Secretary Stewart Udall gave approval, holding that acreage limitation applied to Imperial Valley. Following the opinion, the Interior Department attempted to negotiate acceptance of the acreage limitation in the Valley, but these efforts failed.

In order to impose the acreage limitation on lands in the Imperial Irrigation District, the United States went to court in 1971. District Judge Howard Turrentine held that, in light of Congress' failure to explicitly include the limitation and its implicit approval of the Department of the Interior's earlier interpretation of the Boulder Canyon Project Act, acreage limitation did not apply to Imperial Valley.

In 1972, another district judge contradicted Judge Turrentine's opinion. In Yellen v. Hickel, mostly landless farm workers who desired to purchase farm land in the Valley brought suit to enforce the acreage limitation and residency requirements of the Reclamation Act. Visiting Judge William Murray, from Montana, held that Reclamation law did apply to contracts between the Imperial Irrigation District and the federal government, and held for the plaintiffs.

The Ninth Circuit consolidated the two cases and, in 1977, agreed with Judge Murray that the acreage limitation and residency requirements did apply. The Supreme Court granted certiorari.

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"[I]f the policy of the government upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal."

President Abraham Lincoln

The United States Supreme Court terminated the short-lived antimonopoly reclamation policy in Imperial Valley on June 16, 1980. The Court found that, although the Boulder Canyon Project was "supplemental to the reclamation laws, which as a general rule limited

45. The Imperial Irrigation District Board of Directors steadfastly maintained that restrictions did not apply to the Valley and found "no reason for compromise." IMPERIAL IRRIGATION DISTRICT, INFORMATION ON IMPERIAL VALLEY ACREAGE LIMITATION PROBLEM 3 (n.d.).
46. 322 F. Supp. 16-27.
48. Id. at 1312.
49. Id. at 1318-19.
50. United States v. Imperial Irrigation Dist., 559 F.2d 509, 526-42 (9th Cir. 1977).
52. First Inaugural Address of President Abraham Lincoln (Mar. 4, 1861), reprinted in ABRAHAM LINCOLN: HIS SPEECHES AND WRITINGS 585-86 (R. Basler ed. 1946).
water deliveries from reclamation projects to 160 acres under single ownership," the Act required the Secretary of the Interior to observe rights to Colorado River water that had been perfected under state law at the time the Act became effective.\textsuperscript{54} The Court also noted that Interior Department administrators "did not impose acreage limitations on lands that already had vested or present water rights . . . [and] officially adhered to that position until 1964 when it repudiated its prior construction of the Project Act."\textsuperscript{55} The Court concluded that all water users who perfected water rights before the construction of the Boulder Canyon Project were thus free from Reclamation Law limitations.\textsuperscript{56} The District Court was given the responsibility for identifying some 14,000 Valley acres irrigated only since passage of the Boulder Canyon Project Act and which, consequently, lacked the perfected rights that would have freed them from acreage limitations.\textsuperscript{57}

Following the decision, the \textit{New York Times} reported "farmers in California’s Imperial Valley are entitled to federally subsidized irrigation water regardless of the size of their farms."\textsuperscript{58} The paper noted that among the farmers are Tenneco, Inc., the Southern Pacific Railroad, and the Standard Oil Company of California.\textsuperscript{59} Various corporate owners are said to have spent hundreds of thousands of dollars unsuccessfully lobbying Congress for an exemption from the acreage limitation.\textsuperscript{60} The Court provided the remedy Congress declined to give.\textsuperscript{61}

The significance of the contrasting views of the Ninth Circuit and the Supreme Court on the relevance of acreage limitation to Imperial Valley is highlighted by a 1969 study of social stratification in rural areas across the United States.\textsuperscript{62} The study found that, nationwide, farm personnel of "lower class" comprised less than one-third of the total.\textsuperscript{63} In Imperial Valley the proportion of farm personnel of "lower class" was 87.3 per cent, almost nine out of ten.\textsuperscript{64} This percentage was

\begin{itemize}
  \item \textsuperscript{54} \textit{Id.} at 370-71.
  \item \textsuperscript{55} \textit{Id.}
  \item \textsuperscript{56} \textit{Id.} at 377-78.
  \item \textsuperscript{57} \textit{Id.} at 378-80.
  \item \textsuperscript{58} N. Y. Times, June 17, 1980, at A1, col. 5.
  \item \textsuperscript{59} \textit{Id.} at D17, col. 1.
  \item \textsuperscript{60} \textit{Id.}
  \item \textsuperscript{62} Smith, \textit{A Study of Social Stratification in the Agricultural Sections of the U.S.: Nature, Data, Procedures, and Preliminary Results}, 34 RURAL SOC. 496 (1969).
  \item \textsuperscript{63} \textit{Id.} at 506. Members of the “lower class” were defined as those with income less than $2000 in 1959. \textit{Id.} at 503.
  \item \textsuperscript{64} \textit{Id.} at 508.
\end{itemize}
exceeded only in Dade County, Florida. The machinery of the National Reclamation Act is thus providing irrigation water to very few men of industry in Imperial Valley.

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The Reclamation Act of 1902 was designed for the benefit of small farmers. The Supreme Court, during the administration of Chief Justice Earl Warren, affirmed this purpose when it upheld the application of the 160 acre limitation to lands in California's Central Valley supplied with reclamation water, even though those lands, like the lands in Imperial Valley, possessed prior water rights. The Court, in an unanimous opinion, found the reclamation law's provisions entirely reasonable; landowners who desire to receive government subsidized water must be willing to comply with government regulations allocating its supply. The Court noted that the intention of the Reclamation Act was "to benefit people, not land."

In rejecting the application of acreage limitation to Imperial Valley 22 years later, the Court, during the administration of Chief Justice Warren Earl Burger, unanimously elected to ignore the rights of people in order not to interfere with rights derived from land.

65. Id.
67. Id. at 296.
68. Id. at 297.