

The Enforcement of Federal Reclamation Law in the Westlands Water District: A Broken Promise

BY MARY LOUISE FRAMPTON*

This article discusses the history of federal reclamation law and its enforcement in the Westlands Water District of California. It examines the concentration of reclamation land ownership in relatively few large Westlands landholders and analyzes the impact which proposed Interior Department regulations and pending federal legislation would have upon this concentrated control.

INTRODUCTION

In California's San Joaquin Valley lie more than a half million acres of some of the richest agricultural land in the country.¹ Located in the Westlands Water District,² this ground is made bountiful by irrigation water from the federally constructed San Luis Unit of the Central Valley Project.³ One consideration for

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¹ *Will the Family Farm Survive in America?: Joint Hearings Before the Senate Select Comm. on Small Business and the Comm. on Interior and Insular Affairs, 94th Cong., 1st Sess. 4 (1975) (statement of Sen. Gaylord Nelson) [hereinafter cited as *Joint Hearings*]. As early as 1973 the farm products in the District had annual gross value of \$167 million. *Id.* For location of the Westlands Water District, see Appendix A at page 122 *infra*.*

² The Westlands Water District is a political subdivision of the State of California organized and existing pursuant to the California Water District Law, CAL. WATER CODE §§ 34000-38999 (West 1956), and empowered to build, operate and maintain irrigation works.

³ BUREAU OF RECLAMATION, U. S. DEP'T OF THE INTERIOR, SPECIAL TASK FORCE REPORT ON SAN LUIS UNIT, CENTRAL VALLEY PROJECT, CALIFORNIA 18 (1978) [hereinafter cited as SPECIAL TASK FORCE REPORT]. The Central Valley Project, which stores surplus water principally from the Sacramento River for use in the southern portion of the Central Valley, was authorized by the River and Harbor Acts of 1935 and 1937.

procuring the \$769,192,000 water subsidy⁴ from the federal government is the landowners' continuing compliance with federal reclamation statutes which limit the amount of water an individual may obtain and which require recipients to live on or near their farmland. Through these restraints, reclamation law endeavors to insure that the beneficiaries of the government largesse are many small family farmers rather than a few corporations and absentee investors.⁵

This legal guarantee of widespread benefits convinced Congress to appropriate funds for the San Luis Unit in 1960.⁶ Representative Bernard F. Sisk (D-Fresno), the leading proponent of the bill, told the Senate Subcommittee on Irrigation and Reclamation:

If [San Luis] is built, the present population of the area will almost quadruple. There will be 27,000 farm residents, 30,700 rural nonfarm residents, and 29,800 city dwellers; in all, 87,500 people sharing the productivity and the bounty of fertile lands blossoming with an ample supply of San Luis Water. . . . It is inevitable and historic that under the impact of reclamation laws, as well as the economics of farm management and operation, these lands will break down into family-size units, each cultivated by individual owners and their families.⁷

Contrary to this prediction, however, the purposes of the reclamation law have been continually thwarted in the Westlands Water District. Today, instead of fulfilling Representative Sisk's promise, the Westlands Water District supports a mere 216 large farm operations⁸ and the town of Huron, a decidedly unprosperous center with a population of 2,348 and a concentration of ille-

⁴ *Id.* at 39.

⁵ See 43 U.S.C. § 431 (1977); *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 292 (1958) (four consolidated actions challenging the validity of water service contracts between irrigation districts principally in the Central Valley Project and the federal government); *Yellen v. Hickel*, 352 F. Supp. 1300, 1306 (S.D. Cal. 1972) (suit by small farmers to compel enforcement of residency requirement in Imperial Valley), *vacated as moot*, *United States v. Imperial Irrigation Dist.*, 559 F.2d 509 (9th Cir. 1977); Taylor, *The Excess Land Law: Execution of a Public Policy*, 64 *YALE L.J.* 477, 481 (1955); Graham, *The Central Valley Project: Resource Development of a Natural Basin*, 38 *CALIF. L. REV.* 588, 617 (1950).

⁶ Act of June 3, 1960, Pub. L. No. 86-488, 74 Stat. 156.

⁷ *Hearings on S. 44 Before the Subcomm. on Irrigation and Reclamation of the Senate Comm. on Interior and Insular Affairs*, 86th Cong., 1st Sess. 39 (1959) (statement of Rep. Bernard F. Sisk).

⁸ SPECIAL TASK FORCE REPORT, *supra* note 3, at 196. The average size of farm operations in the Westlands Water District is estimated to be 2,200 to 3,000 acres. *Id.* See also 125 *CONG. REC.* S12,470 (daily ed. Sept. 13, 1979) (remarks of Sen. Nelson).

gal aliens, bars and houses of prostitution.⁹ Almost two-thirds of all landowners in the Westlands live more than fifty miles from their farms.¹⁰ Southern Pacific Railroad alone owns over one-fifth of the District, or 106,000 acres; Boston Ranch holds 26,485 acres; Harris Farms operates the world's largest cattle feed lot on 18,393 acres; and Standard Oil owns 10,474 acres.¹¹ To subsidize these "family farmers," federal taxpayers contribute between \$1,540 and \$2,200 per acre.¹²

This article examines the reasons for the concentration of this federally subsidized wealth and analyzes various methods, principally legislative, which have been proposed to remedy the inequitable distribution and insure that the promise of reclamation law is realized.

I. HISTORY OF FEDERAL RECLAMATION LAW

At the turn of the last century, large landholdings dominated

⁹ *Joint Hearings, supra* note 1, at 63, 170-71, 1809-10; *Life in the Westlands: A Sterile Crossroads*, San Francisco Examiner, Jan. 12, 1967, § 1, at 7, col. 1; Rodriguez & Johnson, *Call It Tortilla Flats*, Fresno Bee, Sept. 9, 1979, §A, at 1, col. 1. See also note 89 *infra*.

¹⁰ 125 CONG. REC. S12,475 (daily ed. Sept. 13, 1979) (remarks of Sen. Nelson).

¹¹ *Id.* at S12,470. See also tabulation from Westlands Water District Land Ownership Map (1977). Other large landholders in the Westlands include Westhaven Farms, Gerald Hoyt, Southlake Farms, Airways Farms, Westlake Farms and Britt's Fertilizer. 125 CONG. REC. S12,504 (daily ed. Sept. 13, 1979) (remarks of Sen. Hatfield).

¹² The SPECIAL TASK FORCE REPORT, *supra* note 3, at 39, concluded that the present value of the subsidy per acre in the Westlands Water District is \$1,540. Phillip Leveen, a professor of agricultural economics at the University of California at Berkeley, has calculated the subsidy per acre at between \$1,800 and \$2,200. See Leveen, *Reclamation Policy at A Crossroads*, 19 PUB. AFF. REP. 1, 3 (1978). The subsidy has three components. First, the farmer repays the construction costs of the project to the government over a forty-year period at no interest; thus, even at the low interest rate of seven percent, the interest over 40 years constitutes 75% of the costs of the project. *Id.* at 2. Second, the farmers repay construction costs only to the extent of their "ability to pay" and the remainder is paid by users of hydroelectricity. Third, the price of the water delivery to the farmers is usually a fixed amount over several years in spite of the effects of inflation on the costs of operation and maintenance. *Id.* at 3. Professor Leveen concludes that on a project with a cost of \$3.62 billion, 56.7% would come from electricity sales, 40% from general tax revenues and 3.3% from farmers. *Id.* See also Seckler & Young, *Economic and Policy Implications of the 160 Acre Limitation in Federal Reclamation Law*, AM. J. AGRIC. ECON. 575, 577 (1978). The subsidy to Southern Pacific Railroad over ten years would amount to \$60 million. 125 CONG. REC. S12,470 (daily ed. Sept. 13, 1979) (remarks of Sen. Nelson).

the western landscape. Speculators, corporations, and railroads — the latter having acquired thousands of acres in land grants from the government — owned most of the land in California.¹³ Much of the acreage, however, was useless for agriculture because of the scarcity of water. Congress responded to the dual problems of land concentration and water shortage by passing the Reclamation Act of 1902 to provide for the construction of irrigation projects by the federal government.¹⁴

To prevent the large landholders from monopolizing the government subsidy and to encourage the settlement of family farmers, Congress provided that:

No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred sixty acres to any landowner and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land.¹⁵

The House Committee on Irrigation of Arid Lands explained that the intent of these provisions was to “compel the breaking up of any large tracts now held for which water rights from the Government works are to be obtained. . . .”¹⁶ The first commissioner of the United States Reclamation Service and sponsor of the reclamation legislation, F. H. Newell, viewed the intent of the law as:

. . . not so much to irrigate the land as it is to make homes . . . It is not to irrigate the lands which now belong to large corporations or to small ones, it is not to make these men wealthy, but it is to bring about a condition whereby that land shall be put into the hands of the small owner, whereby the man with a family can get enough land to support that family . . .¹⁷

The Bureau of Reclamation administrators who succeeded Commissioner Newell, however, were often improperly influenced by the giant landholders whose interests conflicted with those of

¹³ OFFICIAL REPORT OF THE IRRIGATION CONGRESS 26 (1891); Note, *Acreage Limitations and the Applicability of the Reclamation Extension Act of 1914*, 21 S. DAKOTA L. REV. 737, 738-39 (1976); Taylor, *supra* note 5, at 482; P. GATES, *HOMESTEAD LAW AND THE LAND SYSTEM* 657-58, 668-69; *SMALL FARM VIABILITY PROJECT, THE FAMILY FARM IN CALIFORNIA* 12 (1977) [hereinafter cited as *SMALL FARM VIABILITY PROJECT*].

¹⁴ Reclamation Act of 1902, Pub. L. No. 57-161, ch. 1093, § 5, 32 Stat. 388 (codified at 43 U.S.C. §§ 371-573 (1977)).

¹⁵ 43 U.S.C. § 431 (1977).

¹⁶ H.R. REP. NO. 1468, 47th Cong., 1st Sess. 8 (1902).

¹⁷ OFFICIAL PROCEEDINGS OF THE IRRIGATION CONGRESS 28 (1905).

reclamation policy.¹⁸ As early as 1924, a Committee of Special Advisors on Reclamation issued what was to be called the "Fact Finders Report" detailing evasions of the law and recommending stricter enforcement of the acreage limitation.¹⁹

In response to the "Fact Finders Report," Congress supplemented the reclamation law with the Omnibus Adjustment Act of 1926 which provides that persons cannot receive federally subsidized water for more than 160 acres unless they sign contracts with the government promising to sell any land in excess of 160 acres receiving such water within a prescribed period of time (usually ten years) to eligible buyers.²⁰ The Act requires governmental approval of all such "excess land" sales at a price which does not reflect the value of the water.²¹

Despite this congressional strengthening of the law in 1926, the Bureau of Reclamation continued to ignore the residency requirement and to interpret the 160-acre limitation in favor of big growers and investors and at the expense of family farmers.²² The judiciary proved to be the only check on the considerable political pressure of large landowners. In *Ivanhoe Irrigation District v. McCracken*,²³ the United States Supreme Court upheld the constitutionality of the acreage limitation:

From the beginning of the federal reclamation program in 1902, the policy as declared by Congress has been one requiring that the benefits therefrom be made available to the largest number of people . . . The limitation insures that this enormous expenditure will not go in disproportionate share to a few individuals with large landholdings.²⁴

¹⁸ COMMITTEE OF SPECIAL ADVISORS ON RECLAMATION, FEDERAL RECLAMATION BY IRRIGATION, S. DOC. NO. 92, 68th Cong., 1st Sess. 38-39 (1924) [hereinafter cited as COMMITTEE OF SPECIAL ADVISORS ON RECLAMATION]. See also Taylor, *supra* note 5, at 502.

¹⁹ COMMITTEE OF SPECIAL ADVISORS ON RECLAMATION, *supra* note 18.

²⁰ 43 U.S.C. § 423e (1977).

²¹ *Id.*

²² Taylor, *supra* note 5, at 502-05; See ACREAGE LIMITATION - RECLAMATION LAW: MEMORANDUM OF THE CHAIRMAN OF SUBCOMM. ON IRRIGATION AND RECLAMATION TO MEMBERS OF THE SEANTE COMM. ON INTERIOR AND INSULAR AFFAIRS, 85th Cong., 2d Sess. 36-39 (1958). See also Koppes, *Public Water, Private Land: Origins of the Acreage Limitation Controversy, 1933-1953*, 47 PAC. HIST. REV. 607 (1978); 125 CONG. REC. S12,467-68 (daily ed. Sept. 13, 1979) (remarks of Sen. Hatfield).

²³ 357 U.S. 275 (1958); see also *United States v. Tulare Lake Canal Co.*, 535 F.2d 1093 (9th Cir. 1976) (suit filed to obtain judicial declaration of applicability of acreage limitation to recipients in Kings River service area).

²⁴ *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 292 (1958).

II. THE SAN LUIS UNIT AND ENFORCEMENT OF FEDERAL RECLAMATION LAW

In 1942, several large growers and ranchers on the west side of the San Joaquin Valley formed the Westside Landowners Association to investigate the possibility of receiving federally subsidized irrigation water for their farms. When their survey indicated that a district organization pursuant to California water district law was necessary, the Westlands Water District was formed in 1952.²⁵ By the time the *Ivanhoe* case was decided in 1958, the Bureau of Reclamation, under pressure from these large landowners, recommended that Congress authorize what was to become the San Luis Unit.²⁶

Despite proponents' claims that the San Joaquin Valley would shortly become "sagebrush and sand" without water from the San Luis Unit,²⁷ serious doubts were voiced about its construction. Because a few large corporations and growers owned the vast majority of the land in the San Luis Unit Service Area (for example, Southern Pacific Railroad Company held nearly 120,000 acres),²⁸ many members of Congress opposed the initial \$483 million appropriation.²⁹ Then-Senator Wayne Morse (D-Oregon) noted that he was "sure that the Secretary of the Interior . . . will find some way to subvert reclamation law in . . . the San Luis area."³⁰ As former Secretary of the Interior Stewart Udall stated recently:

Those who objected to this project including Members of the Senate, said that this would give benefits to the owners of enormous tracts of land, and the land reform provisions would not work because the owners would not allow them to work or the Bureau of Reclamation would not enforce them.³¹

In spite of these reservations, Congress finally appropriated the funds for the San Luis Unit in 1960³² and, in 1963, the federal government signed the first water service contract with the West-

²⁵ SPECIAL TASK FORCE REPORT, *supra* note 3, at 1.

²⁶ *Id.*

²⁷ *Joint Hearings*, *supra* note 1, at 3.

²⁸ REGIONAL DIRECTOR, BUREAU OF RECLAMATION, REPORT ON THE SAN LUIS UNIT, CENTRAL VALLEY PROJECT, SACRAMENTO, CALIFORNIA 4 (1955). See also Taylor, *Excess Land Law: Calculated Circumvention*, 52 CALIF. L. REV. 978, 982 (1964). See note 10 and accompanying text *supra*.

²⁹ Taylor, *supra* note 28, at 982.

³⁰ 105 CONG. REC. 7688 (1959).

³¹ *Joint Hearings*, *supra* note 1, at 157.

³² SPECIAL TASK FORCE REPORT, *supra* note 3, at 1-3.

lands Water District, the single largest contractor for federal water in the reclamation program.³³

During the 1960s, a majority of the large landowners in the District signed recordable contracts³⁴ promising to sell their excess land within ten years in 160-acre parcels to eligible buyers³⁵ so that they could receive project water for their vast acreage. Meanwhile, many of the smaller farmers and growers in the San Joaquin Valley waited for their opportunity to purchase ground in the Westlands and to share in the benefits of the federally subsidized water.³⁶ However, when sales commenced pursuant to the recordable contracts, the land was not broken up and sold to small family farmers to operate their own farms. Instead, large tracts of land continued to be controlled by single entities, often absentee corporations and business concerns.³⁷

In 1974 in Fresno, California, small farmers who had attempted unsuccessfully to purchase land in the Westlands Water District joined with consumers and others who were encouraging enforcement of the reclamation law to form National Land for People, Inc.³⁸ The organization researched the excess land sales which had occurred in the Westlands Water District and presented its findings at congressional committee hearings held in 1975 to investigate the record of reclamation law enforcement in the Westlands.³⁹ At those hearings, the director of National Land for Peo-

³³ *Joint Hearings, supra* note 1, at 2.

³⁴ These individual contracts must be recorded in the county where the property is located (hence the term "recordable contracts") and are binding on the parties.

³⁵ SPECIAL TASK FORCE REPORT, *supra* note 3, at 196.

³⁶ *Joint Hearings, supra* note 1, at 59, 61-62.

³⁷ Taylor, *supra* note 28, at 1007; Taylor, *supra* note 5, at 479; Note, *supra* note 13, at 697. The Special Task Force Report found that "[a]lthough Congress did not intend for one entity to control lands and farm them for absentee owners, . . . this has occurred in many instances because of the leasing and nonfamily multiple ownership deed arrangements which have been permitted." SPECIAL TASK FORCE REPORT, *supra* note 3, at 199. See also Koenig & Thompson, *Acreage, Residency and Excess-Land Sales: Striking a Balance Between Modern Agriculture and Historic Water Policy*, 15 SAN DIEGO L. REV. 887, 891 (1978). For examples of specific transactions see note 40 *infra*. The total amount of excess land in the Westlands Water District is presently 290,000 acres. 125 CONG. REC. S12,504 (daily ed. Sept. 12, 1979) (remarks of Sen. Hatfield).

³⁸ *Joint Hearings, supra* note 1, at 57-58.

³⁹ Senator Nelson, who co-chaired the hearings, has stated:

I have witnessed few hearings in my career that have been more moving than those held in Fresno when literally hundreds of would-be family farmers appeared just to be represented by one California

ple, George Ballis, presented thirty-five detailed charts explaining the questionable land transactions which his group had uncovered.⁴⁰ In testifying that “there is a widespread violation of

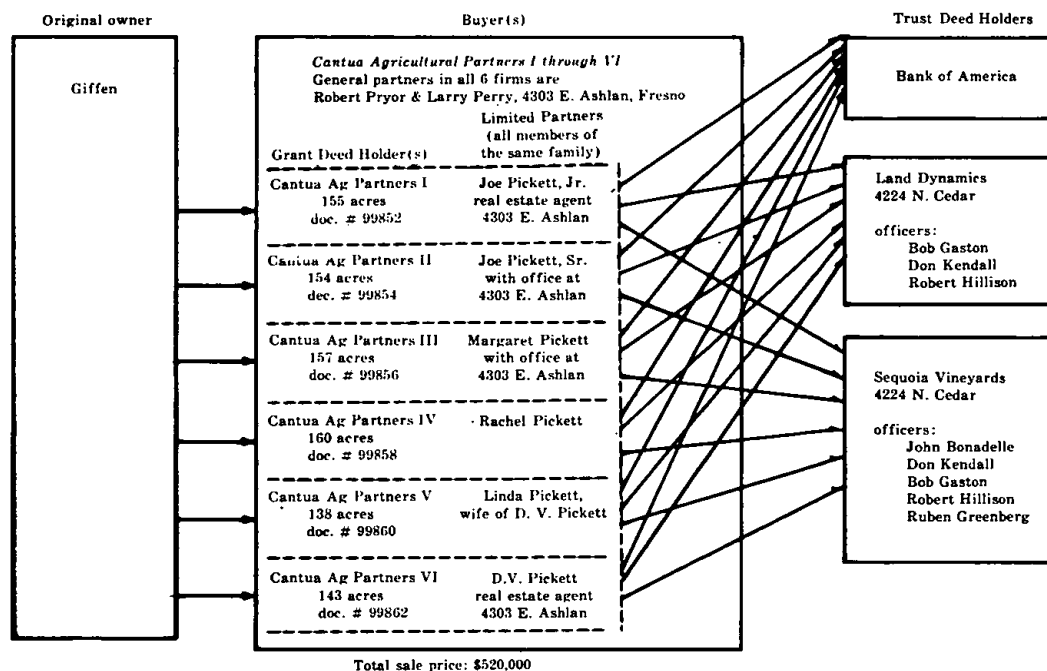
family farmer — a man who told their story of repeated efforts to buy reclamation land sold as excess, only to be told that it was not available in small parcels for family sized farms. These people were experienced family farmers with credit available to them from private sources. All they were asking was what the law promised.

125 CONG. REC. S12,470 (daily ed. Sept. 13, 1979).

⁴⁰ The following four charts are among the 35 charts researched and produced by National Land for People and presented by Executive Director George Ballis on July 17, 1975, to a joint hearing of the U.S. Senate Select Committee on Small Business and the Committee on Interior and Insular Affairs. These four charts depict questionable conveyances of excess land in the Westlands Water District. The reader should take particular note of the relationships between the seller and buyers and among the buyers.

CHART I

GIFFEN-BONADELLE-BONADELLE AN EXAMPLE OF THE QUESTIONABLE LAND TRANSACTIONS IN WESTLANDS WATER DISTRICT, CALIFORNIA

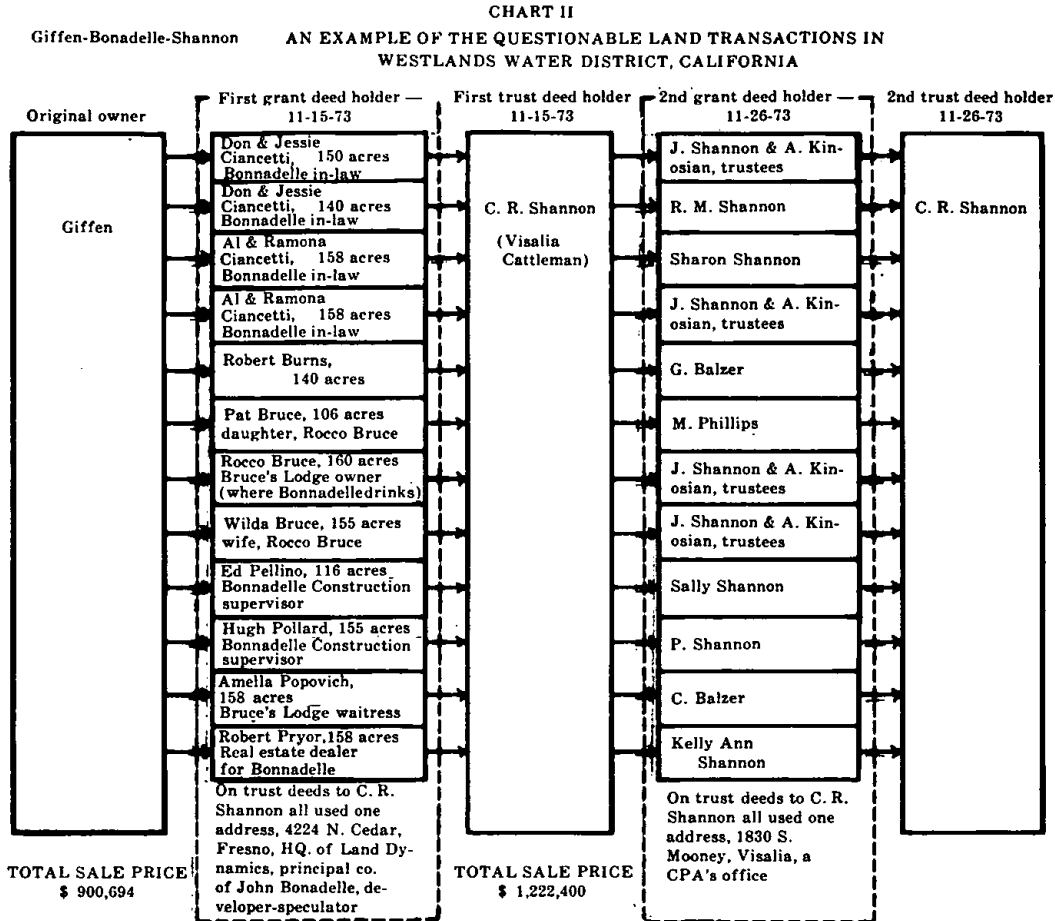


“The buyers are six separate partnerships with only slightly different names. The general partners in all firms are the same two people, Robert Pryor and Larry Perry. All firms, Cantua Agricultural Partners I-VI, list as their address, 4303 East Ashlan, Fresno, the same address as all of the limited partners. This address is in the same small building as 4224 North Cedar, the headquarters of Land Dynamics and Sequoia Vinyards, both controlled by John Bonadelle, a local subdivider and land speculator. Land Dynamics and Sequoia Vinyards also hold trust deeds on the property involved.

All of the limited partners are members of the same family: Joe, Sr., and wife plus two sons and their wives. All of the Picketts are in real estate or construc-

tion, some in close association with Bonadelle companies. None of the general or limited partners are farmers.

The six pieces in this sale are contiguous, all farmed as one operation by Sequoia Vinyards.”



“The sales on this chart are contiguous pieces, previously farmed as one piece and under the new ownership farmed as one piece by the Shannon operation.

The first grant deed holders in the second column are all either relatives, employees or friends of John Bonadelle whose Land Dynamics office is listed as their address by all of the buyers.

The second grant deed holders in column three are all relatives or associates of C.R. Shannon who financed both sales (columns two and four) and is the operator of the property.

Notice the total price on the second sale is over \$300,000 more than the first sale. When the Federal Bureau of Reclamation — which regulates the sale of excess land — was questioned about this, spokesmen said the federal law against land speculation governs only the first sale when the land is excess. After it is broken down into less that 160-acre pieces, there is no price regulation.

It might appear from this chart that Shannon was duped. However, at the time of the sales, the word was that no other Giffen land was to be sold in the near future, and Shannon apparently had a pressing need for acquiring property, maybe for tax purposes, or, perhaps, he was able to obtain some high-priced cotton contracts.

Shannon has been a cattle operator in an adjacent county for many years.”

This transaction was the subject of a federal indictment “for conspiracy to defraud the United States of and concerning its governmental function in having

its reclamation and irrigation program administered in accordance with the provisions of the Reclamation Act" in United States v. Bonadelle, No. F-75-294 (E.D. Cal. 1975). Mr. Bonadelle pled guilty to one of the counts in the indictment.

CHART III

SELLER	BUYERS	MORTGAGES
Giffen, Inc.	Helen B. Telles (wife of Jess P. Telles, Jr.*) ¹ Mona Jo Telles (wife of Frank R. Telles*) ¹ Jess P. Telles, III (son of Jess and Helen) and Patty Rae Telles (his wife) ² James W. (son of Jess, Jr. and Helen) and Dianne Telles ² John Telles (son of Jess, Jr. and Helen) ⁴ Frances Telles ¹ Anna M. Telles ⁶ Peter A. (accountant, Anderson and Ehrman) and Mary J. Ehrman ³ Mary Fortney ¹ Ray C. and Leona Buie ³ Elizabeth Buie (daughter of Ray and Leona) ¹ Joseph (president, Union Chemical Co.) and Jessie Vajretti ³ Jolene Vajretti (daughter of Joseph and Jessie) ¹ Eugene J. (lawyer, Linneman, Burgess, Telles and Van Atta) and Carolyn D. Vierra ³ Paul H. and Thelma J. Weiler ³ Elmer and Esther Skoegard ³ Clarence L. and Natalene A. Freitas ⁵ Manuel A., Jr. and Cecelia A. Souza ³ #87110 signed: 10/31/74 recorded: 11/20/74	Russell and Ruth Giffen \$300,000 #22805 signed: 11/1/72 recorded: 4/3/75
Russell and Ruth Giffen 3,930.86 acres approved sale price: \$2,168,000		Traveler's Insurance Co. \$1,600,000 #30034 signed: 12/20/72 recorded: 3/30/73

* Jess P. Telles and Frank Telles are the owners of Telles Ranch, Inc., the land of which adjoins that land deeded by Giffen.

Jess P. Telles is one of the partners in the law firm Linneman, Burgess, Telles and Van Atta.

¹ As to an undivided 4% interest

² As tenants in common, as to an undivided 5.25% interest

³ As tenants in common, as to an undivided 8.0% interest

⁴ A single man, as to an undivided 1.25% interest

⁵ As tenants in common, as to an undivided 6.25% interest

⁶ As to an undivided 2% interest

LAND SOLD IS CONTIGUOUS WITH AND FARMED AS ONE OPERATION WITH THE LAND PREVIOUSLY OWNED AND FARMED BY TELLES RANCH, INC.

Grant deed requests that when recorded mail to:

Jess P. Telles
c/o Telles Farms
Box 35
Firebaugh, Ca.

"This chart illustrates a purchase of land adjoining lands previously owned by Telles Ranch, Inc. The highlights of this 4,000 acre/28 buyer sale are:

- A) Undivided interest in the grant deed.
- B) Undivided interest in the mortgage.
- C) The seller holds beneficial interest in the mortgage.

The total land holdings of the Telles family and corporations run by them was, at the time, about 10,000 acres with over 1,500 in the Westlands."

CHART IV

Harris Farms, Inc. 158.7 acres		SELLER
Albert and Lois J. Nave #7309	signed: 8/1/68 recorded: 1/30/70	BUYER
Harris Farms, Inc. #7310 \$79,350	signed: 5/1/68 recorded: 1/30/70	MORTGAGE HOLDER
Harris Farms, Inc. #7308	10 year lease commencing 1/1/67 and ending 1/1/77 signed: 5/1/68 recorded: 1/30/70	LEASE HOLDER
Clarence W. and Cornelia Jones #30219	3 year lease until 11/31/73 an undivided 1/2 interest lease signed: 4/14/71 recorded: 4/16/71	LEASE HOLDER
Clarence W. and Cornelia Jones #30220	(part of total security holding to secure \$138,615) signed: 4/14/71 recorded: 4/16/71	MORTGAGE HOLDER
Harris Farms, Inc. #30221	(part of total security holdings to secure \$138,615) signed: 4/14/71 recorded: 4/16/71	MORTGAGE HOLDER
Harris Farms, Inc. #58430	(This deed is a conveyance in lieu of a foreclosure to a beneficiary. There are no agreements other than this.) signed: 4/10/72 recorded: 6/30/72	BUYER
Harris Farms, Inc. #55820	U.S.A. Bureau of Reclamation release. Whereas the terms of the recordable contract have been complied with by the landowner through transfer of title and beneficial ownership to per- sons who are qualified as non-excess land owners to receive water from the CVP under Federal Reclamation laws, the recordable contract is hereby terminated. signed: 5/26/72 recorded: 6/22/72	CONTRACT TERMINATION
Federal Land Bank of Berkeley #28958	(part of total security holdings to secure \$600,000) signed: 1/16/74 recorded: 4/19/74	MORTGAGE HOLDER
Clarence W. and Cornelia Jones #28956	Joneses agree that their beneficial interest in the mortgage #30220 is subordinate to that mortgage in favor of the Federal Land Bank of Berkeley #28958. signed: 4/10/74 recorded: 4/19/74	SUBORDINATE AGREEMENT
Harris Farms, Inc. #28953	Substitution of Harris Farms as trustee in mortgage #30221 to execute trust. signed: 4/17/74 recorded: 4/19/74	SUBSTITUTE TRUSTEE
Harris Farms, Inc. #28954	Harris Farms, Inc., reconveys land held as security in #30221. signed: 4/17/74 recorded: 4/19/74	RECON- VEYANCE

"This chart illustrates the progress of title to a piece of land originally owned by Harris Farms, Inc., sold in "compliance" with the Reclamation Act and then

both the letter and spirit of the law with the express approval of the Bureau of Reclamation,"⁴¹ the director confirmed the statement of the National Farmers Union that:

The purposes of the limitation law have been largely ignored. It appears that every subterfuge imaginable has been used in the Westlands Water District to sabotage honest and sincere enforcement . . . and the Department of the Interior seems to have become a creature of speculators and great landowners.⁴²

At the 1975 hearings, the committees inquired whether small farmers were actually being prevented from purchasing land. In response one real estate broker submitted a list of 303 individuals who had made actual cash offers to buy lots ranging from forty to 160 acres in the Westlands Water District. The broker testified that every single offer had been rejected because the prospective buyers were not interested in large group deals and were not friends or colleagues of the excess landowners.⁴³

The excess land sales which were the subject of the congressional hearings had been approved by the Bureau of Reclamation pursuant to criteria established in a compendium of "Basic Solicitor's Opinions." The opinions, many of which the Bureau admitted were "unpublished" and "difficult to obtain,"⁴⁴ allowed such sales by requiring only a minimal technical or "paper" compliance with the acreage limitation and by ignoring the residency requirement.⁴⁵ In addition, sales prices were inflated by impro-

deeded back to Harris Farms, Inc. in a friendly foreclosure. The highlights of the sale are:

- A) The initial sale is to a non-resident.
- B) The seller holds beneficial interest in the mortgage.
- C) The land is leased back to the seller. Is this compliance?
- D) The land is sold back just eight days after the Bureau releases Harris Farms from the recordable contract."

⁴¹ *Joint Hearings, supra* note 1, at 59. See also *id.* at 61-62.

⁴² *Id.* at 74. Even the former Solicitor of the Department of the Interior, Edward Weinberg, admitted to the committees that administration of the excess land laws had been "relegated to a secondary role," a fact "that has had considerable influence on the effectiveness with which the Bureau of Reclamation has been able to discharge the congressional mandates [of the reclamation law]." *Id.* at 147.

⁴³ *Joint Hearings, supra* note 1, 2d Sess. at 210.

⁴⁴ BUREAU OF RECLAMATION, OFFICE OF THE SOLICITOR, REGIONAL SOLICITOR, U.S. DEP'T OF INTERIOR, BASIC SOLICITOR'S OPINIONS 14 (1976) [hereinafter cited as BASIC SOLICITOR'S OPINIONS]. Renda, *Owner Eligibility Restrictions — Acreage and Residency*, 8 NAT. RESOURCES LAW. 265, 279 (1975).

⁴⁵ BASIC SOLICITOR'S OPINIONS, *supra* note 44, at 14-15.

perly including part of the value of the project water in the Bureau's appraisals of the fair market value of excess land.⁴⁶

III. THE ORIGINS OF THE PRESENT CONTROVERSY: SMALL FARMERS CHALLENGE THE ADMINISTRATION OF FEDERAL RECLAMATION LAW

In May of 1976, National Land for People, on behalf of several of its small farmer members who had been unsuccessful in their efforts to purchase land in the Westlands Water District, filed suit against the Department of the Interior. The group sought a preliminary injunction to prevent the government from approving any further excess land sales in the Westlands Water District pending the Department of the Interior's promulgation of regulations regarding such approvals pursuant to the Administrative Procedure Act.⁴⁷ National Land for People contended that if the "Basic Solicitor's Opinions" were exposed to public view, the Department would be compelled to alter them to conform more closely to the law and thus to provide a real opportunity for small farmers to purchase land.

The District Court for the District of Columbia issued a preliminary injunction on August 13, 1976, directing the Interior Department to initiate rulemaking proceedings pursuant to the Administrative Procedure Act, to suspend approval of all excess land sales in the Westlands Water District pending promulgation of final rules, and to submit monthly progress reports to the court.⁴⁸ After both the trial and appellate courts had denied the

⁴⁶ REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES, APPRAISAL PROCEDURES AND SOLUTIONS TO PROBLEMS INVOLVING THE 160 ACRE LIMITATION PROVISION OF RECLAMATION LAW 8 (1976).

⁴⁷ National Land for People, Inc. v. Bureau of Reclamation of Dep't of Interior, 417 F. Supp. 449 (D.D.C. 1976). On November 14, 1975, National Land for People, Inc. filed a Petition for Rulemaking with the Department of the Interior pursuant to the Administrative Procedure Act, 5 U.S.C. § 553 (1977), requesting that the government promulgate public regulations regarding the criteria and procedures for approving excess land sales. The petition was denied on February 5, 1976, by letter from the Acting Commissioner of the Bureau of Reclamation, on the rationale that approvals of excess land sales were accomplished on an individual *ad hoc* basis and so were not subject to the requirements of the Administrative Procedure Act.

⁴⁸ National Land for People, Inc. v. Bureau of Reclamation of Dep't of Interior, 417 F. Supp. 449, 453 (D.D.C. 1976).

Both the federal defendants and the intervenor defendants (large landowners in the Westlands Water District who had intervened in the action on July 9, 1976) appealed the preliminary injunction to the Court of Appeals for the District of Columbia. They asserted that the district court had abused its discretion in holding that National Land for People, Inc. had standing to bring the action

government's requests for a stay of the preliminary injunction pending appeal,⁴⁹ Secretary of the Interior Cecil Andrus began to formulate regulations. On June 27, 1977, Secretary Andrus suspended approval of excess land sales in all reclamation areas throughout the country pending adoption of final regulations. Two months later, he published a series of proposed rules governing the approval of excess land sales which "embody several important changes in current practices to enforce the excess land (160-acre limitation) . . . and other reclamation laws."⁵⁰ Hearings on the proposed regulations were held throughout the western United States during the autumn of 1977.

and that the "Basic Solicitor's Opinions" were "rules" under the Administrative Procedure Act definition. They also urged the court of appeals to find that excess land sale approvals were exempt from public rulemaking. National Land for People responded that it met the standing requirements and that the "Basic Solicitor's Opinions" came squarely within the A.P.A. definition of "rules." Briefs for Federal Appellants, Intervenor Appellants, and Appellee, *National Land for People, Inc. v. Andrus*, Nos. 76-2027 and 76-2028 (D.C. Cir. 1977). Requests for a stay of the preliminary injunction were denied by both the district court and the court of appeals.

On January 20, 1978, after submission of briefs but before oral argument, the Court of Appeals for the District of Columbia dismissed as moot the appeals in *National Land for People, Inc. v. Andrus*, and ordered the district court to dismiss the entire action as moot, on the representation of the government that it would continue the suspension of excess land sales pending promulgation of final rules.

National Land for People filed a petition for writ of certiorari with the United States Supreme Court on the ground that the case was not technically moot since final regulations had not yet been formulated. National Land for People contended that political pressures or another court order could force the Department of the Interior to begin approving excess land sales before promulgation of final regulations, thus rendering the controversy very "live" again. The petition for writ of certiorari was denied on October 2, 1978. 439 U.S. 831 (1978).

Two months later the Secretary of the Interior lifted the suspension on approval of excess land sales because of the "hardship to large landowners caused by the delay." *Fresno Bee*, December 13, 1978, § G, at 1, col. 1. Shortly thereafter, National Land for People filed a petition for recall of the mandate with the Court of Appeals for the District of Columbia in *National Land for People Inc. v. Andrus*, requesting the court to recall its order dismissing the suit as moot in light of the government's recent change in position.

On April 25, 1979 the court of appeals granted the petition, recalled the mandate, and reinstated the preliminary injunction suspending sales approvals pending promulgation of final regulations.

The court held oral argument on the appeal in September, 1979. As of this date, a decision has not been rendered.

⁴⁹ *National Land for People, Inc. v. Andrus*, Nos. 76-2027 and 76-2028 (D.C. Cir. 1977).

⁵⁰ 42 FED. REG. 43,044 (1977).

At those hearings, large landowners asserted that the proposed regulations represented a radical departure from the previous administration of reclamation statutes and deprived excess landholders of vested property rights.⁵¹ Concerned that the *status quo* of land concentration in reclamation areas would be jeopardized if the proposed regulations became final rules, several water districts, counties and the California and American Farm Bureaus filed suit to suspend the rulemaking process.⁵² In December of 1977, they obtained an injunction halting the promulgation of final regulations pending the completion of an Environmental Impact Statement covering the proposed rules.⁵³

IV. PROPOSED LEGISLATION ON FEDERAL RECLAMATION LAW: THE PROMISE HONORED OR BROKEN?

With the final rules on excess land sales stalled by the preparation of an Environmental Impact Statement for at least another two years,⁵⁴ the major focus of the reclamation law controversy has now shifted to Congress. A series of bills — the provisions of which extend from vigorous implementation of the law's purposes to outright repeal of the major reclamation statutes — have been introduced in the 96th Congress.⁵⁵ The legislative energy now focused on reclamation law revision provides the best method of insuring that the purposes of the law are realized.⁵⁶ At the same

⁵¹ AMERICAN FARM BUREAU FEDERATION, *THE GREAT FEDERAL LAND GRAB* (1978).

⁵² *County of Fresno v. Andrus*, No. F-77-207 (E.D. Cal. Dec. 7, 1977).

⁵³ *Id.* The government did not appeal from the preliminary injunction but proceeded to begin an Environmental Impact Statement.

National Land for People, which had unsuccessfully attempted to intervene in the action, appealed from the denial of its intervention motion and also filed a protective notice of appeal from the preliminary injunction. That appeal is now pending in the Court of Appeals for the Ninth Circuit.

⁵⁴ Supplemental Brief for Federal Appellants at 11, *National Land for People, Inc. v. Andrus*, Nos. 76-2027 and 76-2028 (D.C. Cir. 1977).

⁵⁵ H.R. 160, 96th Cong., 1st Sess. (1979); H.R. 432, 96th Cong., 1st Sess. (1979); H.R. 3275, 96th Cong., 1st Sess. (1979); H.R. 3393, 96th Cong., 1st Sess. (1979); S. 718, 96th Cong., 1st Sess. (1979); S. 14, 96th Cong., 1st Sess. (1979); S. 386, 96th Cong., 1st Sess. (1979); S. 633 96th Cong., 1st Sess. (1979); S. 654, 96th Cong., 1st Sess. (1979); S. 735 96th Cong., 1st Sess. (1979).

⁵⁶ Administrative rules which would achieve the intent of the reclamation law could be drafted on the basis of the statutes now on the books. The disadvantage of regulations, however, is that their enforcement is subject to the whim of each successive administration. The past performance of the Department of the Interior provides little hope for family farmers that administrators will be capable of resisting the political influence of large corporate landholders. Legislation, once enacted, is more difficult to undo.

time, however, it carries the risk that the promise of reclamation policy will be irretrievably broken by power politics.⁵⁷ A comparison of three major bills illustrates this point.

Of the proposed legislation to date, the Reclamation Lands Opportunity Act,⁵⁸ a House bill sponsored by Representative James Weaver (D-Oregon), would "make the most beneficial use of the subsidy in supporting widespread rural development by creating real opportunities for small family farmers to purchase land benefited by project water."⁵⁹ The major components of that legislation provide for receipt of federally subsidized water for a maximum farm operation of 640 acres, whether owned and/or leased, on the condition that all owners, partners, officers and/or shareholders are resident operating farmers;⁶⁰ a lottery to distribute excess land divided into various sized plots (with a 640-acre exemption for transfers to family members);⁶¹ and a residency requirement of fifteen miles.⁶²

Another approach to supplementing reclamation law is found in the Reclamation Lands Family Farm Act sponsored by Senator Gaylord Nelson (D-Wisconsin).⁶³ The bill states that its purpose is to "reaffirm as law and policy" that "the congressional intention in reclamation law is and has been to foster the settlement of bona fide family farmers living on or near the land in Federal irrigation projects."⁶⁴ The measure itself, however, could fail to achieve its objective because of a number of loopholes.⁶⁵

The legislation which is potentially most destructive of reclamation policy is the Reclamation Reform Act of 1979,⁶⁶ which is supported by the large landowners and sponsored by Senator Frank Church (D-Idaho). The bill, S.14, would have the practical effect of repealing the vital features of reclamation law.⁶⁷ As origi-

⁵⁷ See Sinclair, *California Farmers Fight Threat to Irrigation With a Flood of Cash*, *The Washington Post*, July 30, 1979, § A, at 2, col. 1.

⁵⁸ H.R. 3393, 96th Cong., 1st Sess. (1979).

⁵⁹ Leveen, *supra* note 12, at 8.

⁶⁰ H.R. 3393, 96th Cong., 1st Sess., § 102(3) (1979).

⁶¹ *Id.* at § 301

⁶² *Id.* at § 102(2)(B).

⁶³ S. 718, 96th Cong., 1st Sess. (1979).

⁶⁴ *Id.* at § 101(b)(1)(A).

⁶⁵ See notes 93, 104, 129 *infra*.

⁶⁶ S. 14, 96th Cong., 1st Sess. (1979).

⁶⁷ Letter dated July 23, 1979 from Secretary Andrus to Senator Nelson, 125 CONG. REC. S12,472 (daily ed. Sept. 13, 1979). Senator Nelson termed S. 14 "nothing more nor less than reclamation reform for the wealthy;" and Senator Exon said the bill would "legitimize huge Federal water subsidies to industrial

nally introduced, S. 14 raised the acreage limitation almost tenfold, repealed the residency requirement, allowed unlimited leasing and exempted from the acreage limitation those who "paid out" a small part of the federal subsidy on an accelerated basis. As voted out of the Senate Energy and Natural Resources Committee in July of 1979, the Church bill would have virtually abolished any meaningful conditions on the receipt of the water subsidy.

On September 14, 1979, the Senate passed S.14⁶⁸ with amendments which removed the unlimited leasing provision⁶⁹ and narrowed the circumstances under which exemptions from the law by advance "pay out" could occur.⁷⁰ The bill is now in the House of Representatives,⁷¹ which may not act upon the measure until the spring of 1980, if at all.⁷²

An analysis of the specific provisions of these three bills in comparison with the present law (as interpreted in the proposed regulations) demonstrates the wide spectrum of viewpoints on the reform of reclamation law.

A. *Types of Land Ownership*

As accurately noted in the proposed regulations, reclamation law "imposes no restrictions on the amount of land that may be owned by an individual or group of individuals. The law restricts only the portion of land to which project water may be delivered or which may benefit from project facilities."⁷³ Neither the recla-

farming interests and land speculators and promote the demise of small family farms in favor of those interests." *Id.* at S12,469.

⁶⁸ 125 CONG. REC. S12,594 (daily ed. Sept. 14, 1979) The vote was 47 to 23.

⁶⁹ *Id.* at S12,502. Senator Hatfield's amendment passed on a vote of 59 to 36.

⁷⁰ *Id.* at S12,507. Senator Hatfield's amendment, which passed on a vote of 47 to 46, provided that exemption from the acreage limitation by a lump sum pre-payment would only be allowed if present water service contracts so provided. *Id.* at S12,502.

⁷¹ Hearings would be held by the Water and Power Resources Subcommittee of the House Interior and Insular Affairs Committee.

⁷² Baker, *Water-Fight Wounds: California Hopes Gurgle Down Drain*, Fresno Bee, Sept. 23, 1979, at 1, col. 1.

Since the modifications in S. 14 satisfied many excess landowners but were strongly opposed by the large landholders in California, particularly those in the Westlands Water District, it is possible that the landowners' lobbying efforts will become divided and dissipate, thus significantly reducing the chances for any consideration of legislation by the House of Representatives in the near future. *Id.*

⁷³ 42 Fed. Reg. 43,047 (1977) (proposed 43 C.F.R. § 426.7).

mation law itself, the regulations drafted to implement the law, nor any proposed legislation, forces individuals to use their private property in a certain way or limits the acreage which they may own or farm. The existing and proposed reclamation laws simply define the conditions of eligibility for receipt of a valuable governmental subsidy.

The proposed regulations provide that no individual owner may receive federally subsidized water for more than 160 acres.⁷⁴ Thus, growers can own as much land as they please, but may individually receive water from a federal project for only 160 acres of that property. In deference to larger interests, the suggested regulations allow partnerships, corporations and trusts to receive federally subsidized water for an unlimited amount of land as long as they meet certain requirements. The partners, shareholders or beneficiaries must have a family relationship and each partner, shareholder or beneficiary must be an eligible nonexcess owner.⁷⁵ In addition, a partner must have the option under the partnership agreement of partitioning or alienating his or her land. Trust arrangements must meet several other conditions.⁷⁶ All of these requirements find their counterparts in the "Basic Solicitor's Opinions"⁷⁷ and are practically identical to prior requirements.

Excess landowners contend that the present acreage limitation, as defined by the proposed regulations, is outdated because a 160-acre farm is not economically viable in 1979.⁷⁸ This argument, however, is neither practically nor empirically sound. First, as the proposed regulations provide for larger acreage in areas where productivity is reduced because of weather, soil, land costs, quality of water, or other "equivalency factors,"⁷⁹ the 160-acre limitation would apply only on ground of normal or high productivity.⁸⁰

⁷⁴ 42 FED. REG. 43,047 (1977) (proposed 43 C.F.R. § 426.4(b)).

⁷⁵ 42 FED. REG. 43,047 (1977) (proposed 43 C.F.R. § 426.7).

⁷⁶ *Id.*

⁷⁷ BASIC SOLICITOR'S OPINIONS, *supra* note 44, at 27, 33, 37, 43, 44.

However, the proposed definition of "family relationship" as including only lineal descendants and spouses, 43 Fed. Reg. 43,046 (1977) (proposed 43 C.F.R. § 426.4(h)), does seem unduly restrictive. A more equitable rule would include brothers and sisters.

⁷⁸ AMERICAN FARM BUREAU FEDERATION, *supra* note 51.

⁷⁹ See 42 Fed. Reg. 43,048-49 (1977) (proposed 43 C.F.R. § 426.13).

⁸⁰ The majority of the acreage in the Westlands District is of high or above average productivity. See SPECIAL TASK FORCE REPORT, *supra* note 3, at appendix K. When equivalency factors are considered, the actual impact of the acreage limitation in the San Luis Area would be to increase a 320-acre limit to 414

Second, a substantial majority, if not all, of the farms under the proposed regulations would be considerably larger than 160 acres since each individual could obtain water for 160 acres. Therefore, a family of four would be entitled to receive water for 640 acres.

In any case, the economic studies clearly demonstrate that even a 320-acre farm in California constitutes a very lucrative farming unit. Initially it should be noted that a 320-acre property is, in reality, not a small farm. Eighty-four percent of the farms in California are less than 500 acres, seventy-one percent are less than 180 acres and forty-seven percent are fifty acres or less.⁸¹ The United States Department of Agriculture has determined that 200 acres is the optimal farm size for growing vegetables in California; 400 acres is the best unit for California cotton.⁸²

Moreover, since "the farms in the Westlands are able to produce crops for less than their competitors because of cheap water and favorable growing and soil conditions,"⁸³ economic viability is not a substantial problem for beneficiaries of federally subsidized water from the San Luis Unit. The United States Department of Agriculture, for example, concluded in a recent study that a 160-acre farm in the Westlands Water District would produce a net annual income of \$30,120; a 320-acre farm, a net annual income of \$64,240; and a 640-acre farm, a net annual income of \$101,480.⁸⁴ In other words, a 320-acre farm in Westlands would produce sufficient income to rank in the top five percent of American farms.⁸⁵

One report from the Department of Agricultural Economics of the University of California at Davis conservatively projected the net annual income of a 320-acre farm in the Westlands Water

acres. This impact is relatively minor in comparison to other areas receiving reclamation water in the U.S. 125 CONG. REC. S12,579 (daily ed. Sept. 14, 1979) (remarks of Sen. Exon).

⁸¹ SMALL FARM VIABILITY PROJECT, *supra* note 13, at 5. Moreover, 90% of irrigated farmland is less than 500 acres. 125 CONG. REC. S12,553 (daily ed. Sept. 14, 1979).

⁸² STATISTICAL REPORTING SERVICE, U.S. DEP'T OF AGRICULTURE, AGRICULTURAL SITUATION 4 (1974).

⁸³ GOLDMAN, ET AL., ECONOMIC EFFECT OF EXCESS LAND SALES IN THE WESTLANDS WATER DISTRICT, DIV. OF AG. SCIENCE, UNIV. OF CALIF., Special Publication #3214, June 1977, at 195 [hereinafter cited as GOLDMAN]. See note 80 *supra*.

⁸⁴ U.S. DEP'T OF AGRICULTURE, THE U.S. DEP'T OF THE INTERIOR'S PROPOSED RULES FOR ENFORCEMENT OF THE RECLAMATION ACT OF 1902: AN ECONOMIC IMPACT ANALYSIS, E SCS-04, tables 8 & 9 (1978) [hereinafter cited as ECONOMIC IMPACT ANALYSIS].

⁸⁵ *Joint Hearings*, *supra* note 1, at 186.

District at \$40,000 to \$50,000.⁸⁶ Similarly, a study by Professor Goldman took three 320-acre farms in the Westlands Water District producing different combinations of crops and found that one farm would net \$27,360 per year; the second, \$63,440 per year; and the third, \$130,080 per year.⁸⁷ Other agricultural economists have confirmed these results.⁸⁸

Studies have also shown that small family farms create better communities with more business activity and social services, superior schools, and greater political democracy than do large farms.⁸⁹ Moreover, contrary to popular myth, family farming does not seem to result in higher food prices.⁹⁰ As the Small Farm Viability Project for the State of California stated:

Sometimes it is claimed that family size farm units are inherently less efficient than large farms, and that consequently an agriculture based on them would mean significantly higher prices to the con-

⁸⁶ ELY, ET AL., WESTLANDS APPRAISAL SEMINAR GROUP, ASSESSING 320 ACRE FARMING IN THE WESTLANDS WATER DISTRICT, DEP'T OF AG. ECON., UNIV. OF CAL. AT DAVIS, May 1976.

⁸⁷ GOLDMAN, *supra* note 83, at 32.

⁸⁸ See, e.g., SECKLER & YOUNG, *supra* note 12, at 575; SMALL FARM VIABILITY PROJECT, *supra* note 13; LEVEEN, *supra* note 12; U.S. ECONOMIC RESEARCH SERVICE, THE ONE MAN FARM, Report No. 519, at 12 (1973). In fact it appears that the usual economies of scale arguments are simply irrelevant to agriculture. *Joint Hearings, supra* note 1, at 187.

⁸⁹ In 1946, the "Arvin-Dinuba" report compared two rural towns in the San Joaquin Valley: Arvin, a community dominated by large landholdings; and Dinuba, a village of moderate size farms. The investigation concluded that small farm communities produce a greater number of business establishments, more retail trade and a higher average standard of living than towns with large scale farming operations. The former also provide better public services and schools as well as more recreational facilities, organizations of civil improvement, newspapers and churches. Moreover, the political life of the small farm town is more democratic. SPECIAL SENATE COMM. TO STUDY PROBLEMS OF AMERICAN SMALL BUSINESS, SMALL BUSINESS AND THE COMMUNITY: A STUDY IN CENTRAL VALLEY OF CALIFORNIA ON EFFECTS OF SCALE OF FARM OPERATIONS, S. DOC. No. 13, 79th Cong., 2d Sess. 5-6 (1946).

The findings of the "Arvin-Dinuba" study were recently confirmed by the Small Farm Viability Project for the State of California which conducted a survey of 130 communities in the San Joaquin Valley and concluded that "where small family farms predominate there is more development of rural communities, and the quality of community life is better. Such communities have a higher volume of business activity, better schools and other public services, greater stability, and more social activity." SMALL FARM VIABILITY PROJECT, *supra* note 13, at 2. See also 125 CONG. REC. S12,554 (daily ed. Sept. 14, 1979) (remarks of Sen. Nelson).

⁹⁰ 125 CONG. REC. S12,556 (daily ed. Sept. 14, 1979).

sumer. This argument has broad public acceptance but the evidence as a whole does not support it.⁹¹

In short, vigorous enforcement of the present acreage limitation would provide substantial incomes to farmers in Westlands and enrich local communities without increasing food prices.

In spite of the above evidence, the 160-acre limitation has not been actively enforced. By focusing solely on undivided title ownership,⁹² the Department of the Interior has failed to prevent the formation of huge business complexes which control and operate thousands of acres of land benefiting from federally subsidized water.

To remedy this problem, Representative Weaver's Reclamation Lands Opportunity Act proposes to change the limitation from the 160-acre *individual title ownership* to the 640-acre *farm operation size*.⁹³ This formula would be consistent with the intent of the law, would create opportunities for more small farmers to benefit from the subsidy, and would greatly ease the administrative and enforcement burden on the government. It would also have the advantage of offering equal access to all kinds of families and groups since it would not discriminate against single people or against those who cannot or do not wish to have children or whose children have left the farm.

Moreover, the farm operation size plan makes good economic sense. The Reclamation Lands Opportunity Act provides for sale of variable size units from twenty to 640 acres. Very small plots of certain vegetable and fruit crops bring lucrative returns while other commodities, such as wheat and barley, require greater acreage.⁹⁴ Under the farm operation size proposal, a family of six

⁹¹ SMALL FARM VIABILITY PROJECT, *supra* note 13, at 10.

⁹² See notes 37, 40, 45 *supra*.

⁹³ H.R. 3393, 96th Cong., 1st Sess. (1979). In his July 25, 1978, letter to Secretary Andrus regarding the proposed regulations, Secretary of Agriculture Bergland endorsed this concept and suggested different farm unit limitations for each project. 125 CONG. REC. S12,478 (daily ed. Sept. 14, 1979). Secretary of the Interior Andrus suggested a farm operation size limitation of 960 acres in his testimony before the Senate Energy and Natural Resources Committee. *Acreage Limitations and Bureau of Reclamation Projects: Hearings Before the Subcomm. on Public Lands and Resources of the Senate Comm. on Energy and Natural Resources*, 95th Cong., 2d Sess. 540-41 (1978) [hereinafter cited as *1978 Hearings*].

The Reclamation Lands Family Farm Act, S. 718, 96th Cong., 1st Sess. (1979), proposes a 320-acre limitation but allows persons who operate as a farming cooperative to receive water for an unlimited acreage, thus opening a huge loophole for those who wish to perpetuate land monopolization.

⁹⁴ U.S. DEP'T OF AGRICULTURE, *STUDY ON SMALL FARM EFFICIENCY* (1973).

could purchase forty acres to grow strawberries while a bachelor just beginning in farming could plant 400 acres to cotton.

In contrast, Senator Church's Reclamation Reform Act would increase the acreage limitation from 160 acres to 1,280 acres for an individual or a family.⁹⁵ According to the Department of Agriculture study referred to above, such an individual would earn a net annual income of over \$200,000 in the Westlands.⁹⁶ It seems irrefutable that the intent of reclamation law was to insure that benefits received from the federal subsidy would not be so concentrated.⁹⁷

B. Leasing

As there is no explicit reference to leasing in the reclamation law, it is not clear whether individuals should be eligible to receive water for leased ground in excess of 160 acres. The "Fact Finders Report" of 1926 stated that tenants were not "desirable" on reclamation land since irrigation projects were "authorized with the home-building idea as the central consideration," and "[u]nder a system of tenancy, the farm merely becomes a long-distance investment. . . ."⁹⁸

Since the intent of the law is to distribute the federal subsidy as widely as possible, it is arguably contrary to reclamation policy to allow the type of land concentration which leasing can foster. Moreover, as the "Fact Finders Report" stated:

[T]enantry is a factor of disturbance, because . . . the population is not permanent, has no continued interest in the building up of homes on the project lands, and . . . an equal number of owners are giving only indirect attention to the business of building up their farms.⁹⁹

⁹⁵ S. 14, 96th Cong., 1st Sess. § 3(b) (1979). Senator Nelson's amendment to reduce the figure to 640 acres and Senator McGovern's amendment to reduce it to 960 acres were defeated on the Senate floor. 125 CONG. REC. S12,560, S12,576 (daily ed. Sept. 14, 1979). Since the equivalency formula in S. 14 includes all but the very finest land, the actual acreage limitation for most farms, including the majority of those in the Westlands Water District, would be considerably higher. 125 CONG. REC. S12,471 (daily ed. Sept. 13, 1979) (remarks of Sen. Nelson).

⁹⁶ ECONOMIC IMPACT ANALYSIS, *supra* note 84.

⁹⁷ In his speech on the floor of the Senate opposing the 1,280 acre limitation of S. 14, Senator Nelson said, "Is anyone prepared to defend the public policy that we ought to be subsidizing people with incomes in excess of what 99% of the people in the country make themselves, with no subsidy at all?" 125 CONG. REC. S12,558 (daily ed. Sept. 14, 1979).

⁹⁸ COMMITTEE OF SPECIAL ADVISORS ON RECLAMATION, *supra* note 18, at 95-96.

⁹⁹ *Id.* at 96.

More recently, the leasehold has been the favored mechanism for subverting the purposes of the reclamation law. Secretary of the Interior Andrus told the Senate Committee on Energy and Natural Resources: "Leasing has become perhaps the principal vehicle for frustrating the intent of reclamation law. In too many cases it has provided the haven for the nonresident investor-farmer and the land speculator."¹⁰⁰

The proposed regulations provide that no individual may receive federally subsidized water for more than 160 acres of leased land.¹⁰¹ Hence, a family of four would be eligible to receive project water for 640 acres of owned land and 640 acres of leased land, for a total of 1,280 acres. As with the proposed rules on land ownership, the origins of the leasing provision are in the "Basic Solicitor's Opinions."¹⁰² Although this regulation simply allows for the exercise of the Secretary's long-recognized legal authority to determine that leases of more than 160 acres are not compatible with the purpose of the reclamation law, it has been attacked by excess landowners (with large-scale leasing operations) as "retroactive" rulemaking which interferes with their property rights.¹⁰³

¹⁰⁰ 1978 Hearings, *supra* note 93, at 541. Even Senator Church, sponsor of S. 14, told the Senate that:

[T]he practice of long-term leasing as a means for circumventing the 160-acre limitation has long since made a mockery of the law. And we have seen the abuses of leasing of the kind that have permitted certain large agribusinesses to accumulate immense tracts of land on Federal reclamation projects, measured in the many thousands of acres.

125 CONG. REC. S12,466 (daily ed. Sept. 13, 1979).

¹⁰¹ 42 Fed. Reg. 43,047 (1977) (proposed 43 C.F.R. § 4268).

¹⁰² The November 27, 1973, Solicitor's Opinion on the American Agronomic Pacific Division, Inc., sale indicates that it is the duty of the Secretary to determine if various "legal forms" such as leases are "compatible with the purposes and substance of the excess land provisions." BASIC SOLICITOR'S OPINIONS, *supra* note 44, at 26.

¹⁰³ As the proposed regulations apply only to *future* sales, they are not retroactive in the usual sense. However, since some present holders of recordable contracts would be affected, they argue, in essence, that the sale of their excess land would be accomplished pursuant to certain procedures and under certain conditions which they had not anticipated.

The contract holders assert that the proposed regulations would be unconstitutional as an "impairment of contract right." However, article 1, section 19, clause 1 of the United States Constitution prohibiting laws which impair contracts applies only to the states and not to the federal government. Thus, the sole basis for the vested rights argument is the fifth amendment to the United States Constitution providing that "no person . . . shall be deprived of . . .

property . . . without due process of law." In general, the "substantive due process" theory for property rights had its heyday in the early part of this century and has not received serious consideration by the courts for some time. McClosky, *Economic Due Process and the Supreme Court, An Exhumation and Reburial*, 1962 SUP. CT. REV. 34.

More specifically, recent case law demonstrates that the landowners' arguments are unsound. In *Israel v. Morton*, 549 F.2d 128 (9th Cir. 1977), the court analyzed the nature of the right asserted by beneficiaries of federal water projects and determined that it could not be classified as a vested property right for constitutional purposes. In that case certain lands serviced by the Columbia Basin Project were purchased at a time when they were not subject to the 160-acre limitation. One year later, the Columbia Basin Project Act was amended to apply the requirements of the Reclamation Act of 1902 to the lands at issue. The landowners argued that "to restrict their vested rights . . . and to impose new restrictions on lands then free from restrictions amounts to taking of property without due process." *Id.* at 132. This contention is identical to that advanced by the large landowners in the Westlands Water District. The *Israel* court summarily rejected the "vested property right" argument by reasoning that "[p]roject water . . . would not exist but for the fact that it has been developed by the United States . . . [t]he terms upon which it can be put to use, and the manner in which those rights to continued use can be acquired, are for the United States to fix." *Id.* at 132-33. Hence, under *Israel*, the landowners in the Westlands Water District would be unable to surmount even the initial hurdle of establishing a vested property right.

Assuming, *arguendo*, the existence of such a right, the "substantive due process" contention would still fail. When a governmental enactment is the subject of a "substantive due process" attack, it is presumed to be constitutional, and the burden is upon the individual to show both that it is arbitrary and that it is not rationally related to a legitimate governmental objective. *Nebbia v. New York*, 291 U.S. 502, 537 (1934). If the individual cannot make this showing, the fact that he is significantly disadvantaged is not important.

For example, in *Springdale Convalescent Center v. Mathews*, 545 F.2d 943 (5th Cir. 1977), plaintiff nursing home, a provider of medical services, challenged a regulation amendment which retroactively altered the method for computing compensable costs under the Medicare Act as violative of its fifth amendment property rights. Even though the plaintiff in *Springdale* had a vested property right, the court nevertheless upheld the retroactive application of the amendment. The test, the court stated, was not whether the amendment "ha[d] economic consequences which may be inconsistent with a party's reasonable expectations" but whether such a retroactive regulation "has a rational basis." *Id.* at 955. The present contract holders have not shown that any of the proposed regulations are irrational or unrelated to the governmental objective of distributing the benefits of the water subsidy as widely as possible.

Perhaps more importantly, the *Springdale* court determined that the original regulation providing for straight line depreciation was inconsistent with the statute and provided a "windfall" to Springdale. Quoting from *Graham v. Goodcell*, 282 U.S. 409, 429 (1931), the court continued: "Where the asserted vested right, . . . arises from the mistake of officers purporting to administer the law in the name of the Government, the [Secretary] is not prevented from curing the defect in administration." *Springdale Convalescent Center v. Mathews*, 545 F.2d 943, 956 (5th Cir. 1977). Actually *Springdale* was simply applying the established principle that when the administration of a statute has not

To insure widespread distribution of the subsidy, Representative Weaver's Reclamation Lands Opportunity Act treats leased land like owned land for acreage limitation purposes (a farming unit may thus obtain water for a maximum of 640 acres whether it be owned, leased or a combination of the two), except that in cases of extreme hardship water may be received for additional leased land.¹⁰⁴ The bill also provides that the government shall purchase twenty percent of the excess landholdings to lease in variable size parcels to family farmers with purchase options.¹⁰⁵ Government purchase of excess land for resale to small farmers was recently suggested in the report of the General Accounting Office on reclamation land appraisals.¹⁰⁶ The idea was first proposed in 1964 by then-Secretary of the Interior Stewart Udall,¹⁰⁷

been consistent with its legislative purpose, it is always appropriate to "cure the defect" in administration by applying a new retroactive regulation which reflects the intent of the legislature. See *S.E.C. v. Chenery Corp.*, 332 U.S. 194, 203 (1947); *California ex rel. State Lands Comm'n v. Simon*, 504 F.2d 430, 439 (Temp. Emer. Ct. App. 1974); Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 HARV. L. REV. 692 (1960).

As the Court of Appeals for the Ninth Circuit noted in sustaining the retroactive application of a federal regulation for recapture of accelerated depreciation charges of health care providers under the Medicare program, "[a]most all new laws upset some expectations, and frequently changes are made in the legal consequence of prior conduct. . . . We view the regulations in this case as particularly reasonable since it is part of the ongoing adjustment necessary in a program of distributing federal subsidies." *Hazelwood Chronic & Conv. Hosp., Inc. v. Weinberger*, 543 F.2d 703, 708 (9th Cir. 1976). Quoting from *FHA v. The Darlington Inc.*, 358 U.S. 84, 91 (1958), the court further declared that "[t]hose who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end." *Id.* at 708.

Thus, if the Secretary should determine that the rules and regulations in the "Basic Solicitor's Opinions" have been in any manner inconsistent with the intent and purpose of the reclamation laws, the Secretary has the power, and arguably the duty, to apply the rules now being formulated retroactively.

¹⁰⁴ H.R. 3393, 96th Cong., 1st Sess. §§ 102(2), 102(4), 301(b)(3), 501 (1979).

¹⁰⁵ *Id.* at § 501. The Reclamation Lands Family Farm Act, S. 718, 96th Cong., 1st Sess. (1979), also provides for purchase of excess land by the government for lease to small farmers. However, such purchases are limited to those situations in which the seller cannot find a buyer. Thus, the practical effect of this lease provision could well be nil.

¹⁰⁶ REPORT OF THE COMPTROLLER GENERAL, *supra* note 46, at 14-15.

¹⁰⁷ U.S. DEP'T OF THE INTERIOR, 88TH CONG., 2ND SESS., ACREAGE LIMITATION POLICY STUDY PREPARED FOR THE SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS ix (Comm. Print 1964).

and in 1971 by way of legislation.¹⁰⁸ It would seem to be an excellent method of providing real opportunities for beginning farmers to obtain land in the Westlands.

Under Senator Church's original S.14, water could have been obtained for an unlimited amount of leased land if the actual written leases extended for no more than one year and did not contain a right of renewal.¹⁰⁹ Hence, the only real restriction was the necessity for the landlord and tenant to sign a new lease every year. Such a requirement could hardly have been expected to discourage concentrated management of large tracts of land. For this reason, the Senate voted to omit the unlimited leasing provision and to allow maximum leaseholds of 1,280 acres.¹¹⁰

C. Residency

The Reclamation Act of 1902 provides that no right to use of water shall be sold to a landowner "unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land."¹¹¹ The proposed regulations define the eligible nonexcess owner as an individual who has his or her principal place of residence on or in the neighborhood of the land or who has stated his or her intent to establish such principal place of residence within three years.¹¹² By simply restating the reclamation law itself on the issue of residency, the proposed regulations rest on solid ground. In fact, to ignore the applicable statutory mandate on this subject would exceed the authority vested in the Secretary under section ten of the Reclamation Act of 1902.¹¹³ Moreover, according to the proposed regulations, the residency requirement is interpreted with maximum flexibility by allowing purchasers a full three years to establish residency and by defining "in the neighborhood" as fifty miles.¹¹⁴

The argument has been advanced that the residency requirement is no longer valid because it was repealed "by implication" in 1926 and the Department of the Interior has failed to enforce it for such a long period of time. These contentions were consid-

¹⁰⁸ H.R. 5236, 92nd Cong., 1st Sess. (1971).

¹⁰⁹ S. 14, 96th Cong., 1st Sess., § 7 (1979).

¹¹⁰ 125 CONG. REC. S12,502 (daily ed. Sept. 13, 1979). The bill now provides for an acreage limitation of 1,280 acres of land whether leased or owned.

¹¹¹ 43 U.S.C. § 431 (1977).

¹¹² 42 Fed. Reg. 43,046 (1977) (proposed 43 C.F.R. § 426.4(1)).

¹¹³ 43 U.S.C. §§ 373 (1977).

¹¹⁴ 42 Fed. Reg. 43,046 (1977) (proposed C.F.R. § 426.4(1)). The Secretary may in his discretion reduce the radius to encourage family farming.

ered and rejected in *Yellen v. Hickel* by the only court which has ruled on the issue.¹¹⁵ In *Yellen*, the government asserted that the Omnibus Adjustment Act of 1926 had repealed section five of the Reclamation Act of 1902 (and specifically the residency requirement of that provision) by replacing the earlier individual water certificate system with a district contract procedure. Pointing out that the district contract system simply provided for the "sale" of water referred to in section five to districts rather than individuals,¹¹⁶ the court concluded that the formation of districts was merely for "administrative expediency" and was not intended to "thwart the policy of section 5."¹¹⁷ The court in *Yellen* also noted that the United States Supreme Court had implicitly rejected the repeal argument in *Ivanhoe Irrigation District v. McCracken*¹¹⁸ by basing its decision on section five of the Reclamation Act of 1902. The argument that the residency requirement was only a "threshold" prerequisite which exempted landowners after the initial sale was also rejected by the *Yellen* court.¹¹⁹

The court likewise held that the government was not estopped from enforcing the residency requirement because of its failure to do so for several decades since it could not be bound by the illegal construction which its agents might have asserted.¹²⁰ In conclusion, the *Yellen* court stated unequivocally:

The administrative interpretation by the government defendants in administering Section 5 of the Reclamation Act . . . by not enforcing the residency requirement is not now, and has never been, reasonable. The failure to apply the residency requirement is contrary to any reasonable interpretation of the reclamation act as a whole, and it is destructive of the clear purpose and intent of national reclamation policy. . . .¹²¹

A survey of legislative activity on the residency requirement reinforces the decision in *Yellen v. Hickel*. Congress suspended the residency requirement of the reclamation law for those in active military duty in World War II in the Soldiers' and Sailors' Relief Act of 1940,¹²² enacted fourteen years after the date on

¹¹⁵ *Yellen v. Hickel*, 352 F. Supp. 1300 (S.D. Cal. 1972), *dismissed for lack of standing sub. nom.*, *United States v. Imperial Irrigation Dist.*, 559 F.2d 509 (9th Cir. 1977).

¹¹⁶ *Id.* at 1305.

¹¹⁷ *Id.* at 1306.

¹¹⁸ 357 U.S. 275, 291-94 (1958).

¹¹⁹ *Yellen v. Hickel*, 352 F. Supp. 1300 (S.D. Cal. 1972).

¹²⁰ *Id.* at 1311.

¹²¹ *Id.* at 1318.

¹²² 50 U.S.C. § 568 (1977).

which the excess landowners argue the requirement was repealed. Similarly, in 1947, S.912 was introduced for the purpose of exempting certain water projects, particularly the Central Valley Project (including the San Luis Unit), from the "land limitation" provisions "relating to residency and occupancy."¹²³ The foregoing legislation would have been unnecessary had Congress repealed the residency requirement "by implication" in 1926. In addition, the Special Task Force on the San Luis Unit concurred that "residency has been a continuing requirement of reclamation law since 1902," and recommended that it be enforced.¹²⁴ In light of this evidence, the Secretary had no choice but to include the residency requirement in the proposed regulations.

Since the residency requirement is one of the essential components of reclamation policy, the real issue is the definition of that requirement. The criticism of the fifty-mile figure is that it is not consistent with the underlying objective of the residency requirement: to assure that those who benefit from the subsidy are actual farmers working their own land. A fifty-mile requirement would allow bankers, doctors and lawyers in Fresno, one of California's fastest growing cities, to own land in the Westlands Water District. Under such a definition, investors, not farmers, would reap the benefits of the subsidy.¹²⁵

A study by the University of California at Los Angeles concluded that a fifty-mile residency requirement would encourage many landowners in the Westlands Water District to live in Fresno and would provide little opportunity for improvement in the "quality of life" in the District. The report noted that "wealth will continue to be exported" from the Westlands area resulting in "fewer opportunities to diversify and internalize the economic base" of the District.¹²⁶ The study showed that a fifteen-mile residency requirement, in contrast, would increase the population of the Westlands Water District by 23,500, would create strong

¹²³ S. 912, 80th Cong., 1st Sess. § 1(d)(4) (1947).

¹²⁴ SPECIAL TASK FORCE REPORT, *supra* note 3, at 209, 212.

¹²⁵ A letter from Secretary of Agriculture Bergland to Secretary Andrus dated January 25, 1978 suggested that recipients of the subsidy be required to live on or near the land rather than 50 miles away. 125 CONG. REC. S12,478 (daily ed. Sept. 13, 1979).

¹²⁶ U.C.L.A. SCHOOL OF ARCHITECTURE AND URBAN PLANNING, *THE WESTLANDS: PLANNING FOR CHANGE UNDER ENFORCEMENT OF RECLAMATION LAW XVI* (1977). See also Bass & Kirschner, *Demographic and Fiscal Impacts of Alternative Westlands Reclamation Act Enforcement Scenarios*, forthcoming in *AM. J. AG. ECON.*, paper presented at Am. Econ. Assoc. Summer Mtgs., Blacksburg, Va., Aug. 6-9, 1978, at 5, 7.

possibilities for enriching the economy and retaining the economic benefits locally, and would result in a fuller range of community services including schools, medical care and businesses.¹²⁷

The gist of the report is that a fifty-mile residency requirement would only partially affect the pattern of absentee ownership now existing in the Westlands Water District while a fifteen-mile requirement would more nearly fulfill the promise of former Representative Sisk. The fifteen-mile residency requirement in Representative Weaver's Reclamation Lands Opportunity Act thus would encourage greater utilization of the federal subsidy than would a fifty-mile residency provision.¹²⁸

The Reclamation Lands Family Farm Act restates the residency requirement of the Reclamation Act of 1902, but fails to define "neighborhood."¹²⁹ Hence, it would fall to future Bureau of Reclamation administrators to interpret "neighborhood" according to their own particular views of reclamation policy.

In contrast to the other two bills, Senator Church's Reclamation Reform Act explicitly excludes the residency requirement and fails to provide any substitute for it.¹³⁰ By removing this cornerstone of reclamation policy, the bill defeats any possibility that small farmers would benefit from the subsidy. The U.C.L.A. study referred to above concluded that if there were no residency requirement "non-family corporate ownership would continue to predominate in the [Westlands Water] District."¹³¹

D. *Disposition of Excess Lands*

The proposed regulations provide for a lottery "or other impartial means" of disposing of excess land.¹³² In suggesting this method, the government was undoubtedly attempting to guard against transfers of large landholdings between insiders and to guarantee an equal opportunity for all those eligible to benefit from the federal subsidy. When a federal benefit is both scarce and in great demand, it would appear that the only fair and equitable means of distributing that benefit is by a lottery or some other impartial method.

¹²⁷ U.C.L.A. SCHOOL OF ARCHITECTURE AND URBAN PLANNING, *supra* note 125, at XIV.

¹²⁸ H.R. 3393, 96th Cong., 1st Sess., § 102(2), (3) (1979).

¹²⁹ S. 718, 96th Cong., 1st Sess., § 102(3)(B) (1979).

¹³⁰ S. 14, 96th Cong., 1st Sess., § 5 (1979).

¹³¹ See note 126 *supra*.

¹³² 42 Fed Reg. 43,048 (1977) (proposed 43 C.F.R. § 426.10).

Moreover, the lottery is not a novel or radical concept for the Department of the Interior. It has been used successfully by the government in the Columbia Basin Project where public lands are irrigated with federally subsidized water. The more than fifty-five "drawings" between 1948 and 1967 for land in the Columbia Basin have resulted in a large number of prosperous family farms.¹³³ There can be little doubt that the Secretary has the authority to institute such a lottery. Since he may enter into agreements with states for the purpose of "securing and selecting settlers,"¹³⁴ it follows that he has the authority to do so on his own initiative.

However, the lottery proposed by the government contains one important reservation. Secretary Andrus has suggested that it be utilized for distribution of excess land only after the excess landowner has sold an unlimited amount of land to family members, neighbors and longtime employees.¹³⁵ If Secretary Andrus' suggestion is followed, a lottery would rarely be used.

Representative Weaver's Reclamation Lands Opportunity Act solves this problem by mandating the use of the lottery with a 640-acre exemption for sale to family members.¹³⁶ The compulsory use of a lottery for distribution of excess land has two important advantages. First, a system in which individuals or families can purchase variable size plots up to 640 acres would not be workable without a government-administered lottery. Because excess landowners wish to sell their land in the most lucrative and convenient manner possible, excess land sales are invariably "group" transactions of maximum size acreages. Very few private individuals will invest the time, energy or money to divide their land into various size parcels for sale to a large number of individuals, families and groups.¹³⁷

¹³³ U.S. DEP'T OF INTERIOR, HISTORY OF COLUMBIA RIVER BASIN 18.

¹³⁴ 43 U.S.C. § 432(e) (1977).

¹³⁵ 1978 Hearings, *supra* note 93, at 548.

¹³⁶ H.R. 3393, 96th Cong., 1st Sess., § 302 (1979).

¹³⁷ The attitude of most excess landowners concerning disposition of their lands is illustrated by a letter from the counsel for Mr. Giffen, once a large landowner in the Westlands Water District, to the Department of Corporations regarding the conditions under which his client's 80,000 acres in the Westlands were offered for sale by Pearson Realty. The correspondence states that the land was "offered in no event to the public at large or to unsophisticated potential buyers." The conditions on this sale were that none of the land would be sold until buyers were found for all of the property and any offers would be "subject to replacement, in the case of overlapping offers, by offers involving larger acreage. An offer for two sections, for example, could be replaced by a subse-

Second, the purpose of the reclamation law is to facilitate a wide distribution of the federal subsidy. In the past, farmers without a special connection to an excess landowner were excluded from the opportunity to benefit from the government's largesse. Because most reclamation lands (particularly those in the Westlands Water District) are in such great demand, they are seldom, if ever, placed on the "open market."¹³⁸ Secretary of the Interior Andrus explained the need for a lottery in this way: "Price controls and acreage limitations are not enough, for standing alone they fail to address the inequity of creating a permanent, relatively closed class of beneficiaries and correspondingly denying access to these benefits to many who wish to share the opportunity of participating in the reclamation programs."¹³⁹ If excess landowners continue to arrange their own land sales, small farmers, the intended beneficiaries of reclamation law, will inevitably be foreclosed from the opportunity to purchase excess land.¹⁴⁰

Finally, it is difficult to comprehend how any excess landowner would be disadvantaged by the use of the Weaver bill's lottery. Quite to the contrary, it would relieve the individual landowner of the burden of arranging for land purchases. The understandable desire of growers to sell or transfer land to their children or other family members would be satisfied by the bill's 640-acre exemption from the lottery for family members.

Despite the documented need for a lottery,¹⁴¹ Senator Church's Reclamation Reform Act and Senator Nelson's Reclamation Lands Family Farm Act provide for a lottery to distribute excess

quent overlapping offer involving four sections." *Joint Hearings, supra* note 1, at 1555, 1744.

¹³⁸ For example, Jack Stone, president of the Board of Directors of the Westlands Water District, told the Fresno Bee that when he was obligated to sell his excess land he planned to lease it back to himself "to keep my operation at its present size" of 6,400 acres. Fresno Bee, Sept. 23, 1979 at 1, col. 3.

¹³⁹ 1978 Hearings, *supra* note 93, at 544.

¹⁴⁰ Senator Hatfield proposed an amendment to S. 14 providing for disposal of excess lands of over 3,840 acres by a lottery to assure that some land would be made available to small farmers and to distribute the subsidy "fairly and equitably." 125 CONG. REC. S12,508-10 (daily ed. Sept. 13, 1979). The amendment was defeated on a vote of 25 to 54. *Id.* at S12,554.

¹⁴¹ Speaking to the Senate about the need for a lottery to dispose of excess lands, Senator Nelson noted: "So you have lawyers and doctors and businessmen farming the best land in America, subsidized by the American taxpayer, thousands and thousands of hardworking American citizens and farmers who would like to be part of the program that has been created for them. . . ." 125 CONG. REC. S12,559 (daily ed. Sept. 14, 1979).

land *only* in the event that a seller cannot locate a buyer.¹⁴² Since this contingency would rarely occur, the use of a lottery appears to be more rhetoric than reality.

E. Anti-Speculation Provisions

The proposed regulations provide that any subsequent sale of land within ten years be at a price that does not reflect project benefits.¹⁴³ For ten years thereafter and until one-half of the construction costs have been paid, the Secretary will monitor resales to insure that the seller is not reaping any unreasonable profit.¹⁴⁴ These provisions are intended to discourage speculation and encourage the settlement of permanent residents on the land.

Representative Weaver's Reclamation Lands Opportunity Act goes a step further and requires sale approval at prices not including reclamation benefits until the allocated costs of the project have been repaid, generally a period of from forty to sixty years. Repayment costs would be reassessed every five years. Such a provision is the best guarantee against speculation at the expense of the taxpayer.

By comparison, Senator Church's original Reclamation Reform Act would have allowed excess landowners to escape the requirements of reclamation law upon a lump sum payment of construction costs required to be repaid.¹⁴⁵ Since those costs constitute only a fraction of the actual costs to the federal government, both the taxpayer and the small farmer would have been seriously disadvantaged by such a loophole.¹⁴⁶

CONCLUSION

While the courts have consistently mandated enforcement of the reclamation law, the effectiveness of judicial decisions in this area has been limited. The proposed regulations for approval of

¹⁴² S. 14, 96th Cong., 1st Sess., § 10(d) (1979); S. 718, 96th Cong., 1st Sess., § 302 (1979).

¹⁴³ 42 Fed. Reg. 43,048 (1977) (proposed 43 C.F.R. § 429(b)).

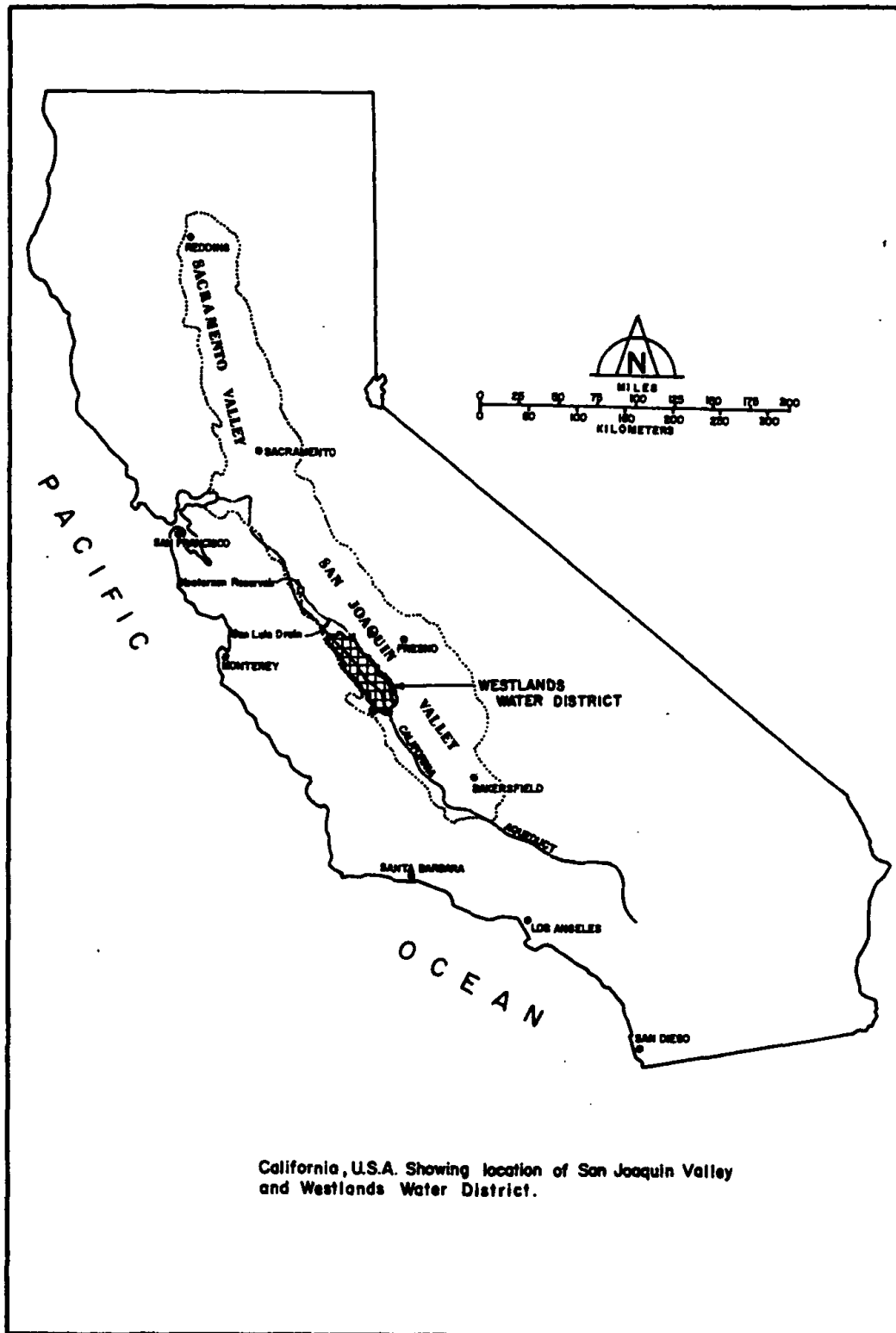
¹⁴⁴ See Seckler & Young, *supra* note 12.

¹⁴⁵ S. 14, 96th Cong., 1st Sess., § 6(a) (1979).

¹⁴⁶ *Id.* Since many water districts vote on a per-acre rather than a one-person one-vote basis, the accelerated pay-out provision could have resulted in the largest landowners in each district winning the vote to borrow the money to pay off the obligation and thus exempt themselves from the limitation. Such an arrangement would have left the smaller farmers paying more for their irrigation water to a private lender than they would have paid to the government without the pay-out. 125 CONG. REG. S12,471 (daily ed. Sept. 13, 1979).

excess land sales promulgated by the Department of the Interior are clearly an improvement over previous rules and procedures. However, without a meaningful lottery provision or a realistic residency figure, they would not prevent the large group transactions and insider deals that exclude the average family farmer. Enactment of Representative Weaver's Reclamation Lands Opportunity Act would provide legislative insurance that former Representative Sisk's promise for the Westlands Water District would finally be kept.

APPENDIX A



California, U.S.A. Showing location of San Joaquin Valley and Westlands Water District.