The People's Land
The People's Water
The People's Money
The People's Lives

RECLAMATION & EXPLOITATION

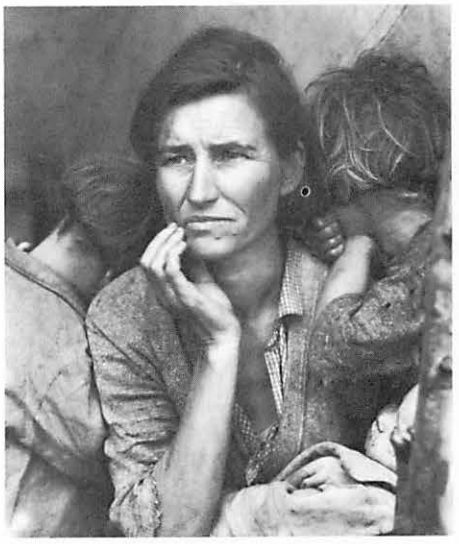
PAUL S. TAYLOR

EVER HEAR OF RECLAMATION law's 160-acre limitation on water deliveries to irrigators? Have you been told that this is "petty political tyranny," inefficient and uneconomic? That because of it the housewife pays more for food in the market? That it is an outmoded myth from bygone times? That it should be eliminated, as the Public Land Law Review Commission, under former Congressman Wayne Aspinall, recommended? (More recently, Senator Lee Metcalf of Montana called this body the "National Watered-Down Commission" because the Nixon Administration replaced members friendly to "the 160.")

Or have you heard that the 160 is a true conservation instrument, essential if properly used, for achieving a decent environment, even for preserving a decent rural society from self-destruction? Ever hear that in Imperial Valley, where the law goes unenforced, almost nine out of ten farm workers (87.3 percent) belong to the economic lower class, compared to, say, Iowa, just outside the reclamation belt, where the proportion is less than one in seven (13.6 percent)? Ever hear that the Sierra Club, joined by Friends of the Earth, National Wildlife Federation, and other civic and labor organizations, sees opportunity for using the 160 to check reclamation's current diseconomies, and through public planning to preserve open spaces and a decent physical and social environment?

Each generation defines "conservation" for itself. Today we are witnessing a great revival of public concern for conservation, and an expanding definition of its meaning. The word itself entered popular usage in the early 20th century, but action came earlier. Preservation of rare and scenic sites came first, notably Yellowstone Park. At that time, when men talked of water they spoke of "reclamation"—"irrigation" if too little, or "flood control" if too much. Only later was the word "conservation" used to cover alike preservation of sites and proper use of resources. Today, "environment" and "ecology" are added to "conservation," and Secretary of the Interior Rogers C. B. Morton reminds us that the meaning of environment "must include man himself." In so doing he opens doors and raises more questions than his department answers.

By whatever name you call it, national reclamation policy is a conservation perennial. It could not be otherwise. It seeks to govern the use and misuse of natural resources—millions of irrigated acres of land, more millions of acre-feet of water, and billions of public



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dollars to store the water and—at a right time and place—to move it to thirsty land. Who decides how much water is to be taken from where, and moved to where? Who pays? Who benefits?

The search for answers began in 1902, when Congress enacted the Reclamation Law. Particular attention was given to the last question: who benefits? Congressman Francis G. Newlands of Nevada explained as the bill was pending that President Theodore Roosevelt had invited members of the House Irrigation Committee of both parties to the White House for consultation. Personally familiar with the extent of large private landholdings in the West, Roosevelt, in Newland's words, ". . . was somewhat in doubt as to whether the bill was sufficiently guarded in the interest of homeseekers. . . . We all wanted to preserve that domain in small tracts for actual settlers. . . . We all wanted to prevent monopoly and concentration of ownership, and the result was that certain changes were made absolutely satisfactory both to the Executive and to the Irrigation Committee. . . ." With these changes, he said, the reclamation law would assure "above all, holding that vast [western] area for the unborn generations . . . in your States of the East . . . the Middle West, and . . . the South, to be held as a heritage for the entire people . . . dedicated forever to American home building, the true foundation of the Republic." These concluding words were greeted with "applause" and the bill became law, reciting that "No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one 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. . . ."

Building on this foundation President Roosevelt in 1908 assembled the first Conference of Governors of the States. Natural resources was its subject, and its title was "Conference on Conservation." In the spirit of the Reclamation Act, the Declaration of the Governors states: "We declare our firm conviction that this conservation of our natural resources is a subject of transcendent importance, which should engage unremittingly the attention of the Nation, the States, and the People in earnest cooperation. We agree that the sources of national wealth exist for the benefit of the People, and that monopoly thereof should not be tolerated."

However, neither a governors' declaration nor even a statutory enactment suffices to ensure adherence to principle and law. Only the other day, 71 years after passage of the Reclamation Act, with its prohibition of water monopoly, the *San Francisco Chronicle* appropriately headlined a story on the law with these words: "The Endless Water War of the 160." To anyone familiar with western history this need be no surprise. As long ago as 1877, the "war" was forecast by the *Visalia* (California) *Delta*, and the questions raised: Who pays? and, Who benefits? In words that serve as text for this phase of a century of western history the *Delta* reported: "No one would believe that shrewd, calculating business men would invest their money on the strength of land rising in value while unimproved, for even the farmer himself has to abandon it who endeavors to add to its value without water. At the same time, purchasers are not lacking who would add it to their already extensive dry domain and the people . . . will find themselves confronted by an array of force and talent to secure capital ownership of the water as well as of the land, and the people will at last have it to pay for. . . ."

The forecast came true. In 1947, a Bureau of Reclamation economist testified that the subsidy to water users along the Friant-Kern Canal in California's Central Valley was 75 percent or more of the cost of providing the water. In 1957, six California Congressmen estimated that the *unrepaid* federal subsidy to landowners for watering Central Valley Project lands amounted to $577 an acre, or $92,320 for 160 acres, exclusive of flood-control subsidy. On the entire project, irrigation was allocated 63 percent of cost, but irrigators were asked to repay only 17 percent. On western projects generally, recent estimates place the unrepaid subsidy to irrigators at from $400 to $2,000 an acre, varying from project to project. These subsidies tell who pays, and give half the answer to who benefits. Interior Secretary Harold Ickes rounded out the answer in 1945, corroborating the 1877 forecast of the *Visalia Delta*. The drive to avoid application of "the 160" designed to distribute reclamation benefits among "the many" instead of among "the few," he explained, is simply "the age-old battle over who is to cash in on the unearned increment in land values created by a public investment."

That is how sympathetic administrators up to a generation ago described the issue and pointed the direction in which solution lay. They did not say they wanted public planning of the environment in the reclamation belt, but clearly they were unwilling to leave the outcome to self-serving, large landholding interests. Yet no one has described more realistically how decisions have been made than William E. Warne, former Assistant Commissioner of Reclamation. In 1973 he wrote: "Since June 17, 1902, . . . projects have been undertaken where a sufficient number of representatives and senators desired them and when congressmen who wanted the work done were strategically placed on committees in which authorizations or appropriations were originating in order to get the necessary action." Aside from engineering considerations, that describes past land-use planning only too well.

> "... in Imperial Valley, almost nine out of ten farm workers belong to the economic lower class."

Five years ago the Sierra Club took a fresh look at the problem and sought ways of doing something about it. To begin with, the law says that in order to receive water, the owners of "excess lands" above 160 acres must agree to sell the excess at the pre-water price, literally "without reference to the proposed construction of the irrigation works. . . ."

The Sierra Club, concerned to preserve the environment, has proposed taking full advantage of this opportunity. It proposed in 1968 the "federal purchase of excess lands . . . with the understanding that lands so purchased would be sold or leased under open space regulations."

The idea caught on. Congressman Robert W. Kastenmeier of Wisconsin introduced a Reclamation Lands Authority Bill to fulfill unrealized potentials of the historic 1902 statute that marked the dawn of the national conservation movement. Support

came quickly. Identical bills were introduced in the 92nd Congress by six California Congressmen: George Danielson, Ron Dellums, Don Edwards, John McFall, Edward Roybal, and Jerome Waldie. Four Senators did likewise: Birch Bayh, Alan Cranston, Fred Harris, and Philip Hart. The Interior Committees, then chaired by Congressman Wayne Aspinall and Senator Henry M. Jackson, have so far held no hearings on the bill.

Congressman Kastenmeier sees the public stake in his bill in the broadest terms inviting coalition support. Its purposes he described as three-fold: "One, to enact a long overdue, and long recommended, method for enforcing the public interest provisions of reclamation law; two, to finance public education by grants of revenues created from public water development, just as grants of 94 million acres of public lands financed public education at an earlier point in our history; and three, to enable the public itself, through a newly established authority, to plan the environment that public water development creates." The proposal has drawn support from other conservation, civic, and labor organizations, including the National Education Association, and awaits hearings.

The bill's potential for preserving rural open space has been estimated at 900,000 acres in California alone, provided "the 160" is fully enforced. It could curb the inroads being made on prime agricultural land by urban sprawl in critical areas, notably in California and Arizona, where the opportunity for conserving agricultural land is confronted by considerable resistance. Enforcement of "the 160" would also discourage large corporate farm combines from continuing to push for further water reclamation projects, which, for the most part, have proven uneconomical for everyone but them. Finally, by encouraging smaller farms, enforcement of "the 160" would give us a better chance to get away from our present dependence on pesticides and inorganic fertilizers, the use of which seems closely tied to large-farm economies.

In 1962, Senator Paul Douglas, of Illinois, threw light on the paralysis of reclamation policy that nominally, but not actually, governs water development in this country. Commenting on the circumvention of reclamation policy on the California Water Project, he told the Congress: "I think we all know the practical difficulties in such a situation as this. The land is owned at present by a relatively small number of persons and corporations, each one of which owns an enormous amount of land....They are organized, powerful . . . do not wish to have their holdings broken up . . . and . . . can marshal tremendous resources in support of their position and against anyone who tries to stand against them. . . . Those who might benefit from the acreage limitation . . . the small farmers who would come into being . . . if the huge holdings were broken up are persons in the future . . . they lack voices and in a sense are unrepresented."

Republican California Congressman Donald L. Jackson spelled out in 1949 what this means on the Salt River in Arizona, a project initiated a half-century ago and on the boards for expansion. "It is true that under reclamation law," he said, "each individual ownership is entitled to 160 acres of irrigated land. However, in the Salt River area alone, which contains more than two-thirds of the proposed Arizona project, there are 995 ownerships in excess of reclamation law. About 32 percent of the irrigable land in this one area is held in excess ownership.

"True, the Bureau of Reclamation says that the 160-acre law will be enforced. . . . But we know that this law has never been enforced there. There is no reason to believe it will be enforced in the future. Rather, there is every reason to believe that it will not be enforced. . . . If the . . . project should be authorized . . . the idle land now held by the big landowner will immediately increase in value six to ten times. If . . . the large landowner should be forced to sell all but 160 acres, he would, of course, sell at tremendous profit."

Opportunity for public environmental planning was likewise circumscribed by bureaucratic circumvention of the law in the Sacramento Valley. In 1964, the *Sacramento Union* reported "an historic compromise" after endless negotiations. The settlement allows excess land owners, by various devices, to "get the water without having to break up their farms. . . . Thus a battle which has been waged since 1944 when Shasta Dam was built, ended." The *Union* forecast this ricochet: "Similar contracts are also being prepared for use in San Luis Project water." As part of the so-called compromise, the Bureau of Reclamation abandoned all attempts to collect repayment for 19 years' use of project water by the Sacramento diverters.

In 1933, a Secretary of the Interior ruled that the excess-land law does not apply to Imperial Valley, California, although the valley is saved from inundation and served in other ways by the Boulder Canyon Project. There, as noted earlier, nearly nine of ten "farm personnel" belong to the "lower class," and 4.4 percent belong to the "upper class." Half of the irrigated lands of the valley are owned in parcels larger than 160 acres. The secretary's executive assistant, a distinguished water attorney, recorded his opinion contrary to the secretary's ruling previous to its issuance, and subsequently testified before Congress that the law simply "has been ignored." Today the issue is before the Ninth Circuit Court of Appeals. It got there, not through the insistence of the Departments of Interior and Justice, but through the persistence of 123 landless Imperial Valley residents alerted and guided by a Brooklyn physician who had come to the valley to practice medicine.

> "We all wanted to preserve that domain for actual settlers. We all wanted to prevent monopoly..."

One could go on and on. The devices destructive of public control over water and land monopoly are infinite, and thoroughly exploited. With their success and spread, opportunity for public planning of open space and the environment recedes.

Why is it so hard to obtain enforcement of the reclamation law at the hands of officials who administer it? Why is law observance relegated as a last resort to the courts, with the initiative and the costs of preserving what the law promised them left so largely to farm families and the landless? Can it be that bureaucrats perceive more clearly than others that "the 160" is indeed—as alleged—no more than "petty political tyranny," and inefficient and uneconomic besides? That it is a burden on con-

sumers? That it is an outmoded myth from long ago? And that wisely in the public interest they relax enforcement to a bare gesture? This is the burden of unending public-relations attacks upon national reclamation policy and law. Can it be true? The questions call for specific answer.

Is "the 160" really "petty political tyranny" imposed upon landowners of more than 160 acres? In 1958, the U.S. Supreme Court listened to argument calling the law formally "a taking of vested property rights both in land and . . . water," and charging that it "discriminate[s] between the nonexcess and the excess landowner."The Court's immediate response was that "We cannot agree. . . . In short, the project is a subsidy, the cost of which will never be recovered in full." The 160-acre law, continued the Court, does not deprive owners of excess lands "of any rights to property or water." In other words, the claim of "petty political tyranny" seeks unsuccessfully to turn the truth bottom-side up.

Does "the 160" render agricultural production inefficient and uneconomical? On September 18, 1971, the *California Farmer* undertook to evaluate the charge that it does. In carefully chosen words it said: "What happens when irrigation water is introduced into the arid area? Does the 160-acre limitation help or hinder? What does farming become under imposed conditions? Southern Tulare County may not give a final answer, but it is old enough so there is a pattern of farming emerging. . . . Short-term financing has become almost routine. Methods to make agriculture profitable are working. Economies of big production are in evidence. Also, the economies of the small producer are there. Farm planning has been brought to engineering perfection. Production costs have been held if not actually reduced. . . . This has been done even in the face of the accusation that the limitation was throttling, rather than helping agriculture. The limitation rule actually appears to be solving long-term financing for many owners. . . . In this operation, efficiencies usually attributed to large acreages can be met and perhaps surpassed for an owner of less than 160 acres. . . . The barren land of southeast Tulare County is fast becoming a profitable garden with high-quality country living." Here it may be noted that the average irrigated farm in California is 142 acres.

Is "the 160" a burden on consumers, who might fare better with products from much larger producing units? Comparing the market impact of larger with smaller farms, Philip M. Raup, Professor of Agricultural Economics at the University of Minnesota, testified in 1972: "The large farm appears to be efficient, cost-conscious, and the source of much of our efficiency in agricultural production. But . . . if there are only large farms, the potentials for collusion, market sharing, restrictions on entry of new firms, and outright supply control are enormously increased. It is a part of our mythology of large farms that they are efficient. But the key question is: efficient at what? For very large farms, the answer is clear: At the exercise of market power . . . the effects of concentration in agriculture are quite likely to drive up the relative price of food in the long run." And Raup pointed out that "What is now needed is a research effort that will alert communities to the potential environmental costs of large-scale agri-business firms."

With these diversionary allegations examined—tyranny, inefficiency, high production costs, and high market prices—we return to the fundamentals of conservation and wholesome environment. The admonition of the original Governors' Conference on Conservation not to tolerate resource monopoly is not out of date, although in practice it remains in jeopardy.The same is true of the 1902 statute's preference for public planning of water and land use over private speculation. The Supreme Court's reassurance that the meaning of the 160-acre limitation is that reclamation projects are "designed to benefit people, not land," has a very modern ring. The fate of this principle is uncertain, however, notwithstanding approval by the highest court. As remarked earlier, administrators relax enforcement under pressure.

A conspicuous example is the State Water Project of California. Faced with the prospect that Congress would refuse to exempt Federal Central Valley Project from acreage limitation, *Business Week* reported on March 13, 1944, that "If the big landowners in the valley lose out in this particular fight they have several other proposals to accomplish their end. One of them . . . said to have originated among the big landowners of Fresno County, is for the State of California to take over the Central Valley project, paying the entire bill." Years elapsed, but finally the idea took hold.

In 1960 the voters of California, assured that the project "will pay for itself," approved a $1.75-billion bond issue by a small margin. They were ill-informed that motivation for the state project was to escape acreage limitation; likewise that three of the State's senators and Governor Brown had publicly assured Congress, in Brown's words, that "the State of California will commit itself to invest more than $11 billion . . . over and above the Federal program." Outlay on the state project already has reached $2.8 billion, not including the huge interest payments this commits the state to make to retire construction costs. In water-receiving districts such as Metropolitan Water District in Southern California, property owners pay for project water whether they receive any or not, and the state's taxpayers, north and south, underwrite the entire bill.

Notwithstanding that Congress—besought to exempt the state project from acreage limitation while allowing joint use of reservoir, pumping, and canal facilities—had debated for six days and refused exemption, administrators signed a federal-state contract minus any provision for acreage limitation.

A decade has elapsed awaiting challenge of the administrators' omission of acreage-limitation law from the contract. It has been left to private citizens to undertake this. Now four Central Valley family farmers have brought suit in San Francisco Federal District Court. Two conservation organizations—the Sierra Club and the North Coast Rivers Association—have asked to intervene in the case on the side of the farmers seeking observance of the law. On August 2, 1973, the presiding judge granted their motion. This is a great step to assure full airing of the conservation and environmental essence of a law that too many, for too long, have assumed was little more than an economic technicality. The Sierra Club, with others, is moving into a key role in two branches of government, to represent the public interest in preservation of a decent environment, practically and effectively.