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PUBLIC WATER, PRIVATE LAND

ORIGINS OF THE ACREAGE LIMITATION CONTROVERSY, 1933-1953

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In 1976 the Ninth Circuit Court of Appeals in San Francisco sent a series of shock waves along clearly defined fault lines of California agriculture. The court ruled that the federal reclamation laws dating to 1902 mean what they say: Heavily subsidized irrigation water can be distributed only to 160 acres per individual landowner, and anyone holding more than a quarter section must dispose of the excess land if he wishes to receive reclamation water.[1] The ruling occasioned surprise and consternation in some quarters, for it seemed to presage major alterations in the land-tenure pattern of the Central Valley of California, and potentially on reclamation projects throughout the West. The only real occasion for surprise, however, was that the issue should have required recourse to the courts at all. The acreage limitation policy was clearly established legally, had been praised by both political parties, and seemed an equitable principle for distributing the benefits of public spending. The Ninth Circuit's ruling raised three questions of historical significance. Why was the 160-acre law only erratically enforced for three quarters of a century? Why did the issue arise in particular in the Central Valley, where the land-tenure pyramid presented the very problem the reclamation laws were designed to avoid? Why, indeed, did a liberal administration in power when the Central Valley Project began operation not only fail to enforce the excess land law, but raise the most serious threat to the redistributive principle of reclamation?

This article attempts to answer these questions, which lie at the root of the modern controversy over the 160-acre law While considering reclamation policy as a whole, the study focuses on the Central Valley, which has been the fulcrum of the dispute for the past four decades. Interpretations of the key role of the Bureau of Reclamation after World War II have varied. Some persons contend the Bureau upheld the 160-acre law. Others, notably Paul S. Taylor and the Ninth Circuit, pinpoint the Bureau's failure to uphold the acreage limitation, but they are concerned mainly with legal analysis.[2] This paper, drawing on previously unused archival sources, analyzes legislation, and particularly administrative practices, in the changing political environment from 1933 through 1953. I argue that the decisive reason for the demise of the excess land law is traceable not merely to the conservative attack but to changes in liberal ideology and politics after World War II. The Franklin D. Roosevelt administration endorsed the family farm and the redistributive purpose of reclamation; the Harry S. Truman administration subordinated both ideals in favor of commercial agriculture and economic growth.

Federal reclamation policy since its inception in the Newlands Reclamation Act of 1902 has espoused twin objectives: to make barren land productive and to distribute the benefits of public spending widely. The Reclamation Bureau has achieved the first goal superbly. Federal spending for reclamation averaged $8.85 million annually before 1928. With the construction of Boulder Dam in 1928, the Bureau's first true multiple-purpose project, the agency assumed its modern character of massive construction and a prominent role for

hydroelectricity as well as irrigation. The New Deal's emphasis on public works and on public over private electrical power caused the Bureau's appropriations to spurt to an annual average of $52 million from 1933-1940; funding reached a one-year record of $359 million in 1950. The number of acres irrigated under reclamation projects reached 4,460,979 in 1946 and 10,929,824 in 1975. At first the Bureau mainly watered lands that had been taken from the public domain. By the 1920s, however, two-thirds of the acreage that received project water had been privately held when construction began. In the 1930s the agency began to provide "supplemental water" to farms that were already irrigated but needed more water. In the Central Valley all the farms to receive Bureau water were privately owned and in the majority of cases they would get supplemental water. The application of the acreage limitation would be especially sensitive and important in the Central Valley, where the Bureau would be putting public water on private land.[3]

The second goal -- the redistributive principle -- was achieved at best imperfectly, but it was of crucial importance because of the heavy subsidies water users received. Wide distribution of benefits had inhered in reclamation law since the 1902 Act. Its father, Representative Francis G. Newlands of Nevada, explained: "We have not felt in this country the evils of land monopoly . . . That will be the test of the future, and the very purpose of this bill is to guard against land monopoly and . . . to give to each man only the amount of land that will be necessary for the support of a family. . . ." Water users had to repay construction charges over a period of forty

years, which began after a ten-year "development period" had run. But they were not charged interest. At an interest rate of 3 percent, the subsidy would amount to 57 percent of the cost over forty years; at 5 percent it would equal 74 percent. The Comptroller General of the United States estimated that the interest-free financing alone gave water users on the Central Valley Project a total subsidy of $1.2 billion. Water users received a further subsidy on annual operating costs because an average of about 65 percent of the irrigation expenses were paid by users of reclamation-generated electricity. When the Central Valley Project began operation in 1947 water users were charged $2.70 per acre-foot. If all the subsidies were eliminated and an interest rate of 3 percent were assumed, the charge would have been $8.36 per acre-foot; at 5 percent interest, the toll would have mounted to $10.80 per acre-foot.[4]

The device chosen to insure wide distribution of benefits was to restrict the water an individual landowner could receive to the amount needed for 160 acres. The limit applied to water, not land. The distinction was crucial, for water rights were usufructuary rights upon which conditions for beneficial use could more easily be imposed than on fee simple titles in land. The 160-acre limit first found expression in the Acts of 1902 and 1912. Since the laws lacked enforcement provisions, however, land speculators often vitiated the social intent. The Act of 1914 therefore required landowners to agree to dispose of their excess lands on terms designated by the Secretary of the Interior if they wished to receive project water. Difficulty in enforcing the provisions of the 1914 Act after a project had

been initiated left it nearly as fruitless as its predecessors. Accordingly the Omnibus Adjustment Act of 1926 required holders of excess lands to sign "recordable contracts" before receiving project water. Under these contracts the landholders agreed to sell their excess lands within ten years at an appraised price that excluded any increased value from irrigation. Recordable contracts proved effective on the Vale, Owyhee, and Deschutes projects, and suggested that the Omnibus Adjustment Act could control speculation and realize the distributive intent, if it were implemented.[5]

In an arbitrary mathematical symbol lawmakers tried to express a bundle of economic and social objectives. The ideal of the family farm reflected the agrarian myth; the 160-acre threshold was derived from the Homestead Act. On early projects a quarter section frequently exceeded the amount a family could fully utilize. As farm sizes grew, 160 acres proved too small for some soil and climatic conditions. But the debates over 160 acres as a figure too often obscured its importance as a symbol. The family farm and quarter section were vehicles for broader purposes: distributing the benefits of public subsidy widely during the progressive era, redistributing wealth during the New Deal, and fostering democratic communities.[6]

After 1926 Congress dealt with the excess land issue on an ad hoc basis. The redistributive principle was extended in two cases. The Columbia Basin Project Act of 1937 gave the secretary of the Interior authority to reduce the maximum to as little as 40 acres; revision of the act in 1943 permitted him to vary the size from 40 to 160 acres depending on the acreage needed to establish a viable farm

unit. The secretary also received authority to purchase excess lands in order to facilitate their redistribution. Congress applied the 160-acre standard to the Arch Hurley (Tucumcari) Project in New Mexico in 1937, even though the project provided only supplemental water. The Department of the Interior firmly supported both enactments.[7]

Two exemptions also surfaced, on the Colorado-Big Thompson Project in Colorado in 1938 and the Truckee Project in Nevada in 1940. Both ventures irrigated land at high altitudes and with short growing seasons, which supposedly necessitated larger acreages; the product of Congressional pork barrel politics, their economic merits were dubious. Congress said the two measures did not establish precedents for further exemptions. Endorsements for both laws slipped through the Department of the Interior without the approval of Secretary Harold L. Ickes. He was livid when he learned belatedly of the loopholes.[8]

The most serious drawback to realization of the redistributive intent had been lax administration. When Ickes inquired about the acreage limitation in 1934, the Bureau told him it had been "a dead letter for years" and that it was better to "let sleeping dogs lie." Little enforcement was attempted until the late 1930s, for three reasons. First, legal interpretations were clouded. Regulations in force in the 1930s derived in part from a 1914 ruling by Bureau Chief Counsel Will R. King which allowed landowners to receive water for more than 160 acres if construction charges were paid in full on the excess lands. King's opinion was dubious, as would become clear when family-farm adherents examined it closely; meanwhile, however, it opened an important escape hatch for larger landholders. Since early in its history the Bureau had also

allowed a husband and wife to receive water on 160 acres each. This informal practice received recognition as a fait accompli in a solicitor's decision in 1945. Second, it was often difficult to find buyers for excess lands, especially in the 1930s, when many farms had been foreclosed. A program of federal purchase or government credit would have promoted the breakup of excess holdings. Third, the Bureau gave priority to "practical engineering" -- the construction and operation of the physical works -- over reclamation's social objectives.[9]

As a result of this weak enforcement, the Bureau had at best a mixed record for distributing its benefits. A survey of landownership on Bureau projects in 1946 revealed that small and medium-sized ownerships predominated but that some projects had serious violations of the excess land law. The agency provided water to 4,030,167 acres divided among 106,338 ownerships. The holders of 160 acres or less numbered 102,853 or 96.6 percent of the total; their farms embraced 2,802,245 acres or 69.5 percent of the total. In the medium-sized category (161 to 640 acres) 3,255 owners held 21.2 percent of the total. The .3 percent who enjoyed a square mile or more held 9.3 percent of the total; these barons owned 50.3 percent of the land in excess. Overall 30.5 percent of the acres were in excess of the land limit. In many cases the landholding pattern probably reflected the conditions that existed before reclamation projects began rather than the effects of enforcement. Nevertheless the Bureau, in part fortuitously, had avoided large-scale subsidies to large farms and agribusiness corporations that would have solidified a skewed landholding pattern.[10]

The Central Valley Project (CVP) encountered, however, the very land tenure problem Representative Newlands had feared. The Bureau's greatest venture, CVP by the 1970s carried a total price tag of $2.3 billion, of which $1.1 billion was allocated to irrigation and repayable to the government; CVP irrigated 2.3 million acres. Mexican land grants, sanctioned by lax American courts, had created in the California a pyramidal land structure that was probably more severe than in any other state. In 1945 the Bureau of Agricultural Economics studied irrigable landholdings in three counties -- Madera, Tulare, and Kern -- that appeared to be representative of the CVP service area. It found that 955,700 irrigable acres were divided among 9,551 owners. Some 8417 owners who enjoyed 160 acres or less apiece held 377,900 acres or 40 percent of the total, compared to nearly 70 percent on other Bureau projects; in other words 60 percent of the land exceeded the acreage limit. Medium-sized farms of 161 to 640 acres totaled 272,000 acres or 28 percent of the whole; they were held by 952 owners or 10 percent of the total. Large farms (641 acres or more) -- owned by 182 owners or 2 percent of the total -- embraced 305,800 acres, or 70 percent of the land in excess, compared to 50 percent on other Bureau projects. The farms larger than a square mile comprised 32 percent of the total acreage, more than triple the 9.3 percent on Bureau projects at large. If the agency's minimal enforcement practice carried over to CVP, the Bureau would find itself subsidizing massively the largest economic interests.[11]

CVP, said Arthur Goldschmidt, one of Ickes' advisers, offered "the best opportunity now available for correcting the land pattern of California." The secretary agreed. "I am decidedly of the

opinion that we ought to do everything in our power to enforce the 160-acre limitation . . . ," Ickes said in 1940. The Department readied an enforcement campaign in preparation for the beginning of CVP operations after the war's end. Harry W. Bashore, a veteran agency engineer who seemed more attuned to Ickes' social goals, became commissioner of reclamation in 1943. The Department launched two dozen major studies of the potential social effects of the project. In November 1943 Ickes, Bashore, and President Franklin D. Roosevelt told the National Reclamation Association -- an opponent of the excess land law -- that they intended to apply the statute to all CVP lands.[12]

The enforcement campaign reflected a maturation of Ickes' and his advisers' commitment to the redistributive purposes possible because of the growth of the reclamation program. One facet was public power. As huge dams, such as Bonneville on the Columbia, neared completion, the crucial question became how the electricity at the dams would be distributed. Moderate and conservative interests wanted the government to sell power to private utilities and to consider power a "cash crop" on which the government got top dollar. But Ickes and his liberal coterie insisted that the government string its own transmission lines, give priority to municipal and cooperative distribution facilities, and levy low rates. Since he found the Bureau of Reclamation too conservative, Ickes formed a Division of Water and Power in his office in 1941 to supervise power distribution and related issues. The division's first head, lawyer Abe Fortas, promptly announced: "Water and power must be distributed to the people without private profit."[13]

The second facet was what I have termed elsewhere the "community New Deal." Beyond the ideal of the family farm, New Deal community programs embraced diffused property ownership as the first step toward a planned ideal cooperative commonwealth. Community New Dealers had an organic view of society that would be roughly egalitarian and in which cooperation and group life would assume more importance than traditional individualism. Franklin Roosevelt believed that reclamation projects should not benefit "the man who happens to own the land at the time" but should provide small tracts that would "give first chance to the 'Grapes of Wrath' families of the nation." He envisioned a comprehensively planned Columbia Valley Project that could support 80,000 new families in agriculture and 20,000 others in small agriculture-related businesses.[14]

Before the enforcement campaign could bear fruit, the Department had to fight off a conservative challenge that threatened the very existence of the 160-acre law. Representative Alfred J. Elliott attached a rider to the rivers and harbors appropriation bill in March 1944 that would have exempted CVP from the acreage limitation. Elliott, a farmer from the Central Valley town of Tulare, where some of the largest landholdings were located, charged the Department was "trying to socialize agriculture and force Communism upon the people of the San Joaquin Valley." Land might be sold to undesirable people, he warned; "remember the Japanese and the trouble we had with them." Caught by surprise, the Department could not keep the House from adopting the Elliott rider.[15]

As the battle shifted to the Senate, the Bureau tried to devise a compromise. The Elliott amendment had crystallized understanding of the home-building and antimonopoly components of reclamation policy among Bureau personnel, Commissioner Bashore noted. But many Bureau officials felt the 160-acre law was too strict and difficult to administer in an area of established agriculture, such as the Central Valley. Moreover, they doubted they could win a straight-out fight to preserve the law. Favoring a revision of policy, they felt the change was dictated by political considerations. Some went so far as to suggest that the acreage limitation should not apply to anyone holding land before CVP was authorized. A more moderate proposal would have given landowners of any size water but levied a surcharge for excess lands.[16]

Secretarial officials dismissed the proposals out of hand. The Bureau's attitude was "not even that of an enlightened banker," said Fortas, now under secretary. The secretariat refused to compromise an ideological issue -- the type of society federal subsidy should encourage in the Central Valley. Assistant Secretary Oscar L. Chapman considered the rider part of a larger attack on the community New Deal that pitted "the organized big men against the unorganized little men; the kulaks against the peasants; the haves against the have-nots." Department spokesmen emphasized the importance of distributing the benefits of the subsidy widely and of developing farm communities. They relied on a study by a young Berkeley-trained anthropologist, Walter Goldschmidt, contrasting social patterns in two Central Valley towns. Arvin, characterized by large farms, had a more unequal

distribution of income, more farm laborers, and fewer retail businesses and social amenities. Dinuba, characterized by small to moderate-sized farms, showed higher and more evenly distributed income, more farm owners and retail businesses, and greater social cohesion. Arvin represented impermanence and alienation; Dinuba, stability and community. Goldschmidt attributed the differences "confidently and overwhelmingly to the scale-of-farming factor."[17]

Committed to the redistributive principle, members of the Department secretariat knew political backing could be mobilized. Support came from some farm organizations, church groups, labor unions, and veterans groups. Liberal to moderate senators praised the family farm. The most devoted ally was Robert M. La Follette, Jr., of Wisconsin, who had become aware of the social problems created by the Central Valley's land tenure pyramid during his investigation of migratory labor. When La Follette and his allies threatened to filibuster, the Senate leadership dropped the Elliott amendment. At the same time the Interior Department scored another victory when it got the Senate to insert the acreage limitation principle into the bill authorizing the Pine Flat Dam on the Kings River in California. Although Roosevelt and Ickes wanted the Bureau -- the logical agency -- to build the dam, the Army Corps of Engineers used its congressional support to win the site. The Corps promised large landowners exemption from the acreage limitation; while the Department might have offered the same lure in order to get the dam, it stuck to the 160-acre principle.[18]

After the Interior Department's successful defense in 1944, however, disquieting signs began to multiply. The years 1945-46 marked

a transition in both personnel and policy. Fortas resigned at the end of 1945. In February 1946 Ickes fell out of the Cabinet in a celebrated dispute with the new president, Harry S. Truman, over the nomination of oil millionaire Edwin Pauley as under secretary of the Navy. "Honest Harold's" successor was Julius A. Krug, an electrical power engineer who had served as chairman of the War Production Board, which had epitomized cooperation between big industry and government. Krug, a protege of Bernard Baruch and David Lilienthal, had mildly liberal leanings; the new secretary's main interest appeared to lie with expansion of federal power facilities but shorn of their redistributive potential. A "much more passive" influence on the Department than Ickes, Krug tended to wait until a "crisis built up so that he was forced into a corner and it had to be solved," noted one of his assistant secretaries, Warner W. Gardner. Krug elevated Chapman to under secretary, a position he held until December 1949, when he assumed the secretaryship upon Krug's resignation. Chapman, though among the more liberal of Truman's Cabinet members, both changed his ideas and tacked to the right as an act of political survival. Amiable and conciliatory by nature, he hated to make tough decisions even when forced into a corner.[19]

Krug and Chapman allowed the new commissioner of reclamation, Michael Straus, much freedom of action. A former Chicago newspaperman, Straus had been an effective publicist for Ickes in the 1930s. Assistant secretary from 1943-1945, Straus took an ostensible demotion to serve as commissioner of reclamation from 1946-1953. The new commissioner's attitude was "largely political and bureaucratic in the best sense," warned Fortas. "He is principally interested in obtaining work and jurisdiction and is not greatly interested in the social and economic problems."[20]

Shifts in liberal thought reinforced the personnel changes. The redistributive concepts important to one wing of New Deal thought were submerged by the new emphasis on economic growth. Truman administration economists, notably Leon Keyserling, argued that the wartime partnership between government and business had proved capitalism capable of an almost unlimited expansion that would obviate the need for redistributive policies. Economic growth constituted "the very essence of our development as a nation," said Chapman. The growth emphasis meant that the Bureau of Reclamation placed most importance on increasing the capacity of dam and irrigation works; how the products were distributed became secondary. Valley authorities, for which Ickes and Fortas had held high hopes, gradually lost favor in the Department until by 1950 Chapman abandoned them entirely. He also shifted from priority for low-rate federally controlled distribution of power in CVP to distribution through Pacific Gas and Electric Company at higher cost and with substantial profit for the private utility. A Department-wide seminar on postwar policy in late 1945 revealed that the ideal of the family farm as a way of life was giving way to a primary concern with the "development of successful farms operated as business enterprises." The Department should not abandon the family farm outright, its land planners said, but it "should recognize that this is a period of cultural transition." Indeed, the year 1945 marked the beginning of what John Shover has termed the "great disjuncture" in American agriculture, when technology, large-scale farming, and government policy worked a fundamental alteration in the structure of agriculture and rural life.[21]

The acreage limitation came under attack again when the Republican-controlled Eightieth Congress convened in 1947. California

Senator Sheridan Downey, a Sacramento lawyer who specialized in irrigation cases and had "substantial" landholdings in the Central Valley, introduced a bill to exempt CVP, the San Luis project in Colorado, and the Valley Gravity project in Texas from the 160-acre law. Though he had been a Bull Moose Progressive in Wyoming, and Upton Sinclair's candidate for lieutenant governor of California in 1934, Downey turned out to be increasingly conservative after reaching the Senate in 1938. Downey and his supporters stressed the difficulties of applying the limit in an area of established agriculture. The Bureau was "planning and plotting the destruction of a free economy to institute totalitarian rule over the Central Valley," he charged. The opponents of redistribution held a strongly individualistic view that subordinated community values to economic goals as determined through private enterprise. Central Valley agriculture and its accompanying social patterns resulted from the inexorable working of natural geographic and economic forces, they argued; the market rewarded those who demonstrated the most skill. They called on the Department to "just put water on all of the land and treat all of our citizens without discrimination." Government policy should assist in the release of individual energies, as James Willard Hurst observed of nineteenth-century legal theories; government efforts to achieve greater equality of result were anathema.[22]

The Downey bill caught the Interior Department searching for an acreage limitation policy. The Bureau continued to argue that some policy changes were desirable and, in any case, politically necessary. Its committee on compromise legislation professed adherence to the family farm ideal but proposed various adjustments upward. The most significant allowed holders of any amount of excess land to pay a

surcharge and continue receiving supplemental water if the secretary determined this were necessary "to prevent the deterioration of established communities." Krug, however, disliked the proposals because they were too vague and did not eliminate all subsidies to large landowners. He doubted the 160-acre limit would harm established communities. Rather, "a breakup of the large holdings might in time improve rather than deteriorate the community," he said. He seemed particularly impressed by the arguments made for a firm stand by Richard Boke, a veteran New Deal publicist and bureaucrat whom Ickes had appointed in 1945 to head reclamation Region II which supervised the CVP. "Frankly, no suggestion has yet been made that is more in keeping with the principles of Reclamation than the acreage limitation in the present law," the secretary pointed out in January 1947. He told the Bureau to hold the line at 160 acres.[23]

Straus and the Bureau found themselves in a dilemma. They did not want to fight for the 160-acre law, but they dared not abandon it outright. Several political inducements encouraged the Bureau to weaken the 160-acre law. First, it wanted to mitigate the image of Washington bureaucracy. Straus stressed that the Bureau was not "a prosecuting agency." Second, some of the projects the agency wanted to undertake were not feasible if ownership were limited to 160 acres; although many persons argued that such land was not worth irrigating, the Bureau's desire to expand pushed it towards projects of diminishing cost effectiveness. Third, power generation had assumed importance equal to or greater than irrigation. Controversial in itself, public power might be retarded if controversy swirled around the excess land law. Fourth, the Bureau was trying to fight off the interloping Corps

of Engineers in the Central Valley. Raising the 160-acre limit might divert some of the Corps' support to reclamation.[24]

Yet Straus could not have abandoned the excess land law openly, even if Krug had been willing. Straus knew, as his predecessor had observed, that the 160-acre law was indispensable to reclamation appropriations, particularly among liberals, who were the most receptive to federal spending. Nonwesterners in Congress looked askance at reclamation until they learned it was "a settlement and homesteading program," said Bashore. "As long as reclamation projects fulfill that purpose, public endorsements and public funds can be secured for reclamation projects. . ." To a large extent the Bureau's political dilemma distilled into a question of constituency. A powerful, well organized constituency stood to benefit directly from abandonment of the excess land law, but there was no constituency in being that stood to benefit directly from the law's enforcement. While such a constituency could perhaps have been created, as occurred with legislation supporting industrial unions in the 1930s, it remained a potential rather than an active constituency. Meanwhile the preservation of the redistributive principle relied on a generalized constituency for which the 160-acre law was but one of many social welfare goals.[25]

To escape from this political dilemma Straus devised a subtle strategy that called for rhetorical adherence to the acreage limitation but which, through a program limited to "technical compliance" with the law, eschewed actual enforcement. Testifying in 1947, Straus defended the land limitation. But he limited his arguments mainly to enforcing the laws passed by Congress, curbing speculation, and preserving the historic principle of reclamation policy. Straus exhibited

little of the ideological fervor that had characterized the defense in 1944; reclamation's contribution to correcting the land pattern and to building community was conspicuously absent. The commissioner's rhetorical defense mollified supporters of the law. But at the same time he explained to opponents how to avoid its substance through technical compliance. Straus volunteered that if a corporation had ten stockholders, it would be entitled to water for 160 acres per partner. He also suggested that a landowner could deed out 320-acre parcels to his married relatives and children and remain in technical compliance. The commissioner raised laughter when he acknowledged that such devices would not constitute "spiritual compliance," but he hastened to say that technical compliance was good enough for him. A dismayed Downey termed Straus's recitation "blithe." Downey continued to insist; the law is harsh and unworkable. Straus cajoled: don't worry, we're flexible. Perhaps because the commissioner's virtuoso performance took the sting out of acreage limitation, the Downey bill died in committee.[26]

Quietly and apparently without informing Krug, Straus had already begun to implement the technical compliance program. Thwarted in its attempt to change the law legislatively, the Bureau changed the law administratively. Technical compliance entailed two problems -- bringing older projects with long-standing violations into compliance and devising escape hatches for new projects. The agency struck first at projects already in operation, particularly those authorized before the 1926 Act introduced recordable contracts. Although the 1946 landownership survey claimed that enforcement had reduced violations to a minimal 3.7 percent, Straus acknowledged privately that many "serious violations" had to be corrected. Regional directors stressed that

compliance would be obtained only when excess landowners realized enforcement would proceed "at any cost," including shutting off the water of recalcitrant owners. The commissioner's office shrank from such tactics, however; it would not go beyond voluntary measures.[27]

Voluntarism required new exceptions. Rather than force immediate breakup by withholding water, Straus decided to apply the recordable contract technique. The excess landowners, who had been receiving water they were not entitled to for as much as four decades, would now receive water for another decade before having to sell. Some regional directors complained that the grace period was excessive. "No progress towards securing compliance will be achieved until the end of that period," said one; "efforts toward enforcement made so far would be largely nullified." This tactic suffered from the further disability that it lacked specific statutory authority, said Chief Counsel Clifford Fix. He got the solicitor to approve the stratagem, nevertheless, because he found it analogous to the purpose of breaking up the larger holdings. Although Fix cautioned that "we should avoid expressing the idea that any degree of 'compliance' with the statute is thus effected," the Bureau happily transferred these older excess lands to the "not in violation" category as soon as they came under recordable contracts.[28]

Another, more far-reaching administrative device -- accelerated or lump-sum payment of construction charges -- struck directly at the redistributive principle. Straus theorized that the acreage limitation would lapse as soon as construction charges were paid off. During the normal forty-year period for payout, excess landowners would have to dispose of their excess lands to receive project water. But if the payout period were accelerated, or perhaps even coincided with the

initial operation date of the project, no one would have to dispose of any excess lands to receive project water. This proposition reduced reclamation policy to that of a banker interested only in the return of his capital investment, and it ignored the continuing heavy subsidies large landowners would receive during the project's operations. It was even less effective than the surcharge proposals, which would have recovered part of the operating subsidy.[29]

Accelerated payout needed a veneer of legal respectability. The associate solicitor, Felix Cohen, provided it in October 1947 by simply putting his name to an opinion, M-35004, supplied two days earlier by D.M. Hudson of the office of the chief counsel of the Bureau. The Hudson-Cohen opinion held that early payout of construction charges would free excess lands from the limit whether they were covered by water-right applications, which were filed by individuals, or whether they came under the joint liability contracts of such organizations as irrigation districts. The opinion turned on Section 3 of the 1912 Act, which read as follows: ". . . no person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water-right application shall have been made. . . before final payment in full of all installments of building and betterment charges shall have been made . . . per single ownership of private land for which a water-right may be purchased . . . nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess . . ." The opinion relied on King's instructions of 1914, which it interpreted as saying flatly that early payout removed the acreage limitation on lands held under water right applications.[30]

Having established this principle for the lands held by individuals, Hudson applied it to tracts covered by joint-liability contracts in irrigation districts. In the Acts of 1922 and 1926 district contracts supplanted water-right applications; he argued that with these instruments Congress desired merely a change of form, not of policy. Consistency demanded that the same early payout provisions he had just established for the individual contracts should apply to district contracts. "Otherwise, substantially different acreage restrictions might result" simply because joint-liability contracts had superseded water-right applications. He held therefore that, by Section 3 of the 1912 Act, lands receiving water under a joint-liability contract were relieved of the excess-land restrictions upon full payment of contruction charges.[31]

The opinion was riddled with problems. In December 1961 Solicitor Frank J. Barry overruled it with an exhaustive opinion that left the 1947 statement in tatters. In 1976 the Ninth Circuit expressed amazement at the Hudson-Cohen opinion's "obvious" errors and "surprising superficiality." The court attributed the legal flaws to the Bureau's political maneuvering.[32]

One of the principal problems with opinion M-35004 was that it relied on the instructions devised by King in 1914, and misread them to boot. King's findings had been "reached largely on 'feel and hunch', with not much law to support it . . .," cautioned a regional counsel in 1947. The phrase "nor in any case in excess of one hundred and sixty acres" appeared to mandate the acreage limitation. But assuming the section were ambiguous, Hudson might have had recourse to legislative history; instead he relied on King, who had not read legislative history either. The misreading stemmed from the failure to realize that

King was dealing with the normal, not an accelerated, payout period. Secretary of the Interior Walter Fisher said in 1914 that Section 3 would "prevent the consolidation of holdings" until full payment of the building charge had been made. "By that time it is believed that the land will be in the hands of permanent settlers and speculative holdings eliminated." This was because at the time of the enactment of the 1912 law an individual could not -- at least before the normal payout period -- receive water for lands in excess of 160 acres. Furthermore, as Solicitor Barry pointed out, King had said only that the 1912 Act could be construed "to permit" delivery of water to excess lands after payout, not that such deliveries "could be demanded as a matter of right." Barry argued that even after the normal payout period, the Secretary of the Interior could permit the delivery of water to excess lands only if it fulfilled the purpose of establishing family farms.[33]

More serious still, M-35004 ignored key provisions of the Acts of 1914 and 1926. These laws added the "crucial" requirement that excess lands be disposed of or recordable contracts signed before their owners received project water. King's instructions did not encompass the 1914 Act, which was passed six weeks after he filed his opinion. The 1914 and 1926 Acts did not merely change the form of contract, as Hudson contended, but added provisions designed to make the excess land idea effective. The legislative history of both acts indicated support for the acreage limitation -- part of a pattern of consistent congressional backing for the 160-acre law from the passage of the Newlands Act through the rejection of the Elliott amendment.[34]

The administrative route was more circuitous than Downey's legislative exemptions, yet exemption by bureaucracy raised perhaps

greater dangers. The legal interpretations could apply to any reclamation project, and their very subtlety made them more insidious. The operation recalled James Willard Hurst's observation of the momentous consequences that could flow from obscure legal processes. "By enlarging or restricting the scope of such concepts as 'property' or 'navigability,'" Hurst wrote, "lawmakers could favor one interest and subordinate another, in a fashion so quick and quiet, so economical of analysis, seeming so routinely logical in its application of accepted values, that . . . the ranking of interests" could proceed virtually unnoticed. Perhaps equally serious, the willingness of midcentury liberals such as Cohen, Chapman, and Straus to revise laws administratively to fit their policy goals betrayed a contempt for the law itself. In 1951 Chapman, frustrated with Congress' failure to pass legislation authorizing federal development of the oil-rich "tidelands," induced his solicitor to file a severely strained interpretation of the Surplus Property Act that gave him the authority to start a leasing program. The act applied to such mundane items as surplus typewriters, however, and Congress administered a humiliating rebuke to Chapman's legal maneuvering.[35]

No matter how deficient its legal scholarship, the Hudson-Cohen opinion furnished the motive power for the technical compliance drive. Although it was one of the most important solicitor's opinions of the Truman period, the Bureau omitted it from the Department's annual compilation of decisions; it was available only in mimeograph. The opinion was not submitted for formal secretarial approval, but Bureau and Department officials accepted it as an authoritative policy statement. As secretary, Chapman informally praised the technical compliance program, at least on older

projects; he misleadingly cited the lump-sum payment device as being "in strict accord with the Reclamation laws as determined by the Associate Solicitor." These informal affirmations were soon reinforced by a string of contracts implementing the lump-sum payout provision. In December 1947 Straus issued Administrative Letter 303 in which he asked field officers to initiate action in accordance with the opinion. One of the first contracts was signed with the Klamath Drainage District in 1948, where accelerated payment lifted the limitations for 15 ownerships with 13,489 excess acres, or a mean of 899 acres. Lump-sum contracts were negotiated with 58 water user districts from 1948 through 1952 and received the approval of the secretary's office. In several cases other aspects of the renegotiated contracts required submission to Congress, and the repayment provisions received congressional approval as part of the overall perfunctory review. Straus's strategy was bringing forth much paper compliance on older projects.[36]

The wide-reaching implications of accelerated payout became clear when the Bureau moved to apply it to new projects, notably the Central Valley. Secretary Chapman had assured uneasy Congressmen in early 1951 that the lump-sum device was not being considered for any California project. Later that year he learned from an article in the San Francisco News that Straus was thinking of applying Administrative Letter 303 to the area served by the Pine Flat Dam. So long as the Corps of Engineers kept control of the dam, the large landowners in the Kings River service area hoped to receive irrigation water untroubled by the acreage limitation. Under the "Folsom Formula" enunciated by Truman in 1948, the Corps of Engineers was to transfer control of the

dam to the Bureau when it became operational. Reclamation law would apply, as New Dealers had made sure in the 1944 act. A stroke of Truman's pen would have resolved the issue in favor of reclamation law, but he left the situation for the Eisenhower administration, which eventually effected the transfer. Anxious to add Pine Flat to his empire, Straus was willing to abandon the acreage limitation -- one of the crucial policy distinctions between the Corps and the Bureau. He advised Chapman that a lump-sum payment of construction charges by the Kings River water users should be accepted as lifting the acreage limitation because such an arrangement would follow "entrenched" Department policy enunciated in opinion M-35004. The secretary avoided committing himself, saying merely that he wanted his staff to give the matter priority attention. Nothing happened, however, until October 1952, when defenders of the 160-acre law found their fears borne out. The Bureau office at Fresno, California, assured the Kings River district that "the proposed lump-sum payment contract, which you requested and we furnished, would remove the excess land restrictions of Reclamation Law . . ."[37]

Supporters of the 160-acre law mobilized and, rightfully suspicious of the Reclamation Bureau's and Interior Department's intentions, carried their appeal to Truman. James G. Patton, president of the National Farmers Union, warned the chief executive: "Unless you act fast and decisively, your Administration is about to go down in history, ironically, as the one that pulled the plug on American family farm policy." Truman appeared uninformed on the issue, however, and passed Patton's letter to Chapman for an explanation of "what he is talking about." The Missourian had issued generalized statements in support of the family farm; unlike his predecessor, however, he had not publicly

endorsed the excess land law. In fact in 1952 Truman signed a bill raising the acreage limit to 480 acres on the San Luis Valley project in Colorado, despite Chapman's objections. To Truman reclamation meant chiefly expansion of economic capacity.[38]

The secretary responded in December 1952 with a brace of memoranda that further clouded the situation and gravely disappointed supporters of the acreage limitation. The memoranda were written by the Program Staff, a small group of policy experts who functioned as Chapman's liberal conscience. In a memorandum to Truman, Chapman implied, as he had earlier, that the Hudson-Cohen opinion was correct. The secretary acknowledged that the Bureau had "accepted accelerated payout from some excess landowners" but only on older projects with long-standing violations. "At no time have I concurred in a general policy that lump-sum or accelerated payments would be an acceptable alternative to the application of the excess lands limitation," he said. The memo to Truman seemed to mean that, while Chapman would not apply the Hudson-Cohen opinion to new projects, it was a valid legal interpretation and was acceptable for older projects.[39]

At the same time, however, Chapman sent a memorandum to Straus that seemed to contradict two vital points. First, "in accordance with the policy statements set forth" in the memorandum to the president, the secretary said, "I am instructing you . . . to refuse to accept <u>any</u> lump-sum or accelerated payment of construction charges from <u>any</u> individual or organization which would, under Opinion M-35004 as construed by Administrative Letter 303" free the individuals or organizations from the acreage limitations. Chapman specifically told the

commissioner not to negotiate such a contract on the Kings River. Second, the secretary denied that the opinion carried secretarial approval and represented departmental policy. Since the opinion did not set forth any policy, Chapman said, it had not been submitted to or approved by the secretary.[40]

The memoranda to the president and the commissioner contradicted each other on both policy and law. It was clear that Chapman would not apply accelerated payout as an overall policy. But on older projects the presidential memorandum said lump-sum payments were acceptable, while the memo to the commissioner said they were not. If the latter were correct, all the contracts recently signed and endorsed in the presidential memo, including 36 Minidoka project contracts approved by Under Secretary Vernon Northrop in the past two weeks, would be invalid. Furthermore, the secretary's attempt to separate the legal and policy issues -- two halves of the same walnut -- blinked at reality. Opinion M-35004 had emerged from the Bureau's technical compliance campaign, which was a matter of policy. In any event Chapman implicitly approved the Hudson-Cohen opinion and cited it explicitly as the basis for the accelerated-payout contracts he had approved. The Department treated the opinion as authoritative until it was specifically limited by the solicitor in 1957 and overruled by the solicitor in 1961. Taken together the actions of December 12-24 -- the Minidoka contracts and Chapman's memoranda -- had confused more than clarified. It was as if the secretary faced a multiple-choice test with the options "all," "none," and "some of the above" and checked all three.[41]

Incredulous, Straus conferred with Chapman on January 6, 1953. He recounted the meeting in a memorandum to the files, which was apparently the only record made of the session. According to Straus,

Chapman said "he had not realized the effect of applying the order" and told the commissioner to disregard it. The commissioner considered that policy had thus reverted to the status quo ante. Straus overlooked, however, or perhaps was not informed of, Chapman's final statement on the question. On January 17 the secretary wrote Senator Paul Douglas a letter in which he reiterated the substance of policy in the directive to Straus but left the Hudson-Cohen opinion untouched. Three days later Chapman retired from office, leaving policy as murky as the tule fogs that sometimes enveloped the Central Valley.[42]

Nearly everyone connected with the issue was unhappy. Straus feared the "fuzzy" and "schizophrenic" situation blocked the application of accelerated payments on the Kings River. Under Secretary Northrop considered his superior's instructions "obviously . . . ill advised in the form issued." Fred A. Clarenbach of the Program Staff threw up his hands and wondered, "What is present Department policy?" But Chapman had particularly disappointed the liberals who supported the redistributive principle. "We certainly deserved better from the avowed friends of acreage limitation," said Douglas sadly. In a final letter to Chapman, Patton said: "Oscar, I don't believe that your memorandum to the Commissioner of Reclamation answers the problem that I have posed. . . . " The farm leader pointed out that the secretary had done nothing more than promise not to approve lump-sum payment contracts on new projects during his few remaining days in office. But the key elements -- Administrative Letter 303 and the Hudson-Cohen legal opinion -- remained intact to be implemented by later administrations.[43]

The Truman administration's legacy differed markedly from

its predecessor's. The Roosevelt administration had resurrected a nearly forgotten principle and fought to maintain it against severe odds. Liberals from 1946-1953, lured by economic growth and bureaucratic desire, buried the policy considerations in a blizzard of legal technicalities. At the crucial moment when federal policy could have triggered some redistribution of landholding in the Central Valley, Truman-era liberals elected instead to use federal subsidies to reinforce the most skewed land-tenure pattern in the nation. The accelerated payout mechanism continued in use through the 1950s and removed the threat of breakup of large holdings on older projects. On newer projects, particularly in California, accelerated payout was used by many water user districts to buy their way out of the acreage limitation. They were finally rebuffed by the federal courts, the branch of government that has been the staunchest defender of the excess land law.[44]

But beyond the lump-sum payment, the technical compliance strategy as a whole that Straus pioneered continued as the Bureau's approach to acreage limitation into the 1970s. A host of legal technicalities, ranging from deeding excess lands to family members to apportioning 160 acres per person in investment trusts, have produced a paradox: In California there was almost perfect paper compliance on Bureau projects, but subsidy to the largest interests was perpetuated. In 1970, 1,097,000 of the 1,287,000 excess acres receiving project water in the nation were in California. During the Truman administration the Bureau confronted one of the key challenges to liberal policy -- the question of which groups would benefit from subsidies contributed by the entire public. In their policies for putting public water on private land, Truman-era liberals used federal subsidy to reinforce rather than alter the distribution of power in society.[45]

FOOTNOTES

1. U.S. v. Tulare Lake Canal Company, 535 F.2d. 1093 (1976). The 3-0 opinion was written by the senior judge of the circuit, James R. Browning, of Great Falls, Montana.

2. The fullest treatment of the excess land law during the period 1933-1953 is David A. Kathka, "The Bureau of Reclamation in the Truman Administration: Personnel, Politics, and Policy" (Ph.D. dissertation, University of Missouri, 1976), ch. 1-5 (hereafter "Bureau of Reclamation"). Kathka argues that "Truman prevented any erosion in the existing policy, but did nothing to strengthen it for the future. . . ." (p. 108). Perhaps beguiled by Commissioner of Reclamation Michael Straus's rhetoric, Kathka emphasizes what the Bureau of Reclamation said rather than what it did. William E. Warne, assistant commissioner of reclamation and assistant secretary of the Interior from 1947-1951, contends that Straus "read the law and tightened up the program" (Warne, The Bureau of Reclamation [New York, 1973], p. 18.) Paul Wallace Gates devotes much attention to the early years of the excess land law but deals only briefly with the controversy from the 1930s to the present (History of Public Land Law Developmen: [Washington, 1968], ch. 22). The leading authority on the 160-acre law, economist Paul S. Taylor, is highly critical of the Bureau. Of

his many writings, "The Excess Land Law: Execution of a Public Policy," Yale Law Journal, LXIV (February 1955), 477-514, is most relevant to the period 1933-1953. Two key legal opinions -- the Ninth Circuit Court decision and an opinion by Solicitor of the Interior Department Frank J. Barry in December 1961 (68 I.D. 370) -- are highly critical of the Bureau of Reclamation's legal maneuvers. The most unusual perspective is found in Harry J. Hogan, Acreage Limitation in the Federal Reclamation Program (Arlington, Va.: National Water Commission, 1972, distributed by National Technical Information Service, U.S. Department of Commerce). Hogan, a devotee of large-scale farming and the mythical free market, provides abundant evidence of the means used to evade compliance with the 160-acre law, and applauds the loopholes: "The flexibility and comprehensiveness of the evasive and meliorative techniques excite admiration. In difficult circumstances over six decades the Bureau of Reclamation and the irrigation farmer, with the tacit, and sometimes express, approval of Congress, have brought off what must be regarded as a remarkable triumph in public administration" (p. 97).

Limited to the 160-acre law, this article does not deal with two other controversial areas of reclamation policy. One is the widely ignored requirement that water users be bona fide residents. The residency requirement was upheld in 1972 by Senior District Judge William Murray of Montana visiting in the Southern District of California (Yellen v. Hickel, 352 F. Supp. 1300), and the case was appealed to the Ninth Circuit. Some persons believe that enforcement of the residency requirement would entail more far-reaching

consequences than the acreage limitation. Another issue is the sale of water rights, for which see Joseph L. Sax, "Selling Reclamation Water Rights: A Case Study in Federal Subsidy Policy," Michigan Law Review, LXIV (November 1965), 13-46.

3. Donald C. Swain, "The Bureau of Reclamation and the New Deal, 1933-1940," Pacific Northwest Quarterly, LXI (July 1970), 142; Gates, History of Public Land Law Development, pp. 691, 698; Oversight Hearings, House Subcommittee on Water and Power Resources of the Committee on Interior and Insular Affairs, Acreage Limitation Provisions of Reclamation Law (Washington, 1976), p. 13.

4. 35 Congressional Record 6734; "Acreage Limitation in the Central Valley -- A Report on Problem 19, Central Valley Project Studies," Sept. 25, 1944, Paul S. Taylor Papers, Bancroft Library, University of California at Berkeley; Richard Boke to Edson Abel, Jan. 31, 1947, File 742, Records of the Bureau of Reclamation since 1945, Record Group 115, Reference Branch, National Archives, Washington, D.C. (hereafter NA); Sax, "Selling Reclamation Water Rights," n4; Comptroller General of the United States, Congress Should Reevaluate the 160-Acre Limitation on Land Eligible to Receive Water From Federal Water Resources Projects (Washington, 1972), p. 10 (hereafter Comptroller General report).

5. Yellen v. Hickel, 352 F. Supp. 1300 at 1306-7; Richard K. Pelz, ed., Federal Reclamation and Related Laws Annotated, 3 vols.

(Washington, 1972), I, 31-89, 177-183, 197-8, 376-387; William E. Warne, "Land Speculation," Reclamation Era, XXXIII (August 1947), 176-180.

6. For data on desirable farm sizes on early projects see the report by F. H. Newell, Jan. 27, 1913, and the responses from the field on which it was based, File 262-B3, Records of the Bureau of Reclamation, General File, 1902-1919, Record Group 115, NA. Some recent studies suggest that farms of 160 acres, or 320 acres for husband and wife, are still economically viable in the Central Valley. See George Goldman, et al., Economic Effect of Excess Land Sales in the Westlands Water District (Berkeley: University of California Division of Agricultural Sciences, Special Pub. 3214, June 1977). E. Phillip Leveen argues that large farms are not inherently more efficient but in part reflect applications of technology and other matters of social choice. See his statement in Senate, Joint Hearings before the Select Committee on Small Business and the Committee on Interior and Insular Affairs, Will the Family Farm Survive in America? (Washington, 1976), pp. 189-202. The debate over farm sizes has tended to obscure another point: From a strict market analysis, federal reclamation projects are not economically viable to start with; farms receiving project water are profitable in large part only because of the heavy federal subsidy. If the issue of economic viability fades, the question of who benefits from the subsidy assumes still greater importance.

7. Pelz, Federal Reclamation Laws, I, 596, II, 728-735.

8. Seriously embarrassed by his subordinates' actions, Ickes had little choice but to recommend that the President sign the bill; the secretary phrased the recommendation as weakly as possible, however. He passed off the Department's position as being "neither favorable nor unfavorable," but simply a lack of objection because the Nevada conditions were similar to those on Colorado-Big Thompson. Ickes to Harold D. Smith, Nov. 25, 1940, File 400.08, Records of the Bureau of Reclamation, 1902-1945, Record Group 115, Natural Resources Branch, NA. Pelz, Federal Reclamation Laws, I, 612-3, 712; "Providing that Excess-Land Provisions of Federal Reclamation Laws Shall Not Apply to Certain Lands," Senate Report, No. 1921, 75th Cong., 3d. Sess., 1938; "Amending the Federal Reclamation Laws," House Report No. 3036, 76th Cong., 3d. Sess., 1940; author's interview with Arthur Goldschmidt, New York City, April 14, 1978.

9. F. C. Youngblutt, "Suggestions for Legislation," Aug. 12, 1938, RMP to Elwood Mead, n.d., ca. Jan. 1934, John C. Page to Leo L. Heisel, Jan. 4, 1939, Page to Under Secretary of the Interior, Jan. 21, 1939, see also replies of field officers to Page, December 1940-February 1941, File 400.08, RG 115, NA; 43 L.D. 339 (1914); Opinion M-34172, "Application of the Excess Land Provisions of the Federal Reclamation Laws to Community Property States," Aug. 21, 1945, reprinted in Central Valley Project Documents, 2 vols. (Washington, 1957), II, 692-8. The phrase "practical engineering" was used by

S. T. Harding, a prominent California water engineer, who lamented the Department's awakening to the social implications of reclamation in contrast to its earlier attitude. Senate Subcommittee of the Committee on Public Lands, Exemption of Certain Projects from Land-Limitation Provisions of Federal Reclamation Laws (Washington, 1947), p. 120. (hereafter Exemption of Certain Projects).

10. Bureau of Reclamation, Land Ownership Survey on Federal Reclamation Projects (Washington, 1946), pp. 29-53.

11. Comptroller General report, pp. 6, 10-11; Charles E. Coate, "Water, Power, and Politics in the Central Valley Project, 1933-1967" (Ph.D. dissertation, University of California at Berkeley, 1969), ch. 2; Edwin E. Wilson and Marion Clawson, Agricultural Land Ownership and Operation in the Southern San Joaquin Valley (Berkeley, 1945). Carey McWilliams, Factories in the Field: The Story of Migratory Farm Labor in California (Boston, 1939) ch. 1.

12. Arthur Goldschmidt to Ickes, April 10, 1944, File 8-3, Part 4, Records of the Office of the Secretary of the Interior, Record Group 48, NA; Ickes to Page, March 30, 1940, File 400.08, RG 115, NA; Ickes and Roosevelt messages in Proceedings, Irrigation War Food Conference and 12th Annual Meeting, National Reclamation Association, Denver, Colorado, October 27-28-29, 1943 (Washington, 1944), pp. 201-3; Kathka, "Bureau of Reclamation," p. 55.

13. Abe Fortas, "Relationship of Power to Reclamation," Reclamation Era, XXXI (December 1941), 312; Clayton R. Koppes,

"Conservation and the Continuity of American Liberalism, 1933-1953," Social Science Working Paper No. 174, June 1978, California Institute of Technology.

14. Clayton R. Koppes, "From New Deal to Termination: Liberalism and Indian Policy, 1933-1953," Pacific Historical Review, XLVI (November 1977), 547-550; Roosevelt to Ickes, Dec. 21, 1939, box 75, President's Secretary's File, Roosevelt Papers, Franklin D. Roosevelt Library, Hyde Park, New York.

15. Elliott quoted in Dinuba Sentinel, April 10, 1947, in File 742 -- Central Valley, RG 115, NA; Warne to Bashore, March 20, 1944, File 400.08, RG 115, NA.

16. Commissioner of Reclamation, Administrative Letter No. 50, Oct. 23, 1944, Charles E. Carey to Bashore, May 16, 1944, Warne to Carey, Oct. 5, 1944, File 400.08, RG 115, NA; R. B. Williams to S. O. Harper, July 5, 1944, Harper to Williams, July 18, 1944, box 6, Sinclair Harper Papers, Western History Research Center, Coe Library, University of Wyoming, Laramie; Kathka, "Bureau of Reclamation," p. 59.

17. Fortas to Ickes, Nov. 10, 1944, box 258, Harold L. Ickes Papers, Library of Congress Manuscript Division, Washington, D. C.; Chapman to Ickes, Oct. 13, 1943, box 67, Oscar L. Chapman Papers, Harry S. Truman Library, Independence, Mo.; Walter Goldschmidt study published in Senate Special Committee 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 (Washington, 1946), esp. pp. 29, 45-50; see also Walter Goldschmidt, As You Sow (New York, 1947).

18. 90 Congressional Record 9494.

19. Warner W. Gardner oral history interview (HSTL), p. 30; Koppes, "Conservation and the Continuity of American Liberalism," p. 15.

20. Fortas to Ickes, Nov. 10, 1944, box 258, Ickes Papers, LC.

21. Evelyn Cooper to C. Girard Davidson, April 30, 1946, box 95, Joel D. Wolfsohn Files, Records of the General Land Office, Record Group 49, NA; John Shover, First Majority -- Last Minority: The Transforming of Rural Life in America (DeKalb, Ill., 1976), p. 141; Willard W. Cochrane and Mary E. Ryan, American Farm Policy, 1948-1973 (Minneapolis, 1976), p. 26; Alonzo L. Hamby, Beyond the New Deal: Harry S. Truman and American Liberalism (New York, 1973), pp. 297-303; Koppes, "Conservation and the Continuity of American Liberalism," pp. 19-24.

22. Senate Subcommittee of the Committee on Commerce, Hearings, Rivers and Harbors Omnibus Bill: California Central Valley Project (Washington, 1944), pp. 623-633, 676, 702; see generally Exemption of Certain Projects; James Willard Hurst, Law and the

Conditions of Freedom in the Nineteenth-Century United States (Madison, 1957); Kathka, "Bureau of Reclamation," p. 56.

23. Warne, Clifford Fix, and G. W. Lineweaver to Straus, enclosing "Policy Basis for Landownership Aspects of Reclamation Program," Dec. 31, 1946, Straus to Gardner, July 10, 1946, Fix to Files, Feb. 13, 1947, Krug to Straus, n.d., ca. Jan. 13, 1947, Gardner note, Jan. 13, 1947, File 742, RG 115, NA; Krug to Cyrus E. Woodward, Jan. 27, 1947, File 742 -- Central Valley, RG 115, NA.

24. Exemption of Certain Projects, p. 94; Paul S. Taylor, California Social Scientist, 3 vols. (oral history interview, Bancroft Library), II, 208.

25. Senate Subcommittee of the Committee on Irrigation and Reclamation, Hearings, Central Valley Project, California (Washington, 1944), p. 192; see also the remarks of Senator Paul Douglas, 108 Congressional Record 5711 (1962).

26. Exemption of Certain Projects, pp. 104-8, 257.

27. Straus to Regional Director, Boise, Idaho, Dec. 10, 1946, H. E. Robbins to Straus, Feb. 21, 1950, Fix to Straus, July 17, 1947, File 742, RG 115, NA.

28. E. A. Moritz to Straus, Aug. 15, 1947, Fix to Straus, July 17, 1947, ibid. Landowners always had the hope that during the ten-year grace period a change in policy or some new technicality would in the end stave off disposition. But even if they had to sell, the economic benefits from a decade of subsidized water were ample. Harry Horton, counsel for the Imperial Irrigation District, explained the willingness of some landowners to sign recordable contracts: "He thinks if he gets water for 10 years . . . without having to sell it, he can make enough money out of it so he can afford to sell the land at any old price." Senate, Subcommittee on Irrigation and Reclamation of Interior and Insular Affairs Committee, Hearings, Acreage Limitation (Reclamation Law) Revision (Washington, 1958), pp. 87-88.

29. Straus to Mastin G. White, Sept. 19, 1947, File 742, RG 115, NA.

30. Hudson draft, Oct. 20, 1947, Cohen to Straus, Opinion M-35004, Oct. 22, 1947, ibid.

31. Opinion M-35004. Kathka interprets Straus's technical compliance program as an attempt to plug the loopholes in reclamation law instead of seeing it as a means to use them to the fullest and, indeed, to open new ones (pp. 102-108). Fix went on to build another wing on the shaky foundation of the Hudson-Cohen opinion. An entire water user district might not want to employ the accelerated payment option, but individual landowners might, although they would be blocked by the joint-liability contract. Fix fused a portion of disparate sections of the 1912 Act, "even though the words of the 1912

Act themselves are not aptly descriptive" of the situation, with a section of the 1926 Act, although "admittedly, the provision . . . does not apply specifically to the question we have here." The effect of his action was to open the lump-sum payment possibility to individuals even though they were covered by joint-liability contracts. None of the regional counsel he had asked for advice had sensed these possibilities. (Fix to Straus, Sept. 3, 1948, Administrative Letter 303, Supp. 1 -- Attachment #1, Taylor Papers, Bancroft Library). The Eisenhower administration generally followed the lines of Straus's technical compliance program. In this case it tightened the law, however, when Solicitor of the Interior Elmer F. Bennett overturned Fix's interpretation (64 I.D. 273). On Eisenhower-era policy, particularly the Kings River controversy, see Reclamation Files, Fred Seaton Papers, Dwight D. Eisenhower Library, Abilene, Kansas, especially C. Petrus Peterson memorandum, "Kings River Contract," n.d. ca. June 1957, and Seaton to Philip A. Gordon, July 12, 1957.

32. 68 I.D. 370; U.S. v. Tulare Lake Canal Co., 535 F. 2d 1093 at 1139, 1140.

33. Howard R. Stinson to Fix, Dec. 5, 1947, File 742, RG 115, NA; 68 I.D. 370 at 382-3; Taylor, "The Excess Land Law: Execution of a Public Policy," 487-8.

34. 68 I.D. 370 at 388-390, 395.

35. James Willard Hurst, Law and Economic Growth: The

Legal History of the Lumber Industry in Wisconsin, 1836-1915 (Cambridge, Mass., 1964), p. 208; Clayton R. Koppes, "Oscar L. Chapman: A Liberal at the Interior Department, 1933-1953" (Ph.D. dissertation, University of Kansas, 1974), pp. 403-415.

36. Chapman to John F. Shelley, March 29, 1951, Secretary's Reading File, Chapman Papers, HSTL; Commissioner of Reclamation, Administrative Letter 303, Dec. 16, 1947, Boke to Straus, Feb. 23, 1950, File 742, RG 115, NA; Department of the Interior, Excess Land Provisions of the Federal Reclamation Laws and the Payment of Charges, 2 parts (Washington, 1956, copy, Department of the Interior library), I, 51-3, appendix 45 (hereafter Excess Land Provisions).

37. Alfred C. Wolf to Fred Aandahl, March 19, 1953, box 1, Program Staff Central Files, RG 48, NA; Chapman to Shelley, March 29, 1951, Secretary's Reading File, Chapman Papers, HSTL; Straus to Chapman, Jan. 18, 1952, May 15, 1952, Chapman to Straus, June 2, 1952, in Excess Land Provisions, I, appendices 36, 42, 43. On the "Folsom Formula" see Official File 620, box 1515, Harry S. Truman Papers, HSTL, esp. Frank Pace to Truman, "Past History of Action with Respect to Central Valley, California," Aug. 5, 1949.

38. Patton to Truman, Nov. 24, 1952, box 1, Program Staff Central Files, RG 48, NA; Kathka, "Bureau of Reclamation," pp. 99-101; Pelz, Federal Reclamation Laws, II, 1083.

39. Chapman to Truman, Dec. 24, 1952, box 1, Program Staff Central Files, RG 48, NA.

40. Chapman to Straus, Dec. 23, 1952, ibid., emphasis added.

41. Excess Land Provisions, pp. 51-53; 68 I.D. 370 at 399-402.

42. Straus memorandum for the record, Feb. 6, 1953, box 1, Program Staff Central Files, RG 48, NA; Chapman to Douglas, Jan. 17, 1953, 26.3 Case File Correspondence, Paul H. Douglas Papers, Chicago Historical Society, Chicago, Illinois.

43. Northrop to Bradley, Feb. 18, 1953, Clarenbach to Files, Feb. 3, 1953, box 1, Program Staff Central Files, RG 48, NA; Douglas to Taylor, Jan. 23, 1953, 26.3 Case File Correspondence, Douglas Papers, CHS; Patton to Chapman, Jan. 12, 1953, File 8-1, RG 48, NA.

44. Oversight Hearings, House Subcommittee on Water and Power Resources of the Committee on Interior and Insular Affairs, Acreage Limitation Provisions of Reclamation Law (Washington, 1976), p. 20. The United States Supreme Court unanimously upheld the validity of the 160-acre law in 1958 after the California Supreme Court, split 4-3, had overturned it as applied in the Golden State. Ivanhoe Irrigation District v. McCracken, 78 S. Ct. 1174.

45. Charles R. Renda, "Owner Eligibility Restrictions -- Acreage and Residency," Natural Resources Lawyer, VIII (1976), 265.